

CHAPTER 15. RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY

7-15-1. Applicability.

7-15-2. Scope.

7-15-3. Permitted Uses.

7-15-4. Reasonable Accommodation.

7-15-5. Accommodation Review.

7-15-6. State Certification or Licensure.

7-15-7. Revocation of Occupancy Permit.

7-15-8. Violations.

7-15-1. Applicability.

The City intends this Chapter to be interpreted and applied in a manner that is consistent with the Utah Fair Housing Act (UCA Chapter 57-21), the Federal Fair Housing Amendments Act of 1988 (42 USC Section 3601 et seq.), Title II of the Americans With Disabilities Act, and the Rehabilitation Act. (2022-40, 12-21-2022) (Ord. 2012-17, 09-05-2012)

7-15-2. Scope.

If any dwelling meets the definition of a residential facility for disabled persons as defined in Section 7-1-5 of this Title, the requirements of this Chapter shall govern, notwithstanding any conflicting provision of this Title or this Code. Except as provided herein, the requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, this Code, or other laws.

(2022-40, 12-21-2022) (Ord. 2012-17, 09-05-2012)

7-15-3. Permitted Uses.

(1) Notwithstanding any contrary provision of this Title, a residential facility for persons with a disability shall be a permitted use in any zoning district where a dwelling is allowed either as a permitted or conditional use, subject to the same development regulations as applied to dwellings.

(2) A residential facility for persons with a disability may not be allowed by variance, prior accommodation, legal nonconforming building, or legal nonconforming use.

(3) Each facility located in a single-family zoning district (R1-7 through RR-5) shall comply with the single-family design standards contained in Chapter 7-11b of this Title.

(4) Each facility located in a multi-family zoning district (MR-20, MR-16, MR-12, and MR-8) shall comply with the multi-family design standards contained in Chapter 7-11a of this Title.

(5) The minimum number of parking spaces required for a facility shall be as required in Chapter 7-4 of this Title.

(6) No more than four persons may be housed in a single bedroom.

(7) A minimum of 60 square-feet per resident

shall be provided in a multiple-occupant bedroom. A minimum of 100 square-feet per resident shall be provided in a single-occupant bedroom.

(8) Bathrooms shall have a minimum ratio of one toilet, one lavatory, and one tub or shower to each six residents.

(9) The facility must be a structure type that is permitted in the zoning district in which the facility is proposed to be located.

(Ord. 2022-40, 12-21-2022) (Ord. 2022-22, 07-06-2022) (Ord. 2019-12, 05-15-2019) (Ord. 2019-08, 03-20-2019) (Ord. 2012-17, 09-05-2012)

7-15-4. Reasonable Accommodation.

(1) None of the requirements of this Chapter shall be interpreted to limit any reasonable accommodation to afford a disabled person an equal opportunity to use and enjoy a dwelling as required by the Fair Housing Amendments Act of 1988, Title II of the Americans With Disabilities Act, the Utah Fair Housing Act, the Rehabilitation Act, and any other Federal or State law requiring a reasonable accommodation for a disabled person.

(2) Any person or entity wanting a reasonable accommodation shall submit a written application to the Director of the Community Development Department, which shall include at least the following:

a. The address of the property to which the accommodation will be applied;

b. The accommodation requested, including the regulations, policies, or procedures from which an accommodation is sought;

c. An explanation of why the accommodation is reasonable and necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling; and,

d. All information necessary and sufficient for the findings required in subsection (4) of this Section.

(3) The Director shall evaluate all reasonable accommodation requests based on the criteria required of an applicant by subsection (4) of this Section.

(4) Within 30 days after receipt of a complete application, the Director shall issue a written decision on the requested reasonable accommodation. The Director may either grant, grant with modifications, or deny a request for reasonable accommodation under the following factors:

a. Whether the dwelling, which is the subject of the request for reasonable accommodation, will be used by a disabled person;

b. Whether the requested accommodation is necessary to afford disabled persons equal opportunity to use and enjoy a dwelling when compared to similarly situated persons or groups without a disability;

c. Whether the requested accommodation

would impose an undue financial or administrative burden on the City;

d. Whether the requested accommodation would require a fundamental alteration in the nature of the City's planned land use, zoning, or building programs;

e. Whether the requested accommodation is reasonable under the circumstances;

f. Whether the request for accommodation would cause a dwelling to be made available to an individual whose tenancy is anticipated to cause a direct threat to the health or safety of other individuals or whose tenancy is anticipated to cause substantial physical damage to the property of others; and,

g. Any other relevant considerations under Federal, State, or Tooele City laws.

(5) If the Director denies a reasonable accommodation request, or grants the request with modifications, the decision may be appealed by the accommodation applicant to the Administrative Hearing Officer in the manner provided for appeals of administrative decisions in Chapter 1-28 of this Code. The review of all such appeals, including any appeals from the Administrative Hearing Officer to the District Court, shall be based upon the record presented to the Director, and shall not be de novo.

(6) A reasonable accommodation shall not be deemed a variance and shall not run with the land.

(7) If the Director does not render a written decision on the request for reasonable accommodation within the 30-day time period allotted by this Section, the request shall be deemed denied based upon the insufficiency of the applicant's information to satisfy the criteria of this Section.

(8) While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

(9) It is the applicant's burden to demonstrate that the accommodation is necessary and reasonable under the standards and definitions set forth in Federal and State law, including Federal and State case law.

(Ord. 2022-40, 12-21-2022) (Ord. 2019-08, 03-20-2019) (Ord. 2012-17, 09-05-2012)

7-15-5. Accommodation Review.

(1) The purpose of the Director's review is to assure that all reasonable accommodation requests comply with this Title, and that all decisions on reasonable accommodation requests are reviewed and handled in compliance with this Title, the Fair Housing Amendments Act of 1988, Title II of the Americans With Disabilities Act, the Utah Fair Housing Act, the Rehabilitation Act, and any other Federal, State, and Tooele City laws requiring a reasonable accommodation for a disabled person.

(2) The Director may consult with and obtain

the services of Tooele City personnel and outside professionals or technical experts to help evaluate any and all requests for accommodation.

(Ord. 2019-08, 03-20-2019) (Ord. 2012-17, 09-05-2012)

7-15-6. State Certification or Licensure.

(1) Prior to the City issuing a certificate of occupancy for a facility, and prior to actual occupancy of a facility, the person or entity licensed or certified by the State of Utah to establish and operate the facility shall:

(a) provide a copy of the required State of Utah licenses and/or certificates for the facility and for any State-regulated programs provided at the facility; and,

(b) certify by affidavit to the City that no person will reside or remain in the facility whose tenancy likely would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

(2) For purposes of this Chapter, State of Utah licenses and certificates for facilities and programs are applicant-specific, facility-specific, and program-specific, and shall not be transferrable to any other owner, operator, facility, or program.

(2022-40, 12-21-2022) (Ord. 2012-17, 09-05-2012)

7-15-7. Revocation of Occupancy Permit.

The City may revoke the occupancy permit of any facility upon the occurrence of any of the following:

(1) the facility is devoted primarily to a use other than a residential facility for persons with a disability;

(2) any license or certificate required and issued by the State of Utah for the facility or a program provided at the facility terminates for any reason (including expiration, revocation, suspension for five years or more, denial of renewal);

(3) the facility fails to comply with all of the requirements of this Chapter; or,

(4) the facility allows a person to reside or remain in the facility whose tenancy constitutes or has constituted a direct threat to the health or safety of others or has resulted in substantial physical damage to the property of others.

(2022-40, 12-21-2022) (Ord. 2012-17, 09-05-2012)

7-15-8. Violations.

(1) The following shall constitute a violation of this Chapter:

(a) continued occupation of a facility upon the revocation of the occupancy permit;

(b) continued occupation of a facility upon the termination of the State of Utah license or certificate for the facility;

(c) continued providing of a program upon the termination of the State of Utah license or

certificate for that program;

(d) noncompliance with any provision of Title 4 or Title 7 of this Code applicable to the facility;

(e) allowing a person to reside or remain in the facility whose tenancy constitutes or has constituted a direct threat to the health or safety of others or has resulted in substantial physical damage to the property of others; and,

(f) allowing the facility to be devoted to a use other than a residential facility for persons with a disability.

(2) Any violation of this Chapter is a class B misdemeanor.

(2022-40, 12-21-2022) (Ord. 2019-08, 03-20-2019)

(Ord. 2012-17, 09-05-2012)