

ORDINANCE NO. 93- 01

AN ORDINANCE ADOPTING REGULATIONS
GOVERNING RESIDENTIAL FACILITIES FOR
ELDERLY AND HANDICAPPED PERSONS.

WHEREAS THE UTAH CODE REQUIRES MUNICIPALITIES TO ADOPT AN ORDINANCE ESTABLISHING THAT A RESIDENTIAL FACILITY FOR ELDERLY AND HANDICAPPED PERSONS IS A PERMITTED USE IN RESIDENTIAL AREAS,

NOW, THEREFORE, be it ordained by the Heber City Council of Heber City, Utah:

18.68.501.

TITLE 18 - ZONING
CHAPTER 18.68

RESIDENTIAL FACILITIES
FOR ELDERLY PERSONS

18.68.501 Residential facilities for elderly persons

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

(b) A residential facility for elderly persons shall:

(i) 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;

(ii) be consistent with existing zoning of the desired location; and

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

(2) 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.

18.68.502 Elderly residential facilities as a permitted use.

(1) 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) A permit to establish a residential facility for elderly persons shall be granted only if:

(a) the facility meets all applicable building safety, zoning, and health ordinances applicable to similar dwellings;

(b) there is adequate off-street parking space provided;

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

(d) no residential facility for elderly persons is established within three-quarters mile of another residential facility for elderly persons or residential facility for handicapped persons, as defined by Section 10-9-103 of the Utah Code;

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

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

18.68.503 Approval of elderly residential facilities.

(1)(a) 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, Heber City may decide only whether or not the residential facility for elderly persons conforms to ordinances under 18.68.502(2); and

(b) if the residential facility for elderly persons complies with the ordinances under 18.68.502(2), Heber City shall grant the requested permit to that facility.

(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 under 18.68.502(2).

18.68.504 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 zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:

(a) conforms to all applicable health, safety,

zoning, 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;

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

(d) is not established within three-quarters mile of another existing residential facility for elderly persons or residential facility for handicapped persons, as defined by Section 10-9-103 of the Utah Code.

(3) 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.

(4)(a) Discrimination against elderly persons and against residential facilities for elderly persons is prohibited.

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

(5) 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 zoning ordinances that allow a specified number of unrelated persons to live together.

18.68.505 Review and Approval

The granting of permits and decisions relating to the administration of the provisions of Chapter 18.68 rests with the Heber City Planning Commission, with appeals going to the Board of Adjustment.

18.68.506 Definitions

(1) As used in this chapter:

(a) "Conditional Use" means a land use that,

because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(b) "Elderly person" means a person who is 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.

(c)(i) "Residential facility for elderly persons" means a single-family or multi-family dwelling unit that meets the requirements of the 500 series of Chapter 18.68 of this ordinance.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2 of the Utah Code.

18.68.601.

**RESIDENTIAL FACILITY
FOR HANDICAPPED PERSONS**

18.68.601 Residential facility for handicapped persons.

(1) A residential facility for handicapped persons shall be consistent with existing zoning of the desired location.

(2) A residential facility for handicapped persons shall:

(a) be occupied on a 24-hour-per-day basis by eight or fewer handicapped persons in a family-type arrangement under the supervision of a house family or manager;

(b) conform to all applicable standards and requirements of the Department of Human Services; and

(c) be operated by or operated under contract with that department.

18.68.602 Handicapped residential facilities as a permitted use.

(1) A residential facility for handicapped persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.

(2) A permit to establish a residential facility for handicapped persons shall be granted only if:

(a) the facility meets all municipal building, safety, and health ordinances applicable to similar dwellings;

(b) the operator of the facility provides assurances that the residents of the facility will be properly supervised on a 24-hour basis;

(c) the operator of the facility establishes a municipal advisory committee through which all complaints and concerns of neighbors may be addressed;

(d) the operator of the facility provides

adequate off-street parking space;

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

(f) is not established or maintained within three-quarters mile of another residential facility for handicapped persons;

(g) no person being treated for alcoholism or drug abuse is placed in a residential facility for handicapped persons;

(h) no person who is violent is placed in a residential facility for handicapped persons; and

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

18.68.603 Approval of handicapped residential facilities.

(1)(a) Upon application for a permit to establish a residential facility for handicapped persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, Heber City may decide only whether or not the residential facility for handicapped persons conforms to the ordinances under 18.68.602(2); and

(b) if the residential facility for handicapped persons is in compliance with the ordinances under 18.68.602(2), Heber City shall grant the requested permit to that facility.

(2) 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 handicapped persons or if the structure fails to comply with the ordinances under 18.68.602(2).

18.68.604 Handicapped 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 handicapped persons;

(b) no person who is violent may be placed in a residential facility for handicapped persons; and

(c) placement in a residential facility for handicapped 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 handicapped persons shall be allowed in a zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:

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

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

(c) conforms to Heber City's criteria, adopted by ordinance, governing residential facilities for handicapped persons in areas zoned to permit exclusively single-family dwellings; and

(d) is not established or maintained within three-quarters mile of another existing residential facility for handicapped persons.

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

(4)(a) Discrimination against handicapped persons and against residential facilities for handicapped persons is prohibited.

(b) Decisions of Heber City regarding the application for a permit by a residential facility for handicapped persons shall be based on legitimate land use criteria, and not based on the handicapping conditions of the facility's residents.

18.68.605 Review and Approval.

The granting of permits and decisions relating to the administration of the provisions of Chapter 18.68 rests with the Heber City Planning Commission, with appeals going to the Board of Adjustment.

18.68.606 Definitions.

(1) As used in this chapter:

(a) "Conditional Use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(b) "Handicapped person" means a person who:

(i) has a severe, chronic disability attributable to a mental or physical impairment or to a combination of mental and physical impairments that is likely to continue indefinitely and that results in a substantial functional limitation in three or more of the following areas of major life activity:

- (A) self-care;
- (B) receptive and expressive language;
- (C) learning;
- (D) mobility;
- (E) self-direction;
- (F) capacity for independent living; and
- (G) economic self-sufficiency; and

(ii) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that are individually planned and coordinated to allow the person to function in, and contribute to, a residential neighborhood.

(c) "Residential facility for handicapped persons" means a single-family or multiple-family dwelling unit that meets the requirements of the 600 series of Chapter 18.68 of this ordinance.

DATE OF EFFECT.

This ordinance shall take effect and be in force from and after its adoption and publication.

ADOPTED AND PASSED by the City Council of Heber City, Utah, this 18TH day of FEBRUARY, 1993, by the following vote:

	AYE	NAY	
Councilman Keith D. Jacobsen	_____	_____	ABSENT
Councilman Terry Wm. Lange	<u>X</u>	_____	
Councilman Robert Giles	<u>X</u>	_____	
Councilman Bob Morris	<u>X</u>	_____	
Councilman Harris Parcell	_____	_____	ABSENT

APPROVED:

Scott W. Wright
Mayor Scott W. Wright

ATTEST:

Mark K. Anderson
Recorder
(SEAL)

DATE OF FIRST PUBLISHING: FEBRUARY 24, 1993