

## JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>(1)</sup> The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

### Questions and Answers

## on the Fair Housing Act and Zoning

### **Q. Does the Fair Housing Act pre-empt local zoning laws?**

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

### **Q. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.<sup>(2)</sup> Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

### **Q. Who are persons with disabilities within the meaning of the Fair Housing Act?**

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

### **Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?**

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a

city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

### **Q. What is a reasonable accommodation under the Fair Housing Act?**

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the

factors that will be taken into account in determining whether a requested accommodation is reasonable.

**Q. What is the procedure for requesting a reasonable accommodation?**

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

**Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?**

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

**Q. What kinds of health and safety regulations can be imposed upon group homes?**

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. ~~Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection.~~ For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?**

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

**Q. What is the status of group living arrangements for children under the Fair Housing Act?**

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for

adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

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**Q. How are zoning and land use matters handled by HUD and the Department of Justice?**

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The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
  2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

## Group Homes - Utah Code Provisions

### Land Use Development and Management Act

#### 10-9a-103 Definitions.

...  
(38) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

(39) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b)(i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

...

#### 10-9a-516. Residential facilities for elderly persons.

(1) A residential facility for elderly persons may not operate as a business.

(2) A residential facility for elderly persons shall:

(a) 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;

(b) be consistent with any existing, applicable land use ordinance affecting the desired location; and

(c) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.

(3) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

#### 10-9a-517. Municipal ordinances governing elderly residential facilities.

(1) Each municipality shall adopt ordinances that establish that a residential facility for elderly persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.

(2) The ordinances shall establish a permit process that may require only that:

(a) the facility meet each building, safety, land use, and health ordinance applicable to similar dwellings;

(b) adequate off-street parking space be provided;

(c) 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;

(d) residential facilities for elderly persons be reasonably dispersed throughout the municipality;

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

(f) placement in a residential facility for elderly persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

#### 10-9a-518. Municipal approval of elderly residential facilities.

(1) Upon application for a permit to establish a residential facility for elderly persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the municipality shall grant the requested permit to the facility if the facility is proposed outside of a zone regulated exclusively for single-family homes and shall otherwise comply with Section 10-9a-519 if the facility is proposed in a land use zone regulated exclusively for single-family homes.

(2) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this section.

(3) If a municipality has not adopted ordinances under this section at the time an application for a permit to establish a residential facility for elderly persons is made, the municipality shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

#### 10-9a-519. Elderly residential facilities in areas zoned exclusively for single-family dwellings.

(1) For purposes of this section:

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

(b) placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any zone that is regulated to permit exclusively single-family dwelling use, if that facility:

(a) conforms to all applicable health, safety, land use, and building codes;

(b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that

would change the structure's residential character; and  
(c) conforms to the municipality's criteria, adopted by ordinance, governing the location of residential facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.

(3) A municipality may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for persons with a disability.

(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.

(b) The decision of a municipality regarding the application for a permit by a residential facility for elderly persons must be based on legitimate land use criteria and may not be based on the age of the facility's residents.

(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing land use ordinances that allow a specified number of unrelated persons to live together.

#### **10-9a-520. Residences for persons with a disability.**

(1) Each municipality shall adopt an ordinance for residential facilities for persons with a disability.

(2) Each ordinance under Subsection (1) shall:

(a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

(b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.

(3) Subject to Subsection (2), an ordinance under Subsection (1) may:

(a) require residential facilities for persons with a disability:

(i) to be reasonably dispersed throughout the municipality;

(ii) to be limited by number of occupants;

(iii) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(A) a security plan satisfactory to local law

enforcement authorities;

(B) 24-hour supervision for residents; and

(C) other 24-hour security measures; and

(iv) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and  
(b) provide that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.

(4) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

#### Note

Virtually identical requirements apply to Utah counties. See U.C.A. 17-27a-515 to -519.

### **Health Care Facility Licensing and Inspection Act**

#### **26-21-2 Definitions.**

...  
(5) (a) "Assisted living facility" means:

(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:

(A) require protected living arrangements; and

(B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and

(ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services.

(b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care;

(ii) administration of medication; and

(iii) support services promoting residents' independence and self sufficiency.

## **Other Group Home Information**

Federal Fair Housing Act, 42 U.S.C. 3601, et seq. (1988); available online here: <http://www.usdoj.gov/crt/housing/title8.htm>

Utah Fair Housing Act, U.C.A. 57-21-1 to -14.

U.C.A. Section 62A-2-108.2 requires the operator of a residential treatment center to notify the local legislative body before submitting a license application. See [http://le.utah.gov/~code/TITLE62A/htm/62A02\\_010802.htm](http://le.utah.gov/~code/TITLE62A/htm/62A02_010802.htm)

To review related state administrative rules see <http://www.rules.utah.gov/publicat/code/r501/r501-01.htm>

The Department of Human Services Office of Licensing website lists all state licensees by location and type:  
[http://www.hslic.utah.gov/db\\_search.asp](http://www.hslic.utah.gov/db_search.asp)

The Utah Court of Appeals recently issued an opinion reinstating a license for a group home in Duchesne County. It can be accessed at: <http://www.utcourts.gov/opinions/appopin/uintah123005.pdf>. Fallout from that case was the subject of a recent news article: <http://deseretnews.com/article/1,5143,695265857,00.html>

**ADMINISTRATIVE POLICY  
PROVO CITY REASONABLE ACCOMMODATION POLICY**

**Purpose:** The purpose of this administrative policy is to establish guidelines for making reasonable accommodations to Provo City policies, practices and procedures for persons with disabilities and medical hardships when reasonable accommodation is required by federal or state law.

**Policy:**

1. Adoption: There is hereby adopted a Provo City Reasonable Accommodation Policy for making reasonable accommodations in City policies, practices or procedures when reasonable accommodations are necessary to comply with Title II of the Americans With Disabilities Act (ADA), the Federal Housing Act (FHA) and other federal and state laws and regulations.

2. Application: This policy is applicable to all requests for reasonable accommodation to Provo City policies, practices and procedures pursuant to federal or state law, except for requests for reasonable accommodation in the workplace by officials, officers, employees or applicants for employment with Provo City. Applications for reasonable accommodation in the workplace by Provo City officials, officers, and employees shall be handled by the Provo City Human Resources Department pursuant to applicable law and Provo City Personnel Policies.

3. Implementation: Implementation of this policy is undertaken pursuant to the Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), and other federal and state laws that require state and local governments to provide reasonable accommodation for persons with disabilities and medical hardships. This policy shall be construed consistent with those laws.

4. Documentation: It shall be the obligation of the person requesting the reasonable accommodation to: (i) apply in writing for the reasonable accommodations desired on an application form provided by Provo City; (ii) specify in detail in the application the reasons the accommodations are necessary and reasonable; and (iii) document the medical hardship/disability to show that accommodation is necessary and reasonable on its face including providing written documentation of the individual's disability, medical hardship or handicap as diagnosed by a licensed physician. *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775 (U.S. App 2002). The written opinion by a licensed physician shall specify the applicant's hardship/disability and why the hardship/disability requires reasonable accommodation. The written opinion should also make, to the extent possible, specific recommendations as to what modifications to Provo City policies, practices, or procedures may be warranted and/or efficacious in providing the reasonable accommodation.

5. Evaluation of Application for Reasonable Housing Accommodation: The following factors may be taken into consideration when evaluating the need and reasonableness of a requested accommodation for residential housing or living facilities: (i) the necessity of the proposed accommodation or living facility in order to afford a disabled person an equal opportunity to live in a particular area, (ii) whether the proposed accommodation or facility complies with the condition of the zone in which it is located, (iii) whether any of the accommodated or facility residents will pose a direct threat to public safety, (iv) whether the proposed accommodation or facility complies with other building, health and safety requirements, (v) whether the proposed accommodations would result in substantial damages to the property of others, and (vi) whether the proposed facility provides adequate off street parking for its residents.

6. Investigation and Recommendation: The Mayor's designee shall investigate and make recommendations regarding requests for reasonable accommodations. In making recommendations regarding reasonable accommodations requests, the Mayor's designee shall make written findings and recommendations as to whether the applicant's application should be granted and what specific accommodation should be granted by the Mayor. In making recommendations regarding reasonable accommodations requests, the Mayor's designee shall make written findings and recommendations as to whether the applicant ("Applicant") meets any one of the following tests: (i) the Applicant has a physical or mental impairment, medical hardship, or handicap, that substantially limits one or more of his or her major life activities; (ii) Applicant has a record of such an impairment; or (iii) Applicant is regarded as having such impairment. In making recommendations regarding necessity and the reasonableness of proposed accommodations for housing or residential living facilities, the Mayor's designee shall consider: (i) the necessity of the living facility in order to afford disabled persons an equal opportunity to live in a particular area; (ii) whether the facility complies with the conditions imposed by the zone in which it is located; (iii) whether any of the residents will pose a direct threat to public safety; (iv) whether the facility complies with other building, health and safety requirements as applicable; (v) whether the requested accommodations would result in substantial physical damages to the property of others; (vi) whether the facility provides adequate off street parking for its residents; and (vii) the financial, administrative or other impact or burden the accommodation or facility would have on the impacted neighborhood, program, or administrative program.

8. Denial of an Application: An application for reasonable accommodation may be denied if it is incomplete, lacks the necessary documentation, or for any other reason provided by law including, but not limited to the fact that the requested accommodation would: (i) fundamentally alter the nature of the service program, activity; (ii) constitute a fundamental alteration of city ordinance; (iii) impose an undue financial or administrative burden on the City; or would place an undue burden on a housing program.

9. Grant of Reasonable Accommodation: If a reasonable accommodation is granted, the waiver shall be documented in writing by a certificate signed by the Mayor specifying the nature and extent of the reasonable accommodation authorized. All reasonable accommodations granted shall be personal and specific to the Applicant, and shall not apply to other individuals, nor shall any reasonable accommodation be considered a variance or run with the land.

10. Appeals: If a requested accommodation is denied, the individual may file a request with the City Recorder for an administrative hearing. An administrative hearing on the matter shall be held in accordance with Provo City Code Chapter 3.06 Administrative Hearings.

  
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Lewis K. Billings, Mayor

11 SEPTEMBER 2007  
Date

*Allyst LaFave Goodrich*  
*City Recorder*



# PROVO CITY

## APPLICATION FORM FOR ADA/FHA REASONABLE ACCOMMODATIONS

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax number: \_\_\_\_\_

Detailed description of proposed accommodation to be considered: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of physical or mental impairment, medical hardship, or handicap that substantially limits one or more major life activities:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*\*Please attach additional pages as necessary. Documentation of the disability or medical hardship by a physician or other similarly qualified licensed health-care provider is required.*

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

Denied: \_\_\_\_\_

Date: \_\_\_\_\_

The City of  
Provo, Utah

## SAMPLE CERTIFICATE OF REASONABLE ACCOMMODATION



(Date)

Lewis K. Billings  
Mayor

(Name)  
(Address)  
(City, State, Zip)

RE: Certificate of Reasonable Accommodation

Dear \_\_\_\_\_:

Pursuant to federal and/or state law and regulations that require local governments to make reasonable accommodations for persons with disabilities and medical hardships, and the Provo City Reasonable Accommodation Policy, your application requesting specific reasonable accommodation is granted. This letter will serve as a certificate authorizing the following reasonable accommodation to Provo City' policies, practices and procedures:

*[Insert the specific reasonable accommodation in detail.]*

This reasonable accommodation is a limited accommodation and valid only as expressly set forth herein and it may not be amended, enlarged or changed by waiver, contrary practice or otherwise. To avail yourself of the reasonable accommodation, please present this certification upon the request of any Provo City enforcement personnel.

The above accommodation is personal and specific to the individual identified in this letter, and shall not apply to other individuals, nor shall any reasonable accommodation be considered a variance or run with the land.

Sincerely,

City Attorney's Office

351 West Center Street

P.O. Box 1849

Provo, Utah 84603

(801) 852-6140

Fax: (801) 852-6150

PROVO CITY MAYOR'S OFFICER

Lewis K. Billings Mayor

