

Chapter 12.21
Residential Facilities for Elderly Persons
or Persons with a Disability and Other
Facilities (*amended 7/10/2007; Ord. 2007-17;*
Ord. 2008-09, 6/10/2008)

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12.21.1 Purpose

The purpose of this Chapter is to comply with Sections 10-9a-516 through 10-9a-520 of the Utah Code Annotated, as amended, and to avoid discrimination in housing against persons with disabilities pursuant to the Utah Fair Housing Act and the Federal Fair Housing Act.

12.21.2 Scope

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 or other facility as set forth in this Title, the requirements of this Chapter shall govern the same notwithstanding any conflicting provision of this Title or the Bluffdale City Code. Except as provided herein, the requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Bluffdale City Code, or other local, state or federal law.

12.21.3 Definitions

- 1. **Adult Day Care Facility.** Adult Day Care Facility means any building or structure furnishing care; supervision, and guidance for three (3) or more adults unaccompanied by guardian for periods of less than twenty-four hours (24) per day.
- 2. **Assisted Living Facility.** An Assisted Living Facility is a residential facility, licensed by the State of Utah, with a home

like setting that provides an array of coordinated support personnel and health care services, available 24-hours per day, to residents who have been assessed under the Utah Department of Health or the Utah Department of Human Services Rules to need any of these services. Each resident shall have a service plan based on the assessment, which may include:

- i. specified services of intermediate nursing care;
- ii. administration of medication, and;
- iii. support services promoting residence independence and self sufficiency. Such a facility does not include adult day care provided in conjunction with a residential facility for elderly persons or a residential facility for persons with a disability.

- 3. **Disability.** 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 U.S.C. 802, or as defined under Title 58, Chapter 37, Utah Code Annotated, 1953 as amended.
- 4. **Elderly Person.** Elderly Person means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently
- 5. **Family.** See definition in Chapter 12.29 of this Title.
- 6. **Non-residential Treatment Facility.** Non-residential Treatment Facility means a facility wherein no persons will be housed on an overnight basis, and provides services including rehabilitation, treatment, counseling, or assessment and evaluation services related to delinquent behavior, alcohol abuse, drug abuse, sexual offenders, sexual abuse, or mental health. Associated educational services may also be provided to juvenile occupants.
- 7. **Nursing Home.** Nursing Home means an intermediate care/nursing facility or a skilled

nursing facility licensed by the State of Utah, for the care of individuals who, due to illness, advanced age, disability, or impairment require assistance and/or supervision on a 24-hour per day basis. Such a facility does not include an adult day care facility or adult day care provider in conjunction with residential facilities for elderly persons or a residential facility for persons with a disability.

8. **Protective Housing Facility.** Protective Housing Facility means a facility either (1) operated, licensed, or contracted by a governmental entity, or (2) operated by a charitable, non-profit organization, where for no compensation, temporary, protective housing is provided to: (i) abused or neglected children waiting placement of foster care; (ii) pregnant or parenting teens; (iii) victims of sexual abuse; or (iv) victims of domestic abuse.
9. **Reasonable Accommodation.** Reasonable accommodation means a change in any rule, policy, practice, or service necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. The following words have the following definitions, to wit:
 - i. **Reasonable.** Reasonable means a requested accommodation that will not undermine the legitimate purpose of existing zoning regulations notwithstanding the benefit that the accommodation will provide to a person with a disability.
 - ii. **Necessary.** Necessary means the applicant must show that, but for the accommodation one or more persons with a disability likely will be denied an equal opportunity to enjoy the housing of their choice.
 - iii. **Equal Opportunity.** Equal opportunity means achieving equal results as between a person with a disability and a non-disabled person.
10. **Related.** Related means by blood, marriage or adoption within the definition of "family." Related persons mean a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild,

to include the half as well as the whole blood.

11. **Residential Care Facility for Elderly Persons.** Residential Care Facility for Elderly Persons means a dwelling unit that is occupied on a 24-hour per day basis by 8 or fewer elderly persons in a family type arrangement and which is:
 - i. licensed or certified by the Department of Human Services under Title 62A, Chapter 2, of the Utah Code, Licensure of Programs and Facilities; or
 - ii. licensed or certified by the Department of Human Health under Title 26, Chapter 21, Health Care Facilities Licensing and Inspection Act; and
 - iii. intended to provide care or treatment to persons with disabilities.
12. **Residential Care Facility for Persons with Disabilities.** Residential Care Facility for Persons with a Disability means a residence in which more than one person with a disability resides and which is:
 - i. licensed or certified by the Department of Human Services under Title 62A, Chapter 2, of the Utah Code, Licensure of Programs and Facilities; or
 - ii. licensed or certified by the Department of Human Health under Title 26, Chapter 21, Health Care Facilities Licensing and Inspection Act; and
 - iii. intended to provide care or treatment to persons with disabilities.
13. **Residential Facility for Elderly Persons.** Residential Facility for Elderly Persons means a dwelling unit that is occupied on a 24-hour per day basis by 8 or fewer elderly persons in a family type arrangement. A residential facility for elderly persons shall not include any of the following:
 - i. a facility which is operated as a business; provided that such facility may not be considered to be operated as a business solely because a fee is charged for food or for actual and necessary costs of preparation and maintenance of the facility;
 - ii. a facility where persons being treated for alcoholism or drug abuse are placed; a facility where placement is not on a

strictly voluntary basis or where placement is part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution; or a facility which is a health care facility as defined by Title 26, Section 21, Chapter 2, Utah Code Annotated, 1953 as amended; or a facility which is a residential facility for persons with a disability.

14. Residential Facility for Persons with Disabilities. Residential Facility for Persons with a Disability means a residence in which more than one person with a disability resides and which is:
 - i. licensed or certified by the Department of Human Services under Title 62A, Chapter 2, of the Utah Code, Licensure of Programs and Facilities; or
 - ii. licensed or certified by the Department of Human Health under Title 26, Chapter 21, Health Care Facilities Licensing and Inspection Act; and
 - iii. not intended to provide care or treatment to persons with disabilities.

12.21.4 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 use subject to the provisions of this Chapter.

A use permitted by this Chapter is non-transferable and shall terminate if:

1. The facility is devoted to a use other than a residential facility for elderly persons or a residential facility for persons with a disability.
2. Any license or certification issued by the Utah Department of Health or the Utah Department of Human Services for such facility terminates or is revoked.
3. The facility fails to comply with requirements set forth in this Chapter.

12.21.5 Development Standards

- 12.21.5.1 Building, Safety and Health Regulations
- 12.21.5.2 No Dangerous Persons Permitted
- 12.21.5.3 License and Certification

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.

12.21.5.1 Building, Safety and Health Regulations

All facilities shall comply with any building, safety, and health regulations applicable to similar structures.

1. Each facility shall be subject to the same development standards applicable to similar structures located in the same zoning district in which the facility is located.
2. 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.

12.21.5.2 No Dangerous Persons Permitted

No facility may be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:

1. May be determined to be or does constitute a direct threat or substantial risk to the health or safety of other individuals; or
2. Has or may engage in conduct resulting in substantial physical damage to the property of others.

12.21.5.3 License and Certification

1. Prior to occupancy of any facility or the issuance of a business license, building permit, or conditional use permit, the person or entity operating the facility shall:
 - a. Provide to Bluffdale City a copy of any license or certification required by the Utah State Department of Health or the Utah Department of Human Services.
 - b. Certify in a sworn statement that no person will reside or remain in the facility whose tendency would:
 - i. Constitute a direct threat to the health or safety of other individuals.
 - ii. Result in substantial physical damage to the property of others.
2. If after a reasonable investigation staff or the City Council determines that a residential facility for persons with a disability might create a fundamental change in the character of a neighborhood the item shall be scheduled for a public hearing before the City Council. The City Council, acting as

the land use authority, may exclude the facility from a zone if it finds that the proposed residential facility for persons with a disability would likely create a fundamental change in the character of a residential neighborhood. The factors to be analyzed in determining whether a fundamental change in the character of a residential neighborhood might be caused include, but are not limited to, the following:

1. impact on traffic congestion,
2. availability of adequate parking,
3. the business nature of a proposed facility in an area zoned for exclusively residential uses, including whether the proposed facility will offer outpatient services,
4. hours of operation,
5. safety and security measures for the proposed facility, and
6. other similar concerns.

Section 12.21.6 Residential Facilities For Elderly Persons and Residential Care Facilities for Elderly Persons

1. Purpose. The purpose of this code is to comply with Title 10, Chapter 9a, Sections 516 through 519, Utah Code Annotated, 1953 as amended.
2. Residential facilities for elderly persons and residential care facilities for elderly persons shall comply with all requirements of §10-9a-516 through 519, and also the following requirements:
 - i. The facility shall meet all applicable building codes, safety codes, zoning regulations, the Americans with Disabilities Act, and health ordinance applicable to single-family or similar dwellings; except as may be modified by the provisions of this Chapter.
3. No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:
 - i. May be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
 - ii. Has or may engage in conduct resulting in substantial physical

damage to the property of others.

4. Minimum site development standards shall be the same as those for a dwelling unit in the zone in which the facility is located;
5. The facility shall be capable of being used as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
6. The use granted and permitted by this section is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structure fails to comply with the applicable health, safety, zoning and building codes; and
7. No residential facility for elderly persons or residential care facility for elderly persons shall be established or maintained within a quarter mile (1,320 feet) measured in a straight line between the closest property lines of the lots or parcels of another facility regulated by the Utah Department of Human Services.

Section 12.21.7 Residential Facilities for Persons with a Disability and Residential Care Facilities for Persons with a Disability

1. Purpose. The purpose of this code is to comply with Title 10, Chapter 9a, Section 520, Utah Code Annotated, 1953 as amended.
2. Residential facilities for persons with a disability and residential care facilities for persons with a disability shall comply with all requirements of § 10-9a-520 and also the following requirements:
 - i. The facility shall meet all applicable building codes, safety codes, zoning regulations, the Americans with Disabilities Act, and health ordinance applicable to single-family or similar dwellings; except as may be modified by the provisions of this Chapter.
3. No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal

convictions, or as a resident, that he or she:

- i. May be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or
 - ii. Has or may engage in conduct resulting in substantial physical damage to the property of others.
4. Minimum site development standards shall be the same as those for a dwelling unit in the zone in which the facility is located.
 5. The facility shall be capable of being used as a residential facility for persons with a disability or a residential care facility for persons with a disability without structural or landscaping alterations that would change the structure's residential character.
 6. The use granted and permitted by this section is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for persons with a disability or a residential care facility for persons with a disability or if the structure fails to comply with the applicable health, safety, zoning and building codes; and
 7. No residential facility for persons with a disability or residential care facility for persons with a disability shall be established or maintained within a quarter mile (1,320 feet) measured in a straight line between the closest property lines of the lots or parcels of another facility regulated by the Utah Department of Human Services.
 8. For residential facilities for persons with a disability or residential care facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, the facility shall provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:
 - (i) a security plan satisfactory to local law enforcement authorities;
 - (ii) 24-hour supervision for residents; and
 - (iii) other 24-hour security measures
 9. In zones that allow residential uses no residential facility for persons with a disability or residential care facility for persons with a disability may exceed eight

(8) residents. A maximum of 18 total persons is permitted (including staff and the family that owns the residence).

12.21.8 Non-residential Treatment Facilities

Non-residential treatment facilities shall not be built within Bluffdale City except as specifically allowed as a permitted or conditional use by proper designation in a zone or zones in Chapter 12.6. Each permitted facility, or facility allowed as a conditional use, shall conform to the following requirements:

1. The facility shall comply with all building, safety, zoning and health regulations, the American with Disabilities Act, fire regulations, and all applicable State code standards and licensing requirements, and any standards set forth in any contract with a state agency.
2. The following site development standards and parking standards shall be applicable:
 - i. Each facility shall be subject to minimum site development standards applicable to a business in the zone in which the facility may be located; and
 - ii. The minimum number of parking spaces required shall be the same as the number required for an office building with similar size, occupancy, and density in the same zone.
3. Prior to occupancy of the facility, the person or entity licensed or certified by the Department of Human Services or the Department of Health to establish and operate the facility shall:
 - i. Provide a certified copy of such license with the City Recorder;
 - ii. Certify, in a sworn affidavit submitted with application for a business license, compliance with the Americans with Disabilities Act;
4. The use permitted by this section is non-transferable and shall terminate if:
 - i. A facility is devoted to or used as other than a non-residential facility; or
 - ii. The license or certification issued by the Department of Human Services, Department of Health or any other applicable agency, terminates or is revoked, or the facility fails to comply with the conditions set forth in this section.

5. No non-residential treatment facility shall be established or maintained within a quarter mile (1,320 feet) measured in a straight line between the closest property lines of the lots or parcels of another facility regulated by the Utah Department of Human Services.
6. To the extent similar requirements to any contained in this section are contained in the specific zone in which any facility referred to herein may be located, the more restrictive provisions shall apply, and the requirements stated herein shall be considered to be in addition to presently existing zoning regulations, subject to the conflicts resolution provisions of this subsection.

12.21.9 Reasonable Accommodation

None of the requirements of this Chapter shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability. Any person or entity wanting a reasonable accommodation shall make application therefor to Bluffdale City and shall articulate in writing the nature of the requested accommodation and the basis for the request. The City Council shall render a decision on each application for a reasonable accommodation within thirty (30) days. If a reasonable accommodation request is denied, the decision may be appealed to the Board of Adjustment in the manner provided for appeals of administrative decisions set forth in this Title.