

ORDINANCE #17-14

AN ORDINANCE AMENDING TITLE 15A OF THE REVISED ORDINANCES OF SANDY CITY (THE LAND DEVELOPMENT CODE), 2008, BY AMENDING CHAPTER 3, "OFFICERS, BOARDS AND COMMISSIONS", AND CHAPTER 11, "SPECIAL USES" TO MODIFY THE PROCESS FOR A REASONABLE ACCOMMODATION BY ADDING PROVISIONS FOR SELECTING A HEARING OFFICER, INSTEAD OF THE PLANNING COMMISSION, TO REVIEW THIS TYPE OF APPROVAL; ALSO PROVIDING A SAVING CLAUSE AND EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, a request has been made to amend Title 15A of the Revised Ordinances of Sandy City (the Land Development Code), 2008, by amending Chapter 3, "Officers, Boards and Commissions", and Chapter 11, "Special Uses" to modify the process for requesting a reasonable accommodation by adding provisions for selecting a hearing officer, instead of the Planning Commission, to review this type of approval; and

WHEREAS, the Planning Commission held a public hearing on April 20, 2017 which meeting was preceded by notice by publication in the Salt Lake Tribune on April 6, 2017, and by posting in Sandy City Hall, the Sandy City Parks & Recreation Building, on the Sandy City Website - <http://www.sandy.utah.gov>, and the Utah Public Notice Website - <http://pmn.utah.gov> on March 31, 2017; and

WHEREAS, following the public hearing before the Planning Commission, the Commission recommended the amendment to the City Council; and

WHEREAS, a public meeting was held by the Sandy City Council on May 2, 2017 to consider adoption of the proposed amendment, which meeting was preceded by publication in the Salt Lake Tribune, on April 6, 2017, and by posting in Sandy City Hall, the Sandy City Parks & Recreation Building, on the Sandy City Website - <http://www.sandy.utah.gov>, and the Utah Public Notice Website - <http://pmn.utah.gov>, on March 31, 2017; and

WHEREAS, the City Council has been given specific authority in Title 10, Chapter 9a, Utah Code Ann. (2012) to adopt a zoning plan, including an ordinance and map which divide the municipality into districts or zones, and within such districts to regulate the erection, construction, reconstruction, alteration, repair and uses of buildings and structures, and the uses of land; and

WHEREAS, the State legislature has granted general welfare power to the City Council, independent, apart from, and in addition to, its specific grants of legislative authority, which enables the City to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare; and

WHEREAS, the foregoing legitimate governmental objectives are achieved by reasonable means, in that any adverse impact on private property value or use has been carefully balanced against the corresponding gain to the public; and the regulations have been calculated, on recommendation of City planning staff to permit property owners to beneficially use their properties for the practical purposes to which the property is reasonably adaptable; and procedures have been established by the Land Development Code and Utah Code Ann. where by appeals can be heard and decided if it is alleged that there is legislative or administrative error, or where a special exception or variance to the

ordinance is required.

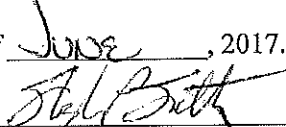
NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City, State of Utah, as follows:

Section 1. Amendment. Title 15A is amended as shown on **Exhibit "A"**, which is attached hereto and by this reference made a part hereof.

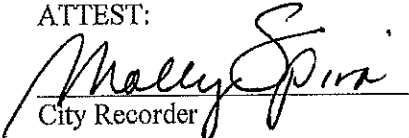
Section 2. Severable. If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 3. Effective. This ordinance shall become effective upon publication of a summary thereof.

PASSED AND APPROVED this 13<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Stephen P. Smith, Chairman  
Sandy City Council

ATTEST:

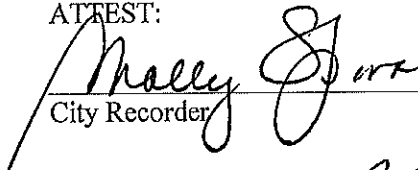
  
\_\_\_\_\_  
City Recorder

PRESENTED to the Mayor of Sandy City for his approval this 16<sup>th</sup> day of June, 2017.

APPROVED this 16<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Thomas M. Dolan, Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

PUBLISHED this 21<sup>st</sup> day of June, 2017.



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 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. 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.



b. The hearing officer shall mail a copy of the written determination and findings to the Director and the person or entity requesting the accommodation along with 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. The hearing officer shall forward a copy of the decision to the Mayor, the City Recorder and the City Council.

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.



SANDY CITY CORPORATION  
HEARING OFFICER  
JUNE 2017

I. INTENT OF SPECIFICATIONS:

It is the intent of these specifications to set forth the minimum acceptable requirements for the service described herein.

II. PROJECT DESCRIPTION:

As required to administer Section 15A-11-08 of the Development Code of Sandy City (attached), Sandy City is soliciting proposals from interested professional individuals or firms to provide Hearing Officer services for requests for reasonable accommodation for residential facilities for persons with a disability as defined by the Development Code of Sandy City.

It is anticipated that Sandy City will receive approximately 0 – 6 requests per year seeking a reasonable accommodation to allow the establishment or occupancy of a residential facility that does not fully comply with what is allowed by the Development Code of Sandy City. The most frequent types of hearings are anticipated to be requests for the number of occupants of a residential treatment, residential recovery or sober living facility to exceed the maximum number allowed by the Development Code of Sandy City.

The Hearing Officer will be a qualified individual who is not an officer, employee or agent of Sandy City and is responsible to understand the Development Code of Sandy City and the nature of the requested accommodation, evaluate written documents and written and oral evidence, conduct fair hearings, apply appropriate legal principles, and render fair and reasonable decisions responsive to the requests. The Hearing Officer should have prior experience with administrative hearing procedures, drafting written findings and decisions based on application of law, and familiarity with the Americans with Disabilities Act, Fair Housing Act and Fair Housing Amendments Act.

III. SUBMISSION OF PROPOSALS:

Proposals shall be submitted in a sealed envelope with the project title marked clearly on the face of the envelope/container. In order to be considered for award, the offeror must complete all requirements and submit the same on or before the specified date and time for the proposal submittal. Proposals received after the stated deadline will not be accepted.

IV. PROPOSAL SHEET:

All prices and notations shall be printed in ink or typewritten. No erasures will be permitted. Errors made that are crossed out and corrections printed in ink or typewritten adjacent to the original figure shall be initialed in ink by the signer of the proposal.

V. SIGNATURE ON PROPOSAL DOCUMENT:

The proposal must be signed by an authorized representative of the company named thereon. The signature on this proposal shall be interpreted to signify the vendor's intent to comply with all the terms, conditions and specifications set forth in this solicitation, unless specific exceptions are noted on the face of the proposal.

VI. PROPOSAL EVALUATION CRITERIA:

The City shall be the sole judge as to which proposal constitutes the "lowest and/or most responsible offer". Proposals will be evaluated based on the following criteria:

- Price
- Prior hearing officer experience and prior experience acting as a hearing officer for requests for reasonable accommodation for residential facilities for persons with a disability.
- Prior experience with the Americans with Disabilities Act, Fair Housing Act, Fair Housing Amendments Act and other laws as applicable to requests for reasonable accommodation for residential facilities for persons with a disability.
- References
- A statement that no conflict exists with providing hearing officer services for Sandy City
- Disclosure of any conflict or potential conflict
- Any other relevant information

VII. INSURANCE REQUIREMENTS:

Insurance will be required in accordance with Exhibit "A" attached to this request for proposal. Offerors should examine these insurance requirements and include Proof of Insurance certificates with the proposal. Failure to meet the insurance requirements may result in rejection of the proposal.

## SPECIFICATIONS FOR HEARING OFFICER

Sandy City is seeking proposals from

### **A. Pricing Proposal**

Compensation will be based on an hourly rate and paid directly from the City.

### **B. Contract Term**

The City intends to award this contract for a one-year period, with the option to renew for (2) two additional one-year periods upon agreement of both parties.

### **C. Scope of Services**

1. The Hearing Officer will conduct hearings pursuant to Section 15A-11-08 of the Development Code of Sandy City (attached).
2. Reasonable accommodation requests received by Sandy City in the past have included requests for more than four unrelated individuals to occupy a single family residence for the purpose of establishing or increasing occupancy of a residential facility for persons recovering from drug or alcohol addiction.
3. Section 15A-11-08 of the Development Code of Sandy City is only applicable to residential facilities for persons with a disability, as defined in the Development Code of Sandy City, and the Hearing Officer will conduct only hearings related to such facilities.
4. The Hearing Officer is responsible to familiarize him/herself with and understand the Development Code of Sandy City, Americans with Disabilities Act, Fair Housing Act, Fair Housing Amendments Act, related judicial decisions and all other applicable Federal, State and local law.
5. The Hearing Officer will be contacted by the Sandy City Director of Community Development or designee and provided available information when a request for reasonable accommodation is received pursuant to Section 15A-11-08 of the Development Code of Sandy City.
6. The Hearing Officer must be available to review information, request additional information, schedule the hearing, hold the hearing and issue a written decision within the required times as stated in Section 15A-11-08 of the Development Code of Sandy City. The length of time schedule for the actual hearing shall be as determined by the Hearing Officer.
7. The hearings should be conducted during normal business hours Monday through Friday from 8:00 am – 4:30 pm at Sandy City Hall but may be scheduled at other times

or locations if necessary to accommodate the person making the request and agreed upon by the Sandy City Director of Community Development.

8. The individual selected must be familiar and comfortable with conducting hearings that may include the applicant's or Sandy City's legal counsel, Sandy City staff and multiple applicant representatives.

9. The Hearing Officer shall provide fair hearings that provide the basic safeguard of due process.

10. The Hearing Officer is expected to maintain the confidentiality of all parties and witnesses and to protect all documents reviewed produced or otherwise available to the Hearing Officer in the secure manner.

11. Anticipated Hearing Officer tasks for each request may include, without limitation: (A) ask for all information from the person making the request and Sandy City that is needed to make a determination and ensure that the applicant and Sandy City have received all information received by the Hearing Officer; (B) read, understand and evaluate all information submitted by the person making the request and Sandy City; (C) read and understand applicable Sandy City laws and policies; (D) schedule a hearing; (E) conduct a hearing; (F) apply correct federal, state and local law to analyze all information received whether through documentation, orally at the hearing or otherwise, as deemed appropriate by the Hearing Officer; (G) make a determination and issue a written decision; (H) render a fair and reasonable decision responsive to the request for reasonable accommodation.

#### **D. Selection Process**

Upon receipt of proposals by the due date of 2:00 PM, Thursday, July 6, 2017, Sandy City will evaluate and rank the proposals. Interviews of potential vendors prior to selection may be held at the discretion of Sandy City. Once a final decision of the vendor is made, the candidate will be invited to finalize a contract with Sandy City.

#### **E. Deadline – 2:00 PM, Thursday, July 6, 2017**

Please address any questions and return your proposals to:

Erica Langenfass, Purchasing Agent  
Sandy City Hall, Suite 330  
10000 Centennial Parkway  
Sandy, UT 84070  
Email: [elangenfass@sandy.utah.gov](mailto:elangenfass@sandy.utah.gov)  
Telephone: 801-352-4477

## "EXHIBIT A"

### INSURANCE AND INDEMNIFICATION REQUIREMENTS FOR PARTIES CONTRACTING WITH SANDY CITY FOR: HEARING OFFICER (2017)

Contracting party shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contracting party's proposal.

#### **A. MINIMUM LIMITS OF INSURANCE**

Contracting party shall maintain limits no less than:

1. **PROFESSIONAL LIABILITY** \$1,000,000 combined single limit per occurrence. For premises/operations, products, public display, bodily injury, personal injury and property damage. Limits apply to this service product individually.

#### **B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retention, exceeding 5% limit of policy, must be declared to and approved by Sandy City. At the option of Sandy City, either; the insurer may be required to reduce or eliminate such deductibles or self-insured retention as respects Sandy City, its officers, officials and employees; or the contracting party may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

#### **C. NOTICE OF INCIDENT OR ACCIDENT**

Contracting party shall agree to disclose to Sandy City, all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

#### **D. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

A. Sandy City, its officers, officials, employees and volunteers are to be covered as an additional insured as respects: liability arising out of activities performed by or on behalf of the contracting party; products and completed operations of the contracting party; premises owned, leased, hired or borrowed by the contracting party. The coverage shall contain no special limitations on the scope of protection afforded to Sandy City, its officers, officials, employees or volunteers.

B. The contracting party's insurance coverage shall be a primary insurance as respects to Sandy City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Sandy City, its officers, officials, employees or volunteers shall be in excess of the contracting party's insurance and shall not contribute with it.

C Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Sandy City, its officers, officials, employees or volunteers.

D The contracting party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the

insurer's liability.

**I. Workers' Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against Sandy City, its officers, officials, employees and volunteers for losses arising from work performed by the contracting party for Sandy City.

**III. All Coverage**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to Sandy City, except for nonpayment of premium, in which case the insurer will provide 10 days notice.

**E. ACCEPTABILITY OF INSURERS**

Insurance and bonds are to be placed with insurers admitted in the State of Utah with a Bests' rating of no less than A-, IX, and in the limits as listed in this document, unless approved by the Director of Risk Management .

**F. VERIFICATION OF COVERAGE**

Contracting party shall furnish Sandy City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be furnished to and accepted by Sandy City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

**G. SUBCONTRACTORS**

Contracting party shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**H. INDEMNIFICATION / LIABILITY**

Contracting party shall indemnify and hold harmless the Customer, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorneys fee, that may at any time arise or be set up because of damages to property, bodily injury or personal injury received by reason of or in the course of providing services to the City but only to the extent caused by any willful, negligent or wrongful act or omission of the contracting party, any of their employees or any subcontractors.



## **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. 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.
  - b. The hearing officer shall mail a copy of the written determination and findings to the Director and the person or entity requesting the accommodation along with 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. The hearing officer shall forward a copy of the decision to the Mayor, the City Recorder and the City Council.
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.

**Brian McCuistion - Sandy City Hearing Officer - Dan McDonald**

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**From:** Darien Alcorn  
**To:** Brian McCuistion  
**Date:** 7/20/2017 2:53 PM  
**Subject:** Sandy City Hearing Officer - Dan McDonald  
**Attachments:** 2017.07.20 Dan McDonald CV.pdf

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>>> "dan@mcdonaldfielding.com" <dan@mcdonaldfielding.com> 7/20/2017 9:44 AM >>>

Darien:

Thank you for reaching out to me. I would be very interested in doing this and/or advising the City on reasonable accommodation issue. My law partner, Kyle Fielding, has represented and worked with Sand City for years and continues to do so, which makes me wonder whether I would have any type of conflict to serve as a hearing officer. I wouldn't think so as even a municipal employee could do so but it's something to consider.

My CV is attached. I typically charge \$300 per hour or negotiable flat fee, piece work. Let me know if you have any questions. Many thanks.

Dan

**Dan McDonald**

**McDONALD|FIELDING, PLLC**

The Mill at Dry Creek

175 W. Canyon Crest Road, Suite 205

Alpine, Utah 84004

Direct Dial: [801-610-0011](tel:801-610-0011)

Mobile: [801-372-0055](tel:801-372-0055)

[www.mcdonaldfielding.com](http://www.mcdonaldfielding.com)

----- Original Message -----

From: "Darien Alcorn" <[DAicorn@SANDY.UTAH.GOV](mailto:DAicorn@SANDY.UTAH.GOV)>

To: [dan@mcdonaldfielding.com](mailto:dan@mcdonaldfielding.com)

Sent: 7/19/2017 5:16:29 PM

Subject: Sandy City Hearing Officer

Dear Mr. McDonald,

Sandy City recently adopted the attached provisions to its Land Development Code requiring a hearing officer to review information, hold a hearing and prepare written findings and determination for residential facilities for persons with a disability. We anticipate receiving from 0-5 requests for reasonable accommodation per year for residential treatment facilities that exceed the maximum number of unrelated individuals allowed to reside in a single family dwelling.

You were recommended by another municipal attorney as someone who may be interested in providing hearing officer services. If you would like to provide qualifications and rate, I will be happy to pass those along, or if you would like to discuss the possibility further, please feel free to contact me.

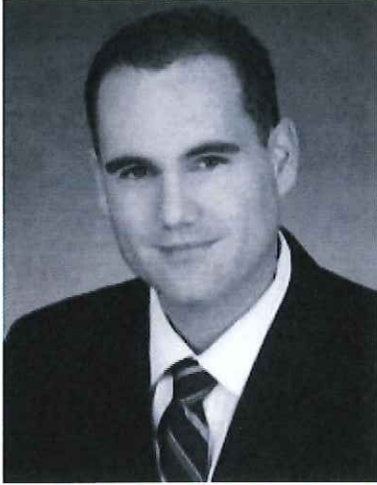
Thank you in advance for your consideration,

Darien Alcorn  
Senior Civil Attorney  
Sandy City  
Tel: [801-568-7194](tel:801-568-7194)

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## **DAN MCDONALD**

### **practice areas**

Real Estate  
Fair Housing / Group Homes  
Civil Litigation  
Business, Commercial, and Corporate Services

### **professional experience**

Dan has broad real estate and business experience. For more than 17 years he has represented lenders and other financial institutions, businesses, local governments, associations, and individuals in hundreds of transactions, lawsuits, administrative proceedings and appeals. Prior to forming McDonald Fielding, he was the managing partner of Smith Hartvigsen, PLLC and a shareholder at Kirton McConkie, Utah's largest law firm. He has owned and operated his own title company and real estate development company.

His real estate experience includes acquisition and disposition of FDIC commercial loan portfolios, judicial and nonjudicial foreclosures, receiverships, commercial leasing (industrial/warehouse, office, and retail) and eviction, loan sales, loan restructuring and workouts, private money financing, mezzanine financing, title insurance coverage, escrow negligence, broker and agent defense, boundary disputes, Uniform Assignment of Rents Act, real estate acquisition and development, trespass and nuisance, land use and development, billboards, underground storage tanks, due diligence, acquisition and disposition of loan portfolios, owner's association disputes, Fair Housing Act and ADA compliance and liability, group homes and RTFs, easements, contract drafting and negotiations, RESPA compliance, DRE investigations and defense, and government relations. He is licensed in title and escrow by the Utah Department of Insurance.

Dan has handled Fair Housing Act, ADA, Rehabilitation Act, and 42 U.S.C. § 1983 cases throughout the western United States. He routinely gives training presentations to various groups of attorneys, cities, counties and governmental organizations throughout the western United States with regard to group homes and residential treatment facilities.

Dan has always had a busy general litigation practice, representing clients and trying cases in a broad variety of commercial disputes, including cases that involve business torts, breach of contract, breach of the implied covenant of good faith and fair dealing, director and officer liability, alter ego liability, referendums and initiatives, Fair Housing Act, ADA, 42 U.S.C. § 1983, disputed LLC or stock ownership,



shareholder's derivative actions, broker and agent defense, and insurance coverage disputes.

## education

- Juris Doctor, J. Reuben Clark Law School, *cum laude*
- B.S., University of Utah, *cum laude*

## honors, awards, & distinctions

- "Legal Elite," *Utah Business Magazine*, 2005 (Civil Trial Practice), 2008-2013 (Business Litigation and/or Real Estate), 2016 (Real Estate)
- President, Constitutional Law Section of the Utah State Bar Association, 2011-2012
- ABA National Trial Academy Certificate of Achievement, 2004
- Douglas H. Parker Award for Outstanding Performance in Jurisprudence
- Foundation Press Award for Excellence in Constitutional Law
- Code-Co Publishing Co. Award for Outstanding Accomplishments in Legal Research and Writing
- Scholarly Writing Award
- Lead Articles Editor, *BYU Law Review*

## publications/speaking engagements

- *Failure to Disclose: Case Studies Uncover When Real Estate Agents Might be Liable*, *CRES Insurance Services Case Studies*(<https://www.cresinsurance.com/failure-to-disclose/>), 2016
- *Group Homes & the Fair Housing Act: You Don't Always Have to Say "Yes"*, 2013 Annual Seminar on Municipal Law, Colorado Municipal League, Steamboat Springs, Colorado, October 11, 2013
- *Group Homes & the Fair Housing Act: You Don't Always Have to Say "Yes"*, Wyoming Association of Local Government Attorneys (WALGA), Riverton, Wyoming, June 13, 2013
- *Fair Housing Act Landmines*, Utah Association of Counties Annual Convention, November, 2012
- *Model Ordinances – Group Homes*, Utah Prosecution Council Annual Civil Training Conference, October 2012
- *Group Homes: The Feds, the State, and your Zoning Ordinance*, Utah Prosecution Council Annual Civil Training Conference, October 2011.
- *Group Homes and the Fair Housing Act*, Utah Land Use Institute Fall Conference, 2011.
- *Fair Housing Act*, Utah Counties Indemnity Pool Risk Management Conference, 2011.
- *Documented Disclosure*, Utah Association of Realtors Annual Conference, 2010.
- *Regulating Sexually-Oriented Businesses: The Regulatory Uncertainties of a Regime of Prohibitions by Indirection and the Obscenity Doctrine's Communal Solution*, 1997 B.Y.U. L. Rev. 339.
- *A Primer on 42 U.S.C. § 1983*, 12 Utah Bar. J. 29 (May 1999).

## personal

Dan is happily married to his lifelong love and high-school sweetheart. Together they have five amazing children. He loves the outdoors and is enthusiastic about fishing, backpacking, skiing, and golf. Despite the fact that he lives in Utah County, he is a devoted supporter of the University of Utah Utes.

Picture