

## ORDINANCE 20-21

WHEREAS, the City Council of Smithfield City, Cache County, Utah, passed and adopted the Smithfield Municipal Code on November 11, 2015; and

WHEREAS, the City Council has determined there is a need to update, repeal, amend and/or modify certain provisions contained in the referenced Municipal Code;

NOW, THEREFORE, the City Council of Smithfield City, Utah hereby adopts, passes and publishes the following:

**AN ORDINANCE AMENDING THE SMITHFIELD CITY MUNICIPAL CODE TITLE 17 "ZONING REGULATIONS", DELETING IN ITS ENTIRETY SECTIONS 17.93.010 "PURPOSE OF THIS CHAPTER", 17.93.020 "DEFINITIONS", 17.93.030 "CONDITIONS", 17.93.040 "DESIGN STANDARDS", 17.93.050 "REASONABLE ACCOMMODATION" AND ADDING IN ITS ENTIRETY SECTIONS 17.93.010 "PURPOSE", 17.93.020 "PERMITTED USES", 17.93.030 "REVIEW PROCESS", 17.93.040 "DEVELOPMENT STANDARDS", 17.93.050 "LICENSE AND CERTIFICATION" AND 17.93.060 "REASONABLE ACCOMODATION".**

BE IT ORDAINED BY THE CITY COUNCIL OF SMITHFIELD CITY, CACHE COUNTY, UTAH, AS FOLLOWS:

1. The following sections shall be amended as indicated. Those portions which are struck out shall be deleted and those that are highlighted in yellow shall be added.

### **17.93.010 PURPOSE OF CHAPTER**

~~The purpose of this chapter is to describe and outline the conditions and procedures to be followed in establishing a residential facility for persons with a disability.~~

### **17.93.020 DEFINITIONS**

~~As used in this chapter:~~

~~**DISABILITY:** A physical or mental impairment which substantially limits one or more of a person's major life activities, including a person having a record of such impairment, or being regarded as having such an impairment. "Disability" does not include current illegal use of or addiction to any federally controlled substances as defined in section 102 of the controlled substance act, 21 USC 802, or successor law. As used in this definition:~~

~~A. "Physical or mental impairment" includes:~~

- ~~1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or~~
- ~~2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~
- ~~3. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments,~~

~~cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.~~

~~B. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~

~~C. "Has a record of such an impairment" means: Has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~D. "Is regarded as having an impairment" means a person who:~~

- ~~1. Has a physical or mental impairment that does not substantially limit one or more major life activities but is treated by another person as constituting such a limitation;~~
- ~~2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or~~
- ~~3. Has none of the impairments defined in SMC A of this definition but is treated by another person as having such an impairment.~~

**REASONABLE ACCOMMODATION:** ~~A change in a rule, policy, practice, or service necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. As used in this definition:~~

~~A. "Reasonable" means a requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability.~~

~~B. "Necessary" means the applicant must show that, but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice.~~

~~C. "Equal opportunity" means achieving equal results as between a person with a disability and a nondisabled person.~~

**RESIDENTIAL FACILITY FOR PERSONS WITH A DISABILITY:** ~~A residence in which not more than eight (8) persons with a disability reside and which is licensed or certified by:~~

~~A. The Utah department of human services under Utah Code Annotated, section 62A-101 et seq., as amended, or~~

~~B. The Utah department of health under Utah Code Annotated, section 26-21 et seq., as amended.~~

## 17.93.030 CONDITIONS

~~A residential facility for persons with a disability shall be allowed as a permitted use in any zone where residential dwellings that are not residential facilities for persons with a disability are allowed. All persons or entities desiring to establish a residential facility for persons with a disability shall first make application to the planning commission for a permit demonstrating zoning/land use regulation clearance. The permit shall be granted by the planning commission when compliance with the following requirements is established:~~

~~**A. Code Compliance:** The facility shall comply with all applicable building, safety, and health regulations, the Americans with disabilities act, fire regulations, and all applicable state code standards and licensing requirements, and any standards set forth in any contract with a state agency.~~

~~**B. Site Development; Parking:** The following site development standards and parking standards shall be applicable:~~

- ~~1. Each facility shall be subject to minimum site development standards applicable to a dwelling unit in the zone in which the facility is located and SMC 17.93.040 of this chapter, except as may be modified by the provisions of this chapter; and~~
- ~~2. The minimum number of off street parking spaces required for a facility shall be the same as for similar structures located in the same zoning district as defined in SMC 17.24 of this title. In addition to those listed in SMC 17.24 of this title, there shall be one parking stall per staff member at the highest number of staff that would be present in the facility at one time.~~
- ~~3. An existing structure may not be utilized as a residential facility for persons with a disability, unless no structural or landscaping alterations that change the structure's residential character are required for the facility to operate. Any alterations to the structure, landscape, or site will require the approval of the appropriate land use authority and must be complete in compliance with this section.~~

~~**C. Prohibited Persons:** No facility shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:~~

- ~~1. May be determined to be or does constitute a direct threat to the health or safety of other individuals; or~~
- ~~2. Has or may engage in conduct resulting in substantial physical damage to the property of others.~~

~~**D. Licensing:** Prior to occupancy of the facility, the person or entity licensed or certified by the Utah department of human services or the Utah department of health to establish and operate the facility shall:~~

- ~~1. Provide a certified copy of such license to the city recorder and maintain said license in full force and effect at all times;~~
- ~~2. Certify, in a sworn affidavit submitted with the application for a business license, compliance with the Americans with disabilities act;~~

- ~~3. Certify, in a sworn affidavit submitted with the application for a business license, that all current residents/clients qualify and that all future residents/clients will qualify prior to admission to the facility;~~
- ~~4. Certify that placement in a facility must be on a voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;~~
- ~~5. Certify, in a sworn affidavit submitted with the application for a business license, that no person will be placed or remain in the facility whose prior or current behavior, actions and/or criminal incidents or convictions, has demonstrated that such person is or may be a substantial risk or a direct threat to the health or safety of other individuals, or whose said behavior, actions and/or incidents or convictions have resulted in or may result in substantial physical damage to the property of others; and such a sworn affidavit or statement shall be resubmitted to the city recorder on each sixth month anniversary after the issuance of the city business license required to operate said facility, the intent being that there be such a sworn affidavit on file with the city recorder that is no older than six (6) months;~~
- ~~6. Apply for, obtain and maintain a city business license in accordance with the procedures stated in SMC 5 of this code, as amended, on forms to be supplied by the city;~~
- ~~7. Any business license issued in accordance with the provisions of SMC 5 of this code, as amended, may be revoked and any application denied, by reason of the failure of the applicant or licensee to comply with the provisions of this chapter, SMC 5 of this code, or any other applicable statute, ordinance, rule or regulation, by following the procedures set forth in SMC 5.04.165 of this code, as amended.~~
- ~~8. Obtain and maintain the liability insurance required by the department of human services, the department of health, or as is standard in the industry in the event neither state agency requires that such insurance be obtained and maintained.~~

~~**E. Nontransferable Use:** The use permitted by this section is nontransferable and shall terminate if:~~

- ~~1. A facility is devoted to or used as other than a residential facility for persons with a disability;~~
- ~~2. The license or certification issued by the department of human services, department of health or any other applicable agency, including the city, terminates or is revoked; or~~
- ~~3. The facility fails to comply with the conditions set forth in this section.~~

~~**F. Appeal:** Any person or entity adversely affected by a final decision of the land use authority regarding an application or request for a residential facility for persons with a disability may appeal that decision to the appeal authority as provided in SMC 17.10 of this title.~~

### 17.93.040 DESIGN STANDARDS

In order for new construction to reflect the design and character of the existing neighborhood the following standards shall be met:

- A. ~~The roof design of the proposed structure or remodel roof shall be a pitched roof of the same slope as the most common roof slope of the homes on the side of the block on which the proposed building is located; and~~
- B. ~~The type of exterior materials shall be of traditional home finishing materials of brick, siding, or stucco. The use of these materials shall be applied in such a manner as to blend in with the neighborhood where the building is located and not draw undue attention to the building because of the materials, their color and combination being uncharacteristic of the other buildings in the neighborhood.~~

### 17.93.050 REASONABLE ACCOMMODATION

~~**A. Reasonable Accommodation Required:** None of the foregoing conditions shall be interpreted to limit reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for person(s) with a disability.~~

~~**B. Application:** Any person or entity who wishes to request a reasonable accommodation shall make application to the planning commission in compliance with the Smithfield City reasonable accommodation policy. Said application shall specifically articulate, in writing, the following:~~

- ~~1. The name, mailing address and phone number of the applicant;~~
- ~~2. The nature and extent of the disability;~~
- ~~3. An exact statement of the ordinance or policy from which the applicant needs a reasonable accommodation;~~
- ~~4. The applicant's proposed reasonable accommodation(s);~~
- ~~5. A statement detailing why the proposed accommodation is reasonable and necessary in order to afford person(s) with a disability equal opportunity to use and enjoy housing; and~~
- ~~6. The physical address of the property where the applicant intends on living.~~

~~**C. Decision:** The planning commission shall render a decision on each application for a reasonable accommodation within ninety (90) days. The decision shall be based on evidence of record demonstrating the existence of the conditions stated in SMC C1, C2 and C3 of this section, while taking into consideration, the information stated in SMC C4 through C6 of this section, and considering other factors deemed relevant to properly evaluate the application:~~

- ~~1. The requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability.~~
- ~~2. That but for the accommodation, one or more persons with a disability will be denied an equal opportunity to enjoy housing within the community.~~

- ~~3. Equal results will be achieved as between the person with a disability requesting the accommodation and a nondisabled person.~~
- ~~4. Given the scope of the accommodation requested, the impact on the immediate neighborhood will not be unreasonable.~~
- ~~5. The accommodation will not fundamentally alter the zoning ordinance of Smithfield City and that the accommodation will not create a fundamental change in the character of a residential neighborhood.~~
- ~~6. The accommodation will not be an undue burden or expense to the city.~~

~~**D. Findings And Conclusions:** Written findings and conclusions of the planning commission shall be sent to the applicant within thirty (30) days after the decision by the planning commission.~~

~~**E. Appeal:** Any person or entity adversely affected by a final decision of the planning commission regarding a request for a reasonable accommodation may appeal that decision to the appeal authority as provided in SMC 17.10 of this title.~~

## **17.93 RESIDENTIAL FACILITY FOR PERSONS WITH A DISABILITY**

### **17.93.010 PURPOSE**

- A. Comply with Utah Code Annotated.
- B. Avoid discrimination in housing against persons with disabilities pursuant to the Utah Fair Housing Act and the Federal Fair Housing Act as interpreted by courts whose decisions are binding in Utah. This Section is not a separate zone for such facilities but applies to all residential zones within Smithfield City. If any facility, residence, congregate living, or other housing arrangement meets the definition of a residential facility for elderly persons or a residential facility for persons with a disability as set forth in this Title, the requirements of this Chapter shall govern the same notwithstanding any conflicting provision of this Title or the Ordinances of Smithfield City. Except as provided herein, the requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Ordinances of Smithfield City, or other local, County, State, or Federal laws.

### **17.93.020 PERMITTED USES**

- A. Notwithstanding any contrary provision of this Title, a residential facility for persons with a disability shall be permitted uses in any zone where a dwelling is allowed as a permitted or conditional use subject to the development standards in SMC 17.93.040.
- B. Termination. A use permitted by this Section is non-transferable and shall terminate if:
  1. The facility is devoted to a use other than a residential facility for persons with a disability.
  2. Any license or certification issued by the Utah Department of Health or the Department of Human Services for such facility terminates or is revoked.

3. The facility fails to comply with requirements set forth in this Chapter.

### **17.93.030 REVIEW PROCESS**

In addition to other information required by the Ordinances of Smithfield City Utah, the following information must be submitted with the business license application or request for a reasonable accommodation, as applicable, for a residential facility. Additional information may be requested to aid in that review.

- A. A statement indicating the Specific type of facility (as defined by State regulations) the applicant seeks to operate and by which State agency it is regulated.
- B. The Number of residents and staff who will live at the residential facility and the expected/typical number of visitors per day.
- C. The typical or average length of stay of the residents.

### **17.93.040 DEVELOPMENT STANDARDS**

The development standards set forth in this Section shall apply to any residential facility for persons with a disability.

- A. Building, Safety, and Health Regulations. The facility shall comply with building, safety, and health regulations applicable to similar residential structures within the residential zone in which the facility is located.
  1. Each facility shall be subject to the same development standards applicable to similar residential structures located in the same zoning district in which the facility is located.
  2. The minimum number of parking spaces required for a facility shall be the same as for similar structures located in the same zoning district in which the facility is located.
- B. No dangerous Persons Permitted. No facility shall be made available to an individual whose tenancy would:
  1. Constitute a direct threat or safety of other individuals
  2. Result in substantial physical damage to the property of others.
  3. Be contrary to individuals listed in the Fair Housing Act.

### **17.93.050 LICENSE AND CERTIFICATION**

Prior to occupancy of any facility, the person or entity operating the facility shall:

- A. State License. Provide to the City a copy of any license or certification required by the Utah State Department of health (Title 26, Chapter 21) or the Utah State Department of Human Services (Title 62A, Chapter 2), including any policies and procedures that are required under state law.

- B. Certification Requirements. Certify in a sworn statement that no person will reside or remain in the facility whose tenancy would:
1. Constitute a direct threat to the health or safety of other individuals.
  2. Result in substantial physical damage to the property of others.
  3. Be contrary to individuals defined in the Fair Housing Act.
- C. City License. Obtain a Smithfield City Business License, which is renewed annually.
- D. Compliance/Renewal. Any such facility must comply with all Federal, State, County, and City regulations. At the time of renewal, the applicant must provide copies of all necessary certifications/recertifications or licenses as required by State regulations.

### **17.93.060 REASONABLE ACCOMODATION**

- A. Reasonable Accommodation Required: None of the foregoing conditions shall be interpreted to limit reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for person(s) with a disability.
- B. Application: Any person or entity who wishes to request a reasonable accommodation shall make application to the STRC Committee, created under SMC 16.05.40 and shall specifically articulate, in writing on the application the following:
1. The name, mailing address and phone number of the applicant.
  2. The nature and extent of the disability.
  3. An exact statement of the ordinance or policy from which the applicant needs a reasonable accommodation.
  4. The applicant's proposed reasonable accommodation(s).
  5. A statement detailing why the proposed accommodation is reasonable and necessary in order to afford person(s) with a disability equal opportunity to use and enjoy housing; and
  6. The physical address of the property where the applicant intends on living.
- C. Information: In addition to the information provided under SMC 17.93.050, the applicant shall provide, within seven days any additional information requested by the STRC Committee to aid it in evaluating the application. The STRC Committee shall make requests for additional information within 30 days, of the day that the application was filed with the STRC Committee.
- D. Decision: The STRC Committee shall render a decision on each application for a reasonable accommodation within ninety (90) days, of the date of filing of the application, or the date that additional information is provide to the STRC Committee under subsection 3 (above), whichever is later. The decision shall be based on evidence of record demonstrating the existence of the conditions stated in factors 1 through 4 listed



below, while taking into consideration, the information stated in factor 5 through 6, listed below and considering other factors deemed relevant to properly evaluate the application:

1. The requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability.
2. That but for the accommodation, one or more persons with a disability will be denied an equal opportunity to enjoy housing within the community.
3. Equal results will be achieved as between the person with a disability requesting the accommodation and a nondisabled person.
4. Given the scope of the accommodation requested, the impact on the immediate neighborhood will not be unreasonable.
5. The accommodation will not fundamentally alter the zoning ordinance of Smithfield City and that the accommodation will not create a fundamental change in the character of a residential neighborhood.
6. The accommodation will not be an undue burden or expense to the city.

E. Findings and Conclusions: Written findings and conclusions of the STRC Committee shall be sent to the applicant within thirty (30) days after the decision by the STRC Committee.

F. Appeal: Any person or entity adversely affected by a final decision of the STRC Committee regarding a request for a reasonable accommodation may appeal that decision to the appeal authority as provided in SMC 17.10 of this title.

G. Exemptions. A Residential Facility for Persons with a Disability shall not include facilities which house persons who are violent, who are not voluntarily residing therein, or who are residing therein as a part of or in lieu of confinement, rehabilitation, or treatment in a correctional facility.

2. Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, in whole or in part, the same shall not affect the validity of the Ordinance as whole, or any other part thereof.
3. All ordinances, and the chapter, clauses, sections, or parts thereof in conflict with provisions of this ordinance are hereby repealed, but only insofar as is specifically provided for herein.
4. This ordinance shall become effective after the required public hearing and upon its posting as required by law.

THIS ORDINANCE shall be attached as an amendment to the Smithfield Municipal Code above referred to.

Approved and signed this 26th day of August, 2020

**SMITHFIELD CITY CORPORATION**

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Jeffrey H. Barnes, Mayor

**ATTEST:**

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Justin B. Lewis, City Recorder