

ORDINANCE NO 16-20

AN ORDINANCE AMENDING SECTION 10-2-1, SECTION 10-14-16, and the CITY CENTER & 40TH STREET CORRIDOR FORM-BASED CODE and ADDING SECTION 10-14-21 OF THE ZONING ORDINANCE OF SOUTH OGDEN CITY.

PART I

FINDINGS

1. The City recognizes, through its observation, study and experience, as the United States Supreme Court recognized in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974), that group living, including “[t]he regimes of boarding houses, fraternity houses, and the like present urban problems.” Among other things, “[m]ore people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.” *Id.*

2. The U.S. Supreme Court, in an attempt to help clarify the appropriate role of local government with respect to community planning noted:

“The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.”

Berman v. Parker, 348 U.S. 26, 33, 75 S. Ct. 98, 102-03, 99 L.Ed. 27 (1954).

The Supreme Court subsequently commented further in *Boraas* with respect to the right of a community in the preservation of residential areas:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”

3. The United States Supreme Court and federal appellate courts continue to recognize that “[I]and use planning and the adoption of land use restrictions constitute some of the most important functions performed by local government.” *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 603 (4th Cir. 1997) (citing *FERC v. Mississippi*, 456 U.S. 742, 768 n. 30, 102 S.Ct. 2126, 2141 n. 30, 72 L.Ed.2d 532 (1982) (“regulation of land use is perhaps the quintessential state activity”)). These courts continue to recognize that local land use ordinances may legitimately be utilized “to preserve ‘the character of neighborhoods, securing “zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.””” *Id.* (quoting *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732-33, 115 S.Ct. 1776, 1780, 131 L.Ed.2d 801 (1995) (quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974))).

4. According to the latest U.S. Census data for South Ogden City, the average household size is 2.66 persons per household. And, for the years 2010-2014, 86.9% of individuals living in South Ogden City lived in the same house for 1 year or more.

5. Among other things, Group Living Arrangements tend to introduce transiency, congestion, increased traffic, increased parking and other urban problems and challenges into communities.

6. Regulation of Group Living Arrangements serves to preserve housing densities consistent with both reality (in terms of the average composition of single family households in South Ogden City) and the goals and objectives of the General Plan. It also promotes permanence and stability in neighborhood composition.

7. Regulating Group Living Arrangements is an essential aspect of fostering the goals of the General Plan and South Ogden City City's zoning scheme, which seeks uncrowded, stable (non-transitory) single family neighborhoods.

8. The City also recognizes the need, in certain demonstrable circumstances, for individuals with handicaps or disabilities to live in a Group Living Arrangements. For example, one of the most common types of group living arrangements for individuals with handicaps or disabilities is a residential treatment facility for recovering addicts. The City has consulted experts in the field, expert reports and testimony submitted in other jurisdictions, and considered the scholarly literature on these type of facilities and recognizes the need to provide some type of accommodation to them.

9. In order to fulfill the purposes of the General Plan while accommodating the demonstrable needs of individuals with handicaps or disabilities to live in Group Living Arrangements, which are generally prohibited for individuals without disabilities or handicaps, the City desires to clarify its ordinances and define its practices and policies with regard to these issues.

WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN CITY CITY, UTAH, AS FOLLOWS:

PART II

TEXT OF ORDINANCE

SECTION 1. Section **10-2-1** of the Zoning Ordinance, is hereby amended as follows:

The definition of “**DISABLED PERSON**” is amended as follows:

DISABLED PERSON: A “Disabled Person” is a person with 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; a person with a “Disability” under Title 57, Chapter 21 of the Utah Code, as amended; a person with a “disability” under 42 U.S.C. § 12102(1), as amended; and a person with a “Handicap” under 42 U.S.C. § 3602(h), as amended. A “Disabled Person” does not include a person engaged in the current illegal use of, or addiction to, any federally-controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. Sec. 802.

The definition of “**FAMILY**” is amended as follows:

FAMILY: Any of the following who occupy a dwelling unit: a) one person living alone; b) two (2) or more persons related by blood, marriage or adoption and foster children living together as a single housekeeping unit; and up to two (2) other persons hired for domestic help residing on the same premises where the housekeeping unit is located; or c) not more than four (4) unrelated persons living together as a single, nonprofit housekeeping unit

The following definition of “**GROUP LIVING ARRANGEMENT**” is added:

GROUP LIVING ARRANGEMENT: A group living or congregate living arrangement where groups of more than four unrelated persons live together in a single dwelling or housekeeping unit, including, but not limited to, Assisted Living Unit, Boarding House, Lodging House, Nursing Home, Senior Housing, assisted living facility, nursing care facility, Residential Facility for Disabled Persons, dormitory, student housing, fraternity, club, institutional group, half-way house, convent, monastery, or other similar group living or congregate living arrangement of unrelated persons. A Group Living Arrangement does not include clinics, medical or dental; hospital(s) or hospital/clinic.

The definition of “**RESIDENTIAL FACILITY FOR DISABLED PERSONS**” is amended as follows:

RESIDENTIAL FACILITY FOR DISABLED PERSONS: A residence in which no more than eight (8) Disabled Persons reside and which is licensed or certified by: A. The Utah department of human services under title 62A, chapter 2, of the

Utah code, licensure of programs and facilities; B. The Utah department of health under title 26, chapter 21, of the Utah code, health care facility licensing and inspection act.

The definition of “**SENIOR HOUSING**” is amended as follows:

SENIOR HOUSING: A building or group of buildings containing residential dwelling units where daily meals shall be offered for the residents in a community dining room and support services such as crafts, exercise, TV, personal care and party rooms may be available on site. One family member of each residential dwelling shall be a minimum of fifty-five (55) years of age at the time of initial occupancy.

SECTION 2. Section **10-14-16** of the Zoning Ordinance, is hereby amended as follows:

10-14-16: RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY:

- A. Purpose: It is the intent of the City that this section shall be interpreted and applied in a manner that is consistent with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq, Title II of the Americans with Disabilities Act and the Rehabilitation Act.

- B. Scope: If any Group Living Arrangement, facility, residence, congregate living or other housing arrangement meets the definition of a Residential Facility for Disabled Persons as defined in Section 10-2-1 of this title, the requirements of this chapter shall govern the same notwithstanding any conflicting provision of this title or this code. Except as provided herein, the requirements of this chapter shall not be construed to prohibit or limit other applicable provisions of this title, this code or other laws.

- C. Permitted Uses:
 - 1. Notwithstanding any contrary provision of this title, a Residential Facility for Disabled Persons shall be a permitted use in any zone where a Group Living Arrangement is allowed either as a permitted or conditional use, subject to the same development standards as are applied to Group Living Arrangements in this title.
 - 2. In determining whether a Group Living Arrangement is allowed, only those uses currently and presently allowed by ordinance shall be considered; variances, prior accommodations, pre-existing non-

conforming buildings, or pre-existing non-conforming uses shall not be considered.

D. Reasonable Accommodation:

1. None of the requirements of this chapter shall be interpreted to limit any reasonable accommodation necessary to afford a Disabled Person an equal opportunity to use and enjoy a dwelling as required by the Fair Housing Amendments Act of 1988, Title II of the Americans with Disabilities Act, the Utah Fair Housing Act, the Rehabilitation Act, and any other federal or state law requiring a reasonable accommodation for a Disabled Person.
2. Any person or entity wanting a reasonable accommodation shall submit an application to the Accommodation Review Committee (ARC) and shall in writing:
 - a. Provide the address of the property to which the accommodation will be applied;
 - b. Specify the accommodation requested, including the regulation(s), policy or procedure for which an accommodation is sought;
 - c. Explain why the accommodation is reasonable and absolutely necessary to afford a Disabled Person an equal opportunity to use and enjoy a dwelling; and
 - d. Provide all information necessary and sufficient for the findings set forth in Section 10-14-16.D.4.
3. The ARC shall evaluate all reasonable accommodation requests based on the criteria set forth in Section 10-14-16.D.4.
4. Within thirty (30) days after receipt of a complete application, the ARC shall issue a written decision on the requested reasonable accommodation. The ARC may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the following factors:
 - a. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by a Disabled Person;
 - b. Whether the requested accommodation is necessary to afford Disabled Persons equal opportunity to use and enjoy a dwelling when compared to similarly-situated persons or groups without a disability;
 - c. Whether the requested accommodation would impose an undue financial or administrative burden on the City;

- d. Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use, zoning or building programs;
 - e. Whether the requested accommodation is reasonable;
 - f. Whether the request for accommodation would result in a dwelling being made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others; and
 - g. Any other relevant considerations under federal or state law.
5. If a reasonable accommodation request is denied, the decision may be appealed to the hearing officer in the manner provided for appeals of administrative decisions set forth in [chapter 4](#) of this title. (Ord. 15-07, 2-17-2015, eff. 2-17-2015). The review of all such appeals, including any appeals from the hearing officer to the district court, shall be based upon the record presented to the ARC and shall *not* be de novo.
 6. A reasonable accommodation shall not be deemed a variance or to run with the land.
 7. If the ARC fails to render a written decision on the request for reasonable accommodation within the thirty (30) day time period allotted by Section 10-14-16.D.4., the request shall be deemed denied based upon the insufficiency of the applicant's information to satisfy the criteria set forth in Section 10-14-16.D.4.
 8. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
 9. It is the applicant's burden to demonstrate that the accommodation is necessary and reasonable under the standards and definitions set forth in federal and state law, including federal and state case law.

E. Accommodation Review Committee (ARC):

1. The purpose of the ARC is to assure that all reasonable accommodation requests comply with the provisions of this title and that all decisions on reasonable accommodation requests are reviewed and handled in compliance with this title, the Fair Housing Amendments Act of 1988, Title II of the Americans with Disabilities Act, the Utah Fair Housing Act, the Rehabilitation Act, and any other federal or state law requiring a reasonable accommodation for a Disabled Person.

2. The ARC shall consist of five (5) members: The City Manager, the City Planner, the Fire Chief, the Chief Building Official, and the City Attorney or their designee(s). The Police Chief, the City Engineer, the Public Works Director and any other person(s) designated by the ARC shall serve as advisors to the ARC.
3. The City Manager shall serve as the chairperson of the ARC.
4. The ARC may establish procedures for the preparation of its agendas, the scheduling of meetings, and the conduct of meetings and field trips, if any.
5. The ARC may retain the services of any other outside professionals or technical experts to help evaluate any and all requests for accommodation.

SECTION 3. Section 10-14-21 of the Zoning Ordinance is enacted as follows:

10-14-21: GROUP LIVING ARRANGEMENTS:

A. Group Living Arrangements which are not expressly permitted within a zone or by the Zoning Ordinance are expressly prohibited.

B. Group Living Arrangements are a permitted use in only the following zones:

R-4
R-4A
R-5
R-5A
R-5B
R-5C

C. Group Living Arrangements are a conditional use in only the following zones:

C3
C3zc(A)
CP3
CP3 zc(A)
C2
CP2

The following subdistricts of the City Center & 40th Street Corridor Form-Based Code:

City Center "Core"
City Center "General"
Riverdale Road "General"
40th Street "General"

- D. No Group Living Arrangement shall be allowed, established or maintained within the City if it is located or proposed to be located within a 2,640-foot radius of any other Group Living Arrangement, whether located in the City, County, State, or a surrounding municipality.

SECTION 4. Section 4.2.1(3) of the City Center & 40th Street Corridor Form-Based Code, which will be codified is amended as follows:

1. The definition of “Residential Care” is deleted in its entirety and replaced with the following: “Group Living Arrangements as defined in Section **10-2-1** of the Zoning Ordinance.”
2. The term “Residential Care” is deleted from the Use Table and replaced with the term “Group Living Arrangements.”

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, UTAH, THIS 6th DAY OF DECEMBER 2016.

Mayor James F. Minster

ATTEST:

City Recorder