

## 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 addition to other information required by the Revised Ordinances of Sandy City, Utah, 1978, the following information must be submitted with the business license application for a residential facility. Additional information may be requested to aid in that review.

1. A statement of the specific type of facility (as defined by State regulations) the applicant seeks to operate and by which State agency it is regulated.
2. The number of residents and resident staff who will live at the residential facility.
3. The complete name of the business, the type of business entity and whether the business is a for-profit or non-profit organization.

4. The typical or average length of stay of the residents.

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. **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)

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. **Request for Accommodation.** Any person or entity 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. 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. The requested accommodation must relate to the use of the property so that it may be enjoyed as other similarly situated properties.

G. **Review and Hearing Process.** 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 with the advice and consent of the City Council, to review the request for accommodation. Additional information may be requested by the hearing officer to aid in that review.

1. **Hearing Officer Scheduling of Hearing.** The hearing officer shall review the request for accommodation within ten days after receipt of the written request by the Director. The hearing officer shall determine whether additional information is needed from the Director, the person or entity making the request, or both.

- a. 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. 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. **Findings.** The hearing officer shall make a determination and prepare written findings within seven days after the hearing.
- 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.
  - a.b. 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.
  - 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.
3. **Appeal.** The determination of the hearing officer shall be final and may be appealed to a court of competent jurisdiction.

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.