



Community Development Department

Tom Dolan
Mayor

Scott J. Bond
Chief Administrative Officer

James L. Sorensen
Director

MEMORANDUM

April 20, 2017

To: City Council via Planning Commission
From: Community Development Department
Subject: Hearing Officer – Amend Title 15A, Chapter 3, Officers, Boards and Commissions, Chapter 11, Special uses, Land Development Code, Revised Ordinances of Sandy City, 2008 CODE-3-17-5244

HEARING NOTICE: *This Code Amendment was noticed in the paper at least 10 days prior to the first Planning Commission meeting.*

BACKGROUND

The Sandy City Community Development Department has filed a request to amend Title 15A, Chapters, 3 Officers, Boards and Commissions, 11, Special Uses, Land Development Code, Revised Ordinances of Sandy City, 2008. The purpose of the Code Amendment is to consider modifying the process for requesting a reasonable accommodation. This amendment will consider adding provisions for selecting a hearing officer, instead of the Planning Commission, to review this type of land use approval, and to classify the hearing officer as a land use appeal authority.

ANALYSIS

Over the last few months, the City has discussed the possibility of appointing a hearing officer, in place of the Planning Commission, to review all requests for reasonable accommodations. This type of request is typically associated with a Residential Facility for the Disabled where the applicant is requesting more residents than allowed within the definition of a family. This definition currently limits no more than four unrelated individuals living together as a single house keeping unit.

The Community Development Director is a Land Use Authority that approves business licenses, building permits and enforces zoning ordinances. In the case of a Residential Facility for the Disabled, the owner or agent may file a business license, building permit application, may inquire about an application or may be notified of a violation. The owner or agent could then file a request for a reasonable accommodation. The reasonable accommodation request will be given to the proposed hearing officer.

NON-CONFORMING USES

This Code Amendment would not create any non-conforming situations.

LAND DEVELOPMENT CODE PURPOSE COMPLIANCE

The Sandy City Land Development Code in §15A-01-03 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

15A-01-03 Purpose

This Code is adopted to implement Sandy City's General Plan and to promote: public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. General

- a. To facilitate the orderly growth and development of Sandy City.
- b. To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.
- c. To stabilize property values.
- d. To enhance the economic well being of Sandy City and its inhabitants.

2. Implementation of General Plan

To coordinate and ensure the implementation of the City's General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.

3. Comprehensive, Consistent and Equitable Regulations

To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

4. Efficiently and Effectively Managed Procedures

- a. To promote fair procedures that are efficient and effective in terms of time and expense.
- b. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.
- c. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.

The proposed Code Amendment will stabilize property values by establishing a system of fair, comprehensive, consistent and equitable regulations, and standards for all reasonable accommodation requests within the City.

GENERAL PLAN COMPLIANCE

The General Plan encourages appropriate development standards for all uses and zoning categories within Sandy City.

OTHER

Besides the purposes set out in the ordinances cited above, one of the stated purposes of the City's land use ordinances is to facilitate the orderly growth and development of Sandy City (Rev. Ord. of Sandy City 2008, Section 15A-01-03(A)(1)). Some of the general purposes of the City's Development Code are to implement Sandy City's General Plan, and to promote the following public policies: public health, safety, convenience, aesthetics, welfare; efficient use of land;

sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration (R.O.S.C. Sec. 15A-01-03(A)).

STAFF RECOMMENDATION

The Community Development Department requests that the Planning Commission forward a positive recommendation to the City Council to adopt the proposed ordinance amendment as shown in exhibit "A", attached, for the following reasons:

1. Compliance with the Purpose of the Land Development Code by creating consistency and equitable standards and procedures for reasonable accommodation requests within Sandy City.
2. Compliance with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.
3. Better serve the residents of Sandy City.

Planner:

Reviewed by:

Brian McCuiston
Planning Director

Exhibit "A"

15A-03-04 Appeal Authorities

A. Board of Adjustment

1. **Purpose.** In order to provide for just and fair treatment in the administration of local land use ordinances and to ensure that substantial justice is done, a Board of Adjustment has been created to exercise the powers and duties provided hereafter.
2. **Creation and Membership.** The Board of Adjustment shall consist of five regular members and two alternate members.
 - a. The Mayor shall appoint the members and alternate members with the advice and consent of the City Council for a term of five years.
 - a. The Mayor shall appoint regular members of the Board of Adjustment to terms so that the term of one member expires each year. The Mayor shall appoint alternate members in such a manner that at least a two and one-half year gap will exist between term expirations.
 - b. One member of the Planning Commission shall be appointed semi-annually by the Commission to serve as the Commission's liaison to the Board of Adjustment. Such Planning Commission member shall have the right to attend all meetings of the Board of Adjustment, take part in all discussions but shall not vote on the Board of Adjustment decisions. Notwithstanding, the Commission's liaison to the Board of Adjustment shall not take part in discussions or decisions on conditional use permit appeals. (Ord 16-15, Amended 3-28-2016)
 - c. One member of the City Council shall be appointed semi-annually by the Planning Commission to serve as the Council's liaison to the Board of Adjustment. Such Council member shall have the right to attend all meetings of the Board of Adjustment, take part in all discussions but shall not vote on the Board of Adjustment decisions.
 - d. All members and alternate members of the Board of Adjustment shall be residents of the City. Any member or alternate member of the Board of Adjustment relocating their primary residence outside the limits of the City shall resign their appointment within 30 days prior to their relocation, if possible.

- e. Alternate members are to serve in the absence of members of the Board of Adjustment upon request of the chairman. Alternate members are to attend all meetings of the Board of Adjustment. The chairman shall establish a service rotation system which provides that alternate members serve on the Board approximately the same amount.
- f. Members of the Board of Adjustment may be removed as established by the City's Administrative and Legislative Codes.
- g. Vacancy on the Board of Adjustment:
 - (1) The Mayor, with the advise and consent of the City Council, shall fill any vacancy.
 - (2) The person appointed shall serve for the unexpired term of the member or alternate member whose seat was vacated.

3. **Procedures.**

- a. Organize and elect a chairman.
- b. Adopt rules that comply with all applicable State statutes and City ordinances.
- c. Meet at the call of the chair and at any other times that the Board of Adjustment determines.
- d. Have the chair, or in the absence of the chair, the acting chair may administer oaths and compel the attendance of witnesses.
- e. Conduct its meetings in compliance with the requirements of State statutes and City ordinances concerning the keeping of minutes, recording of votes, and absences.
- f. Hear a request for a variance or appeal. Three members constitute a quorum of the Board of Adjustment and a concurring vote is necessary to grant a variance or to overturn a decision on an appeal.
- g. Make decisions on scheduled agenda items. Decisions of the Board of Adjustment become effective at the meeting in which the decision is made unless a different time is designated in the Board's rules or at the time the decision is made.

4. **Powers and Duties.** The Board of Adjustment shall hear and decide:

- a. Requests for variances from the terms of the land use ordinance as specifically delegated to it by this Code or referred to it by the Director.
 - b. Appeals from decisions applying the land use ordinance except those appeals specifically delegated in this Code to be heard by an alternate appeal authority.
 - a. Other matters as established by the City Council.
- B. **Administrative Officer.** The Director is designated as an appeal authority for the purpose of reviewing and deciding:
- 1. Requests for minor variances.
 - 2. Other matters as established by the City Council. (Ord 16-15, Amended 3-28-2016)
- C. Hearing Officer. A Hearing Officer, as appointed by the Mayor, is designated as an appeal authority for the purpose of reviewing and deciding requests for reasonable accommodations.

15A-11-08 Residential Facility for Elderly Persons or for Persons with a Disability

- A. **Purpose.** The purpose of this Section is to:
- 1. Comply with Utah Code Annotated.
 - 2. Avoid discrimination in housing against persons with disabilities pursuant to the Utah Fair Housing Act and the Federal Fair Housing Act as interpreted by courts whose decisions are binding in Utah. This Section is not a separate zone for such facilities but applies to all residential zones within Sandy City. If any facility, residence, congregate living, or other housing arrangement meets the definition of a residential facility for elderly persons or a residential facility for persons with a disability as set forth in this Title, the requirements of this Chapter shall govern the same notwithstanding any conflicting provision of this Title or the Revised Ordinances of Sandy City. Except as provided herein, the requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Revised Ordinances of Sandy City, or other local, County, State, or Federal laws.
- B. **Permitted Uses**
- 1. **Permitted Uses.** Notwithstanding any contrary provision of this Title, a residential facility for elderly persons and a residential facility for persons with a disability shall be permitted uses in any zone where a dwelling is allowed as a permitted or conditional use subject to the development standards in paragraph D of this Section.
 - 2. **Termination.** A use permitted by this Section is non-transferable and shall terminate if:

- a. The facility is devoted to a use other than a residential facility for elderly persons or a residential facility for persons with a disability.
 - b. Any license or certification issued by the Utah Department of Health or the Department of Human Services for such facility terminates or is revoked.
 - c. The facility fails to comply with requirements set forth in this Chapter.
- C. **Review Process.** ~~In order to evaluate the impact of the proposed facility and its similarity to the impact of a single family dwelling occupied by a family or, where applicable, in multiple family zones or a multiple family dwelling, the~~ In addition to other information required by the Revised Ordinances of Sandy City Utah, the following information must be submitted with the business license application or request for a reasonable accommodation, as applicable, for a residential facility. Additional information may be requested to aid in that review.
- ~~1. Sufficiently detailed site plans, building plans, and other information necessary to determine compliance with building, safety, and health regulations and standards applicable to similar residential dwellings permitted in that zone.~~
 - ~~2. Drawings or photographs depicting the elevations of all sides of all buildings.~~
 3. 1. A statement of the Sspecific type of facility (as defined by State regulations) the applicant seeks to operate and by which State agency it is regulated.
 4. 2. The Nnumber of residents, and resident and non-resident staff who will live at the residential facility, and expected/typical number of visitors per day.
 - ~~5. Location and number of similar facilities in the vicinity of the proposed facility.~~
 6. 3. Type of operation—business, family, eleemosynary, charitable, or benefiecial organization The complete name of the business, the type of business entity and whether the business is a for-profit or non-profit organization.
 - ~~7. Supervision—hours and degree of supervision to be provided.~~
 8. 4. The Typical or average length of stay of the residents.
 - ~~9. Special accommodation(s), waivers, or exceptions requested or necessary, to extent thereof, and basis for need for the same.~~
 - ~~10. Photographs and plot plans of residences within 1,000 feet of the proposed site that are similar in size and scope to the accommodation request.~~
 - ~~11. Location of any schools within 500 feet of the property line of the proposed site.~~
- D. **Development Standards.** The development standards set forth in this Section shall apply to any residential facility for elderly persons or residential facility for persons with a disability.
1. **Building, Safety, and Health Regulations.** The facility shall comply with building, safety, and health regulations applicable to similar residential structures within the residential zone in which the facility is located.
 - a. Each facility shall be subject to the same development standards applicable to similar residential structures located in the same zoning district in which the facility is located.

- b. The minimum number of parking spaces required for a facility shall be the same as for similar structures located in the same zoning district in which the facility is located.
 2. **No dangerous Persons Permitted.** No facility shall be made available to an individual whose tenancy would:
 - a. Constitute a direct threat to the health or safety of other individuals.
 - b. Result in substantial physical damage to the property of others.
 3. ~~**Proximity.** No such facility may be located within 800 feet measured from the property line of each facility of a similar facility. (Ord 10-04, Amended 2-19-2010)~~
 4. ~~**Security Measures.** For residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 2A, Chapter 2, Licensure of Programs and Facilities:
 - a. A security plan satisfactory to local law enforcement authorities.
 - b. 24 hour supervision for residents.
 - c. Other 24 hour security measures.~~
 5. **3. Day Treatment and Outpatient Treatment.** Any such facility may seek an approval from the Planning Commission which would allow Day Treatment and/or Outpatient Treatment if the following measures have been taken to ensure the facility will not alter the fundamental character of the neighborhood:
 - a. The facility has direct access to an arterial or major collector street, with no access permitted to any minor collector or local street.
 - b. The facility is located on the same block or within 800 feet of an Institutional Care Facility.
 - c. The facility has enough off-street parking to accommodate each staff member, van/carpool parking, and each outpatient client.
 - d. All day treatment clients are transported to the Residential Facility for Disabled Persons from a separate facility using a van/carpool.
 - e. The maximum number of day and outpatient treatment clients will not exceed eight at any one time as permitted by the Building & Safety Code.
 - f. The facility is licensed for all three different activities by both the City and the State.
 - g. The facility meets all Building, Fire, and Life Safety Codes.
 - h. Any approval is subject to periodic review or review upon legitimate complaint. If upon review, the facility is found to be out of compliance with these criteria, the approval may be revoked. (Ord 10-04, Amended 2-19-2010)
 6. **4. Prohibited.** A residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood is not allowed.
- E. **License and Certification.** Prior to occupancy of any facility, the person or entity operating the facility shall:

1. **State License.** Provide to the City a copy of any license or certification required by the Utah State Department of Health or the Utah State Department of Human Services, including any policies and procedures that are required under state law.
2. **Certification Requirements.** Certify in a sworn statement that no person will reside or remain in the facility whose tenancy would:
 - a. Constitute a direct threat to the health or safety of other individuals.
 - b. Result in substantial physical damage to the property of others.
3. **City License.** Obtain a Sandy City Business License, if required.
4. **Compliance/Renewal.** Any such facility must comply with all Federal, State, County, and City regulations. At the time of renewal, the applicant must provide copies of all necessary certifications/recertifications or licenses as required by State regulations.

F. **Accommodation Request.**

1. **Reasonable Accommodation Required.** In accordance with the Americans with Disabilities Act, the Fair Housing Act, Fair Housing Amendments Act, and applicable law, ~~None~~ of the requirements of this Chapter shall be interpreted to limit any accommodation which is reasonable and necessary to allow the establishment or occupancy of a residential facility for persons with a disability.
 2. **Application Request for Accommodation.** Any person or entity wanting may request an accommodation after being informed that an existing or proposed: (i) residential facility for persons with a disability; or (ii) business license application or building permit application for a residential facility for persons with a disability, does not comply with the requirements of the Development Code of Sandy City. ~~shall make application to the Planning Commission and~~ The application and required fees shall be submitted to the Director, shall articulate in writing the nature of the requested accommodation and the basis for the request, and shall include all other information relevant to the request.
 3. ~~**Appeal.** If an accommodation request is denied, the decision may be appealed to the Board of Adjustment in the manner provided for appeals of administrative decisions set forth in this Title.~~
 4. ~~**Prohibited Accommodations.** The requested accommodation must relate to the use of the property so that it may be enjoyed as other similarly situated properties. An example would include a reduction in setback requirements for the installation of handicapped accessibility improvements. An accommodation cannot be granted to waive a zoning requirement, general setback reduction requests not related to the occupants, increase the profitability of the facility, or increase the maximum number of unrelated occupants above eight plus two additional persons acting as house parents or guardians.~~
- G. **Accommodation Review and Hearing Process.** ~~The Planning Commission shall review all applications for accommodation to determine if the accommodation(s) is reasonable and necessary. In addition, the Commission shall determine if the impact of the facility and each accommodation requested (both singly or in combination with all other accommodations requested) is similar in impact to the impact of a single family dwelling occupied by a family or, where applicable, in multiple family zones, a multiple family dwelling, or changes the fundamental character of the neighborhood.~~ A hearing officer with demonstrated experience as a hearing officer and knowledge of the Americans with Disabilities Act or Fair Housing Act, shall be appointed by the Mayor to review the request for accommodation. Additional information may be requested by staff or the Planning Commission the hearing officer to aid in that review.

1. **Purpose Hearing Officer Scheduling of Hearing.** The Planning Commission hearing officer shall review the application for an request for accommodation within ten days after receipt of the written request by the Director. ~~for the purpose of: The hearing officer shall determine whether additional information is needed from the Director, the person or entity making the request, or both.~~
 - a. ~~Verifying compliance with the building, safety, and health regulations that are applicable to similar structures, including those found in the IBC (International Building Code), UFC (Uniform Fire Code), Life Safety Code, Sandy City Ordinances, state statutes and regulations, and federal laws and regulations. If additional information is needed, the hearing officer shall notify the Director and the person or entity making the request within twenty-one days after receipt of the written request by the Director. The Director and requesting person or entity shall have seven days to submit the requested information, or such reasonable additional time as approved by the hearing officer. The hearing officer shall determine within three days after receipt of additional information whether the submission is responsive to the hearing officer's request.~~
 - b. ~~Determining if the residential facility is consistent with the use of the building as a single family dwelling and has no different or greater impact on the neighborhood than a single family dwelling occupied by a family as defined in this Title (or in multiple family zones to a multiple family dwelling occupied by multiple families). If no additional information is needed or if the hearing officer receives the requested additional information, the hearing officer shall schedule a hearing. The hearing officer shall provide written notice of the hearing date and time to the person or entity requesting the accommodation and the Director. Unless otherwise agreed to by the person or entity requesting the accommodation and the Director, the hearing officer shall hold the hearing within fourteen days after the hearing officer determines that all requested information has been received and no additional information is needed. Unless agreed upon by the person or entity requesting the accommodation and the Director, the hearing shall be held no more than forty-five days after receipt of the request by the Director. If the hearing officer has not received all requested information at that time, the hearing officer may continue the hearing or deny the request based on insufficient information.~~
2. ~~**Aggregate Review.** The Planning Commission shall determine if each such accommodation, waiver, or exception or some modification thereof is reasonable and necessary when taken as a whole together with all other accommodations, waivers, or exceptions.~~
3. **2. Findings. The hearing officer shall make a determination and prepare written findings within seven days after the hearing.** ~~Planning Commission shall approve only those applications where it finds that:~~
 - a. ~~The facility with the requested accommodation(s) complies with the regulations set forth above.~~
 - b. a. The hearing officer shall mail a copy of the written determination and findings to the Director and the person or entity requesting the accommodation. The hearing officer shall include a letter notifying the Director and the person or entity requesting the accommodation that the decision is final and may be appealed to a court of competent jurisdiction. The facility with the requested accommodation(s), either with or without the imposition of conditions as set forth herein, has no different or greater impact than a single family dwelling occupied by a family (or, where applicable, in multiple family zones, multiple family dwelling occupied by multiple families).
 - c. At a minimum, the written findings shall address the following issues: (i) whether ~~The~~ requested accommodation(s) is reasonable; (ii) whether the requested accommodation is necessary for financial and therapeutic viability; (iii) whether the facility with the requested accommodation(s) is or is not likely to create a fundamental change in the character of the residential neighborhood; and (iv) other findings in support of the hearing officer's determination.
 - d. ~~The requested accommodation(s) is necessary.~~

e. ~~The facility with the requested accommodation(s) is not likely to create a fundamental change in the character of the residential neighborhood.~~

4. ~~**Conditions.** The Planning Commission may impose conditions to address concerns of safety for persons and property, health and sanitation, environment, general plan, and neighborhood needs in order to mitigate the impacts of the use on the adjacent properties and to assure that the use will have no different or greater impact than a single family dwelling occupied by a family (or, where applicable, in multiple family zones, multiple family dwelling occupied by multiple families) consistent with the guidelines set forth for conditional use permit review.~~

H. **Exemptions.** A Residential Facility for Persons with a Disability shall not include facilities which house persons who are violent, who are not voluntarily residing therein, or who are residing therein as a part of or in lieu of confinement, rehabilitation, or treatment in a correctional facility.