

Chapter 19.85
GROUP HOMES; OTHER
FACILITIES

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19.85.010 Definitions.

The following definitions shall apply to all sections of this title 19, and, except as provided herein, shall supersede any other definition contained in this title:

A. “*Adult daycare facility*” means any building or structure furnishing care, supervision, and guidance for three or more adults unaccompanied by guardians for periods of less than 24 hours per day.

B. “*Assisted living facility*” means a residential facility, licensed by the state of Utah, with a homelike setting that provides an array of coordinated support personnel and healthcare 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:

1. Specified services of intermediate nursing care;
2. Administration of medication; and
3. Support services promoting resident's independence and self-sufficiency. Such a facility does not include adult daycare provided in

conjunction with a residential facility for elderly persons or a residential facility for persons with a disability.

C. “*City*” means the city of Cottonwood Heights, Utah.

D. “*Director*” means the city’s community development director or, if none, its manager, or the director’s designee (such as the city’s planning commission).

E. “*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 a problem or being regarded as having such an impairment. The following definitions are incorporated into the definition of disability:

1. Disability does not include current illegal use of, and/or resulting 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 UTAH CODE ANN. Title 58, Chapter 37, as amended;

2. A physical or mental impairment includes the following:

(a) Any psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(b) Any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; or

(c) Such diseases and conditions as orthopedic, visual, speech and hearing

impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV), mental retardation, drug addiction (other than addiction caused by current, illegal use of controlled substances) and alcoholism.

F. “*Domestic staff*” means persons employed or residing on the premises of a dwelling or other residential facility to perform domestic services or to assist residents in performing major life activities.

G. “*Elderly person*” means a person who is 60 years or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

H. “*Family*” means one or more persons related by blood, marriage, adoption, or guardianship (including foster children), and may also include up to four additional unrelated individuals living with the family, such as domestic staff, living together as a single nonprofit housekeeping unit.

I. “*Major life activities*” means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

J “*Nonresidential treatment facility*” means a facility wherein no persons will be housed on an overnight basis, which provides services including rehabilitation, treatment, counseling, or assessment and evaluation services related to delinquent behavior, alcohol abuse, drug abuse, sexual offenses, sexual abuse, or mental health. Associated educational services may also be provided to juvenile patients.

K. “*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 24 hours per day. Such a facility does not include an adult daycare facility or adult daycare provider in conjunction with residential facilities for elderly persons or a residential facility for persons with a disability.

L. “*Protective housing facility*” means a facility either:

1. Operated, licensed, or contracted by a governmental entity, or

2. Operated by a charitable, nonprofit organization, where, for no compensation, temporary protective housing is provided to:

(a) Abused or neglected children awaiting placement of foster care;

(b) Pregnant or parenting teens;

(c) Victims of sexual abuse; or

(d) Victims of domestic abuse.

M. “*Reasonable accommodation*” means a change in any rule, policy, practice, or service necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. The following words have the following definitions:

1. “Reasonable” means that a requested accommodation will not undermine the legitimate purpose of existing zoning regulations notwithstanding the benefit that the accommodation will provide to a person with a disability.

2. “Necessary” means that 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.

3. “Equal opportunity” means achieving equal results as between a

person with a disability and a nondisabled person.

N. "*Record of impairment*" means having a record or history of having, or having been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

O. "*Regarded as having an impairment.*" A person is regarded as having an impairment when:

1. The person has a physical or mental impairment that does not substantially limit one or more major life activities but is treated by another person as having such a limitation;

2. The person has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others towards such an impairment; or

3. The person has none of the impairments defined in this section but is treated by another person as having such an impairment.

P. "*Rehabilitation/treatment facility*" means a facility licensed or contracted by the state of Utah to provide temporary occupancy and supervision of individuals (adults and/or juveniles) in order to provide rehabilitation, treatment or counseling services. Without limitation, such services may include rehabilitation, treatment, counseling, or assessment and evaluation services related to delinquent behavior, alcohol abuse, drug abuse, sexual offenses, sexual abuse, or mental health. Associated educational services may also be provided to juvenile occupants.

Q. "*Related.*" Related by blood, marriage or adoption within the definition of "family" means 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.

R. "*Residential facility for elderly persons*" means a dwelling unit that is occupied on a 24 hour per day basis by eight or fewer elderly persons in a family type arrangement. The dwelling unit must be owned by one of the residents or by an immediate family member of one of the residents, or be a facility for which the title has been placed in trust for a resident. A residential facility for elderly persons shall not include any of the following:

1. 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 operation and maintenance of the facility;

2. A facility where persons being treated for alcoholism or drug abuse are placed;

3. 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;

4. A facility which is a healthcare facility as defined by UTAH CODE ANN. 26-21-2, as amended; or

5. A facility which is a residential facility for persons with a disability.

S. "*Residential facility for persons with a disability*" means a residence in which more than one person with a disability resides and which is:

1. Licensed or certified by the Utah Department of Human Services under UTAH CODE ANN. Title 62A, Chapter 2, as amended; or

2. Licensed or certified by the Utah Department of Health under UTAH CODE ANN Title 26, Chapter 21, as amended.

T. “*Shelter for the homeless*” means charitable lodging or sleeping rooms provided on a temporary (usually daily) basis to those members of society lacking other safe, sanitary or affordable shelter. A shelter for the homeless may also include kitchen and cafeteria facilities.

U. “*Transitional housing facility*” means a facility owned, operated or contracted by a governmental entity or a charitable, not for profit organization, where, for no compensation, temporary housing (usually three to 24 months, but in no event less than 30 days) is provided to homeless persons while they obtain work, job skills, or otherwise take steps to stabilize their circumstances. A transitional housing facility shall not include a shelter for the homeless, and a dwelling unit provided to a family for their exclusive use for more than 30 days as part of a transitional housing program shall not be considered to be a transitional housing facility.

19.85.020 Residential facilities for persons with a disability.

A. Applicability. This section shall govern any facility, residence, or other circumstance that constitutes a residential facility for persons with a disability as defined in this chapter. The requirements of this section shall govern and control any contrary provisions of this code.

B. Purpose. The purposes of this section are:

1. To comply with UTAH CODE ANN 10-9a-520; and
2. To avoid discrimination in housing against persons with disabilities

as provided in the Utah Fair Housing Act and the federal Fair Housing Act, as amended, as interpreted by the courts having jurisdiction over the city.

C. Permitted Use. Subject to the provisions of this chapter, and notwithstanding any contrary provision of this title, a residential facility for persons with a disability shall be a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed. A residential facility for persons with a disability that would likely create a fundamental change in the character of the neighborhood may be excluded from a zoning area. A residential facility for persons with a disability shall be a permitted use in any zoning district where a dwelling is allowed. Each residential facility for persons with a disability shall conform to the following requirements:

1. The facility shall comply with all applicable building, safety and health regulations, the Americans with Disabilities Act, fire regulations, and all applicable state core standards and licensing requirements, and any standards set forth in any applicable contract with a state agency. The facility shall also comply with the city's land use ordinances applicable to single-family dwellings for the zone in which it is to be located, except as may be modified pursuant to this chapter.

2. The following site development standards and parking standards shall be applicable:

- (a) Each facility shall be subject to the same minimum site development standards applicable to a dwelling unit in the zone in which the facility is located; and
- (b) The minimum number of parking spaces required for the facility shall be

the same as the number required for a dwelling with similar occupancy density in the same zone.

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:

(a) May be determined to be or does constitute a direct threat or substantial risk to the health or safety of other individuals; or

(b) Has or may engage in conduct resulting in substantial physical damage to the property of others.

4. Prior to occupancy of the facility, the person or entity licensed or certified by the Utah Department of Human Services or the Utah Department of Health to establish and operate the facility shall:

(a) Provide a certified copy of such license to the city recorder;

(b) Certify, in a sworn affidavit submitted with the application for a business license, compliance with the Americans with Disabilities Act;

(c) Certify, in a sworn affidavit submitted with the application for a business license, that no person will be placed or remain in the facility whose prior or current behavior, actions and/or criminal incidents or convictions, have demonstrated that such person is or may be a substantial risk or direct threat to the health or safety of other individuals, or whose said behavior, actions and/or incidents or convictions have resulted in or may result in substantial physical damage to the property of others. Such affidavit shall be supplemented and updated not less than 150 days nor more than 190 days after the date of issuance or renewal of the business license, and at the time of the application for renewal of the business license.

5. The use permitted by this section is nontransferable and shall terminate if:

(a) A facility is devoted to or used as other than a residential facility for persons with a disability; or

(b) The license or certification issued by the Utah Department of Human Services, Utah Department of Health or any other applicable agency, terminates or is revoked; or

(c) The facility fails to comply with the conditions set forth in this section.

6. In the F-20, F-1-43, F-1-21, RR-1-43, RR-1-29, RR-1-21, R-1-15, R-1-10, R-1-8 and R-1-6 zones, no residential facility for persons with a disability shall exceed eight residents plus a maximum of two additional qualified persons acting as houseparents or guardians.

7. In an R-2-8, RM, RO and MU zones, no residential facility for persons with a disability shall exceed twelve (12) residents plus a maximum of two additional qualified persons acting as houseparents or guardians.

8. No residential facilities for persons with disabilities shall be permitted in the NC, CR, PF or O-R-D zones, or in any other zones in the city that do not allow for residential use as a permitted or conditional use.

9. Each residential facility for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, shall provide, in accordance with rules established by the Utah Department of Human Services under *UTAH CODE ANN* Title 62A, Chapter 2, as amended, the following:

(a) A security plan satisfactory to local law enforcement authorities;

(b) 24-hour supervision for residents; and

(c) Other 24-hour security measures.

10. Each residential facility for persons with a disability shall obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zoning area to similar uses that are not residential facilities for persons with a disability.

11. No residential facility for persons with disabilities shall be located within 1,000 feet of another such facility as measured from nearest property line of the existing facility to nearest property line of the proposed facility.

D. Reasonable accommodations. 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; provided, however, that an accommodation cannot be granted to waive a material zoning requirement (such as lot coverage, parking, setback or height standards), as reasonably determined by the director; to diminish the required spacing of such facilities under this section; or to increase the maximum number of occupants of such facilities above the limit specified in this section.

E. Any person or entity wanting a reasonable accommodation shall make application therefor to the director.

1. Such application shall specifically articulate, in writing, the following:

(a) The name, mailing address, and phone number of the applicant;

(b) The nature and extent of the disability;

(c) An exact statement of the ordinance or policy from which the applicant needs a reasonable accommodation;

(d) The applicant's proposed reasonable accommodation;

(e) A statement detailing why such reasonable accommodation is necessary; and

(f) The physical address of the property where the applicant requests the reasonable accommodation.

2. When considering whether or not to grant a reasonable accommodation, the director shall, in consultation with the city manager and the city attorney, consider the following factors, among others deemed appropriate and applicable:

(a) The zoning ordinance applicable to the property;

(b) The anticipated parking, traffic, and noise impact on the neighborhood if the reasonable accommodation is granted;

(c) Whether or not the accommodation will be an undue burden or expense to the city;

(d) The extent to which the accommodation will or will not benefit the applicant;

(e) The extent to which the accommodation will or will not benefit the community;

(f) Whether or not the accommodation fundamentally alters the citywide zoning ordinance and whether or not the accommodation would likely create a fundamental change in the character of a residential neighborhood;

(g) Whether or not the applicant has demonstrated that the accommodation will affirmatively enhance the applicant's life or ameliorate the effects of the applicant's disability, or the lives or disabilities of those on whose behalf the applicant is applying;

(h) Whether or not, without the accommodation, similar housing is

available in the city for the applicant or group of applicants;

(i) The anticipated impact of the requested accommodation on the immediate neighborhood; and

(j) The requirements of applicable federal and state laws and regulations.

3. A written decision shall be sent to the applicant within 60 days after the application.

4. If a request for a reasonable accommodation is denied, such decision may be appealed to the city's board of adjustment within ten days after such denial.

19.85.030 Residential facilities for elderly persons.

A. *Purpose.* The purpose of this section is to comply with UTAH CODE ANN. 10-9a-516 to -519.

B. *Compliance.* Residential facilities for elderly persons shall comply with all requirements of UTAH CODE ANN. 10-9a-516 to -519, and also the following requirements:

1. 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.

2. 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:

(a) May be determined to be or does constitute a substantial risk or direct threat to the health or safety of other individuals; or

(b) Has or may engage in conduct resulting in substantial physical damage to the property of others.

3. Minimum site development standards shall be the same as for a dwelling unit in the zone in which the facility is located.

4. 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.

5. A use granted under this section is nontransferable 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 all applicable ordinances, including health, safety, zoning and building codes.

6. No residential facility for elderly persons shall be established or maintained within three-fourths ($\frac{3}{4}$) of a mile measured in a straight line between the closest property lines of the lots or parcels of similar facilities, residential facilities for persons with disabilities, protective housing facilities, transitional housing facilities, assisted living facilities, rehabilitation/treatment facilities, or a nonresidential treatment facility.

19.85.040 Design standards.

A. The design standards set forth in this section are applicable to protective housing, rehabilitation/treatment facilities (both residential and non-residential, including, without limitation, residential facilities for persons with a disability and residential facilities for elderly persons), transitional housing and assisted living facilities, when allowed as a permitted or conditional use in the city.

B. Any newly constructed or remodeled facility in a residential zone or immediately abutting a residential

zone on at least two sides shall comply with the following design standards:

1. All setbacks shall be according to the requirements of the residential zone in which the facility sits; provided that if the facility is in a non-residential zone abutting a residential zone, then the setbacks shall be those of the abutting residential zone;

2. All required or accessory parking areas shall be located either in the rear yard area of the lot or behind the main building or garage;

3. In addition to the maximum height restrictions of the individual zone, new or additional buildings shall not exceed 110% of the average height of the closest dwellings on both sides of the proposed structure;

4. In order for new construction to reflect the design and character of the existing neighborhood, the following standards also shall be met:

(a) The roof design of the proposed structure or remodel shall be a pitched roof of the same slope as the most common roof slope of the homes on the side of the block on which the building is proposed; and

(b) The type of exterior materials shall be traditional home finished materials of brick, siding, or stucco. The use of these materials shall be applied so as to blend in with the neighborhood where the building is located and not draw undue attention to the building because its materials, color and/or design is uncharacteristic of the other buildings in the neighborhood.

5. 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. The requirements of this section are in addition to all other

applicable ordinances and regulations, subject to the conflicts resolution provisions of this subsection.

19.85.050 Nonresidential treatment facilities.

A. Nonresidential treatment facilities shall not be built in the city except as specifically allowed as a permitted or conditional use by proper designation in a zone or zones in this title. 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 Americans with Disabilities Act, fire regulations, and all applicable state core 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 to nonresidential treatment facilities:

(a) 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

(b) 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 Utah Department of Human Services or the Utah Department of Health to establish and operate the facility shall:

(a) Provide a certified copy of such license with the city recorder; and

(b) 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 nontransferable and shall terminate if:

(a) A facility is devoted to or used as other than a nonresidential facility; or

(b) 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 nonresidential treatment facility shall be established or maintained within 1,000 feet measured in a straight line between the closest property lines of the lots or parcels of the following facilities:

(a) A residential facility for persons with a disability;

(b) A residential facility for elderly persons; or

(c) Any of the following facilities: protective housing facility, transitional housing facility, assisted living facility or rehabilitation/treatment facility, a nonresidential treatment facility, and schools.

6. 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:

(a) May be determined to be or does constitute a direct threat or substantial risk to the health or safety of other individuals; or

(b) Has or may engage in conduct resulting in substantial physical damage to the property of others.

7. 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. The requirements of this section are in addition to other applicable ordinances and regulations, subject to the conflicts resolution provisions of this subsection.

19.85.060 Limitations.

Only such uses and facilities as are specifically authorized in this chapter and in this title as permitted or conditional uses shall be allowed. All other uses and facilities are prohibited.

19.85.070 Severability.

If any provision of this chapter is declared invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.