

ORDINANCE NO. 2022 – 15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, REPLACING CHAPTER 5.62 OF THE SOUTH JORDAN MUNICIPAL CODE WITH A NEW TITLE 14 REGULATING RESIDENTIAL FACILITIES FOR THE DISABLED.

WHEREAS, Utah Code § 10-9a-102 grants the City Council of the City of South Jordan (the “City Council”) authority to enact ordinances that it considers necessary or appropriate for the use and development of land in the City of South Jordan (the “City”), including the City’s aesthetics; and

WHEREAS, the City Council desires to amend and reorganize the City Code regarding Residential Facilities for the Disabled by repealing previously enacted Chapter 5.62 and replacing it with a new Title 14 entitled Residential Facilities for the Disabled; and

WHEREAS, the City Council held a public hearing and reviewed the subject text amendments; and

WHEREAS, the City Council finds that the subject text amendment will enhance the public health, safety and welfare, and will promote the goals of the General Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:

SECTION 1. Amendment. City Code Chapter 5.62 is repealed. A new Title 14 regarding Residential Facilities for the Disabled as shown in Exhibit A to this Ordinance is enacted.

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.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

[SIGNATURE PAGE FOLLOWS]

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS _____ DAY OF _____, 2022 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	_____	_____	_____	_____
Bradley Marlor	_____	_____	_____	_____
Donald Shelton	_____	_____	_____	_____
Tamara Zander	_____	_____	_____	_____
Jason McGuire	_____	_____	_____	_____

Mayor: _____
Dawn R. Ramsey

Attest: _____
City Recorder

Approved as to form:


Gregory Simonsen (Sep 28, 2022 17:16 MDT)

Office of the City Attorney

EXHIBIT A

TITLE 14 RESIDENTIAL FACILITIES FOR THE DISABLED

14.01.010: PURPOSE:

A. The purpose of this Title is to:

1. Establish licensing requirements for Residential Facilities for the Disabled, in compliance with the Fair Housing Amendments Acts of 1988 (42 USC 3601 et seq.) and the Federal Rehabilitation Act of 1973; and
2. Establish a procedure whereby disabled persons seeking equal access to housing may make requests for reasonable accommodations in policies, regulations, and practices when these accommodations are necessary to afford the disabled an equal opportunity to use and enjoy a dwelling.

14.01.020: SCOPE:

If any facility, residence, congregate living, or other housing arrangement meets the definition of a residential facility for the disabled, set forth in this Title, this Title shall govern and shall supersede any other conflicting provision of the City Code. Except as provided herein, if other provisions of the City Code do not conflict, the regulations for similar structures and uses shall apply.

14.01.030: DEFINITIONS:

BUSINESS LICENSE OFFICIAL: As the term is defined in Section 5.04.010 of the City Code.

DISABILITY: A physical or mental impairment that substantially limits one or more of a person's major life activities, including a person not 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.

REASONABLE ACCOMMODATION: A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

RESIDENTIAL FACILITY FOR THE DISABLED includes:

- A. "Recovery Residence," as that term is defined in Section 62A-2-101(37) of the Utah Code;
- B. "Residential Treatment Facility that provides Residential Treatment," as that term is defined in Section 62A-2-101 (40) of the Utah Code; or
- C. "Neighborhood Residential Facility," as that term is defined in Section 17.18.060 B. 2 of the City Code.

RESIDENTIAL FACILITY FOR THE DISABLED does not include:

- A. A facility that provides "Social Detoxification," as that term is defined in Section 62A-2-101 (43) of the Utah Code;
- B. A "Community Residential Facility," as that term is defined in Section 17.18.060 B.1 of the City Code; or
- C. A facility that admits any person that is currently intoxicated or withdrawing from alcohol or drugs or otherwise unable to understand terms and consent to reside in a Residential Facility for the disabled.

14.01.040: GENERAL REGULATIONS:

- A. Residential Facilities for the Disabled are permitted uses in all residential zones.

- B. Each Residential Facility for the Disabled shall conform to all state and local building safety, health, and zoning requirements, applicable to other similarly situated structures in the zone in which it is located.
- C. Each Residential Facility for the Disabled shall conform to all applicable Federal and State laws, standards, and requirements, including State licenses necessary to operate the facility.
- D. Each Residential Facility for the Disabled shall provide the same number of off street parking as required for similar structures and uses to serve the needs of residents, visitors, staff members, and others. Additional parking may be required based on the following:
 - 1. The number of residents occupying the facility;
 - 2. The number of residents who are reasonably expected to maintain a vehicle at the facility;
 - 3. The number of staff members who will be serving the residents;
 - 4. The reasonably anticipated number visitors;
 - 5. The number of vendors that will serve the facility; and
 - 6. Any other factors that may increase or impact parking demands for the facility.
- E. Each Residential Facility for the Disabled shall apply for and receive an appropriate business license from the Business License Official before it can operate the Facility.
- F. Each Residential Facility for the Disabled shall not house more than eight (8) individuals.
- G. Each Residential Facility for the Disabled shall only be occupied by individuals with a disability and paid professional staff members. Occupancy by any paid

professional staff member is only permitted if the occupancy is primarily for the purpose of serving persons with a disability, and not primarily a benefit of employment to the staff member.

- H. Each Residential Facility for the Disabled shall be capable of use as a facility without structural or landscaping alterations that would change the structure's residential character or appearance. Any new or remodeled structure shall be of a size, scale, and design that is in harmony with other residential uses in the vicinity, and shall not create a fundamental change in the character of the residential neighborhood in which it is proposed to be located.
- I. Each Residential Facility for the Disabled housing more than four (4) persons shall not be located closer than two thousand, six hundred forty feet (2,640 ft.), or 1/2 mile, to any other Residential Facility for the Disabled housing more than four (4) persons, as measured in a straight line between the closest property lines of the lots on which they are located.
- J. Residency in a Residential Facility for the Disabled shall be on a strictly voluntary basis and not part of, or in lieu of, confinement, rehabilitation, or treatment in either a correctional facility or a condition of probation or parole. A Facility for the Disabled shall not include any persons referred by the Utah State Department of Corrections or any adult or juvenile court.
- K. Each Residential Facility for the Disabled 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.

14.01.050: BUSINESS LICENSE APPLICATION AND DECISION

- A. If an applicant for a Residential Facility for the Disabled submits an incomplete application for a Business License, the Business License Official shall not

approve the application and shall send notice to the applicant that the application was incomplete.

- B. Once an applicant for a Residential Facility for the Disabled submits a complete application and payment of its associated fee, the Business License Official shall provide written approval or denial of the business license within a reasonable amount of time, but not longer than 30 days. Applications shall be approved if it meets the requirements of this Code.
- C. A Business License issued pursuant to this Title shall be non-transferable and shall terminate if the structure is devoted to a use other than the Residential Facility for the Disabled.

14.01.060: REQUESTING A REASONABLE ACCOMMODATION

An applicant may request a reasonable accommodation pursuant to Federal and State law and this Title. A reasonable accommodation request may be made at any time, including at the time the application is submitted for a business license, at the time of denial of a business license, or anytime thereafter.

14.01.070: APPLICATION PROCESS AND HEARING FOR A REASONABLE ACCOMMODATION

- A. A person requesting a reasonable accommodation shall submit the following to the Business License Official through the City internet portal or by certified mail:
 - 1. Information regarding the property for which the reasonable accommodation is sought, including:
 - a. Address
 - b. Parcel Number

- c. Current Zoning
 - d. Name, address and telephone number of the property owner
- 2. Name, address and telephone number of the applicant.
- 3. Supporting information.
 - a. Identify the specific regulation, policy, procedure, rule, or practice for which deviation or waiver is requested.
 - b. An explanation with supporting documents of why a reasonable accommodation is warranted, including a description of how the person(s) are disabled and that the accommodation is reasonable and necessary to afford the disabled person(s) with an equal opportunity to use and enjoy the residential dwelling. Any supporting information or arguments not included in the explanation may not be used at a hearing on the reasonable accommodation request.
 - c. The number of residents and employees that will have vehicles at the property and a site plan showing where the vehicles will be parked at the property.
 - d. Whether the owner of the facility has other similar facilities for the disabled and, if so, a description of any complaints from neighbors, incident reports from local law enforcement officials and licensure citations, or investigations from any state or federal authorities.
- 4. Payment of applicable fees.
- 5. The applicant's state license, city business license, or business license application.
- 6. All additional evidence supporting the request for a reasonable accommodation, including:

- a. A full statement of all opinions of any witnesses supporting the request, including the applicant, expressing the basis and reasons supporting the opinions;
- b. The facts or data considered by the applicant or witness in forming its opinion;
- c. Any exhibits that will be used at a hearing on the request for accommodation;
- d. Witness qualifications including a list of all publications authored in the previous 10 years; and
- e. A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition.

B. Hearing

- 1. Once a complete request for reasonable accommodation and, if applicable, an application for business license has been submitted to the Business License Official with payment of any applicable fee, the City shall either act favorably upon the request or schedule the request for hearing within 30 days.
- 2. At least five (5) days before the hearing, the City may file, at its discretion, a responsive brief, setting forth the City's position on whether the requested accommodation should be granted or denied, in whole or in part.
- 3. A hearing on a request for reasonable accommodation will not be open to the public, but the applicant and the City may bring its attorneys or witnesses, if so desired. A witness, including the applicant, may only speak at the hearing if a witness statement for that witness was submitted in the application (if by the applicant) or responsive brief (if by the City).

4. The Hearing Officer may ask additional questions related to the requested reasonable accommodation to the applicant, witnesses, or the City.

C. Review Authority

1. The City may contract with a Hearing Officer before or at the time a reasonable accommodation request is made.
2. A Hearing Officer shall:
 - a. have sufficient knowledge in housing discrimination laws;
 - b. act in an unbiased quasi-judicial manner;
 - c. consider the reasonable accommodation application and the City's responsive briefing;
 - d. conduct and oversee an informal hearing on the application; and
 - e. issue a written decision including detailed findings and conclusions, which affirms, affirms in part, denies, or denies in part the request for accommodation.

D. Burden, Findings, And Decision

1. Burden. The applicant bears the burden of proving that its residents are disabled and that the reasonable accommodation is necessary and reasonable for the disabled to enjoy an equal opportunity to use the dwelling.
2. Findings. The Hearing Officer's written decision shall be based on, at minimum, consideration of the following:
 - a. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by one or more persons with a disability.

- b. Whether the requested accommodation is necessary to afford such persons an equal opportunity to use and enjoy a dwelling when compared to similarly-situated persons or groups without a disability.
 - c. Whether the requested accommodation is reasonable.
 - d. Whether the accommodation would impose an undue financial or administrative burden on the city.
 - e. Whether the requested accommodation would result in a fundamental alteration to the residential character of the neighborhood.
 - f. Whether tenancy of the property proposed to be occupied by such persons would constitute a direct threat to the health or safety of other persons or result in substantial physical damage to the property of others.
3. Decision. The written decision shall be made within 14 days of the hearing date. A decision of a Hearing Officer takes effect on the date when the Hearing Officers issues a written decision.
- E. Business License Appeal: A person may appeal a business license approval, approval with conditions, or denial in accordance with Title 5.
- F. Reasonable Accommodation Appeal: A person with standing who is aggrieved by the Hearing Officer's decision may file for relief in any court of competent jurisdiction within thirty (30) days of the Hearing Officer's decision.