

CHAPTER 20

RESIDENTIAL FACILITIES FOR ELDERLY AND DISABLED PERSONS

Section

- 20-1. Purpose.
- 20-2. Residential facilities for elderly persons.
- 20-3. Residential facilities for persons with a disability.

20-1. Purpose.

The purposes of this section are:

- (1) to comply with section 17-27-504 and 17-27-605 of the Utah Code; and
- (2) establish an administrative process for the approval of permits to operate residential facilities for elderly and disabled persons that balances the need to prevent discrimination against elderly and disabled persons in the interests which are rationally related to legitimate land-use concerns. The county commission finds these equally valid and competing interests can be best accommodated and balanced by adopting an administrative process ensuring legitimate governmental interests are protected while guarding against discrimination and providing flexibility in residential facilities for elderly and disabled persons which do not cause undue hardship, fiscal or administrative burden on the County and do not undermine the basic purposes that the land use ordinance seeks to achieve. (Ord.2005-30, 11/22/05)

20-2. Residential facilities for elderly persons.

- (1) A "residential facility for elderly persons" shall not include any facility:
  - (a) operated as a business; provided, that such facility may not be considered to be operated as a business solely because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility;
  - (b) where persons being treated for alcoholism or drug abuse are placed;
  - (c) where placement is not on a strictly voluntary basis or where placement is part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;
  - (d) which is a health care facility as defined by section 26-21-2 of the Utah Code; or
  - (e) which is a residential facility for persons with a disability.
- (2) "Elderly person" means a person 60 years or older who desires or needs to live with other elderly persons in a group setting but who is capable of living independently.
- (3) A residential facility for elderly persons

shall:

- (a) meet all applicable building, safety, land use, and health ordinances applicable to similar dwellings;
- (b) be subject to the same minimum site development standards as those for a single-family dwelling or dwelling unit in the zone in which the facility is located; and
- (c) be capable of use as such facility without structural or landscaping alterations that would change the structure's residential character.
- (4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for the elderly, or if the structure fails to comply with the applicable health, safety, and building codes. (Ord.2005-30, 11/22/05)

20-3. Residential facilities for persons with a disability.

- (1) As used in this chapter, "Disability" is defined in Section 57-21-2 UCA.
- (2) "Residential facility for persons with a disability" means a residence in which more than one person with a disability resides and which is:
  - (a) licensed or certified by the department of human services under Title 62A, Chapter 2 of the Utah Code, licensure of programs and facilities; or
  - (b) licensed or certified by the department of health under Title 26, Chapter 21 of the Utah Code, Health Care Facility Licensing and Inspection Act.
- (3) A residential facility for persons with a disability shall be a permitted use in any zoning district where a dwelling is allowed. Each such facility shall conform to the following requirements:
  - (a) The facility shall comply with all building, safety, and health regulations applicable to similar structures. As part of this requirement the following site development standards and parking standards shall be applicable:
    - (i) Each facility shall be subject to minimum site development standards applicable to a single-family dwelling or other similar dwelling in the zone in which the facility is located; and
    - (ii) The minimum number of parking spaces required for a residential facility for persons with a disability shall be the same as those for a single-family dwelling located in the same zoning district in which the facility is located.
  - (b) No facility shall be made available to an individual whose tenancy would:

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(i) constitute a direct threat to the health or safety of other individuals, or

(ii) result in substantial physical damage to the property of others. It is not the intention of this subsection to establish any legal basis for tort liability on the part of the facility operator.

(c) Prior to the occupancy of any facility, the person or entity licensed or certified by the department of human services or the department of health to establish and operate the facility shall provide to the zoning administrator:

(i) a copy of such license or certification; and

(ii) a sworn affidavit that no person will reside or remain in the facility whose tenancy would likely:

(a) constitute a direct threat to the health or safety of other individuals, or

(b) result in substantial physical damage to the property of others.

(d) the use permitted by this section is nontransferable and shall terminate if:

(i) the facility is devoted to a use other than a residential facility for persons with a disability;

(ii) the license or certification issued by the department of human services or the department of health terminates or is revoked, or

(iii) the facility fails to comply with this section.

(4) None of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

(5) Any person or entity who wishes to request a reasonable accommodation shall make application to the zoning administrator and articulate in writing the basis for the requested accommodation.

(6) Each application for a reasonable accommodation shall be decided within 30 days.

(7) If a request for a reasonable accommodation is denied, such decision may be appealed to the board of adjustment in the manner provided for appeals of administrative decisions. (Ord.2005-30, 11/22/05)