

Provo City Planning Commission

# Report of Action

November 11, 2015

ITEM 2\* The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. *City Wide*. 15-0017OA, Brian Maxfield, 801-852-6429

The following action was taken by the Planning Commission on the above described item at its regular meeting of November 11, 2015:

## RECOMMEND APPROVAL

On a vote of 4:0, the Planning Commission recommended that the Municipal Council approve the above noted application

Motion By: Kermit McKinney

Second By: Jamin Rowan

Votes in Favor of Motion: Kermit McKinney; Jamin Rowan; Fred Brandley; Ross Flom

*Ross Flom was present as Chair.*

The Motion includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report; Planning Commission determination is generally consistent with the Staff analysis and determination.

### RELATED ACTIONS

None

### STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the presentation by Camille Williams of the City Attorney's Office to the Planning Commission included the following:

1. When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.
2. The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

3. The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.
4. The Planning Commission should also evaluate the utility of retaining "Residential Facilities for Elderly Persons" as a permitted use.

**CITY DEPARTMENTAL ISSUES**

- Compliance with State Code

**NEIGHBORHOOD MEETING DATE**

- City-wide application; all Neighborhood Chairs received notification.

**NEIGHBORHOOD AND PUBLIC COMMENT**

- This item was City-wide or affected multiple neighborhoods.

**CONCERNS RAISED BY PUBLIC**

- No response was given by the public in attendance.

**PLANNING COMMISSION DISCUSSION**

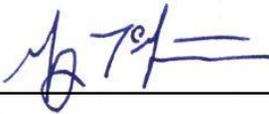
Key points discussed by the Planning Commission included the following:

- Need for compliance with State Statutes
- Questions regarding elderly housing occupancy verses single-family occupancy
- Clarification that this does not affect group homes for criminal, drug or alcohol related rehabilitation



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Planning Commission Chair



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Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (\*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.



**Planning Commission  
Staff Report  
Ordinance Amendment  
Hearing Date: November 11, 2015**

**ITEM 2\*** The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. *City Wide*. 15-00170A, Brian Maxfield, 801-852-6429

<p>Applicant: Provo City Attorney's Office</p> <p>Staff Coordinator: Brian Maxfield</p> <p>*Council Action Required: Yes</p> <p>Related Application(s): None</p> <p><b><u>ALTERNATIVE ACTIONS</u></b></p> <p>1. <b>Continue</b> to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is December 9, 2015, at 5:00 p.m.</i></p> <p>2. <b>Recommend Denial</b> of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation</u>; the Planning Commission should <u>state new findings</u>.</i></p>	<p>Neighborhood Issues: None received by staff.</p> <p>Summary of Key Issues: A recent court ruling has brought attention to the limitations a city can place on residential facilities for the disabled and elderly. The City Attorney's Office is proposing an amendment to Section 14.34.24 to address that ruling.</p> <p>Staff Recommendation: <b><u>Recommend Approval</u></b> of the proposed ordinance amendment to Section 14.34.24, to the Municipal Council, per the findings of the City Attorney's Office.</p>
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**OVERVIEW**

See the attached memo from Camille Williams of the City Attorney's Office.

## *MEMO*

**TO:** *PLANNING COMMISSION*  
**FROM:** *Camille S. Williams, Assistant City Attorney*

### *Summary of Key Issues*

When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.

The Planning Commission should also evaluate the utility of retaining "Residential Facilities for Elderly Persons" as a permitted use.

### *Background*

Early in 2014, the Provo City Council approved revisions to 14.34.470, which altered Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Dec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

### ***Residential Facilities for Persons with a Disability***

While revisions to ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on disability, since many people need assistance with daily activities as they age. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

The City Attorney's Office has created a draft amendment which changes the code to remove the distance requirement. This requires no minimum distance restraints beyond the requirements of specific zones, and would appear to reduce the likelihood of allegations of discrimination against persons with a disability in the application of land use ordinances

### ***Residential Facilities for Elderly Persons***

The Legal Department recommends evaluating the use entitled "Residential Facilities for Elderly Persons." The State recently removed all references to such facilities from the State Code. Following the lead of the State would include striking portions of the current definition of "Elderly Person," which, if the ordinance were challenges, might be alleged to be a way of restricting the residential choices of persons with a disability.

This section of code allows a residential use which must be occupied on a twenty four (24) hour-per-day basis by eight (8) or fewer elderly persons able to live independently in a family-type arrangement. The use must otherwise follow all other guidelines established for the zone in which is it built.

The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City's vision for its future.

***Recommendation***

Recommend that the Municipal Council amend City Code to remove the minimum distance requirement for "Residential Facilities for Persons with Disabilities," and amend the definition of elderly person, or consistent with current state statute, strike the definition of "Elderly Person" and "Residential Facilities for Persons with Disabilities."



# Provo City Municipal Council

Staff Memorandum

## A Review of permitted “Residential Facilities”

January 27, 2015

### Council Coordinator

[Dan Quick](#)

801-852-6134

### Meeting History

February 3, 2015

Work Meeting

### Item Short Title

A discussion of the relative merits of amending Provo City Code 14.34.240, regulating residential facilities for persons with a disability and residential facilities for elderly persons.

### Summary of Key Issues

When originally adopted, Provo City Code 14.34.240, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with these revisions to the Utah State Code may prevent challenges to the current code.

Council staff found that removal of the minimum distance requirement would bring the City Code into compliance with State and Federal laws.

Staff also suggests that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

## ***Background***

Early in 2014, the Provo City Council approved an ordinance which altered the Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

## ***Residential Facilities for Persons with a Disability***

The ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

The City Attorney's Office has created a draft amendment which changes the code to remove a distance requirement. This requires no minimum distance restraints beyond the requirements of specific zones, and would appear to reduce the likelihood of allegations of discrimination against persons with a disability in the application of land use ordinances

## ***Residential Facilities for Elderly Persons***

The Legal Department recommends consideration of the use entitled "Residential Facilities for Elderly Persons." The State recently removed all references to such

facilities from the State Code. Following the lead of the State would include striking portions of the current definition of “Elderly Person, which might in a challenge to the ordinance be alleged to be a way of restricting the residential choices of persons with a disability.

This section of code allows a residential use which must be occupied on a twenty four (24) hour-per-day basis by eight (8) or fewer elderly persons in a family-type arrangement. The use must otherwise follow all other guidelines established for the zone in which is it built.

The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City’s vision for its future.

## **Recommendation**

Council Staff recommends that the Municipal Council approve the ordinance amendment removing the minimum distance requirement in regards to “Residential Facilities for Persons with Disabilities”.

Furthermore Council Staff recommends that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

Staff also recommends a review of all zoning code sections relative to persons with a disability for compliance with current State, Federal, and case law.

## **Appendices**

1. Draft Amendment

# Appendix 1 – Draft Amendment

## Chapter 14.34 Supplementary Development Standards.

### 14.34.230 Residential Facilities

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#### 14.34.230. Residential Facilities.

(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

(a) The facility shall conform to all building, safety, and health requirements of the Provo City Code applicable to similar structures.

~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(b) The facility shall meet the requirements of the zone in which it is located:-

(i) ~~The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.~~

(ii) ~~The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.~~

(iii) ~~The facility's design and landscaping shall be consistent with the structure's residential character.~~

(iv) ~~Any new structure shall be constructed of a size, scale, and design that is in harmony with other residential users in the vicinity.~~

(c) ~~It is the intent of Provo City to regulate a residential facility for persons with a disability only to the extent allowed by:~~

(i) ~~Title 57, Chapter 21, Utah Fair Housing Act, and applicable jurisprudence;~~

(ii) ~~The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq. and applicable jurisprudence; and~~

(iii) ~~Section 504, Rehabilitation Act of 1973, and applicable jurisprudence.~~

(d) ~~In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.~~

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

(3) Residential Facility for Elderly Persons. Upon application for a permit to establish a residential facility for elderly persons in any zone in which such facility is a permitted or conditional use, a facility that conforms to the conditions listed below (and the conditional use criteria of Section 14.02.040, Provo City Code, if applicable) shall be

granted a permit. Such permit shall be nontransferable and shall terminate if the structure is devoted to a use other than a residential facility for elderly persons, or the structure fails to comply with the conditions listed below:

- (a) that all building, safety, zoning and health ordinances applicable to similar dwellings be met;
- (b) that no residential facility for elderly persons be established within one thousand (1,000) feet of another existing residential facility for elderly persons ~~or residential facility for persons with a disability~~;
- (c) that the operator of the facility provide adequate off-street parking spaces as required for one-family residential uses by Chapter 14.37 of this Title;
- (d) that the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
- (e) that no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and
- (f) that placement in a residential facility for elderly persons be on a voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

#### **14.06.020. Definitions.**

For the purposes of this Title, certain words and phrases have the following meanings:

**"Certified Residential Facility for Persons with a Disability"** means a dwelling unit certified by the State of Utah for the housing of three (3) or fewer persons with a disability.

**"Elderly person"** means a person who is sixty (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.~~

**"Licensed residential facility for persons with a disability"** means a dwelling unit licensed by the State of Utah for the housing of four (4) or more persons with a disability.

**"Residential facility for persons with a disability"** means a ~~residence: dwelling unit licensed or certified by the Utah Department of Human Services,~~

- (a) in which more than one (1) person with a disability resides; ~~and~~
- (b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
- (ii) which is licensed or certified by the Department of Human Services under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

**Proposed Amendments to Conform with Utah Code, Federal Regulations and Case Law:**

**14.06.020. Definitions.**

For the purposes of this Title, certain words and phrases have the following meanings:

**"Elderly person"** means a person who is sixty (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.~~

Field Code Changed

Field Code Changed

**14.34.230. Residential Facilities.**

(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

(a) The facility shall conform to all building, safety, and health requirements of the Provo City Code applicable to similar structures.

~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(c) The facility shall meet the requirements of the zone in which it is located.

(d) The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.

(e) The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.

(f) In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

(3) Residential Facility for Elderly Persons. Upon application for a permit to establish a residential facility for elderly persons in any zone in which such facility is a permitted or conditional use, a facility that conforms to the conditions listed below (and the conditional use criteria of Section 14.02.040, Provo City Code, if applicable) shall be granted a permit. Such permit shall be nontransferable and shall terminate if the structure is devoted to a use other than a

residential facility for elderly persons, or the structure fails to comply with the conditions listed below:

(a) that all building, safety, zoning and health ordinances applicable to similar dwellings be met;

(b) that no residential facility for elderly persons be established within one thousand (1,000) feet of another existing residential facility for elderly persons ~~or residential facility for persons with a disability;~~

(c) that the operator of the facility provide adequate off-street parking spaces as required for one-family residential uses by Chapter 14.37 of this Title;

(d) that the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;

(e) that no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and

(f) that placement in a residential facility for elderly persons be on a voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.  
(Enacted 1987-19, Am 1991-14, Am 1998-07, Am 1998-050, Am 2008-19)