

ORDINANCE

Residential Facilities For Persons With a Disability and Elderly Persons

(1) Purposes

- a. To conform with the requirements Title 10 Chapter 9 Sections 502 and 605 of the Utah Code.
- b. To preserve the rights of persons with a disability or elderly persons to live in the dwelling of their choice, consistent with federal and state law and sound land use management.
- c. To eliminate any differentiation between residential facilities for persons with a disability or elderly persons and other residential uses by regulating all residential uses in the same manner.
- d. To enhance the quality of life for all citizens of Emery City by protecting residential areas free from industrial or commercial uses, and preserving the character and viability of residential neighborhoods.

(2) Definitions

- a. **Disability.** Means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment. It does not include current illegal use of, or addition to, any federally controlled substances, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.
- b. **Residential Facility for Persons With a Disability.** Means a residence in which more than one person with a Disability resides and which is:
 - i. licensed or certified by the Department of Human Services under Title 62A, Chapter 2 of the Utah Code, Licensure of Programs and Facilities; or
 - ii. licensed or certified by the Department of Health under Title 26, Chapter 21 of the Utah Code, Health Care Facility Licensing and Inspection Act.
- c. **Elderly Person.** Means a person 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.
- d. **Residential Facilities for Elderly Persons.** Means a residence in which more than two unrelated Elderly Persons reside and as defined in Title 10 Chapter 9 Section 501 of the Utah Code, but shall not include any facility:
 - i. 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 or necessary costs of operation and maintenance of the facility;

- ii. where persons being treated for alcoholism or drug abuse are placed;
 - iii. 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;
 - iv. which is a health care facility as defined by section Title 26 Chapter 21 Section 2 of the Utah Code;
 - v. which is occupied by nine (9) or more elderly persons; or
 - vi. which is a Residential Facility for Persons With a Disability.
- (3) Upon application for a permit to establish a Residential Facility for Elderly Persons in any zone, except an area zoned to permit exclusively single-family dwellings, a facility that conforms to the conditions listed below shall be granted a permit. Such permit shall not be granted or 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. 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 Elderly Persons shall be met.
 - b. Residential Facilities for Elderly Persons may be reasonably dispersed throughout the City.
 - c. Residential Facilities for Elderly Persons may be reasonably separated from the following facilities:
 - i. a Residential Facility for Persons With a Disability, or
 - ii. any of the following facilities:
 - 1. shelter care facilities,
 - 2. assisted living center, and
 - 3. residential treatment center.
 - d. Off-street parking shall be provided to accommodate staff and shall also include 1.25 parking places per resident.
 - e. The facility shall be capable of use as a Residential Facility for Elderly Persons without structural or landscaping alterations that would change the structure's residential character.
 - f. The facility shall continue in accordance with the above definition of Residential Facility for Elderly Persons.
- (4) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any area that is zoned to permit exclusively single-family dwellings. Such conditional use permit shall not be granted or 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. 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 Elderly Persons shall be met.
 - b. Residential Facilities for Elderly Persons may be reasonably dispersed throughout the City.
 - c. Residential Facilities for Elderly Persons may be reasonably separated from the following facilities:

- i. a Residential Facility for Persons With a Disability, or
 - ii. any of the following facilities:
 - 1. shelter care facilities,
 - 2. assisted living center, and
 - 3. residential treatment center.
 - d. Off-street parking shall be provided to accommodate staff and shall also include 1.25 parking places per resident.
 - e. The facility shall be capable of use as a Residential Facility for Elderly Persons without structural or landscaping alterations that would change the structure's residential character.
 - f. The facility shall continue in accordance with the above definition of Residential Facility for Elderly Persons.
- (5) To the extent required by federal law, a Residential Facility for Persons With a Disability is a permitted use in any zoning district where similar residential dwellings that are not residential facilities for persons with a disability are allowed. Each such facility shall conform to the following requirements:
- a. A valid Emery City business license shall be obtained.
 - b. All 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 shall be obtained. As part of this requirement the following site development standards and parking standards shall apply:
 - i. off-street parking shall be provided to accommodate staff and shall also include 1.25 parking places per resident.
 - c. If consistent with Title 57, Chapter 21, of the Utah Fair Housing Act, and the Fair Housing Act Amendments of 1988, 42 U.S.C. Section 3601 et seq., Residential Facilities for Persons with Disabilities that are also substance abuse facilities and are located within 500 feet of a school may be required to provide:
 - i. 24-hour supervision for residents; and
 - ii. other 24-hour security measures.
 - d. If consistent with Title 57, Chapter 21, of the Utah Fair Housing Act, and the Fair Housing Act Amendments of 1988, 42 U.S.C. Section 3601 et seq., Residential Facilities for Persons with Disabilities may be reasonably dispersed throughout the City.
 - e. If consistent with Title 57, Chapter 21, of the Utah Fair Housing Act, and the Fair Housing Act Amendments of 1988, 42 U.S.C. Section 3601 et seq., Residential Facilities for Persons with Disabilities may be reasonably separated from the following facilities:
 - i. a Residential Facility for Elderly Persons, or
 - ii. any of the following facilities:
 - 1. shelter care facilities,
 - 2. assisted living center, and
 - 3. residential treatment center.
 - f. If the proposed facility is to be located in a new building constructed for the Residential Facilities for Persons with Disabilities, or if significant

renovation has to be conducted on an existing facility to house the proposed development, the building shall be constructed/renovated so as to be consistent with the size, shape, design, landscaping, and placement of the residential buildings located in residential zoning districts near the proposed facility.

- g. No Residential Facility for Persons with Disabilities shall house more than five (5) residents at any one time.
 - i. This will preserve the nature of the neighborhood, and will serve to reduce the amount of parking necessary at such facilities.
- h. No facility shall be made available to an individual whose tendency would:
 - i. constitute a direct threat to the health or safety of other individuals, or
 - ii. result in substantial physical damage to the property of others.
- i. To the extent available by Federal and State law, the person or entity licensed or certified by the Department of Human Services or the Department of Health to establish and operate the facility shall be liable if it knowingly allows the facility to be made available to an individual mentioned in subsection (h) above and such individual causes damage to others.
- j. Prior to the occupancy of any facility, the person or entity licensed or certified by the Department of Human Services or the Department of Health to establish and operate the facility shall provide to the zoning administrator:
 - i. a copy of such license or certification;
 - ii. a sworn affidavit that no person will reside or remain in the facility whose tenancy would likely:
 - 1. constitute a direct threat to the health or safety of other individuals, or
 - 2. result in substantial physical damage to the property of others.
- k. If ownership of such facility is transferred, the person or entity licensed or certified by the Department of Human Services or the Department of Health to operate the facility under the new ownership shall provide to the zoning administrator:
 - i. a copy of such license or certification;
 - ii. a sworn affidavit that no person will reside or remain in the facility whose tenancy would likely:
 - 1. constitute a direct threat to the health or safety of other individuals, or
 - 2. result in substantial physical damage to the property of others.
- l. No Residential Facility for Persons with Disabilities shall be allowed to change the character of the neighborhood or impose undue financial or administrative costs to the city. As part of this requirement the person or entity licensed or certified by the Department of Human Services or the

Department of Health to establish and operate the facility shall complete and provide to the city a complete study of the following:

- i. the programs provided by the applicant as part of the facility;
 - ii. the effects that the proposed facility may have on the surrounding neighborhoods;
 - iii. the costs and administrative burden that the proposed facility may impose to the city, including the tax revenue, city's infrastructure, public safety, law enforcement, traffic, aesthetics, and tourism;
 - iv. the impact that the proposed facility may have on the economy and economic resources of the community, including neighboring properties and businesses, and property values;
 - v. any other costs that the proposed facility may impose on surrounding municipalities; and
 - vi. any other adverse effects that the proposed facility may have on the community.
- m. No Residential Facility for Persons with a Disability, which is also a substance abuse facility, shall be established or maintained within one thousand (1,000) feet measured in a straight line between facility's closest property line and the closest property line of the lots or parcels of a business licensed to sell alcohol.
- n. The use permitted by this section shall terminate if:
- i. the facility is devoted to a use other than a Residential Facility for Persons With a Disability;
 - ii. the license of certification issued by the Department of Human Services or the Department of Health terminates or is revoked;
 - iii. the person or entity licensed or certified by the Department of Human Services or the Department of Health to establish and operate the facility shall knowingly make the facility available to an individual whose tendency would:
 1. constitute a direct threat to the health or safety of other individuals, or
 2. result in substantial physical damage to the property of others; or
 - iv. the facility fails to comply with this section.
- (6) None of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a Residential Facility for Persons With a Disability.
- a. Any person or entity who wishes to request a reasonable accommodation shall make application to the city and articulate in writing the basis for the requested accommodation.
 - b. Each application for a reasonable accommodation shall be decided within 30 days.
- (7) If any provision in this ordinance shall be found to be invalid, the other provisions shall continue to operate.

ORDINANCE No. 2-10-04AN ORDINANCE ESTABLISHING TEMPORARY REGULATION PERTAINING TO
THE DEVELOPMENT OF GROUP HOMES AND/OR DRUG REHABILITATION
FACILITIES WITHIN THE MUNICIPALITY OF EMERY TOWN

WHEREAS the municipality has had requests to establish group homes and/or drug rehabilitation facilities which will have major impact on the public welfare of the residents; and

WHEREAS it is proposed that the town of Emery impose a six-month moratorium on approval of such group homes or facilities to allow time for the following issue to be resolved or addressed:

Drafting of new ordinance regulating such establishments.

NOW THEREFORE BE IT ORDAINED by the governing body of Emery Town that:

1. The public health, safety and welfare of Emery Town residents requires that a moratorium be, and is hereby placed, on all approvals and application of the development of group homes or drug rehabilitation facilities. This moratorium shall apply to all applications after this date. The moratorium shall be in place for a period of not more than six months.

The six-month time period shall be used to develop proper planning in order to protect the public interest and to promote organized development by allowing the town of Emery to review its' ordinances and fees, etc., and to adequately manage the process.

The moratorium shall run from the date of this ordinance and expire no later than the 10th day of August, 2004.

2. This ordinance shall take effect immediately upon passage.

DATED this 10th day of February, 2004.

SIGNED:



Mayor

Attest:



Recorder

CERTIFICATE OF POSTING

I, the duly appointed Clerk for the Town of Emery, Utah, hereby certify that copies of the foregoing notice, Ordinance 2-10-04 passed by the Emery Town Council on February 10, 2004, were posted at three (3) public places within the municipality this 18th day of February, 2004. The places posted are:

1. Town Office
2. Town Bulletin Board
3. Randy's Service

Dated this 18th day of February, 2004.



Emery Town Clerk

