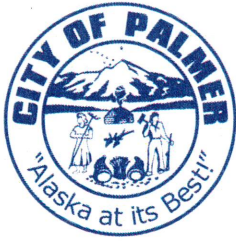




New Business



**CITY OF PALMER
PLANNING & ZONING COMMISSION
INFORMATION MEMORANDUM 23-006**

SUBJECT: Annual Review of Accessory Dwelling Units (ADUs)

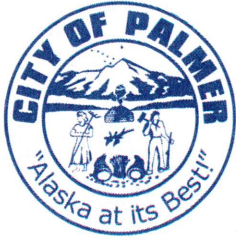
AGENDA OF: April 20, 2023

ACTION: Review and comment

Attachment(s): 1) ADU spreadsheet
2) ADU location map

Summary: Per PMC 17.86.110, Annual Review, "The zoning administrator shall report annually to the planning and zoning commission the number of ADU units established, the geographic distribution of the units, the average size of the units, the number and type of complaints, and completed enforcement actions. The commission shall reassess this chapter if records show that 20 percent of the single-family structures within the city have ADUs."

Recommendation: Review, provide comments and reassess PMC 17.86 Accessory Dwelling Units, if necessary.



**CITY OF PALMER
PLANNING & ZONING COMMISSION
INFORMATION MEMORANDUM 23-007**

SUBJECT: Committee of the Whole: Review PMC Title 17 Zoning code language regarding Residential Care Facilities in residential districts

AGENDA OF: April 20, 2023

ACTION: Review and comment

Attachment(s):

- 1) ADA Informational Handouts
- 2) PMC 17.08 Definitions
- 3) PMC 17.20 R-1 Single-family Residential District
- 4) PMC 17.24 R-2 Low Density Residential District
- 5) PMC 17.26 R-3 Medium Density Residential District
- 6) PMC 17.27 R-4 High Density Residential District
- 7) PMC 17.52 R-1E Single-family Residential Estate District

Summary: Currently, Residential Care Facilities are permitted through obtaining a conditional use permit in the R-2, R-3 & R-4 districts; they are not permitted outright or by a conditional use permit in the R-1 & R-1E districts.

Recommendation: Review Palmer Municipal Code Title 17 Definitions and code portions regarding Residential Care Facilities in residential districts and provide comments and feedback should further action be requested.

Fair Housing and Zoning Laws

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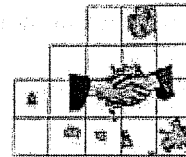
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September 21 from 6 to 8 PM.

The Department of Planning Services is presenting this **workshop**



Department of Planning Services



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Fair Housing Acts, Group Homes & Zoning Laws¹

In recent decade's treatment and housing for Ohio's disabled citizens shifted from housing in impersonal institutions to more personal and focused care in residential group homes. Caretakers and the state legislature have recognized that patients enjoy extensive benefits from smaller, more "normalized" residential settings. As caretakers began to relocate patients from institutional districts to neighborhoods, they ran into opposition from local communities. These communities acted most likely on entrenched prejudices against individuals with disabilities, stemming from centuries of myths and miscommunications on their capabilities and the dangers they pose to others. *See generally e.g. Epicenter of Steubenville v. City of Steubenville*, 924 F. Supp. 845 (U.S. Dist., Ohio 1996); *Ardmore v. City of Akron*, 1990 U.S. Dist. LEXIS 20806 (D. Ohio, 1990). In response, communities began to pass zoning laws that excluded group homes for the disabled from residential neighborhoods. The Ohio and Federal Fair Housing Acts, ORC §§ 4112.02 and 42 U.S.C.S. §§3601 *et seq.* (FHA), Ohio statutes allowing group homes in family districts, and general principles of equality and fairness, those wishing to establish residential group homes have fought back.

Generally, Ohio courts seem to include group homes in zoning laws' definitions of "family" and "household." *See e.g. Westerville v. Kuehnert*, 50 Ohio App. 3d 77 (Ohio Ct. App., 10th Dist. 1988) (licensed group homes for four developmentally disabled residents fell under the local zoning ordinance's definition of "household" as permitted in its residential district); *Freedom Township Bd. Of Zoning Appeals v. Portage County Bd. Of Mental Retardation &*

¹ Part of this material is taken from a student memorandum done by Jessica Paine for the Fair Housing Law Clinic entitled Ohio Case Law on Conflicts Between Group Homes and Exclusionary Zoning Laws

Developmental Disabilities, 16 Ohio App. 3d 387 (Ohio Ct. App., 11th Dist. 1984) (“The fact that the occupants of a group home will operate as a unit for purposes of cooking, cleaning and otherwise maintaining the home is reliable, probative evidence that the home's occupants will function as a family unit.”); *Herr v. Morris Constr. Co.*, 1983 Ohio App. LEXIS 11223 (Ohio Ct. App., 1983) (group home for six mentally retarded women qualified as “family”); *Fliotsos v. Youngstown*, 1983 Ohio App. LEXIS 14149 (Ohio Ct. App., 1983) (court found that home of plaintiff who wished to raise five mentally retarded children with the help of paid assistants qualified as “family” home under broad definition of family required by case law); *see contra White v. Bd. Of Zoning Appeals*, 1982 Ohio App. LEXIS 13776 (Ohio Ct. App., 5th Dist., 1982), *discussed infra*. However, it is extremely important to remember that such findings depend on the individual zoning law’s definition of “family” or “household.”

At least one Ohio court has held that in the absence of any definition of the word “family” or “household” as used in restrictions for single family or single household districts, group homes are more closely allied with family use than commercial use. In *Freedom Township*, 16 Ohio App. 3d 387, the court held that the local mental retardation board’s proposed use of a house located in a residential district as a group home for mentally retarded adults was a permitted use. In the absence of any definition of family, the court looked to the ordinary meaning of family use as opposed to commercial use. *Id.*, 390. The court found that because of the restriction of property rights inherent in zoning laws, any ambiguity must be construed against the restrictions. *Id.* The court held that, in light of earlier case law in the area, the fact that the residents “operate a unit for purposes of cooking, cleaning and otherwise conducting everyday chores” is probative evidence of their domestic cohesiveness. *Id.*, 391. Thus, when

zoning ordinances are silent on the definition of “family” or “household,” there is some authority that the extent of their communal activities qualifies group homes as families.

If the zoning law defines family or household only as a certain number of persons living as a single dwelling or housekeeping unit with no restrictions on relation by blood or marriage, Ohio courts tend to include group homes within the ordinance’s definition. *See e.g. Westerville, 50 Ohio App. 3d 77* (ordinance limited number of unrelated individuals still classified as a family to five *2 Herr, 1983 Ohio App. LEXIS 11223; Beres, 6 Ohio App. 3d 71; and Fliotsos, 1983 Ohio App. LEXIS 14149.*

Zoning laws are highly individualistic, and the courts’ results frequently turn upon the inclusion of a single term that separates a particular ordinance from other municipalities’ language. From the limited extent of Ohio jurisprudence on the subject, a careful observer may nevertheless draw several conclusions.

FEDERAL FAIR HOUSING ACT AND LOCAL LAND USE ORDINANCES

The Fair Housing Act (“FHA”), passed by Congress as Title VIII of the Civil Rights Act

² As of the date of this writing, the author was unable to find any Ohio case law determining the legality of limits on numbers of unrelated individuals living together higher than two but fewer than restrictions placed on related persons, other than *White v. Bd. Of Zoning Appeals, 1982 Ohio App. LEXIS 13776* (an absolute exclusion of unrelated individuals from the ordinance’s definition of “family”). Although an argument could be made that such exclusion is unconstitutional intrusion into private choices of family (*see Beres, 6 Ohio App. 3d 71, 74, quoting Moore, 431 U.S. 494, 499 and Saunders, 66 Ohio St.2d 259,263: “A ‘single family unit’ can exist in the absence of consanguinity. ‘... [A]ny resolution seeking to define this term narrowly would unconstitutionally intrude upon an individual’s right to choose the family living arrangement that is best suited to him and his loved ones.’”), the United States Supreme Court upheld a zoning ordinance that excluded groups of more than two unrelated individuals from its definition of family in *Village of Belle Terre v. Boraas, 416 U.S. 1*, as part of municipalities’ lawful power to restrict land use as to families. By extension, Ohio courts would likely uphold limits on numbers of unrelated individuals living together higher than two but fewer than restrictions placed on related persons. See discussion on *White* supra.*

of 1968, prohibits housing discrimination on the basis of, *inter alia*, race, religion, and national origin. 42 U.S.C. §§ 3601 et seq. In 1974, sex was added as a protected class but otherwise the statute remained basically unchanged until 1988. See 42 U.S.C. §3604(a). In 1988, Congress amended the Fair Housing Act to extend its protection to handicapped persons. Fair Housing Amendments Act of 1988, P.L. No. 100-430, 102 Stat. 1619 (1988) ("FHAA"). Congress recognized that discrimination against the handicapped is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference of benign neglect." Alexander v. Choate, 469 U.S. 287, 105 S. Ct. 712, 717, 83 L. Ed. 2d 661 (1985).

Under the FHAA, which Congress passed in 1988 to extend the coverage of the FHA to include people with disabilities, it is unlawful:

To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

42 U.S.C. §3604(f)(2).

By its express terms, this section applies to the provision of services or facilities to a dwelling, such as sewer service, and courts have specifically allowed claims under this section to be brought against municipalities and land use authorities.

See generally, Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment, 284 F.3d 442 (3d Cir.

2002). Further, under 42 U.S.C. §3604(f)(3)(B), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such

accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The Fair Housing Act protects people with mental retardation, mental illness, former alcoholics or drug addicts, epilepsy, cerebral palsy, visual and hearing impairments, AIDS, and other disabilities. People who use wheel chairs, service dogs, or a personal care attendant are all protected against housing discrimination.

The FHA applies to zoning codes since it is well established that the FHA prohibits discriminatory land use decisions by municipalities and their officials. In fact, 42 U.S.C. ' 3615 provides that "any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]" *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991) (on motion for preliminary injunction: city's enforcement of zoning ordinance so as to prevent operation of local Oxford House in area zoned for single family residences violated Fair Housing Act); *Association of Relatives and Friends of AIDS Patients v. Regulations and Permits Administration*, 740 F. Supp. 95 (D.P.R. 1990)(government agency's denial of land use permit to open AIDS hospice violated Fair Housing Act); *Baxter v. City of Belleville*, 720 F. Supp. 720 (S.D.Ill. 1989) (on motion for preliminary injunction: city's refusal to issue special use permit under zoning law to developer wishing to remodel building into residence for persons with AIDS violated Fair Housing Act).

The single Congressional Report on the 1988 amendments to the FHA, the House of Representatives Report, reveals that the U.S. Congress was concerned that local government

zoning restrictions be covered under the law. As the report clearly states: A[t]he Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. @ H.R.Rep. No. 711, 100th Cong., 2d Sess. 18, reprinted in 1988 U.S.C.C.A.N. 2173, 2185. This legislative history is supported by the case law decided even prior to the amendments in the FHA. *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-35 (2d Cir.), *aff'd*, 109 S. Ct. 276 (1988) (per curiam); *U.S. v. Parma*, 661 F.2d 562 (6th Cir. 1981).

Persons alleging violations of the FHAA under these sections may bring three general types of claims: (1) intentional discrimination claims (also called disparate treatment claims) and (2) disparate impact claims, both of which arise under § 3604(f)(2), and (3) claims that a defendant refused to make reasonable accommodations, @ which arise under ' 3604(f)(3)(B). See *Lapid-Laurel*, 284 F.3d at 448 n.3.

To evaluate these claims under the FHAA, courts have typically adopted the analytical framework of their analogues in employment law, including their coordinate burden-shifting analyses once plaintiff has made a prima facie showing of discrimination under a specific claim. Consistent with the focus on language rather than a showing of discriminatory animus in evaluating facially discriminatory classification claims, courts have developed a Aproxy@ theory for such claims, recognizing that a regulation or policy cannot Acause a technically neutral classification as a proxy to evade the prohibition of intentional discrimination,@ such as classifications based on gray hair (as a proxy for age) or service dogs or wheelchairs (as proxies for handicapped status). *McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992). proxy@ cases where courts have had little difficulty leaping from the term Apersonal care home@ Bor

something substantially equivalent to discrimination based on handicapped status because it was obvious, in light of the language and the record evidence, that the term was used to classify plaintiff's facility and treat it differently because of the disabled status of the facilities' residents. See, e.g., *Larkin v. Mich. Dept of Social Servs.*, 89 F.3d 285 (6th Cir. 1996); *Cnty. Hous. Trust v. Dept of Consumer & Regulatory Affairs*, 257 F. Supp. 2d 208, 225 (D.D.C. 2003) (It is well settled that a defendant's decision or action constitutes disparate treatment, or intentional discrimination, when a person's disability was a motivating factor behind the challenged action or decision) *Alliance for the Mentally Ill v. City of Naperville*, 923 F. Supp. 1057, 1071 (N.D. Ill. 1996). *Childre's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wash. 1997); *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp. 683, 694 (E.D. Pa. 1992), aff'd, 995 F.2d 217 (3d Cir. 1993). A review of these cases reveals a combination of four common elements that caused the courts to find a fair housing violation: first, the alleged discriminatory classification was actually defined by the challenged regulation in terms that largely coincided with the FHAA definition of handicap second, the classification was used specifically to single out facilities for handicapped individuals for different treatment because of their disability; third, there was often direct or circumstantial evidence of discriminatory animus indicating an intent to discriminate because of the disabled status of the facilities' residents; and fourth, the defendant's purported reason for treating plaintiff's facility differently was predicated on a justification for treating disabled persons differently that was of questionable legitimacy. In both *Larkin* and *Horizon House*, the courts struck down laws that imposed distance requirements between residential care facilities for persons who were handicapped under the FHAA. In each case, the challenged law singl[ed]

out for regulation group homes for the handicapped with a classification comprising only such facilities. *Larkin*, 89 F.3d at 290 (noting that the Act, by its very terms, applied Aonly to [adult foster care] facilities which . . . house the disabled, and not to other living arrangements); *see also Horizon House*, 804 F. Supp. at 694 (concluding that defendant township=s reactionary enactment of an ordinance imposing a distance requirement between plaintiff’s family care homes singled out for disparate treatment . . . those who are unable to live on their own [and] who, in the language of the Fair Housing Act, are “handicapped”). In *Alliance for the Mentally Ill, Children Alliance, and Community Housing Trust*, the courts invalidated laws that singled out for regulation group homes for the handicapped by distinguishing family homes from either residential board and care occupancies, group facilities, or Acommunity-based residential facilities, each latter classification constituting a proxy for handicapped status. *Alliance for the Mentally Ill*, 923 F. Supp. at 1070 (noting that although the municipal fire code did not use the words handicapped or Adisabled,@ special provisions for residential board and care occupancies defined as facilities that house four or more unrelated persons for the purpose of providing personal care services applied primarily to handicapped persons); *Children’s Alliance*, 950 F. Supp at 1496 (determining that distinguishing families from group facilities based on the presence of a staff providing care and supervision for and assistance with the daily living activities was a proxy for a classification based on the presence of individuals under eighteen and the handicapped as both groups require supervision and assistanc and, therefore, facially discriminated on the basis of familial and handicapped status); *Cmty. Hous. Trust*, 257 F. Supp. 2d at 221-22 (concluding that the definition of a community-based residential facility as Aa residential facility for persons who have a common need for treatment, rehabilitation, assistance,

or supervision in their daily living called for the application of different standards to persons on the basis of their disability, even though the law did not make such a distinction expressly)

WHERE TO GET HELP

If you suspect you have experienced housing discrimination or for more information about the housing rights of people with disabilities, contact:

THE HOUSING DISABILITY LAW PROJECT
3214 Prospect Avenue
Cleveland, Ohio 44115
216-431-7400 ext 100
WWW.HOUSINGADVOCATESINC.COM

The U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
1-800- 669-9777,
TDD: 1-800-927-9275

OHIO CIVIL RIGHTS COMMISSION:

CLEVELAND REGIONAL OFFICE
Frank Lausche Building
615 W. Superior Avenue
Cleveland, Ohio 44113
(216) 787-3150

AKRON REGIONAL OFFICE
Akron Government Center
1161 S. High Street, Suite 205
(330)643-3100 (Voice/TTY)

THE MENTAL HEALTH LAW PROJECT
(1-202-467-5730)

THE U.S. DEPARTMENT OF JUSTICE
(1-202-514-4713)

SELECT FAIR HOUSING CASES ON LAND USE REGULATIONS

Marbrunak, Inc. v Stow, 974 F.2d 43 (6th Cir. 1992) - Zoning ordinance imposing special safety requirements on residence operated by non-profit corporation for benefit of four mentally retarded adult women violated FHAA because it imposed safety requirements more stringent than those applied to other single-family residences, and ordinance made no effort to tailor safety requirements to particular disabilities of residents, and requirement that non-profit corporation seek zoning variance was unduly burdensome.

Larkin v Michigan Dep't of Social Servs., 883 F. Supp 172 aff'd 89 F.3d 285 (6th Cir. 1996) Spacing and notice requirements of Michigan Adult Foster Care Licensing Act were preempted by FHA and facially discriminatory, and 1,500 foot spacing requirement allegedly promulgated to integrate disabled into community and to prevent clustering, and required notification to municipality or neighbors of housing facility for 4 disabled adults, were not justified to meet needs of handicapped.

Smith & Lee Assocs. v City of Taylor, 102 F.3d 781 (6th Cir. 1996) - District Court's finding that city's decision to deny zoning petition of company operating adult foster care home was motivated by discriminatory animus was erroneous, where city reasonably interpreted established zoning ordinance as characterizing 12 person adult foster care home as multiple-family use, and neither fact that city permitted homeowners in single-family neighborhoods to run home businesses while prohibiting for-profit company from operating 12 person adult foster care home, nor comments by city council member that fire safety and property values might be compromised by 12 person adult foster care home in single family neighborhood, showed discriminatory animus toward handicapped. However, allowing adult foster care home to house nine elderly disabled residents in home in single-family neighborhood where only 6 such residents were allowed under zoning ordinance was reasonable accommodation, as additional 3 residents would not alter character of neighborhood, and city's elderly and disabled consumers had need for more available adult foster care homes.

Hovsons, Inc. v Township of Brick, 89 F.3d 1096 (3rd Cir. 1996) - Conclusion of district court that township satisfied FHA's mandate that "reasonable accommodations" be provided to handicapped persons when township authorized nursing home construction within its hospital support zone but denied variance to build nursing home in residential zone was clear error, where no evidence supported claim that nursing homes were out of place in residential zones, and planned residential retirement communities were permitted in residential zone.

Gamble v City of Escondido, 104 F.3d 300 (9th Cir. 1997) - Property owner seeking to build housing for elderly disabled adults failed to state claim under 42 USCS ' 3604, where accommodation demanded was due in significant part to adult day care health facility occupying half of proposed building, for which accommodation was not required under statute.

Proviso Ass'n of Retarded Citizens v Village of Westchester, 914 F. Supp 1555 (ND Ill. 1996) - Developmentally disabled residents are entitled to summary judgment on 42 USCS ' 3604(f)(3)(B) claim, where village claims that intended use of dwelling as community integrated living arrangement requires change in zoning classification and installation of expensive sprinkler system, even though waiving such requirement has not been argued or shown to increase risk to safety of residents or community, because residents' proposed accommodation of waiver of sprinkler requirement is reasonable.

Familystyle of St. Paul, Inc. v St. Paul, 923 F.2d 91 (8th Cir. 1991) - State statutes and city zoning ordinances requiring dispersal of group homes for mentally ill persons throughout communities did not violate 42 USCS ' 3604, notwithstanding claim that dispersal requirements limited housing choices of mentally handicapped and therefore conflicted with language and purposes of Fair Housing Act, since dispersal requirement was part of licensing process as legitimate means to achieve state's goals in process of de-institutionalization of mentally ill.

Oxford House, Inc. v Babylon, 819 F. Supp 1179 (ED NY 1993) - Claim of residents of group home for recovering alcohol and/or drug dependents against town is granted summarily, where town sought to evict residents by enforcing zoning limitation on number of unrelated persons that could live in home, because (1) no genuine issue of material fact existed as to whether the eviction would discriminate against residents because of their handicap since recovering addicts are more likely than those without handicaps to live with unrelated individuals, and (2) showing of discriminatory effect far outweighs town's asserted interest in maintaining zone's residential character since town received no substantial complaints from neighbors, house is well maintained, and it does not alter residential character.

Thornton v City of Allegan, 863 F. Supp 504 (WD Mich. 1993) - Developer of adult foster-care facility is denied relief on claim under 42 USCS ' 3604(f), where argument is that failure to grant special-use permit for facility amounted to not making "reasonable accommodations" for developer in violation of statute, because city more than reasonably accommodated developer, after rejecting first site as inconsistent with its land-use plan, by arranging through real estate agent developer's acquisition and its approval of alternate site for facility.

Epicenter of Steubenville v City of Steubenville, 924 F. Supp 845 (SD Ohio 1996) - Operator of handicapped adult-care facilities is granted preliminary injunction barring enforcement of city's ordinance imposing absolute one-year moratorium on establishment of new adult-care facilities, where ordinance was enacted as result of alleged problems with handicapped residents at operator's existing facility, because (1) ordinance clearly discriminates against handicapped, (2) proffered justifications for ordinance were pretexts for true motive to exclude mentally impaired from moving into city, and (3) even if city's proffered reasons are taken as true, reasons fail to justify ordinance because ordinance is grossly overbroad.



National Network

Information, Guidance and Training on the
Americans with Disabilities Act

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www.adata.org

For the most current and accessible version, please visit
<https://adainfo.us>/<https://adainfo.us/add-rec-gov>

The Americans with Disabilities Act, Addiction and Recovery for State and Local Governments

The Americans with Disabilities Act (ADA) ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol and people in recovery from opioid and other drugs.

The ADA applies to all state and local government departments and agencies of those governments (“public entities”). Examples include the criminal justice system (jails, prisons, probation, and the courts) and State and local government-operated recovery homes. The ADA requires that all programs, services, and activities are accessible to and usable by people with disabilities. The ADA also requires that when a person with a disability asks for a modification of policies or the way the program operates, that modification must be considered.

Definition of Disability

A person has a disability under the ADA if the person:

1. Has a physical or mental impairment that substantially limits one or more **major life activities**, e.g., someone with bi-polar disorder, diabetes, or addiction to alcohol; or
2. Has a **history** of an impairment that substantially limited one or more major life activities, e.g., someone who is in remission from cancer or someone in recovery from the illegal use of drugs; or
3. Is **regarded** as having such an impairment, e.g. A prison assumes that an inmate has an addiction to drugs (even though that inmate does not have an addiction), and takes a negative action based on that belief, such as placing the inmate in a segregated cell.

Major life activities include, but aren’t limited to, walking, seeing, caring for oneself, learning, thinking, communicating, as well as the operation of bodily functions, such as neurological and brain functions.

Addiction is generally considered a disability because it is an impairment that affects the brain and neurological functions.

Addiction to alcohol and the illegal use of drugs are treated differently under the ADA. Addiction to alcohol is generally considered a disability whether the use of alcohol is in the **present** or in the **past**. For people with an addiction to opioids and other drugs, the ADA only protects a person **in recovery who is no longer engaging in the current illegal use of drugs**.



Illegal use of drugs means:

- Use of illegal drugs such as heroin or cocaine; and/or
- The misuse of prescription medications such as opioids or morphine where the person has **no** prescription, has a **fraudulent** prescription, or is using **more medication than prescribed**.

In recovery means:

- Is in recovery and is no longer engaged in the illegal use of drugs; or
- Is participating in a supervised rehabilitation program and is no longer using drugs illegally.

“Current” illegal use of drugs:

- Means the use of the drugs occurred recently enough to have a reasonable belief that a person’s drug use is a real and ongoing problem.
- Can be demonstrated where a person fails a drug test or indicates they may fail such a test.
- Isn’t limited to days, weeks, or months but is decided on a case by case basis.

At the time this factsheet was written, different court cases (*Quinones v. Univ. of Puerto Rico and Salley v. Circuit City Stores, Inc.*) defined “current use” as anywhere between five weeks to three months.

A person who has a legally prescribed medication to treat their substance use disorder (such as Suboxone, Methadone, or Vivitrol etc.), and is no longer engaging in the illegal use of drugs is a person with a disability and is protected by the ADA.

Social Service Programs

Scenario: Lillian stopped using **heroin** two years ago when she began using medication to treat her substance use disorder, including **Methadone** treatments, which she is still taking. She also regularly sees a counselor. Lillian’s mother, Jane believes Methadone is the same as heroin and calls child protective services (CPS) to have Lillian’s two children removed from the home. When the CPS worker interviews Lillian about her mother’s complaint, Lillian tells him she takes Methadone as part of her recovery and shows the worker documentation to prove it. The CPS worker isn’t sure that Methadone is a treatment drug and tells Lillian that he still plans to remove her children and give custody to Jane.

Is Lillian protected under the ADA? Yes, she is protected under the ADA because she has a history of an impairment (addiction to heroin) and hasn’t used illegal drugs for two years. Therefore, there is a good chance that there isn’t an ongoing problem. The CPS worker violated the ADA when he refused to work with Lillian because of her history of drug use. The CPS worker is also incorrectly regarding Methadone as an illegal drug. Methadone is a legally prescribed medication, just like insulin is prescribed for diabetes.

Criminal Justice System

Scenario: David has an addiction to opioids but stopped using them three years ago when he entered a treatment program, which includes a daily dose of **Suboxone**, a daily prescription medication used to treat opioid use disorder. David was recently arrested for robbing a convenience store and was sentenced to jail. When he arrived at the county jail, he provided officials a prescription from his doctor for Suboxone. The Sheriff is concerned about the **safety risk** of administering Suboxone in a jail environment because other inmates could access the drug.



Under the ADA, is the jail required to administer Suboxone to David? Yes, court cases (*Pesce v Coppinger and Godsey v Sawyer*) have found that the ADA requires correction programs (jails and prisons) to administer medications prescribed to treat substance use disorders. The correctional system must find a way to administer and monitor Suboxone in a way that doesn't cause a security or safety risk.

Housing

Recovery homes and half-way housing are examples of housing options that are covered under the ADA. Recovery homes serve people who need treatment for their addiction. Other housing, like half-way houses, serve people who are on probation, some of whom have addictions. Often staff of housing programs refuse to admit people who take medication prescribed to treat their substance use disorders, even if they are required to live there while on probation. If a person is prescribed medication to treat a substance use disorder, the ADA and/or the Fair Housing Act may require housing programs to admit the individual. The ADA also requires that state-funded housing provide "reasonable modifications" to individuals with disabilities, including those in recovery.

Recovery Homes

Scenario: Sofia has anxiety, depression, and addiction to alcohol, all of which affect her ability to care for herself. Her doctor prescribed **Gabapentin** to treat her anxiety and depression symptoms. Now, Sofia wants to stop drinking, so she enters a residential recovery home **run by the city** for alcohol treatment. At the intake interview, the recovery home coordinator asks Sofia if she is taking any medications. Sofia shows the coordinator her prescription for Gabapentin and explains that she takes it to help manage her anxiety and depression. The coordinator tells her that she can enter the recovery home, but she won't be allowed to take her Gabapentin because they don't allow residents to take any drugs. The coordinator fears Sofia will abuse the Gabapentin to get high.

Did the recovery home discriminate against Sofia under the ADA? Yes, the recovery home discriminated against Sofia under the ADA because she wasn't allowed to take her medication while participating in the treatment program. Sofia is considered a person with a disability because she has anxiety, depression, and addiction to alcohol, which are mental impairments that substantially limit Sofia's major life activity of caring for herself. She must be allowed to participate in the recovery program while she continues to take the Gabapentin.

Half-Way Houses

Scenario: Jason is on probation. He was ordered by a judge to live in a **county-based** half-way house as part of his probation. He is receiving medication to treat opioid use disorder, because he is in recovery from an addiction to **Percocet**, an opiate pain medicine. During the intake, the home director said they wouldn't allow Jason to take his prescribed Suboxone if he lives there. Jason knows he will be in violation of his probation if he doesn't enter this half-way house.

Did this half-way house violate the ADA? Yes, the half-way house violated the ADA. Jason is a person with a disability covered by the ADA because he is a person in recovery, i.e., no longer illegally using drugs. The half-way house must admit anyone who is receiving medication to treat substance use disorder, unless it completely changes their program (a fundamental alteration). For example, the half-way house doesn't dispense any medications, so requiring the staff to dispense Suboxone would fundamentally change their operations. However, the half-way house could allow Jason to leave each day only to receive Suboxone at a treatment center. It's important to note that people in recovery may



have other disabilities requiring accommodations, such as providing a sign language interpreter for a Deaf participant or providing materials in an alternative format for someone with a vision disability.

Healthcare Exception

So far, this factsheet has focused on people who have an addiction to alcohol or people who are in recovery from the illegal use of drugs. Generally, people can't currently be engaged in the illegal use of drugs to be protected by the ADA. However, there is one exception. A person who is currently engaging in the illegal use of drugs can't be denied healthcare or rehabilitation services because of their current use if they would otherwise qualify for these services.

Scenario: While on probation, George, who is taking Suboxone to treat his substance use disorder, is arrested for driving under the influence of alcohol and Gabapentin. His probation is revoked. George requests that he be allowed to continue taking his Suboxone prescription while serving the remainder of his sentence. His request is denied because Gabapentin, a medication for which George doesn't have a prescription, was found in his system.

Is George protected under the ADA? Yes, George is protected under the ADA because he can't be denied health care that he would normally qualify for on the basis of his current use of illegal drugs. A public entity can't deny health services, or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services. This exception is important, because people often go to jail with legal Suboxone in their system, but may also have additional drugs in their system that they are illegally using. In this case, the illegal use of Gabapentin doesn't mean that the jail can withhold the legal use of Suboxone unless there is a legitimate medical reason to do so.

Need more information?

If you have questions about your rights or obligations under the ADA, contact your local ADA Center. Each center has ADA specialists who provide information and guidance to anyone requesting ADA information. You can call toll-free at 1-800-949-4232. You can also email your local center by clicking the following link and completing the form: adata.org/email. All calls and emails are treated anonymously and confidentially.

References

Drugs, Alcohol and the ADA. Great Lakes ADA Center.

http://www.adagreatlakes.org/Publications/Legal_Briefs/BriefNo33_Drugs_Alcohol_and_the_ADA.pdf



New England  Center

Institute for Human Centered Design

1-800-949-4232

ADAinfo@NewEnglandADA.org

www.NewEnglandADA.org



Pacific ADA Center

1-800-949-4232 (V/TTY)

ADAtch@ADAPacific.org

www.ADAPacific.org

Content was developed by the New England ADA Center and the Pacific ADA Center, and is based on professional consensus of ADA experts and the ADA National Network.

The contents of this factsheet were developed under grants from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant numbers 90DP0087 and 90DP0086). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this factsheet do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

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[FHEO Home \(https://www.hud.gov/program_offices/fair_housing_equal_opp\)](https://www.hud.gov/program_offices/fair_housing_equal_opp)

[Fair Housing Month \(/program_offices/fair_housing_equal_opp/fair_housing_month\)](/program_offices/fair_housing_equal_opp/fair_housing_month)

[About FHEO \(https://www.hud.gov/program_offices/fair_housing_equal_opp/abouttheo\)](https://www.hud.gov/program_offices/fair_housing_equal_opp/abouttheo)

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HOUSING DISCRIMINATION UNDER THE FAIR HOUSING ACT

Housing discrimination is illegal in nearly all housing, including private housing, public housing, and housing that receives federal funding.

[The Fair Housing Act](#)

[Who Is Protected?](#)

[What Types of Housing Are Covered?](#)

[What Is Prohibited?](#)

[Additional Resources](#)

The Fair Housing Act

The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. Additional protections [\(/program_offices/fair_housing_equal_opp/non_discrimination_housing_and_community_development_0\)](/program_offices/fair_housing_equal_opp/non_discrimination_housing_and_community_development_0) apply to federally-assisted housing.

Learn about the [History \(/program_offices/fair_housing_equal_opp/abouttheo/history\)](/program_offices/fair_housing_equal_opp/abouttheo/history) of the Fair Housing Act, and read [Examples \(/program_offices/fair_housing_equal_opp/examples_housing_discrimination\)](/program_offices/fair_housing_equal_opp/examples_housing_discrimination) of the many forms of housing discrimination.

Who Is Protected?

The Fair Housing Act prohibits discrimination in housing because of:

- Race
- Color
- National Origin
- Religion
- Sex (including gender identity and sexual orientation)
- Familial Status
- Disability

What Types of Housing Are Covered?

The Fair Housing Act covers most housing. In very limited circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family houses sold or rented by the owner without the use of an agent, and housing operated by religious organizations and private clubs that limit occupancy to members.

What Is Prohibited?

[Provide Feedback](#)

In the Sale and Rental of Housing:

It is illegal discrimination to take any of the following actions because of race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Otherwise make housing unavailable
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide a person different housing services or facilities
- Falsely deny that housing is available for inspection, sale or rental
- Make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination
- Impose different sales prices or rental charges for the sale or rental of a dwelling
- Use different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements
- Evict a tenant or a tenant's guest
- Harass a person
- Fail or delay performance of maintenance or repairs
- Limit privileges, services or facilities of a dwelling
- Discourage the purchase or rental of a dwelling
- Assign a person to a particular building or neighborhood or section of a building or neighborhood
- For profit, persuade, or try to persuade, homeowners to sell their homes by suggesting that people of a particular protected characteristic are about to move into the neighborhood (blockbusting)
- Refuse to provide or discriminate in the terms or conditions of homeowners insurance because of the race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin of the owner and/or occupants of a dwelling
- Deny access to or membership in any multiple listing service or real estate brokers' organization

For more information and examples, visit [Examples of Housing Discrimination \(/program_offices/fair_housing_equal_opp/examples_housing_discrimination\)](#).

In Mortgage Lending:

It is illegal discrimination to take any of the following actions based on race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin:

- Refuse to make a mortgage loan or provide other financial assistance for a dwelling
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising a dwelling
- Condition the availability of a loan on a person's response to harassment
- Refuse to purchase a loan

For more information about discrimination in mortgage lending, visit [Fair Lending \(/program_offices/fair_housing_equal_opp/fair_lending\)](#).

Harassment:

The Fair Housing Act makes it illegal to harass persons because of race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin. Among other things, this forbids sexual harassment. Learn more about sexual harassment here ([/program_offices/fair_housing_equal_opp/sexual_harassment](#)).

Other Prohibitions:

In addition, it is illegal discrimination to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise the right
- Retaliate against a person who has filed a fair housing complaint or assisted in a fair housing investigation

Advertising:

For more information about advertising and the Fair Housing Act, visit Advertising and Marketing (/program_offices/fair_housing_equal_opp/advertising_and_marketing).

Additional Protections For Persons With Disabilities:

Housing providers must make reasonable accommodations and allow reasonable modifications that may be necessary to allow persons with disabilities to enjoy their housing. Get more information about reasonable accommodation here (/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications).

Certain multifamily housing must be accessible to persons with disabilities. Get more information here (/program_offices/fair_housing_equal_opp/physical_accessibility).

Additional Resources

Examples of Housing Discrimination

(/program_offices/fair_housing_equal_opp/examples_housing_discrimination)

Fair Housing and Related Laws

(/program_offices/fair_housing_equal_opp/fair_housing_and_related_law)

File a Complaint (/program_offices/fair_housing_equal_opp/online-complaint)

[Back to FHEO Home \(/program_offices/fair_housing_equal_opp\)](/program_offices/fair_housing_equal_opp)

Agency

Resources

U.S. Department of Housing and Urban Development

451 7th Street, S.W., Washington, DC 20410
T: 202-708-1112
TTY: 202-708-1455

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[Provide Feedback](#)

PMC Title 17.08 Definitions

17.08.032 Assisted living home

"*Assisted living home*" means a residential facility, currently and duly licensed by the state of Alaska as an assisted living home, which combines housing, food service, general protective oversight and personalized assistance with the activities of daily living tasks such as eating, bathing, dispensing of medicines, housekeeping and other tasks

17.08.078 Child care facility.

"*Child care facility*" means a facility wherein care, supervision, education and/or special needs care is provided for more than six children.

17.08.113 Day care.

"*Day care*" means providing care and supervision services for compensation between 6:00 a.m. and 10:00 p.m.

17.08.170 Family.

"*Family*" means one or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a roominghouse, club, fraternity house or hotel.

17.08.222 Home special needs care.

"*Home special needs care*" means providing special needs care for not more than five people for compensation in a dwelling. Home special needs care is a home occupation.

17.08.380 Residential care facility.

"*Residential care facility*" means a place which provides 24-hour care for one or more people who are not related by blood, marriage or legal adoption to the owner or operator and includes facilities called group homes and institutions.

17.08.390 Roominghouse.

"*Roominghouse*" means any dwelling in which, for compensation, three or more persons whether individually or as families are housed or lodged, with or without meals. A boardinghouse, lodginghouse, tourist home or a furnished-room house shall be deemed a roominghouse.

17.08.399 Senior citizen housing.

"*Senior citizen housing*" means housing in which each dwelling unit is occupied by individuals representing one or more of the following classifications:

- A. One or more senior citizens;
- B. The surviving spouse of a senior citizen who was, at the time of his or her death, living in the dwelling unit with the surviving spouse;

C. One or more individuals who reside in the same dwelling unit as a senior citizen, so long as such individuals are related to the senior citizen within two degrees of consanguinity and nieces and nephews;

D. One or more individuals who reside in the same dwelling unit as a senior citizen, so long as such individuals are essential to the care or well-being of the senior citizen.

Senior citizen housing also includes individuals who meet the eligibility requirements of a state or federal senior housing program that provides financing for projects so long as at least 80 percent of the units in the project are occupied exclusively by individuals who satisfy the requirements of subsection (A), (B), (C), or (D) of this section.

17.08.422 Special needs care.

"*Special needs care*" means providing care, supervision and/or education for people requiring more than ordinary attention because of a physical and/or a mental handicap.

17.08.423 Special needs day care facility.

"*Special needs day care facility*" means a facility wherein special needs day care is provided for more than five people.

17.08.424 Special needs housing.

"*Special needs housing*" means a residential facility where tenants are physically or mentally disabled or are senior citizens.

Chapter 17.20

R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

Sections:

- 17.20.010 Intent.**
- 17.20.020 Permitted uses.**
- 17.20.030 Conditional uses.**
- 17.20.040 Prohibited uses.**
- 17.20.050 Building height limit.**
- 17.20.060 Lot area restrictions.**
- 17.20.070 Parking.**

17.20.010 Intent.

- A. The R-1 district is established as a district in which the principal use of land is for single-family dwellings.
- B. The specific intent in establishing this district is:
 - 1. To encourage the construction of and use of the land for single-family dwellings;
 - 2. To prohibit community and individual use of the land and any other use which would substantially interfere with development or continuation of single-family dwellings;
 - 3. To discourage any use which would generate traffic on minor streets other than normal traffic to serve dwellings on these streets;
 - 4. To discourage any use which because of character or size would create requirements and cost for public services, such as police and fire protection, water supply and sewage, substantially in excess of such requirements and cost if the district were developed solely for single-family dwellings. (Ord. 05-001 § 4, 2005; Ord. 454 § 4, 1992)

17.20.020 Permitted uses.

Permitted principal uses and structures in the R-1 district are:

- A. One single-family dwelling per lot;
- B. Gardens and greenhouses when incidental to residential use;
- C. Home occupations;

- D. Accessory buildings and uses not used or operated for gain nor used as a dwelling;
- E. Parks and playgrounds;
- F. Storage of travel trailers, campers, pleasure boats and motor homes neither used nor occupied as living quarters. (Ord. 05-001 § 4, 2005; Ord. 454 § 4, 1992)

17.20.030 Conditional uses.

Uses which may be permitted in the R-1 district by obtaining a conditional use permit are:

- A. Churches, synagogues, temples, chapels, mosques or similar places of religious worship, and related structures; provided, that no part of any building or structure used for such purposes shall be located nearer than 30 feet to an adjoining lot or street line;
- B. Utility substation;
- C. Child care facilities operating as a day care only; and provided, that no part of any building shall be located nearer than 30 feet to an adjoining lot or street line;
- D. Special needs day care facilities; provided, that no part of any building shall be located nearer than 30 feet to an adjoining lot or street line. (Ord. 05-029 § 3, 2005; Ord. 05-001 § 4, 2005; Ord. 489 § 6, 1995; Ord. 454 § 4, 1992)

17.20.040 Prohibited uses.

Prohibited uses and structures in the R-1 district are all uses and structures not specified as permitted outright, including, without limitation, the following:

- A. Residences other than those for single-family dwelling purposes;
- B. Parking or storage of heavy equipment, such as buses, tractors, graders or trucks; and
- C. Mobile homes. (Ord. 05-001 § 4, 2005; Ord. 454 § 4, 1992)

17.20.050 Building height limit.

The maximum building height shall be 25 feet above grade, excluding chimneys, steeples, antenna and similar appurtenances which have no floor area. Appurtenances shall not exceed 35 feet in height. (Ord. 05-001 § 4, 2005; Ord. 454 § 4, 1992)

Chapter 17.24

R-2 LOW DENSITY RESIDENTIAL DISTRICT

Sections:

- 17.24.010 Intent.**
- 17.24.020 Permitted uses.**
- 17.24.030 Conditional uses.**
- 17.24.040 Prohibited uses.**
- 17.24.050 Building height limit.**
- 17.24.061 Lot area restrictions.**
- 17.24.064 Setback requirements.**
- 17.24.066 Open space requirements.**
- 17.24.070 Parking.**

17.24.010 Intent.

The R-2 district is intended for residential areas with a combination of multifamily structures consisting of four or fewer dwelling units, single-family residences and a low-to-medium population density. Nonresidential uses have been permitted on the basis of whether or not they are compatible with the predominantly residential character of this district. (Ord. 05-002 § 4, 2005; Ord. 454 § 4, 1992)

17.24.020 Permitted uses.

Permitted principal uses and structures in the R-2 district are:

- A. No more than a total of four dwelling units per lot. This may be a combination of single-family dwellings, two-family dwellings and/or multiple-family dwellings with four or fewer units;
- B. Boarding and roominghouses with four or fewer units;
- C. Home occupations;
- D. Parks and playgrounds;
- E. Child care facilities and preschools, both operating as day care only;
- F. Other compatible uses;

- G. Storage of travel trailers, campers, pleasure boats and motor homes neither used nor occupied as living quarters;
- H. Gardens and greenhouses when incidental to residential use;
- I. Churches, synagogues, temples, chapels, mosques or similar places of religious worship, and related structures; provided, that no part of any building or structures used for such purposes shall be located nearer than 30 feet to any adjoining lot or street line;
- J. Short term rentals, Type 1, Type 2, and Type 4 shall meet the requirements of PMC [17.89.070](#). (Ord. 20-013 § 3, 2020; Ord. 05-002 § 4, 2005; Ord. 489 § 7, 1995; Ord. 454 § 4, 1992)

17.24.030 Conditional uses.

Uses which may be permitted in an R-2 district by obtaining a conditional use permit are:

- A. Public and private schools;
- B. Public buildings and structures;
- C. Residential planned unit development;
- D. Residential care facilities for four or fewer patients and special needs day care facilities;
- E. Utility substation;
- F. Short term rentals, Type 5 shall meet the requirements of PMC [17.89.070](#). (Ord. 20-013 § 4, 2020; Ord. 05-029 § 5, 2005; Ord. 05-002 § 4, 2005; Ord. 489 § 8, 1995; Ord. 454 § 4, 1992)

17.24.040 Prohibited uses.

Prohibited uses and structures in the R-2 district are all uses and structures not specified as permitted outright, including, without limitation, the following:

- A. Parking or storage of heavy equipment, tractors, graders or trucks which are used for gain;
- B. Mobile homes which are used for occupancy outside of a mobile home court;
- C. Short term rentals, Type 3. (Ord. 20-013 § 5, 2020; Ord. 05-002 § 4, 2005; Ord. 454 § 4, 1992)

17.24.050 Building height limit.

The maximum building height shall be 35 feet. (Ord. 05-002 § 4, 2005; Ord. 454 § 4, 1992)

Chapter 17.26

R-3 MEDIUM DENSITY MULTIFAMILY RESIDENTIAL DISTRICT

Sections:

- 17.26.010 Intent.**
- 17.26.020 Permitted uses.**
- 17.26.030 Conditional uses.**
- 17.26.040 Prohibited uses.**
- 17.26.050 Building height limit.**
- 17.26.061 Lot area restrictions.**
- 17.26.064 Setback requirements.**
- 17.26.068 Fencing requirements.**
- 17.26.070 Parking.**
- 17.26.080 Site plan requirements and access control.**

17.26.010 Intent.

The R-3 district is intended for residential areas with a combination of multiple-family structures consisting of eight or fewer dwelling units, and single-family residences with a medium population density. Nonresidential uses have been permitted on the basis of whether or not they are compatible with the predominantly residential character of this district. (Ord. 05-003 § 4, 2005; Ord. 586 § 3, 2002)

17.26.020 Permitted uses.

Permitted principal uses and structures in the R-3 district are:

- A. No more than a total of eight dwelling units per lot. This may be a combination of single-family dwellings, two-family dwellings and/or multiple-family dwellings with eight or fewer units;
- B. Boarding and roominghouses with eight or fewer units;
- C. Home occupations;
- D. Parks and playgrounds;
- E. Child care facilities and preschools, both operating as day care only;
- F. Other compatible uses and accessory uses, such as storage structures for use by residents of the development;

- G. Storage of travel trailers, campers, pleasure boats and motor homes neither used nor occupied as living quarters;
- H. Gardens and greenhouses when incidental to residential use;
- I. Churches, synagogues, temples, chapels, mosques or similar places of religious worship, and related structures; provided, that no part of any building or structure used for such purposes shall be located nearer than 30 feet to any adjoining lot or street line;
- J. Short term rentals, Type 1, Type 2, Type 3, and Type 4 shall meet the requirements of PMC 17.89.070. (Ord. 20-013 § 8, 2020; Ord. 05-003 § 4, 2005; Ord. 586 § 3, 2002)

17.26.030 Conditional uses.

Uses which may be permitted by the R-3 district by obtaining a conditional use permit are:

- A. Public and private schools;
- B. Public buildings and structures;
- C. Residential planned unit development meeting the requirements of Chapter 17.84 PMC;
- D. Mobile homes that are used for occupancy in a mobile home court;
- E. Residential care facilities with eight or fewer patients and special needs day care facilities;
- F. Utility substation;
- G. Short term rentals, Type 5 shall meet the requirements of PMC 17.89.070. (Ord. 20-013 § 9, 2020; Ord. 05-029 § 7, 2005; Ord. 05-003 § 4, 2005; Ord. 586 § 3, 2002)

17.26.040 Prohibited uses.

Prohibited uses and structures in the R-3 district are all uses and structures not specified as permitted outright, including, without limitation, the following:

- A. Parking or storage of heavy equipment, tractors, graders or trucks which are used for gain;
- B. Mobile homes which are used for occupancy outside of a mobile home court. (Ord. 05-003 § 4, 2005; Ord. 586 § 3, 2002)

Chapter 17.27

R-4 HIGH DENSITY RESIDENTIAL DISTRICT

Sections:

- 17.27.010 Intent.**
- 17.27.020 Permitted uses.**
- 17.27.030 Conditional uses.**
- 17.27.040 Prohibited uses.**
- 17.27.050 Building height limit.**
- 17.27.060 Lot area restrictions.**
- 17.27.064 Setback requirements.**
- 17.27.066 Open space requirements.**
- 17.27.068 Fencing requirements.**
- 17.27.070 Parking.**
- 17.27.080 Site plan requirements and access control.**

17.27.010 Intent.

The R-4 district is intended for residential areas with a combination of multiple-family structures and single-family residences with a high population density. Nonresidential uses have been permitted on the basis of whether or not they are compatible with the predominantly residential character of this district. (Ord. 05-004 § 3, 2005)

17.27.020 Permitted uses.

Permitted principal uses and structures in the R-4 district are:

- A. One-family dwellings;
- B. Two-family dwellings;
- C. Multiple-family dwellings;
- D. Boarding and roominghouses;
- E. Home occupations;
- F. Parks and playgrounds;
- G. Child care facilities and preschools, both operating as day care only;

- H. Other compatible uses and accessory uses such as storage structures for use by residents of the development;
- I. Storage of travel trailers, campers, pleasure boats and motor homes neither used nor occupied as living quarters;
- J. Gardens and greenhouses when incidental to residential use;
- K. Churches, synagogues, temples, chapels, mosques or similar places of religious worship, and related structures; provided, that no part of any building or structure used for such purposes shall be located nearer than 30 feet to any adjoining lot or street line;
- L. Short term rentals, Type 1, Type 2, Type 3, Type 4, and Type 5 shall meet the requirements of PMC 17.89.070. (Ord. 20-013 § 12, 2020; Ord. 05-004 § 3, 2005)

17.27.030 Conditional uses.

Uses which may be permitted by the R-4 district by obtaining a conditional use permit are:

- A. Public and private schools;
- B. Public buildings and structures;
- C. Residential planned unit development meeting the requirements of Chapter 17.84 PMC;
- D. Mobile homes that are used for occupancy in a mobile home court;
- E. Residential care facilities with eight or fewer patients and special needs day services facilities;
- F. Utility substation. (Ord. 05-029 § 9, 2005; Ord. 05-004 § 3, 2005)

17.27.040 Prohibited uses.

Prohibited uses and structures in the R-4 district are all uses and structures not specified as permitted outright, including, without limitation, the following:

- A. Parking or storage of heavy equipment, tractors, graders or trucks which are used for gain;
- B. Mobile homes which are used for occupancy outside of a mobile home court. (Ord. 05-004 § 3, 2005)

17.27.050 Building height limit.

The maximum building height shall be 50 feet. (Ord. 05-004 § 3, 2005)

Chapter 17.52

R-1E SINGLE-FAMILY RESIDENTIAL ESTATE DISTRICT

Sections:

- 17.52.010 Intent.**
- 17.52.020 Permitted uses.**
- 17.52.030 Permitted accessory uses and structures.**
- 17.52.040 Conditional uses.**
- 17.52.050 Standards for a conditional use.**
- 17.52.060 Prohibited uses.**
- 17.52.070 Building height limit.**
- 17.52.080 Minimum lot requirements.**
- 17.52.090 Parking.**

17.52.010 Intent.

The R-1E district is established to provide large lot residential estates comprised primarily of single-family residences. The regulations are designed to protect and stabilize the characteristics of the neighborhood, to encourage an environment compatible for family living, and to prohibit all commercial activities except home occupations. (Ord. 457 § 4, 1993)

17.52.020 Permitted uses.

Permitted principal uses and structures in the R-1E district are:

- A. One-family dwellings;
- B. Bed and breakfast establishments;
- C. Parks and playgrounds;
- D. Recreational courts, including, but not limited to, tennis and other similar uses;
- E. One temporary subdivision sales office per subdivision in a residential structure, when located within the subdivision, and provided such use is discontinued when all lots have been sold and provided it complies with PMC 15.08.3103, Temporary buildings or structures. (Ord. 08-008 § 3, 2008; Ord. 457 § 4, 1993)

17.52.030 Permitted accessory uses and structures.

The following accessory uses and structures are permitted in the R-1E district:

- A. Uses and structures customarily accessory to a permitted use;
- B. Gardens and greenhouses when incidental to residential use;
- C. Home occupations;
- D. Travel trailers, campers and motor homes not used or occupied as living quarters. (Ord. 457 § 4, 1993)

17.52.040 Conditional uses.

Uses which may be permitted in the R-1E district by obtaining a conditional use permit are:

- A. Churches and related buildings, provided no part of any church building shall be located nearer than 30 feet to an adjoining lot or street line;
- B. Public utility installations and substations;
- C. Country clubs and golf courses;
- D. Community and publicly owned recreational centers;
- E. Public and private schools;
- F. Cemeteries;
- G. Child care facilities operating as a day care only; provided, that no part of any building is located nearer than 30 feet of a lot or street line;
- H. Special needs day care facilities; provided, that no part of any building is located nearer than 30 feet from a lot or street line. (Ord. 489 § 13, 1995; Ord. 457 § 4, 1993)

17.52.050 Standards for a conditional use.

In addition to the requirements of PMC 17.72.050, conditional uses shall be provided with access determined to be adequate by the Palmer planning and zoning advisory commission. (Ord. 457 § 4, 1993)

17.52.060 Prohibited uses.

Prohibited uses and structures in the R-1E district are all uses and structures not specified as permitted outright, including:

- A. Residences other than those for single-family dwelling purposes;
- B. Parking or storage of heavy equipment, tractors, graders or trucks which are used for gain;
- C. Mobile homes. (Ord. 457 § 4, 1993)

17.52.070 Building height limit.

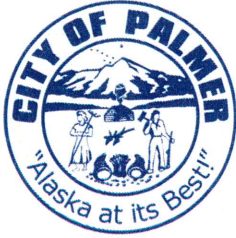
The maximum building height shall be 35 feet above grade. (Ord. 457 § 4, 1993)

17.52.080 Minimum lot requirements.

- A. Minimum lot width: Minimum average lot width shall be 85 feet. Each lot shall have not less than 45 feet of frontage when a lot fronts on a cul-de-sac or 60 feet of frontage on a street;
- B. Minimum lot area, 20,000 square feet;
- C. Minimum setback requirements:
 - 1. Front yard, 25 feet,
 - 2. Side yard, 15 feet,
 - 3. Side yard on street side of corner lot, 15 feet,
 - 4. Rear yard, 25 feet;
- D. Maximum lot coverage by all buildings shall not exceed 30 percent. (Ord. 457 § 4, 1993)

17.52.090 Parking.

Parking space shall meet the requirements of Chapter 17.64 PMC. (Ord. 457 § 4, 1993)



**CITY OF PALMER
PLANNING & ZONING COMMISSION
INFORMATION MEMORANDUM 23-008**

SUBJECT: Matanuska-Susitna Borough establishment of Metropolitan Planning Organization (MPO)

AGENDA OF: April 20, 2023

ACTION: Review and comment

Summary: Communities with populations of over 50,000 are required by the Federal Government to form an MPO. As a result of the 2020 US Census parts of the Mat-Su borough meet that criteria and must form an MPO.

Staff will provide the P & Z Commission an overview of the mandatory Metropolitan Planning Organization within an urbanized area of the Matanuska-Susitna Borough. No action is required at this point. This is meant to keep the P & Z Commission updated with the latest information.

Recommendation: No action is required at this point.

Transportation Planning & Funding

In the Mat-Su is about to change

MPO

MATSU Valley Planning (MVP) for Transportation

Metropolitan
Planning Organization



What is a Metropolitan Planning Organization (MPO)

An MPO is an organization created to carry out the transportation planning process within a metropolitan area. The MPO is the policy board, designated by the Governor, and carries out a continuing, cooperative and comprehensive performance-based multimodal transportation planning process, including the development of a Metropolitan Transportation Plan (MTP) and a Transportation Improvement Program (TIP). This process is done in cooperation with the State and public transportation operators and under the guidance of a robust public participation plan. Federal legislation passed in 1962 requires that any Urbanized Area (UZA) with a population greater than 50,000 will create a Metropolitan Planning Organization. The definition of “urban” is defined by development density within or outside of municipal limits, meaning that unincorporated areas surrounding municipalities are also defined as part of an urbanized area, just as areas outside the cities of Wasilla and Palmer are part of the urban cluster.

Why do we need an MPO?

Our Population is growing and because of that, the Federal Government requires we form one.



The Department of Commerce

will designate a portion of the Mat-Su as a Qualifying Urban Area, with a population "cluster" of over 50,000 for Census 2020. An official Metropolitan Planning Organization (MPO) must be established in the Mat-Su area to continue to receive Federal Highway Funding.

April 2022- expected census designation

INTRODUCTION

What does an MPO do?

"BY LAW, THE MPO IS DEFINED AS THE POLICY BOARD COMPRISED OF LOCAL OFFICIALS."

- ✓ Carries out transportation planning activities-based on population growth and community need
- ✓ Directs State and Federal Funds for road/transportation projects for motorized and non-motorized users
- ✓ Allows for local control of transportation decisions
- ✓ **Engages the public** in transportation planning and projects

Organized

- How is the MPO organized?

A non-profit Organization or Corporation. Governance is managed by a board of directors- but the board of directors are made up of elected officials of the regional governments and policy makers of transportation NGO's

- State/Borough/City/Tribes

Each entity will have representation on the policy board and together they will review and approve recommendations from MPO staff and the Technical Committee about the transportations infrastructure needed to support the communities needs.

Then the State of Alaska will allocate State and Federal funding to develop the projects within the MPO boundary

Policy Board

- Policy Board must consist of units of local government who represent a minimum of 75% of the existing metropolitan planning area population. (including largest incorporated city)

Pre-MPO has recommended:

Policy board consisting of:

- Palmer
- MSB (3)
- Wasilla
- AK DOT
- Knik Tribe Representative
 - Chickaloon Village

Technical Committee Consisting of:

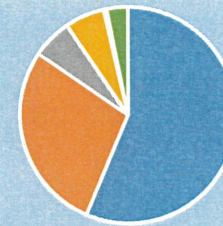
- Representatives such as planners, engineers, and other specialists from the city of Palmer City of Wasilla, MSB Planning and Public Works
 - ADOT & PF Planning and Pre-Construction
 - ADEC Air Quality Division
 - Alaska Railroad Corporation
 - Trucking industry Advocate
 - Mat-Su Road Service Area Advisory Board Chair
 - Public transit Provider
 - Mat-Su School District Operations
 - Knik Tribe
 - Chickaloon Native Village
 - Trails and Parks Representative

Federal Funding

- How much MONEY does Alaska get from Federal Highway Administration?

NHPP	\$306,715,836
STP	\$153,320,470
HSIP	\$32,384,409
CMAQ	\$29,076,413
Planning	\$2,402,700
Freight	\$17,206,531

FFY19 FAST Act Funding For Alaska



■ NHPP ■ STP ■ HSIP ■ CMAQ ■ Planning ■ Freight

Acronyms

NHPP – National Highway Performance Program STP – Surface Transportation Program HSIP – Highway Safety Improvement Program
CMAQ – Congestion Mitigation & Air Quality FAST – Fixing America's Surface Transportation STBGP - Surface Transportation Block Grant

MPO Statewide Allocation

- Communities >5000-200,000 \$31.2 M
 - ✓ Juneau
 - ✓ Sitka
 - ✓ Ketchikan
 - ✓ Wasilla
 - ✓ Kenai
 - ✓ Kodiak
 - ✓ Bethel
 - ✓ Palmer
 - ✓ Homer
 - ✓ Soldotna
- Communities >50,000<200,000 \$8.3 M
 - ✓ Fairbanks
- Communities > 200,000 \$27.3 M
 - ✓ Anchorage

Types of MPO Hosting

- **Independent MPO**

This is a truly independent agency. The MPO must meet all of its operating needs by itself. The most expensive type of MPO. Provides all payroll costs, administrative and capital needs.

- **Leaning Independent**

Independent MPO that “leans” on one of its members for support. The MPO receives some services under a severable contract.

- **Component MPO**

This type of hosting relationship, the MPO functions are separated from all other functions of the host. (Department or Division)

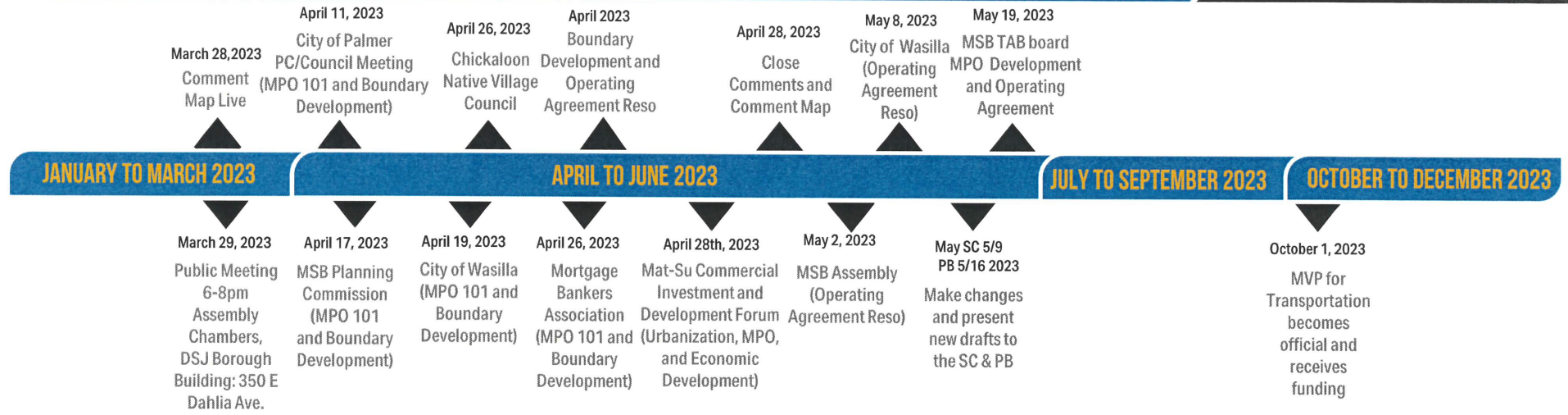
- **Dual Purpose MPO**

This type of hosting relationship, the host leverages MPO planning funds to maintain transportation planning staff. Performs both MPO planning and local government transportation planning functions.

- **All-In-One Agency**

This type of agency does not differentiate between MPO functions, non-MPO transportation functions and all other functions of the broader agency.

MPO DEVELOPMENT SCHEDULE



SUMMARY OF PUBLIC NOTICES

Frontiersman Ads

STEERING COMMITTEE:

11 ADS BETWEEN 3/4/22 – 3/5/23

POLICY BOARD:

12 ADS BETWEEN 3/5/22 – 3/12/23

UPWP DRAFT:

3 ADS BETWEEN 9/23/22 – 10/7/22

BOUNDARY DISCUSSION PUBLIC MEETING:

4 ADS BETWEEN 2/24/23 – 3/24/23

Facebook Posts

MSB PLANNING PAGE:

8 POSTS

2/8/22 – PRE-MPO PROJECT MANAGER JOB POSTING (8.3K REACH) – ALSO SHARED TO MAIN MSB PAGE

3/16/22 – PRE-MPO POLICY BOARD MEETING 117 REACH

4/19/22 – PRE-MPO POLICY BOARD MEETING 86 REACH

5/18/22 – PRE-MPO POLICY BOARD MEETING 224 REACH

9/22/22 – UPWP DRAFT FOR PUBLIC COMMENT 153 REACH

9/30/22 – UPWP DRAFT FOR PUBLIC COMMENT 94 REACH

2/24/23 – MAIN MSB PAGE URBAN AREA DESIGNATION 54 COMMENTS/68 SHARES

2/27/23 – MPO BOUNDARY DISCUSSION EVENT – 9.3K REACH

Websites

MPO STARTUP WEBSITE :

LIVE BETWEEN 2020 – 7/1/2022

MVP MPO WEBSITE :

LIVE FROM 6/1/2022 - PRESENT

MSB MPO PROJECT WEBSITE :

LIVE EARLY 2022- PRESENT

Strategy of Boundary Development

- Consider 2010 and 2020 Census Data
- Consider where people are moving (where are they building?)
- Where will the growth occur in the next 20 years?
- Consider any available models, forecasts and GIS mapping scenarios
- Consider road miles of each area
- Consider air quality conditions
- Consult subject matter experts (Platting, Planning, Zoning, Real Estate, Economist)