

ORDINANCE NO _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERRIMAN, SALT LAKE COUNTY, STATE OF UTAH, AMENDING CHAPTER 10-3, CHAPTER 10-16, AND CHAPTER 10-25 OF THE CITY CODE AND ENACTING TITLE 11 OF THE HERRIMAN CITY CODE.

PART I

FINDINGS

1. The City recognizes, through its observation, study and experience, as the United States Supreme Court recognized in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974), that group living, including “[t]he regimes of boarding houses, fraternity houses, and the like present urban problems.” Among other things, with such living arrangements (hereafter “Group Living Arrangements”), “[m]ore people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.” *Id.*

2. The U.S. Supreme Court, in an attempt to help clarify the appropriate role of local government with respect to community planning has noted:

“The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.”

Berman v. Parker, 348 U.S. 26, 33, 75 S. Ct. 98, 102-03, 99 L.Ed. 27 (1954).

3. The United States Supreme Court and federal appellate courts continue to recognize that “[l]and use planning and the adoption of land use restrictions constitute some of the most important functions performed by local government.” *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 603 (4th Cir. 1997) (citing *FERC v. Mississippi*, 456 U.S. 742, 768 n. 30, 102 S.Ct. 2126, 2141 n. 30, 72 L.Ed.2d 532 (1982) (“regulation of land use is perhaps the quintessential state activity”)). These courts continue to recognize that local land use ordinances may legitimately be utilized “to preserve ‘the character of neighborhoods, securing “zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.””” *Id.* (quoting *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732-33, 115 S.Ct. 1776, 1780, 131 L.Ed.2d 801 (1995) (quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974))).

4. According to the latest U.S. Census data for Herriman City, the average household size is 3.7 persons per household. And, for the years 2016-2020, 83.9% of individuals living in Herriman City lived in the same house for 1 year or more.

5. Among other things, Group Living Arrangements tend to introduce transiency, congestion, increased traffic, increased parking and other urban problems and challenges into communities.

6. Regulation of Group Living Arrangements serves to preserve housing densities consistent with both reality (in terms of the average composition of single family households in Herriman City) and the goals and objectives of the General Plan. It also promotes permanence and stability in neighborhood composition.

7. Regulating Group Living Arrangements is an essential aspect of fostering the goals of the General Plan and Herriman City's zoning scheme, which seeks uncrowded, stable (non-transitory) single family neighborhoods.

8. The City also recognizes the need, in certain demonstrable circumstances, for individuals with handicaps or disabilities to live in a Group Living Arrangements. For example, one of the most common types of Group Living Arrangements for individuals with handicaps or disabilities is a sober living home, Oxford House, or recovery residence where unrelated persons with the disability of alcohol or drug addiction live together in a single family dwelling. The City has consulted experts in the field, expert reports and testimony submitted in other jurisdictions, and considered the scholarly literature on these type of facilities and recognizes the need to provide some type of accommodation to them.

9. In order to fulfill the purposes of the General Plan while accommodating the demonstrable needs of individuals with handicaps or disabilities to live in Group Living Arrangements, which are generally prohibited for individuals without disabilities or handicaps, the City desires to clarify its ordinances and define its practices and policies with regard to these issues.

WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HERRIMAN CITY, UTAH, AS FOLLOWS:

PART II

TEXT OF ORDINANCE

SECTION 1. Chapter 10-3 of the City Code is hereby amended as follows:

A. The following definition of "**DISABILITY**" is added to Section 10-3-5:

DISABILITY: With respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment, or being regarded as having such an impairment; but does not include a person engaged in the current illegal use of, or addiction to, any federally-controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. Sec. 802.

B. The following definition of "**GROUP LIVING ARRANGEMENT**" is added to Section 10-3-6.B:

GROUP LIVING ARRANGEMENT: A group living or congregate living arrangement where groups of more than four unrelated persons live together in a single dwelling, including, but not limited to, an assisted living facility, boarding house, congregate living facility, protected living facility, residential facility for persons with a disability, boarding school, dormitory,

student housing, fraternity, club, institutional group, half-way house, convent, monastery, or other similar group living or congregate living arrangement of unrelated persons. A Group Living Arrangement does not include clinics, medical or dental; hospital(s) or hospital/clinic.

C. The definition of “**RESIDENTIAL FACILITY FOR PERSONS WITH A DISABILITY**” in Section 10-3-6.B is repealed in its entirety and replaced with the following:

RESIDENTIAL FACILITY FOR PERSONS WITH A DISABILITY: Any facility or dwelling that houses or seeks to provide housing to five (5) or more persons with a disability.

D. The definition of “**SCHOOL, THERAPEUTIC**” in Section 10-3-6.B is repealed and deleted in its entirety.

SECTION 2. Chapter 10-16 (Table of Uses) is hereby amended as follows:

A. The list of prohibited uses in Section 10-16-1 shall include the following:

Group Living Arrangement(s) (unless a more specific type of Group Living Arrangement is expressly allowed as a conditional or permitted use in the table of uses below).

B. The term “School, boarding” is deleted from the table of uses in Section 10-16-1.

C. The term “School, therapeutic” is deleted from the table of uses in Section 10-16-1.

SECTION 3. Chapter 10-25 of the City Code is repealed in its entirety.

SECTION 4. Title 11 of the City Code is hereby enacted as follows:

11-10 General Provisions

11-10-010 Intent And Purpose

11-10-020 Findings

11-10-030 Scope

11-10-040 Definitions

11-10-010 Purpose

The purpose of this Title is to provide flexibility in the application of the City Code requirements for the disabled when flexibility is necessary to eliminate barriers to equal housing opportunities. This Title is intended to facilitate compliance with federal and state fair housing laws and promote housing opportunities for disabled residents of the City.

An additional purpose of this Title is to establish a procedure whereby disabled persons seeking equal access to housing can make requests for reasonable accommodations in policies, regulations, and practices when these accommodations are necessary to afford the disabled equal opportunity to use and enjoy a dwelling.

11-10-020 Findings

The City finds that increasing the number of unrelated persons who may live together in a single dwelling from four (4) unrelated persons to eight (8) unrelated disabled persons in a residential dwelling is reasonable and necessary to help ameliorate the most common handicaps and disabilities encountered by the City's residents.

The City further finds that it is reasonable and necessary to provide a mechanism whereby the disabled can request further accommodations through the processes outlined in this Title.

11-10-030 Scope

If any facility, dwelling, residence, congregate living, or other housing arrangement meets the definition of a residential facility for persons with a disability in Section 10-3-6.B of the City Code, this Title shall govern and shall supersede any other conflicting provision of City Code. The requirements of this Title shall not be construed to prohibit or limit other applicable provisions of this Title, this Code, or other laws.

11-10-040 Definitions

The words and phrases utilized in this Title are defined in Chapter 10-3 of the City Code. Additionally, for purposes of this Title, the terms defined below shall apply. In the event of any conflict between the definitions in this Section and federal or state definitions, the federal and state definitions shall control.

BUSINESS LICENSE OFFICIAL: Is defined in City Code § 3-1-1.

FHA: Means the Fair Housing Amendments Act of 1988, codified as 42 USC § 3601, et seq.

RFPD: Means a residential facility for persons with a disability as defined in Section 10-3-6.B of the City Code.

11-20 Provisions Applicable to RFPDs
11-20-010 Residential Zone Regulations
11-20-020 General Regulations

11-20-010 Residential Zone Regulations

- A. Permitted Uses: The table of permitted, conditional, or prohibited uses for residential zones is found in Section 10-16-1 of the City Code. An RFPD shall be a permitted use in any zone where a specific subtype of Group Living Arrangement is shown in the Table of Uses as a permitted or conditional use, subject to the same development standards as are applied to Group Living Arrangements in this Title and Title 10. In determining whether a Group Living Arrangement is allowed, only those specific uses and types of Group Living Arrangements currently and presently allowed by ordinance and shown in Table 10-16-1 shall be considered. Variances, prior accommodations, pre-existing noncomplying structures, or pre-existing nonconforming uses shall not be considered.
- B. Pre-Existing Nonconforming Use/Noncomplying Structure. Any lawfully created pre-existing nonconforming use(s) or noncomplying structure(s) that are in conflict with this Title or any other provision of the City Code may be continued as allowed by City Code. A nonconforming use, noncomplying structure, nonconforming lot, or other nonconformity may not be changed except in conformance with the provisions of this Title. Such changes requiring conformance with the provisions of this Title shall include, but not be limited to, a change in state licensure, additional state licensure(s), an increase in resident census size, or any other expansion of or change in use.
- C. Maintain Residential Character of Facility: An RFPD located in a residential zone 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 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 shall not create a fundamental change in the residential character of the neighborhood in which it is proposed to be located.
- D. Occupying Restrictions: The RFPD shall not house more than eight (8) persons with a disability.
- E. 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 either a correctional facility or 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.
- F. Distance Restrictions. No Group Living Arrangement shall be located within one-half (1/2) mile of another Group Living Arrangement. Measurement shall be in a

straight line between the closest property lines of the lots/parcels, whether located in the City, County, State, or a surrounding municipality.

11-20-020 General Regulations

Each RFPD shall comply with the following:

- A. Conform to Applicable State and Local Requirements: Each RFPD shall comply with all applicable state and local building, safety, health, and zoning requirements.
- B. Conform to Relevant State Standards and Have Appropriate Licensure: Each RFPD shall comply with all applicable federal and state, laws, standards, and requirements, including state licensure, if applicable and required.
- C. Provide Adequate Parking: The minimum number of parking spaces required for an RFPD shall be the same as for similar structures located in the same zone in which the facility is located. Off-street parking shall be adequate to serve the needs of residents, visitors, staff members, and others. Additional parking may be required based on the number of residents occupying the facility, the number of residents who are reasonably expected to maintain a vehicle at the facility, the reasonably anticipated number of visitors, number of staff members who will be serving the residents, the number of vendors that will serve the facility, and any other factors that may increase or impact parking demands for the facility.
- D. No Tenants Who Constitute Direct Threat to Health or Safety: The RFPD 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.

11-30 Business License

11-30-010 Business License Required

11-30-020 Review Authority And Decision

11-30-030 License Change, Transferability, And Revocation

11-30-010 Business License Required

An applicant shall comply with and apply for a business license in accordance with Title 3 before an RFPD can operate and house the disabled.

11-30-020 Review Authority And Decision

- A. Incomplete Applications: If an applicant submits an incomplete application, the Business License Official shall not approve the application and shall send notice to the applicant that the application was incomplete.

- B. Complete Applications: Once an applicant 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. An application shall be approved if it meets the requirements of this Title and Title 3.

11-30-030 License Change, Transferability, And Revocation

A business license or facility regulated under this Title:

- A. is not transferable; and

- B. may be denied, suspended, or revoked in accordance with Title 3, Chapter 1 of the City Code.

11-40 Reasonable Accommodation

11-40-010 Requesting A Reasonable Accommodation

11-40-020 Application Requirements

11-40-030 Review Authority

11-40-040 Hearing Process and Decision

11-40-010 Requesting A Reasonable Accommodation

An applicant may request a reasonable accommodation pursuant to federal and state law and this Chapter. A requested accommodation may be made concurrently with a complete business license application.

11-40-020 Application Requirements

A. Application Process: A person requesting a reasonable accommodation shall submit the following to the City Recorder by email, hand delivery or certified mail:

1. A complete application that includes:

a. Property Information: Address, parcel number, current zoning, and name of the property owner.

b. Applicant Information: Name, address, phone number, and email address of the applicant.

c. Supporting Information:

(1) The specific regulation, policy, or procedure from which an accommodation is sought and/or for which deviation or waiver is requested.

(2) A document that provides a detailed explanation of why the requested accommodation is warranted under federal and/or state law, including a description how the person(s) is handicapped under the FHA, and analysis with evidence, legal authorities, and other information showing that the accommodation is reasonable and necessary to afford the handicapped/disabled person(s) an equal opportunity to use and enjoy the residential dwelling. Any arguments and/or evidence not submitted with the application may not be presented at the hearing.

(3) 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.

(4) Whether the owner/operator of the RFPD or applicant has other facilities for the disabled and, if so, a description and

copy of any complaints from neighbors, incident reports from a local police department, or investigations, citations, notices of violation(s) or complaints received from any federal, state, or local agencies, etc. relating to licensure, parking, traffic, a direct threat to the health or safety of other persons, or substantial physical damage to the property of others.

- (5) An accurate description of the type of program(s), treatment(s), therapies, and/or services, if any, that will be provided to the residents of the RFPD.
 - (6) The category of state licensure, if any, the RFPD will have.
 - (7) An accurate summary and/or description of the RFPD's admissions criteria and standards.
- d. Payment of applicable fees in accordance with the City's adopted fee schedule.
 - e. The RFPD's business license application.
 - f. Any additional evidence, including the following:
 - (1) a complete statement and summary of all testimony and opinions the witnesses, including the applicant and any expert witnesses, will express at the hearing and the basis and reasons for them;
 - (2) the exhibits, evidence, facts or data considered and relied upon by the applicant or any witness(es) in forming its/their opinion and/or argument;
 - (3) a copy of any exhibits or other evidence that will be used at the hearing;
 - (4) the expert witness's qualifications, including a list of all publications authored in the previous 10 years; and a list of all other cases in which, during the previous 4 years, the expert witness testified as an expert, including testimony at hearings, trial or by deposition.

B. Hearing.

1. Submission to Hearing Officer: Once an applicant submits a complete application and payment of its associated fee to the City Recorder as required by this Chapter, the City Recorder shall submit the complete application to a Hearing Officer.

11-40-030 Review Authority

- A. Hearing Officer: The City may contract with a neutral Hearing Officer before or at the time a reasonable accommodation request is made.
- B. The Hearing Officer shall:
 - 1. have demonstrable experience as a Hearing Officer and knowledge of the FHA, Americans with Disabilities Act, Rehabilitation Act and/or applicable anti-discrimination laws;
 - 2. act in a quasi-judicial manner and make a decision on whether the applicant shall receive a reasonable accommodation;
 - 3. consider the reasonable accommodation application and the City's responsive briefing;
 - 4. conduct and oversee an informal hearing on the application; and
 - 5. issue a written decision, including detailed findings and conclusions, that affirms, affirms in part, denies, or denies in part the request for accommodation.

11-40-040 Hearing Process and Decision

- A. Scheduling of the Hearing: Within ten (10) days after the Hearing Officer's receipt of the complete accommodation application from the City Recorder, the Hearing Officer shall contact the applicant and the City or its representative to schedule the time, date and place for the hearing. The Hearing Officer shall schedule the hearing for the time, date, and place mutually agreed by the City and the applicant and, if the City and the applicant cannot agree, at a time, date, and place determined by the Hearing Officer.
- B. No Ex Parte Communications. The applicant, City, and their representatives shall avoid ex parte communications with the Hearing Officer. The applicant, City, and their representatives shall include each other when communicating with the Hearing Officer about the information required by this Chapter and when transmitting the information required by this Chapter to the Hearing Officer.
- C. City Response to the Application: At least five (5) business days before the hearing, the City may, at its discretion, file a responsive brief regarding the City's position on whether the requested accommodation should be granted or denied, in whole or in part. The brief should address whether the requested accommodation is warranted under federal and/or state law, including an analysis of whether the RFPD's residents are handicapped under the FHA, and contain analysis with evidence, legal authorities, and other information addressing whether

the accommodation is reasonable and necessary to afford the handicapped/disabled person(s) an equal opportunity to use and enjoy the residential dwelling. Any arguments and/or evidence not submitted with the City's response may not be presented at the hearing. The City's response shall also include the following:

1. a complete statement and summary of all testimony and opinions the witnesses, including the City's witness(es) and any expert witnesses, will express at the hearing and the basis and reasons for them;
2. the exhibits, evidence, facts or data considered and relied upon by the City or any witness(es) in forming its/their opinion and/or argument;
3. a copy of any exhibits or other evidence that will be used at the hearing;
4. the expert witness's qualifications, including a list of all publications authored in the previous 10 years; and a list of all other cases in which, during the previous 4 years, the expert witness testified as an expert, including testimony at hearings, trial or by deposition.

D. Informal Hearing Procedures:

1. The hearing will be a public meeting but shall not be open to participation by the public. The applicant and the City may bring their attorneys or witnesses, if so desired.
2. The hearing shall be conducted on an informal basis. The Utah Rules of Evidence or Federal Rules of Evidence shall not apply.
3. Each of the parties may make an opening statement, if so desired. The applicant shall be allowed to make its presentation. The City shall then be allowed to make its presentation. Each of the parties may then make a closing statement, if so desired. Each of the parties may question any witnesses. The Hearing Officer may ask additional questions related to the requested accommodation to the applicant, witnesses, or the City and may adjust or modify the hearing procedures in the Hearing Officer's discretion.
4. 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).
5. The hearing shall be recorded by the City Recorder through audio and/or video means.
6. A transcript of the hearing may be requested by any party to the hearing at its/their own expense.

- E. Burden of Proof: The applicant bears the burden of proving that its residents are handicapped and/or have a disability and that the reasonable accommodation is necessary and reasonable for disabled persons to enjoy an equal opportunity to use the dwelling.
- F. Decision: The Hearing Officer shall issue a written decision on the accommodation application and deliver the decision to the applicant, City, and City Recorder within 14 days of the hearing date. A decision of a Hearing Officer is a quasi-judicial decision and shall take effect on the date when the Hearing Officer issues a written decision. The reasonable accommodation decision shall not be deemed a variance or to run with the land.
- G. Findings and Conclusions: The Hearing Officer's written decision shall make written findings and conclusions addressing the following:
1. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by one or more persons with a handicap or disability.
 2. Whether the requested accommodation is necessary to afford such persons an equal opportunity to use and enjoy a dwelling.
 3. Whether the requested accommodation is reasonable.
 4. 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.

11-50 Appeals

11-50-010 Business License Appeal

11-50-020 Reasonable Accommodation Appeal

11-50-010 Business License Appeal

A person may appeal a business license approval, approval with conditions, or denial in accordance with Title 3.

11-50-020 Reasonable Accommodation Appeal

A person with standing who is aggrieved by the Hearing Officer's decision in City Code § 11-40-040 may file for relief in any court of competent jurisdiction within thirty (30) days of the Hearing Officer's decision.

11-60-010 Nontransferable

Any use permitted by this Chapter, including a use and/or reasonable accommodation approved by the Hearing Officer is nontransferable, does not run with the land, and shall terminate if any of the following occur:

- A. Cessation of Use: Persons with disabilities or handicaps no longer reside at the facility and operations have ceased for a period of more than sixty (60) days not precipitated or caused by a force majeure.
- B. Termination of Licensure: If the RFPD is required to have state licensure, the termination or revocation of such licensure by the State of Utah or any of its departments or divisions.
- C. Noncompliance: The RFPD fails to comply with the requirements set forth in Title 3, this Chapter, and/or fails to comply with any conditions of accommodation issued by the Hearing Officer.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF HERRIMAN CITY, UTAH, THIS ____ DAY OF _____ 20__.

The Mayor

ATTEST:

City Recorder

