

ORDINANCE NO. ____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO, STATE OF CALIFORNIA, ADDING A NEW TITLE TO CHAPTER 5 OF THE EL DORADO COUNTY CODE RELATING TO PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS

WHEREAS, the County of El Dorado joins the State in declaring that elders and dependent adults deserve special protection (see Penal Code Section 368(a)); and

WHEREAS, elders and dependent adults may have mental or physical impairments that make them less able to protect themselves, to detect, understand, or report criminal conduct, or to testify in court proceedings on their own behalf; and

WHEREAS, crimes against elders and dependent adults are particularly destructive given the mental and physical impairments they face, particularly because their ability to recover from the harm is significantly diminished; and

WHEREAS, the types of abuses committed against elders and dependent adults include financial abuse, physical abuse, neglect, isolation, false imprisonment, and mental abuse; and

WHEREAS, perpetrators of crimes against elders and dependent adults specifically target elders and dependent adults; and

WHEREAS, perpetrators commonly purport to befriend the elder and dependent adult to deceive that person; and

WHEREAS, perpetrators of crimes against elders and dependent adults are frequently known by and trusted by the elder or dependent adult, as the perpetrators include persons who are employed to perform services in the homes of elder and dependent adults or who provide personal services; and

WHEREAS, perpetrators of crimes against elders and dependent adults often already have criminal records, which if made known would signal that they are more likely to abuse elder and dependent adults; and

WHEREAS, the regulation of persons who provide these services to elders and dependent adults would help protect elders and dependent adults from such predators; and

WHEREAS, the Board of Supervisors of the County of El Dorado finds and declares that the purpose of this Ordinance is:

- (1) to better protect the health and welfare of elders and dependent adults in this community;

(2) to ensure that persons who serve in a position of trust by providing these services to elders and dependent adults have not committed designated crimes which signal the potential for abuse; and

(3) to give elders and dependent adults the knowledge that the person whom they employ has gone through the application and permit process, which includes a background check.

WHEREAS, the fines imposed by this Ordinance shall not be enforced until beginning _____, 2012 in order to provide caregivers and the public sufficient time to become acquainted with the new program and its mandates.

The Board of Supervisors of the County of El Dorado, State of California, ordains as follows:

SECTION 1. A new Title is added to Chapter 5, entitled “Permits For Elder and/or Dependent Adult Caregivers,” and is hereby added to the El Dorado County Code to read in full as follows:

Chapter _____

PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS

Sections:

(Table of Contents, as per Napa’s Code, deferred until numbering done)

_____.010 Definitions.

“Business caregiver permit” means a permit to work for profit or compensation, whether current or future in nature, as a caregiver for a specific elder and/or dependent adult home service business.

“Caregiver” means any person that provides personal and/or domestic services for compensation or any form of consideration for an elder and/or dependent adult. A “caregiver” as so defined does not include a spouse.

“Caregiver coordinator” means the county designated organization that accepts caregiver permit applications, forwards applications to the industry specialist for background checks, and notifies applicants and the county of applicant status.

“Caregiver permit” means a permit for an individual person to work for profit as an elder and/or dependent adult caregiver.

“Dependent adult” has the same meaning as used in Penal Code Section 368 (any person between the ages of eighteen and sixty-four, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent Adult” includes any person between the ages of eighteen and sixty-four who is admitted as an inpatient to a twenty-four hour health facility).

“Disqualifying crimes” means a list of criminal convictions that disqualifies an applicant from obtaining a caregiver permit, although a “Limited Caregiver Permit” may be obtained as herein provided. The list of disqualifying crimes shall be adopted by resolution on the date this ordinance is passed and may be amended by adoption of subsequent resolutions.

“Elder” has the same meaning as used in Penal Code Section 368 (any person who is sixty-five years of age or older).

“Elder and/or dependent adult home service business” means any for-profit business which employs, arranges, or contracts for one or more persons to perform personal and/or domestic services for elders and/or dependent adults.

“For profit” means any type of compensation, whether in the form of current or future benefit, provided by the elder and dependent adults to the caregiver for the caregiver’s services;

“Home services” or “personal services” means providing personal and/or domestic services to an elder and/or dependent adult, or personal services and domestic services in the elder and/or dependent adult’s temporary or permanent place of residence, which are intended to enable that individual to remain safely and comfortably in his or her own residence.

“Industry specialist” means a private company that enters into a contract with the caregiver coordinator to perform the background checks on individuals applying for a caregiver permit.

“Limited caregiver permit” means a permit to work for profit as a caregiver for a single elder and/or dependent adult only (rather than for multiple clients).

“Personal and/or domestic services” includes the following services for elders and/or dependent adults: domestic services performed on a regular basis more than one day a week such as housework, meal preparation, meal clean-up, laundry, grocery and other essential shopping, other errands, heavy house or yard cleaning; and/or personal services performed on a regular basis such as bathing, oral hygiene, grooming, dressing, feeding, assistance with ambulation and/or transfers, care and assistance with medical apparatus, taking an elder and/or dependent adult to and from medical appointments, or any other similar acts.

“Public authority” has the same meaning as used in Welfare and Institutions Code Section 12301.6.

“Responsible managing officer” means the employee designated by a corporation or partnership to complete and sign all applications on behalf of the corporate officers and partners.

“Undue influence” consists of any one or more of the following: (1) the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over that other, of such confidence or authority, for the purpose of obtaining an unfair advantage over the other; or, (2) taking an unfair advantage of another's weakness of mind; or, (3) taking a grossly oppressive or unfair advantage of another's necessities or distress. Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results that kind of supremacy of one mind over another by which that other is prevented from acting according to his or her own wish or judgment, and whereby the will of the other is overborne and he/she is induced to do an act which, if left to act freely, he/she would not do.

____.020 Permit -- Required.

A. It is unlawful for any person to act as a caregiver without a valid caregiver permit. This section shall not apply to persons who are registered nurses, licensed vocational nurses, nurse practitioners, physician assistants, certified nursing assistants, physical therapists, certified home health aides, or similar occupations for which the person already possesses a valid and current state license or state certificate and has passed a state and FBI background check.

B. It is unlawful for any person to operate an elder and/or dependent adult home service business without all caregiving employees receiving a business caregiver permit.

C. This section does not apply to the county Board of Supervisors, a public authority, or a non-profit consortium established to implement an In-Home Supportive Services Program as described in Welfare and Institution Code Sections 12301.6. et seq.

D. This section does not apply to a facility that is licensed and regulated by the State of California through a process that requires the facility's employees to be the subject of a background check prior to employment.

E. This section does not apply to any person who is wholly or exclusively compensated by a State of California-administered benefit program.

F. Violation of this ordinance is a misdemeanor or infraction, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

____.030 Permit -- Application.

A. Each application for an individual permit to act as a caregiver shall contain the following information and shall be submitted to the caregiver coordinator:

1. The full true name and any other names ever used by the applicant;
2. The current residential address and telephone number of the applicant;
3. Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address;
4. All fictitious business names used by the applicant and the respective addresses of those businesses;
5. Written proof that the applicant possesses a valid social security number;
6. Written proof that the applicant is at least eighteen years of age unless the particular business has a different age requirement pursuant to state or federal law, in which case proof of the applicable state or federal law requirement shall be provided;
7. Applicant's height, weight, and color of eyes and hair;
8. Submit two passport type photographs;
9. Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment;
10. The name and business address of any employing individual elder and/or dependent adult or elder and/or dependent adult home service business within the last five years;
11. Whether the applicant has ever had any license or permit issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational license or permit revoked or suspended within five years immediately preceding the application, and, if so, the reason for the suspension or revocation;
12. All criminal convictions of the applicant, including those dismissed pursuant to Penal Code Section 1203.4, except traffic, and a statement of the dates and places of such convictions; all current grants of probation or parole; and
13. Such other identification and information as may be required to substantiate the matters required to be set forth in the application.
14. Upon request of the caregiver coordinator, the applicant shall submit any further information or documentation required to assess the applicant's eligibility for a business caregiver permit.
15. The applicant shall to the full extent permitted by law indemnify and hold harmless the county, the caregiver coordinator and the officers, agents, employees and volunteers of the county and the caregiver coordinator from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for any incorrect or incomplete information received from applicant, any other agency or governmental entity, or any other source which results in a denial of said application.

16. The applicant shall sign a statement waiving confidentiality to enable the caregiver coordinator and/or designee to receive any and all information necessary to evaluate and process the application pursuant to this ordinance.

B. Each application for a business caregiver permit shall contain the following information and be submitted to the caregiver coordinator:

1. If the applicant is a corporation, the name of the corporation exactly as shown on its articles of incorporation or charter, together with the state and date of incorporation and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than twenty five percent of the stock of the corporation;

2. If the applicant is a partnership, the name and residential addresses of each of the partners, including limited partners;

3. If applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the county clerk;

4. If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner as stated in subsection (B)(1) of Section ____ .030;

5. If the applicant is a non profit organization, the name of the organization exactly as shown on its IRC Section 501(c)(3) form, the legal formation of the organization together with the state and date of its formation and the names and residential addresses of each of its members and/or governing board;

6. If the applicant is a corporation, partnership, or non profit organization, the name of the responsible managing officer; and

7. The current business address and telephone number of the applicant;

8. Written proof that the applicant and employee(s) possess a valid social security number;

9. Written proof that the applicant and employee(s) are at least eighteen years of age unless the particular business has a different age requirement pursuant to state or federal law, in which case proof of the applicable state or federal law requirement shall be provided;

10. Together with the application, the applicant shall submit the following documents:

a. A notarized and/or witnessed declaration from the legal owner or responsible managing officer of the elder and/or dependent adult home services business stating:

i. That applicant is the legal owner or responsible managing officer of the elder and/or dependent adult home service business;

ii. The applicant's background has been checked as has that of each of his or her employees;

iii. That the background check included, at a minimum, a social security trace and address locator search, statewide criminal records search, federal criminal records search, and a driving records search, U.S. Sex Offenders Registries search for each individual for the past seven years or a criminal history record check was conducted by the California Department of Justice and optionally the Federal Bureau of Investigations;

iv. The applicant has been provided, reviewed, and is aware of the criminal exemptions that prevent an applicant from receiving a caregiver permit;

v. The applicant received and reviewed his or her employee(s) background report and the applicant certifies that the employee(s) do not have any disqualifying crimes, have not been convicted of any other felony in the past ten years (dating back from the date of application), are not on formal or informal probation or parole in any jurisdiction, and do not have a similar type of license, permit or certificate denied, suspended or revoked in the past five years;

vi. The applicant acknowledges that he or she knowingly, intelligently and voluntarily chose to employ the person(s) listed in the application;

vii. The applicant agrees to accept any and all risks associated with the decision to hire the above referenced individuals;

viii. The applicant agrees to continue to background check his or her employee(s) annually and review the information for disqualifying crimes. If a criminal history record check was conducted by the California Department of Justice and optionally the Federal Bureau of Investigations, he or she agrees to review the information received for any disqualifying crimes. If an employee has a subsequent disqualifying crime, the applicant agrees to return the permit and notify the recorder-county clerk within five days of becoming aware of the disqualifying crime. The applicant agrees to provide the employee with an appeal process;

ix. The applicant agrees to notify the recorder-county clerk within five days of termination of his or her employees. The notification shall be in writing and shall include the individual's business caregiver permit;

x. The applicant agrees to notify the recorder-county clerk within five days of hiring any new employee. The notification shall be in writing;

xi. The applicant, to the full extent permitted by law, shall hold harmless, defend at applicant's own expense, and indemnify the county, the caregiver coordinator and the officers, agents, employees and volunteers of the county and the caregiver coordinator from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for personal injury (including death) or damage to property, arising from or related to all acts or omissions of applicant's employees; and

xii. The applicant agrees to maintain a legible true and complete copy of the names and addresses of all persons whom applicant employs as caregivers, copies of the results of the background reports for each employee, proof that the applicant has inspected the background report, and all licenses, permits, or certificates required and/or issued by any government agency for the business to operate, for a period of seven years. The applicant agrees that these records shall be open for inspection by the county and caregiver coordinator within the ordinary course of business hours;

b. Liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance in which the applicant agrees to maintain in full force and effect while employing elder and/or dependent adult caregivers:

i. Current general and professional liability insurance in the amount of one million dollars per occurrence and three million dollars in the aggregate;

ii. Workers' compensation insurance covering all employees providing care;

iii. Crime/Employee Dishonesty Bond, including third party coverage, with a minimum coverage of ten thousand dollars;

c. Proof of current business license in every jurisdiction that the business operates in or, if a non profit organization, proof of non profit status; and

d. Proof of agreement or other evidence of relationship with company agency used to do background checks.

11. Such other identification and information as may be required to substantiate the matters required to be set forth in the application.

____.040 Permit -- Fees.

A. An application fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of application and upon annual renewal thereafter.

B. A permit fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of issuance of the permit and upon annual renewal thereafter.

C. In the event of a denial of the permit, for whatever reason, the fees are nonrefundable.

D. Upon a written request by the caregiver, a replacement permit may be issued for a "lost card" fee of \$ ____.

____.050 Permit Issuance or Denial; Grounds for Denial.

A. Upon submittal of a complete application, the caregiver coordinator shall forward the application to the industry specialist who shall conduct a background investigation to determine an applicant's fitness to conduct the occupation of caregiver. The application of an elder and/or dependent adult home service business will not be submitted to the industry specialist if all the supporting documents are submitted pursuant to subsection (B) of Section _____.030.

B. Except as otherwise provided in this code, upon completion of the investigation of an individual applicant, the county shall issue a permit unless:

1. The applicant has any misdemeanor or felony conviction for violation of the Penal Code Sections included on the list of disqualifying crimes;

2. The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application;

3. The applicant has had a similar type of license, permit, or certificate previously denied, suspended for a total of six months, or revoked, within five years immediately preceding the date of the filing of the application, and the applicant can show no material changes in circumstances since such denial, suspension, or revocation;

4. The applicant is on informal or formal probation in any jurisdiction;

5. The applicant has had a felony conviction within ten years immediately preceding the date of the application; or

6. After request by the caregiver coordinator, the applicant fails to provide proof of any application requirement set forth in Section _____.30.

C. Except as otherwise provided in this code, upon submittal of the application and required documents by an elder and/or dependent adult home service business, the county shall issue a permit unless:

1. The applicant fails to provide proof of any application requirement set forth in subsection (B) of Section _____.30;

2. The applicant has knowingly made a false or misleading statement of a material fact or omitted a material fact in the application; or

3. The applicant failed to inform the recorder-county clerk in writing, within five calendar days of cessation of work, stating that an individual no longer works for the agency and failed to return the individual's business caregiver permit to the recorder-county clerk.

D. The caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional two year period of time, by submittal of a renewal application.

E. The business caregiver permit shall be valid until the employee no longer is employed by the elder and/or dependent adult home service business or the permit is revoked by elder and/or dependent adult home service business.

____.060 Permit -- Right to Appeal.

A. Any applicant denied a caregiver permit shall be afforded an appeal as follows:

1. For a denial pursuant to a disqualifying crime, an appeal as prescribed by the industry specialist.

2. For a denial under subsections (B)(2), (3), (6) and (C)(1), (2), and (3) of Section _____.050, an appeal as provided below, except that any employee of an elder and/or dependent

adult home service business whose permit is revoked shall be afforded an appeal as prescribed by the elder and/or dependent adult home service business.

B. Any applicant who is denied a caregiver permit shall be notified of the denial in writing within ____ days of the denial by the (____?), to the mailing address provided by the applicant in the application material. By providing the mailing address on the application, the applicant is deemed to have agreed to service by mail at that location.

C. A letter notifying the applicant of the denial shall state: the reason(s) for the denial; the date of the denial; and (____?).

D. The appeal shall be considered by (____?).

E. The applicant who is denied shall be afforded the opportunity to present within thirty (30) days of receipt of the denial letter any information or evidence the applicant deems necessary to present his or her appeal. Failure to submit the information or evidence within the thirty (30) days shall be deemed a waiver by the applicant of the appeal process, in the sole discretion of the County.

F. Upon receipt of the additional information or evidence, the ____ shall have fourteen (14) days to in writing either uphold the denial of the caregiver permit, to request further information or evidence from the applicant, or to overturn the denial of the caregiver permit.

G. Once the determination described above has been made, the decision of ____ is final and in the sole discretion of _____.

____.070 Permit -- Limited Caregiver Permit.

A. A person who would otherwise qualify as an applicant for a caregiver permit but cannot do so because of a disqualifying conviction may request a limited caregiver permit that will authorize the applicant to perform home services for a single employing elder or dependent adult. An individual may possess only a single limited caregiver permit at any one time.

B. A limited caregiver permit may be issued if the following conditions have been satisfied:

1. Together with the application and payment of fees required for a permit under Sections _____.30 and _____.040, the applicant shall submit a notarized and/or witnessed declaration from the employing elder and/or dependent adult acknowledging:

a. That he or she is aware that the elder and/or caregiver applicant is not eligible for an elder and/or dependent adult caregiver permit;

b. That he or she has been provided, reviewed, and is aware of the criminal exemptions that prevent an applicant from passing the background check and he or she understands the applicant has a disqualifying conviction;

c. That he or she desires to employ the applicant as an elder and/or dependent adult caregiver notwithstanding the applicant's ineligibility to obtain a non-limited permit due to previous criminal convictions;

d. That he or she has knowingly, intelligently, and voluntarily chosen the applicant to be their caregiver;

e. That he or she understands the possible danger and potential risk involved with hiring a caregiver who was unable to pass the background check and agrees to accept any and all risks associated with the decision to hire the applicant;

f. That he or she, to the full extent permitted by law, shall hold harmless, defend at his or her own expense, and indemnify the county, the caregiver coordinator and the officers, agents, employees, and volunteers of the county and the caregiver coordinator, from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for personal injury

(including death) or damage to property, arising from or related to all acts or omissions of the applicant.

C. A limited caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional one year periods by submittal of an application and current notarized and/or witnesses declaration and payment of the applicable fee. A limited caregiver permit shall not be issued to anyone that has previously had such a permit suspended or revoked.

D. A limited caregiver permit provided under this section shall be subject to any regulatory and/or criminal action as if it were a permit issued under Chapter ____.

E. Any statement of the elder and/or dependent adult which is to be notarized and/or witnessed under this section shall not be notarized and/or witnessed by the applicant.

____.080 Threatening, Coercing, Intimidating, or Using Undue Influence - Prohibited.

It is unlawful for any person to threaten, coerce, intimidate, or use undue influence upon an elder and/or dependent adult in order to obtain a statement required under Section _____.070. Any person found to have threatened, coerced, intimidated, or unduly influenced an elder and/or dependent adult may be the subject of criminal prosecution as provided in subsection (E) of Section _____.020 above.

____.090 Permit -- Update and Renewal.

Each individual permit holder shall apply for renewal of his or her permit prior to the expiration of said permit within one year of the issuance date. Renewal applications shall include any new information not contained in the original application. Upon the renewal of said permit, the renewal term is for two (2) years.

Each business caregiver permit issued to the elder and/or dependent adult home service business shall remain in effect until the employee no longer is employed by the elder and/or dependent adult home service business or until the permit is revoked by elder and/or dependent adult home service business.

For any type of caregiver permit issued, it is the sole responsibility of the applicant or permit holder to notify in writing within thirty (30) days of conviction of any crime listed herein as a "Disqualifying Crime," by notifying both the care recipient and the caregiver coordinator. Failure to so notify in writing shall be deemed as an automatic revocation of the permit.

SECTION 2. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of El Dorado hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 3. This Ordinance shall be effective thirty (30) days from and after the date of its passage. Enforcement of the monetary fine provisions in this Ordinance (Section _____.020(E)) shall be suspended until _____, 2012.

SECTION 4. A summary of this Ordinance shall be published at least once five (5) days before adoption and at least once before the expiration of fifteen (15) days after its passage in the

(Mountain Democrat???), a newspaper of general circulation published in the County of El Dorado, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of El Dorado, State of California, held on the ___ day of _____, 2012, and passed at a regular meeting of the Board of Supervisors of the County of El Dorado, State of California, held on the ___ day of _____, 2012, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

Ray Nutting, Chair
El Dorado County Board of Supervisors

ATTEST: _____
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM Office of County Counsel	Approved by the El Dorado County Board of Supervisors
By: (do we need this?)	Date: _____
	Processed by: _____
	Deputy Clerk of the Board

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 330 Fair Lane, Placerville, California on _____.

_____, DEPUTY
_____, CLERK OF THE BOARD