

Ordinance 2016-02

SHORT TITLE:


An ordinance amending Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities).

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	MOTION	SECOND	FOR	AGAINST	OTHER	
CW 1	DAVID SEWELL			✓			
CW 2	GEORGE STEWART	✓		✓			
CD 1	GARY WINTERTON			✓			
CD 2	KIM SANTIAGO			✓			
CD 3	DAVID KNECHT		✓	✓			
CD 4	KAY VAN BUREN			✓			
CD 5	DAVID HARDING			✓			
				TOTALS	7	0	0

This ordinance was passed by the Municipal Council of Provo City, on the 19th day of January, February 11, 2016
2016, on a roll call vote as described above. Signed this _____.

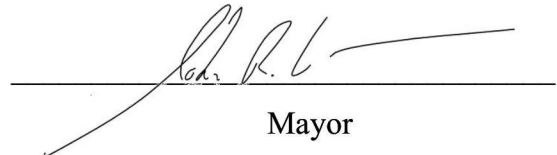


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 2/18/2016.


Mayor

Ordinance 2016-02

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was recorded in the office of the Provo City Recorder on the 22nd day of February , with a short summary being published on the 23rd day of January 2016, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2016-02.



Signed this 22nd day of February, 2016

Janeen Skiss
City Recorder

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ORDINANCE 2016-02

AN ORDINANCE AMENDING PROVO CITY CODE SECTIONS 14.06.020 (DEFINITIONS) AND 14.34.230 (RESIDENTIAL FACILITIES). CITY-WIDE IMPACT. (15-00170A)

WHEREAS, it is proposed that amendments be made to Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities) to clarify language, eliminate minimum separation requirements, and add certain site standards and occupancy requirements; and

WHEREAS, when originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included a minimum distance requirement which created location restrictions on where such facilities can be established; and

WEREAS, the State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability; and

WHEREAS, amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code; and

WHEREAS, the removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws; and

WHEREAS, on November 11, 2015, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended to the Municipal Council that the proposed amendment be approved as set forth below; and

WHEREAS, on February 3, 2015, and January 5, 2016, the Municipal Council held duly noticed public meetings and on January 19, 2016 held a duly noticed public hearing to ascertain the facts and receive public comment regarding this matter, which facts and comments are found in the meeting and hearing records; and

WHEREAS, all persons for and against the proposed amendment were given an opportunity to be heard during the public hearing; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities) should be amended on the basis recommended by the Planning Commission and (ii) this action, as set forth below, reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

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PART I:

Provo City Code Section 14.34.230 is hereby amended as follows:

14.34.230. Residential Facilities.

(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

(a) The facility shall conform to all building, safety, and health requirements of the Provo City Code applicable to similar structures.

~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(b) The facility shall meet the requirements of the zone in which it is located.

~~(c)~~ (d) The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.

(d) The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.

(e) The facility's design and landscaping shall be consistent with the structure's residential character.

(f) Any new structure shall be constructed of a size, scale, and design that is in harmony with other residential uses in the vicinity.

(g) It is the intent of Provo City to regulate a residential facility for persons with a disability only to the extent allowed by:

(i) Title 57, Chapter 21, Utah Fair Housing Act, and applicable jurisprudence;

(ii) The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq. and applicable jurisprudence; and

(iii) Section 504, Rehabilitation Act of 1973, and applicable jurisprudence.

(h) In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

(3) Residential Facility for Elderly Persons. Upon application for a permit to establish a residential facility for elderly persons in any zone in which such facility is a permitted or conditional use, a facility that conforms to the conditions listed below (and the conditional use criteria of Section 14.02.040, Provo City Code, if applicable) shall be

93 granted a permit. Such permit shall be nontransferable and shall terminate if the structure
94 is devoted to a use other than a residential facility for elderly persons, or the structure
95 fails to comply with the conditions listed below:

- 96 (a) that all building, safety, zoning and health ordinances applicable to similar
97 dwellings be met;
- 98 (b) that no residential facility for elderly persons be established within one
99 thousand (1,000) feet of another existing residential facility for elderly persons ~~or~~
100 ~~residential facility for persons with a disability;~~
- 101 (c) that the operator of the facility provide adequate off-street parking spaces as
102 required for one-family residential uses by Chapter 14.37 of this Title;
- 103 (d) that the facility be capable of use as a residential facility for elderly persons
104 without structural or landscaping alterations that would change the structure's
105 residential character;
- 106 (e) that no person being treated for alcoholism or drug abuse be placed in a
107 residential facility for elderly persons; and
- 108 (f) that placement in a residential facility for elderly persons be on a voluntary
109 basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a
110 correctional facility.

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112 PART II:

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114 Provo City Code Section 14.06.020 is hereby amended as follows:

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116 **14.06.020. Definitions.**

117 For the purposes of this Title, certain words and phrases have the following meanings:

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121 **"Elderly person"** means a person who is sixty (60) years old or older, who desires or needs to
122 live with other elderly persons in a group setting, ~~but who is capable of living independently.~~

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124 ...

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126 **"Residential facility for persons with a disability"** means a **residence: dwelling unit licensed**
127 ~~or certified by the Utah Department of Human Services;~~

128 (a) in which more than one (1) person with a disability resides; **and**

129 (b) which is:

130 (i) licensed or certified by the Department of Human Services under Title 62A,
131 Chapter 2, Licensure of Programs and Facilities; or

132 (ii) licensed or certified by the Department of Human Services under Title 26,
133 Chapter 21, Health Care Facility Licensing and Inspection Act.

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137 PART III:

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- 139 A. If a provision of this ordinance conflicts with a provision of a previously adopted
140 ordinance, this ordinance shall prevail.
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- 142 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be
143 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or
144 invalid, the remainder of the ordinance shall not be affected thereby.
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- 146 C. The Municipal Council hereby directs that the official copy of the Provo City Code be
147 updated to reflect the provisions enacted by this ordinance.
148
- 149 D. This ordinance shall take effect immediately after it has been posted or published in
150 accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah
151 Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.
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153 END OF ORDINANCE.
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Provo City Municipal Council

Council Meeting Item Description

A public hearing on an ordinance amending Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities). City-Wide Impact. (15-00170A)

January 19, 2016

When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included a minimum distance requirement which created location restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.

On a vote of 4:0, the Planning Commission recommended that the Municipal Council approve the application.

ORDINANCE 2015-

AN ORDINANCE AMENDING PROVO CITY CODE SECTIONS 14.06.020 (DEFINITIONS) AND 14.34.230 (RESIDENTIAL FACILITIES). CITY-WIDE IMPACT. (15-00170A)

WHEREAS, it is proposed that amendments be made to Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities) to clarify language, eliminate minimum separation requirements, and add certain site standards and occupancy requirements; and

WHEREAS, when originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included a minimum distance requirement which created location restrictions on where such facilities can be established; and

WEREAS, the State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability; and

WHEREAS, amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code; and

WHEREAS, the removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws; and

WHEREAS, on November 11, 2015, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended to the Municipal Council that the proposed amendment be approved as set forth below; and

WHEREAS, on February 3, 2015, and January 5, 2016, the Municipal Council held duly noticed public meetings and on January 19, 2016 held a duly noticed public hearing to ascertain the facts and receive public comment regarding this matter, which facts and comments are found in the meeting and hearing records; and

WHEREAS, all persons for and against the proposed amendment were given an opportunity to be heard during the public hearing; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code Sections 14.06.020 (Definitions) and 14.34.230 (Residential Facilities) should be amended on the basis recommended by the Planning Commission and (ii) this action, as set forth below, reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

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PART I:

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14.34.230. Residential Facilities.

(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

(a) The facility shall conform to all building, safety, and health requirements of the Provo City Code applicable to similar structures.

~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(b) The facility shall meet the requirements of the zone in which it is located.

~~(c)~~ (d) The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.

(d) The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.

(e) The facility's design and landscaping shall be consistent with the structure's residential character.

(f) Any new structure shall be constructed of a size, scale, and design that is in harmony with other residential uses in the vicinity.

(g) It is the intent of Provo City to regulate a residential facility for persons with a disability only to the extent allowed by:

(i) Title 57, Chapter 21, Utah Fair Housing Act, and applicable jurisprudence;

(ii) The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq. and applicable jurisprudence; and

(iii) Section 504, Rehabilitation Act of 1973, and applicable jurisprudence.

(h) In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

(3) Residential Facility for Elderly Persons. Upon application for a permit to establish a residential facility for elderly persons in any zone in which such facility is a permitted or conditional use, a facility that conforms to the conditions listed below (and the conditional use criteria of Section 14.02.040, Provo City Code, if applicable) shall be

93 granted a permit. Such permit shall be nontransferable and shall terminate if the structure
94 is devoted to a use other than a residential facility for elderly persons, or the structure
95 fails to comply with the conditions listed below:

- 96 (a) that all building, safety, zoning and health ordinances applicable to similar
97 dwellings be met;
- 98 (b) that no residential facility for elderly persons be established within one
99 thousand (1,000) feet of another existing residential facility for elderly persons ~~or~~
100 ~~residential facility for persons with a disability;~~
- 101 (c) that the operator of the facility provide adequate off-street parking spaces as
102 required for one-family residential uses by Chapter 14.37 of this Title;
- 103 (d) that the facility be capable of use as a residential facility for elderly persons
104 without structural or landscaping alterations that would change the structure's
105 residential character;
- 106 (e) that no person being treated for alcoholism or drug abuse be placed in a
107 residential facility for elderly persons; and
- 108 (f) that placement in a residential facility for elderly persons be on a voluntary
109 basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a
110 correctional facility.

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112 PART II:

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116 **14.06.020. Definitions.**

117 For the purposes of this Title, certain words and phrases have the following meanings:

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121 **"Elderly person"** means a person who is sixty (60) years old or older, who desires or needs to
122 live with other elderly persons in a group setting, ~~but who is capable of living independently.~~

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126 **"Residential facility for persons with a disability"** means a ~~residence: dwelling unit licensed~~
127 ~~or certified by the Utah Department of Human Services;~~

128 (a) in which more than one (1) person with a disability resides; ~~and~~

129 (b) which is:

130 (i) licensed or certified by the Department of Human Services under Title 62A,
131 Chapter 2, Licensure of Programs and Facilities; or

132 (ii) licensed or certified by the Department of Human Services under Title 26,
133 Chapter 21, Health Care Facility Licensing and Inspection Act.

134
135 ...

136
137 PART III:

138

- 139 A. If a provision of this ordinance conflicts with a provision of a previously adopted
140 ordinance, this ordinance shall prevail.
141
- 142 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be
143 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or
144 invalid, the remainder of the ordinance shall not be affected thereby.
145
- 146 C. The Municipal Council hereby directs that the official copy of the Provo City Code be
147 updated to reflect the provisions enacted by this ordinance.
148
- 149 D. This ordinance shall take effect immediately after it has been posted or published in
150 accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah
151 Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.
152
- 153 END OF ORDINANCE.



WELCOME HOME

PLANNING COMMISSION

NOVEMBER 11, 2015

ITEM 2*

The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements.

City Wide.

15-00170A





Provo City Planning Commission

Report of Action

November 11, 2015

ITEM 2* The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. *City Wide*. 15-0017OA, Brian Maxfield, 801-852-6429

The following action was taken by the Planning Commission on the above described item at its regular meeting of November 11, 2015:

RECOMMEND APPROVAL

On a vote of 4:0, the Planning Commission recommended that the Municipal Council approve the above noted application

Motion By: Kermit McKinney

Second By: Jamin Rowan

Votes in Favor of Motion: Kermit McKinney; Jamin Rowan; Fred Brandley; Ross Flom

Ross Flom was present as Chair.

The Motion includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report; Planning Commission determination is generally consistent with the Staff analysis and determination.

RELATED ACTIONS

None

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the presentation by Camille Williams of the City Attorney's Office to the Planning Commission included the following:

1. When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.
2. The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

3. The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.
4. The Planning Commission should also evaluate the utility of retaining "Residential Facilities for Elderly Persons" as a permitted use.

CITY DEPARTMENTAL ISSUES

- Compliance with State Code

NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods.

CONCERNS RAISED BY PUBLIC

- No response was given by the public in attendance.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Need for compliance with State Statutes
- Questions regarding elderly housing occupancy verses single-family occupancy
- Clarification that this does not affect group homes for criminal, drug or alcohol related rehabilitation



Planning Commission Chair



Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.



**Planning Commission
Staff Report
Ordinance Amendment
Hearing Date: November 11, 2015**

ITEM 2* The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. *City Wide*. 15-00170A, Brian Maxfield, 801-852-6429

<p>Applicant: Provo City Attorney's Office</p> <p>Staff Coordinator: Brian Maxfield</p> <p>*Council Action Required: Yes</p> <p>Related Application(s): None</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is December 9, 2015, at 5:00 p.m.</i></p> <p>2. Recommend Denial of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation</u>; the Planning Commission should <u>state new findings</u>.</i></p>	<p>Neighborhood Issues: None received by staff.</p> <p>Summary of Key Issues: A recent court ruling has brought attention to the limitations a city can place on residential facilities for the disabled and elderly. The City Attorney's Office is proposing an amendment to Section 14.34.24 to address that ruling.</p> <p>Staff Recommendation: <u>Recommend Approval</u> of the proposed ordinance amendment to Section 14.34.24, to the Municipal Council, per the findings of the City Attorney's Office.</p>
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OVERVIEW

See the attached memo from Camille Williams of the City Attorney's Office.

MEMO

TO: *PLANNING COMMISSION*
FROM: *Camille S. Williams, Assistant City Attorney*

Summary of Key Issues

When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.

The Planning Commission should also evaluate the utility of retaining "Residential Facilities for Elderly Persons" as a permitted use.

Background

Early in 2014, the Provo City Council approved revisions to 14.34.470, which altered Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Dec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

Residential Facilities for Persons with a Disability

While revisions to ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on disability, since many people need assistance with daily activities as they age. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

The City Attorney's Office has created a draft amendment which changes the code to remove the distance requirement. This requires no minimum distance restraints beyond the requirements of specific zones, and would appear to reduce the likelihood of allegations of discrimination against persons with a disability in the application of land use ordinances

Residential Facilities for Elderly Persons

The Legal Department recommends evaluating the use entitled "Residential Facilities for Elderly Persons." The State recently removed all references to such facilities from the State Code. Following the lead of the State would include striking portions of the current definition of "Elderly Person, which, if the ordinance were challenges, might be alleged to be a way of restricting the residential choices of persons with a disability.

This section of code allows a residential use which must be occupied on a twenty four (24) hour-per-day basis by eight (8) or fewer elderly persons able to live independently in a family-type arrangement. The use must otherwise follow all other guidelines established for the zone in which is it built.

The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City's vision for its future.

Recommendation

Recommend that the Municipal Council amend City Code to remove the minimum distance requirement for "Residential Facilities for Persons with Disabilities," and amend the definition of elderly person, or consistent with current state statute, strike the definition of Elderly Person and Residential Facilities for Persons with Disabilities.



Provo City Municipal Council

Staff Memorandum

A Review of permitted “Residential Facilities”

January 27, 2015

Council Coordinator

[Dan Quick](#)

801-852-6134

Meeting History

February 3, 2015

Work Meeting

Item Short Title

A discussion of the relative merits of amending Provo City Code 14.34.240, regulating residential facilities for persons with a disability and residential facilities for elderly persons.

Summary of Key Issues

When originally adopted, Provo City Code 14.34.240, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with these revisions to the Utah State Code may prevent challenges to the current code.

Council staff found that removal of the minimum distance requirement would bring the City Code into compliance with State and Federal laws.

Staff also suggests that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

Background

Early in 2014, the Provo City Council approved an ordinance which altered the Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

Residential Facilities for Persons with a Disability

The ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

The City Attorney's Office has created a draft amendment which changes the code to remove a distance requirement. This requires no minimum distance restraints beyond the requirements of specific zones, and would appear to reduce the likelihood of allegations of discrimination against persons with a disability in the application of land use ordinances

Residential Facilities for Elderly Persons

The Legal Department recommends consideration of the use entitled "Residential Facilities for Elderly Persons." The State recently removed all references to such

facilities from the State Code. Following the lead of the State would include striking portions of the current definition of “Elderly Person, which might in a challenge to the ordinance be alleged to be a way of restricting the residential choices of persons with a disability.

This section of code allows a residential use which must be occupied on a twenty four (24) hour-per-day basis by eight (8) or fewer elderly persons in a family-type arrangement. The use must otherwise follow all other guidelines established for the zone in which is it built.

The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City’s vision for its future.

Recommendation

Council Staff recommends that the Municipal Council approve the ordinance amendment removing the minimum distance requirement in regards to “Residential Facilities for Persons with Disabilities”.

Furthermore Council Staff recommends that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

Staff also recommends a review of all zoning code sections relative to persons with a disability for compliance with current State, Federal, and case law.

Appendices

1. Draft Amendment

Appendix 1 – Draft Amendment

Chapter 14.34 Supplementary Development Standards.

14.34.230 Residential Facilities

...

14.34.230. Residential Facilities.

(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

(a) The facility shall conform to all building, safety, and health requirements of the Provo City Code applicable to similar structures.

~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(b) The facility shall meet the requirements of the zone in which it is located:-

(i) ~~The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.~~

(ii) ~~The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.~~

(iii) ~~The facility's design and landscaping shall be consistent with the structure's residential character.~~

(iv) ~~Any new structure shall be constructed of a size, scale, and design that is in harmony with other residential users in the vicinity.~~

(c) ~~It is the intent of Provo City to regulate a residential facility for persons with a disability only to the extent allowed by:~~

(i) ~~Title 57, Chapter 21, Utah Fair Housing Act, and applicable jurisprudence;~~

(ii) ~~The Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq. and applicable jurisprudence; and~~

(iii) ~~Section 504, Rehabilitation Act of 1973, and applicable jurisprudence.~~

(d) ~~In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.~~

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

(3) Residential Facility for Elderly Persons. Upon application for a permit to establish a residential facility for elderly persons in any zone in which such facility is a permitted or conditional use, a facility that conforms to the conditions listed below (and the conditional use criteria of Section 14.02.040, Provo City Code, if applicable) shall be

granted a permit. Such permit shall be nontransferable and 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) that all building, safety, zoning and health ordinances applicable to similar dwellings be met;
- (b) that no residential facility for elderly persons be established within one thousand (1,000) feet of another existing residential facility for elderly persons ~~or residential facility for persons with a disability~~;
- (c) that the operator of the facility provide adequate off-street parking spaces as required for one-family residential uses by Chapter 14.37 of this Title;
- (d) that the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
- (e) that no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and
- (f) that placement in a residential facility for elderly persons be on a voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

14.06.020. Definitions.

For the purposes of this Title, certain words and phrases have the following meanings:

"Certified Residential Facility for Persons with a Disability" means a dwelling unit certified by the State of Utah for the housing of three (3) or fewer persons with a disability.

"Elderly person" means a person who is sixty (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.~~

"Licensed residential facility for persons with a disability" means a dwelling unit licensed by the State of Utah for the housing of four (4) or more persons with a disability.

"Residential facility for persons with a disability" means a ~~residence: dwelling unit licensed or certified by the Utah Department of Human Services,~~

- (a) in which more than one (1) person with a disability resides; ~~and~~
- (b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
- (ii) which is licensed or certified by the Department of Human Services under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Proposed Amendments to Conform with Utah Code, Federal Regulations and Case Law:

14.06.020. Definitions.

For the purposes of this Title, certain words and phrases have the following meanings:

"Elderly person" means a person who is sixty (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.~~

Field Code Changed

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(1) Residential Facilities for Persons with a Disability. Upon application for a permit to establish a residential facility for persons with a disability in any zone in which such facility is a permitted use, a facility that conforms to the conditions listed below shall be granted a permit.

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~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

(c) The facility shall meet the requirements of the zone in which it is located.

(d) The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.

(e) The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.

(f) In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

(a) the structure is devoted to a use other than a residential facility for persons with a disability, or

(b) the structure fails to comply with any conditions enumerated in Subsection 14.34.230(1).

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residential facility for elderly persons, or the structure fails to comply with the conditions listed below:

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(c) that the operator of the facility provide adequate off-street parking spaces as required for one-family residential uses by Chapter 14.37 of this Title;

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

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(f) that placement in a residential facility for elderly persons be on a voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.
(Enacted 1987-19, Am 1991-14, Am 1998-07, Am 1998-050, Am 2008-19)



**Planning Commission
Staff Report
Ordinance Amendment
Hearing Date: November 11, 2015**

ITEM 2* The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. *City Wide*. 15-00170A, Brian Maxfield, 801-852-6429

<p>Applicant: Provo City Attorney's Office</p> <p>Staff Coordinator: Brian Maxfield</p> <p>*Council Action Required: Yes</p> <p>Related Application(s): None</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is December 9, 2015, at 5:00 p.m.</i></p> <p>2. Recommend Denial of the proposed ordinance amendment. <i>This would be <u>a change from the Staff recommendation</u>; the Planning Commission should <u>state new findings</u>.</i></p>	<p>Neighborhood Issues: None received by staff.</p> <p>Summary of Key Issues: A recent court ruling has brought attention to the limitations a city can place on residential facilities for the disabled and elderly. The City Attorney's Office is proposing an amendment to Section 14.34.24 to address that ruling.</p> <p>Staff Recommendation: <u>Recommend Approval</u> of the proposed ordinance amendment to Section 14.34.24, to the Municipal Council, per the findings of the City Attorney's Office.</p>
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OVERVIEW

See the attached memo from Camille Williams of the City Attorney's Office.

MEMO

TO: *PLANNING COMMISSION*
FROM: *Camille S. Williams, Assistant City Attorney*

Summary of Key Issues

When originally adopted, Provo City Code 14.34.230, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and has amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with those revisions to the Utah State Code may prevent challenges to the current code.

The removal of the minimum distance requirement for residential facilities for persons with disabilities would bring the City Code into compliance with State and Federal laws.

The Planning Commission should also evaluate the utility of retaining "Residential Facilities for Elderly Persons" as a permitted use.

Background

Early in 2014, the Provo City Council approved revisions to 14.34.470, which altered Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Dec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

Residential Facilities for Persons with a Disability

While revisions to ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on disability, since many people need assistance with daily activities as they age. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

The City Attorney's Office has created a draft amendment which changes the code to remove the distance requirement. This requires no minimum distance restraints beyond the requirements of specific zones, and would appear to reduce the likelihood of allegations of discrimination against persons with a disability in the application of land use ordinances

Residential Facilities for Elderly Persons

The Legal Department recommends evaluating the use entitled "Residential Facilities for Elderly Persons." The State recently removed all references to such facilities from the State Code. Following the lead of the State would include striking portions of the current definition of "Elderly Person," which, if the ordinance were challenges, might be alleged to be a way of restricting the residential choices of persons with a disability.

This section of code allows a residential use which must be occupied on a twenty four (24) hour-per-day basis by eight (8) or fewer elderly persons able to live independently in a family-type arrangement. The use must otherwise follow all other guidelines established for the zone in which is it built.

The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City's vision for its future.

Recommendation

Recommend that the Municipal Council amend City Code to remove the minimum distance requirement for "Residential Facilities for Persons with Disabilities," and amend the definition of elderly person, or consistent with current state statute, strike the definition of "Elderly Person" and "Residential Facilities for Persons with Disabilities."



Provo City Municipal Council

Staff Memorandum

A Review of permitted “Residential Facilities”

January 27, 2015

Council Coordinator

[Dan Quick](#)

801-852-6134

Meeting History

February 3, 2015

Work Meeting

Item Short Title

A discussion of the relative merits of amending Provo City Code 14.34.240, regulating residential facilities for persons with a disability and residential facilities for elderly persons.

Summary of Key Issues

When originally adopted, Provo City Code 14.34.240, in compliance with Utah Code, included minimum distance requirements which create locational restrictions on where such facilities can be established. Subsequent cases interpreting Fair Housing laws suggest that such locational restrictions may be subject to challenge.

The State no longer regulates residential facilities for the elderly, and amended its land use statutes regulating facilities for persons with a disability. Amending the City Code to comply with these revisions to the Utah State Code may prevent challenges to the current code.

Council staff found that removal of the minimum distance requirement would bring the City Code into compliance with State and Federal laws.

Staff also suggests that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

Background

Early in 2014, the Provo City Council approved an ordinance which altered the Provo City Code's definition and treatment of assisted living facilities. The changes were instituted to simplify the code by referring the definition and other requirements for assisted living facilities to the applicable Utah State Code. One of the fundamental alterations was a change in the locational restrictions for such facilities. Whereas previously Assisted Living Facilities were only allowed in Low Density Residential zones, they are now allowed in any zone that allows residential uses, as well as in Professional Office and Public Facilities zones. This change was made in response to recent revisions to the Utah State Code which affected the ability of cities to regulate some aspects of land use and development, including residential facilities for persons with a disability. The ordinance cites to Title 57, Chapter 21, Utah Fair Housing Act, The Fair Housing Amendments Act of 1988, 42 U.S.C. Dec. 3601 et seq, and Section 504, Rehabilitation Act of 1973, and other applicable jurisprudence which requires that housing practices do not discriminate on the basis of race, color, religion, sex, national origin, familial status, source of income, or disability.

Residential Facilities for Persons with a Disability

The ordinance was effective in changing the requirements related to assisted living facilities but it did not address the potential issues in a related section of code regulating residential facilities for persons with a disability. These sections of code set locational restrictions on where these types of facilities could be established. In some jurisdictions such restrictions have been found to be a form of discrimination based on. The United States Department of Justice has specifically addressed minimum distance requirements for group homes for people with disabilities. DOJ, HUD, and most courts that have addressed the issue agree that density restrictions are generally inconsistent with the Fair Housing Act. It appears that most cities in Utah that mention these facilities in their code have not yet complied with current State law by repealing the minimum distance requirements. The Legal Department recommends amending these sections of code to comply with current law.

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The City must decide if there is value in continuing to allow this use but amend the definition of Elderly Person. Community Development is likely better equipped to make a suggestion regarding the current extent of this use in the City and whether its continued existence is consistent with the City’s vision for its future.

Recommendation

Council Staff recommends that the Municipal Council approve the ordinance amendment removing the minimum distance requirement in regards to “Residential Facilities for Persons with Disabilities”.

Furthermore Council Staff recommends that the Municipal Council request a recommendation from the Planning Commission regarding the continued existence of the permitted use “Residential Facilities for Elderly Persons”.

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Appendices

1. Draft Amendment

Appendix 1 – Draft Amendment

Chapter 14.34 Supplementary Development Standards.

14.34.230 Residential Facilities

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~~(b) Any licensed residential facility for persons with a disability shall be at least one thousand three hundred twenty (1,320) feet from any other such facility, as measured in a straight line between the closest property lines of the lots on which they are located.~~

~~(b)~~ (be) The facility shall meet the requirements of the zone in which it is located:-

~~(id)~~ (i) The operator of the facility shall provide off-street parking spaces as required by Chapter 14.37, Provo City Code.

~~(iie)~~ (ii) The facility shall be occupied only to the same extent that a dwelling unit may be occupied in the zone where the facility is located.

~~(iii) The facility's design and landscaping shall be consistent with the structure's residential character.~~

~~(iv) Any new structure shall be constructed of a size, scale, and design that is in harmony with other residential users in the vicinity.~~

~~(c) It is the intent of Provo City to regulate a residential facility for persons with a disability only to the extent allowed by:~~

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~~(d) In accordance with the Fair Housing Amendments Act of 1988, 42 U.S.C., Section 3601 et seq., none of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow occupancy of a residential facility for persons with a disability.~~

(2) Any permit issued pursuant to Subsection 14.34.230(1) shall be nontransferable and shall terminate if:

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Customer Ad Proof

60005417 Provo City Corporation

Order Nbr 64285

Publication	Daily Herald	PO Number	
Contact	Provo City Corporation	Rate	Provo City
Address 1	P.O. BOX 1849	Order Price	40.78
Address 2		Amount Paid	0.00
City St Zip	PROVO UT 84603	Amount Due	40.78
Phone	8018526505	Start/End Dates	12/22/2015 - 12/22/2015
Fax		Insertions	1
Section	Legals	Size	27
SubSection		Salesperson(s)	CLASSIFIED DEFAULT
Category	999 Legal Notices	Taken By	Lisa Llewelyn
Ad Key	64285-1		
Keywords	64285-NOTICE OF PUBLIC HEARING		
Notes			

Ad Proof

**PROVO CITY CORPORATION
COUNCIL OFFICE
Municipal Council Meeting Agenda
January 19, 2016
NOTICE OF PUBLIC HEARING BEFORE THE
MUNICIPAL COUNCIL**

Notice is hereby given that the Municipal Council of Provo, Utah will hold a public hearing on these items on Tuesday, January 19, 2016 beginning at 5:30 p.m. in the Council Chambers located at the Provo City Center Building, 351 West Center Street. Anyone interested is invited to attend.

Provo City Community Development requests review and recommendation of the Provo Downtown Streetscape Standards. City Wide. 15-0004GPA.

The Provo City Attorney's Office requests an amendment to Section 14.34.24 - Residential Facilities for Persons with a Disability and Residential Facility for Elderly Persons, including the elimination of minimum separation requirements and adding certain site standards and occupancy requirements. City Wide. 15-0017OA.

Legal Notice 64285 Published in The Daily Herald December 22, 2015.

Publication	Herald Extra Online
Contact	Provo City Corporation
Address 1	P.O. BOX 1849
Address 2	
City St Zip	PROVO UT 84603
Phone	8018526505
Fax	
Section	Legals
SubSection	
Category	999 Legal Notices
Ad Key	64285-1
Keywords	PROVO CITY CORPORATION COUNCIL
Notes	

PO Number	
Rate	Provo City
Order Price	40.78
Amount Paid	0.00
Amount Due	40.78
Start/End Dates	12/22/2015 - 12/22/2015
Insertions	1
Size	27
Salesperson(s)	CLASSIFIED DEFAULT
Taken By	Lisa Llewelyn

Ad Proof

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