



NORTH OGDEN CITY

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MEMORANDUM

TO: City Council, North Ogden City
FROM: Dave Carlson, City Attorney
DATE: January 6, 2012
RE: AN ORDINANCE OF THE NORTH OGDEN CITY COUNCIL AMENDING
CHAPTER 10, TITLE 11 OF THE NORTH OGDEN CITY CODE REGULATING
FACILITIES FOR DISABLED PERSONS

Dear City Council Member:

This is the information you received in the December 13, 2011 City Council packet. The public hearing was held on December 13, 2011. Before you tonight is an ordinance for your consideration.

This ordinance amends Section 11-10-28 of the North Ogden City Code, regulating “Residential Facilities for Disabled Persons”. The purpose of these amendments is to bring the city ordinance more closely into compliance with federal regulations under the “American’s with Disabilities Act” and “Fair Housing Act” (“the federal law”).

Few issues in zoning have led to more litigation than efforts by cities to regulate “group homes” in their zoning codes. Despite considerable effort and creativity, cities have not fared well in court on this issue. Attempts by cities to regulate group homes usually occur in reaction to clamor from neighbors when they learn that a nearby home will be converted to a residential living facility for persons with some type of disability. It is typical for neighbors to imagine the proverbial “parade of horrors” when presented with new neighbors outside their comfort zone.

The federal law requires cities to treat as any other “family,” residents with disabilities who live in a group home situation. With few exceptions, a city may not place requirements on group home residents that it does not place on every other “family” in the neighborhood. In fact, in some instances, federal law requires the city to make special “accommodation” to disabled persons that it may not have to extend to other families.

Let me walk you through the amendments that I recommend:

- Paragraph “A” is amended to make it clear group homes are a “permitted use”

- Paragraph “B(1)” is amended to clarify that only group homes for “minors” require 24-hour adult supervision (this is an area where cities have gotten in trouble).
- Paragraph “B(2)” is amended to list the only classes of residents that are not protected by federal law – everyone else is; also, the federal law prohibits the type of proximity restrictions that are stricken out.
- In regard to paragraph “B(3)”, federal law does allow the even-handed enforcement of non-discriminatory building and fire codes; although, there could be some instances in which the City would need to make an accommodation even for these. Generally speaking group homes are licensed and regulated by the state; the city may require a license but should not require the state license to be obtained first to avoid creating a “catch 22” situation.
- In paragraph “B(4)” the city can do something about dangerous persons in a group home, but generally must have evidence that a particular person is dangerous and cannot impose categorical exclusions based on types of disabilities (other than those listed B(2)).
- Paragraph C, is inserted to allow the Community Development Director the discretion to make accommodations where necessary.

If you have any questions, I will be happy to try to answer them.