

Chapter 5.62 RESIDENTIAL FACILITIES

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5.62.010: PURPOSE:

- A. The purpose of this chapter is to establish licensing requirements that are not contrary to law for residential facilities for persons with a disability in order to promote the health, safety, morals and general welfare of the public. Residential facilities for persons with a disability are a permitted use in all City residential zones.
- B. It is the intent of the City to comply with the Utah Fair Housing Act (41-21, Utah Code Annotated et seq), the Fair Housing Amendments Act of 1988 (42 USC Section 3601 et seq), and Section 504 of the federal Rehabilitation Act of 1973 et seq.
- C. It is the intent of the City, to the extent allowed by law, to maintain the residential feel of a residential neighborhood consistent with the general plan.

5.62.020: DEFINITIONS:

“Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment. “Disability” does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 USC 802.

“Residential facility for persons with a disability” means a residence in which more than one person with a disability resides; and

- A. is license or certified by the Department of Human Services under Title 42A, Chapter 2, licensure of Programs and Facilities; or

B. is licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

“Residential support” means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families. Residential support includes providing a supervised living environment for persons with:

1. dysfunctions or impairments that are:
 - a. emotional;
 - b. psychological;
 - c. developmental; or
 - d. behavioral; or
2. chemical dependencies.

Treatment is not a necessary component of residential support.

“Residential treatment facility” means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotion, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

“Social detoxification” means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

- A. room and board for persons who are unrelated to the owner or manager of the facility;
- B. specialized drug or alcohol treatment; and aftercare services.

“Substance abuse treatment program” means a program:

- A. designed to provide:
 1. specialized drug or alcohol drug treatment;
 2. rehabilitation; or
 3. habilitation; and

- B. that provides the treatment or services described to persons with:
 - 1. specialized substance abuse disorder; or
 - 2. chemical dependence disorder.

5.62.030: PROVISIONS APPLICABLE TO ALL RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY:

Each facility for persons with a disability shall:

- A. **Conform To Applicable State And Local Requirements:** conform to all state and local building, safety, health, and zoning requirements applicable to residential structures in the zone in which it is located.
- B. **Maintain Residential Character of Facility:** a facility located in an existing residential dwelling shall be capable of use as a facility without structural or landscaping alterations that would change the structure's residential character. Any new structure constructed for use as a facility shall be of a size, scale, and design that is in harmony with other residential uses in the vicinity and will not likely create a fundamental change in the character of the residential neighborhood in which it is proposed to be located.
- C. **Conform to Relevant State Standards and Have Appropriate Licensure:** conform to all applicable standards and requirements of the Utah state department of human services or the Utah state department of health. The owner/operator has obtained all licenses required by the state to operate such a facility.
- D. **Provide Adequate Parking:** provide at minimum three (3) off street parking stalls or the same number of off street stalls as required for similar structures located in the same zoning district, whichever is greater, to serve the needs of residents, visitors, and staff members. Additional parking may be required based on the number of residents occupying the residential facility, the number of residents who are reasonably expected to maintain a vehicle at the facility, the reasonably anticipated number of visitors, and the number of staff members who will be serving the residents.
- E. **Possess a Valid City Business License:** the owner/operator of the facility possesses the appropriate City business license.
- F. **Occupying Resident Restrictions:** the residential facility for persons with a disability is occupied only by individuals with a disability and paid, professional staff members. Occupancy by any staff member shall only be allowed if such occupancy is primarily for the purpose of serving the persons with a disability and not primarily a benefit of employment to the staff member. The residential facility for persons with a disability shall not house more than eight (8) persons with a disability.

- G. Voluntary Residency: residency in the facility shall be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in neither a correctional facility nor a condition of probation or parole. A facility shall not include any persons referred by the Utah state department of corrections or any adult or juvenile court.
- H. No Tenants Who Constitute Direct Threat to Health or Safety: the facility shall not be made available to or occupied by any person whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- I. Reasonable Dispersion of Facilities: the facility shall not be located closer than two thousand six hundred forty (2,640) feet ($\frac{1}{2}$ mile) to any other facility permitted under this chapter, as measured in a straight line between the closest property lines of the lots on which they are located.
- J. No Outpatient Treatment: the facility shall not provide professional counseling, treatment, therapy, or other treatment for any non-residents.

5.62.040: INDIVIDUALIZED RESIDENT ASSESSMENTS:

- A. The owner or operator of a residential treatment facility, residential support, or social detoxification facility for persons with a disability shall conduct an individualized assessment of each person who desires to become a resident of the facility to determine if such person's tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others prior to allowing occupancy of the facility by such person or has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by 21 USC 802.
- B. The assessment shall consider any prior criminal or violent acts of each individual, the amount of time that has elapsed since the commission of any such acts, and the treatment or medication received by the individual that may have eliminated the direct threat. In the case of any resident or potential resident who has committed an offense requiring registration with any sex offender registry, the individualized assessment shall include a psychosexual evaluation of such person performed by a duly licensed psychiatrist or an individual holding a PhD in psychology.
- C. The owner or operator of the facility shall be responsible to determine whether any resident or potential resident has been convicted of an offense requiring registration with any sex offender registry.
- D. Within seven (7) days of opening any facility, and at least quarterly thereafter, the person or entity licensed or certified by the applicable regulatory state agency shall certify in a sworn affidavit to the City Recorder that based on the individualized assessment performed for each resident, no person will or does reside in the facility

whose tenancy would likely constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others or has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by 21 USC 802.

5.62.050: LICENSING:

- A. Any license issued pursuant to this chapter shall be nontransferable and shall terminate if the structure is devoted to a use other than the permitted facility, the facility fails to comply with all applicable building, safety, health, and zoning requirements of this code, or the licensing State agency suspends, revokes, or materially changes the classification of the permitted activities at the facility.
- B. The general licensing procedures of Title 5 shall apply to the granting, renewal, suspension, or revocation of any license application or license as a residential facility for persons with a disability.

5.62.060: REASONABLE ACCOMMODATION:

- A. A residential facility for persons with a disability applicant or license holder who is denied a license to operate a facility or desires to request a reasonable accommodation from any of the requirements of this section based on the Utah Fair Housing Act (41-21, Utah Code Annotated et seq), the Fair Housing Amendments Act of 1988 (42 USC Section 3601 et seq), and Section 504 of the federal Rehabilitation Act of 1973 et seq shall have the right to appeal such action or make such request to the city manager at an informal hearing.
- B. The notice of appeal shall be in writing and shall be delivered to the city recorder either in person or by certified U.S. mail. A notice of appeal must be filed within ten (10) business days of the person's receipt of notice of a denial of a license. The notice of appeal shall identify the appellant, set forth the nature of the action for which reasonable accommodation is being appealed or sought, and state the grounds for appeal.
- C. The hearing shall be held no later than twenty (20) business days following the city's receipt of the applicant's notice of appeal. The hearing will be held by the City manager or a designee.
- D. Within ten (10) business days of the hearing, the city manager or the designee shall make written findings and issue a decision.
- E. Any applicant or license holder who is aggrieved by the city manager's decision may file for relief in any court of competent jurisdiction within thirty (30) days of the city manager's decision.

SECTION 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.