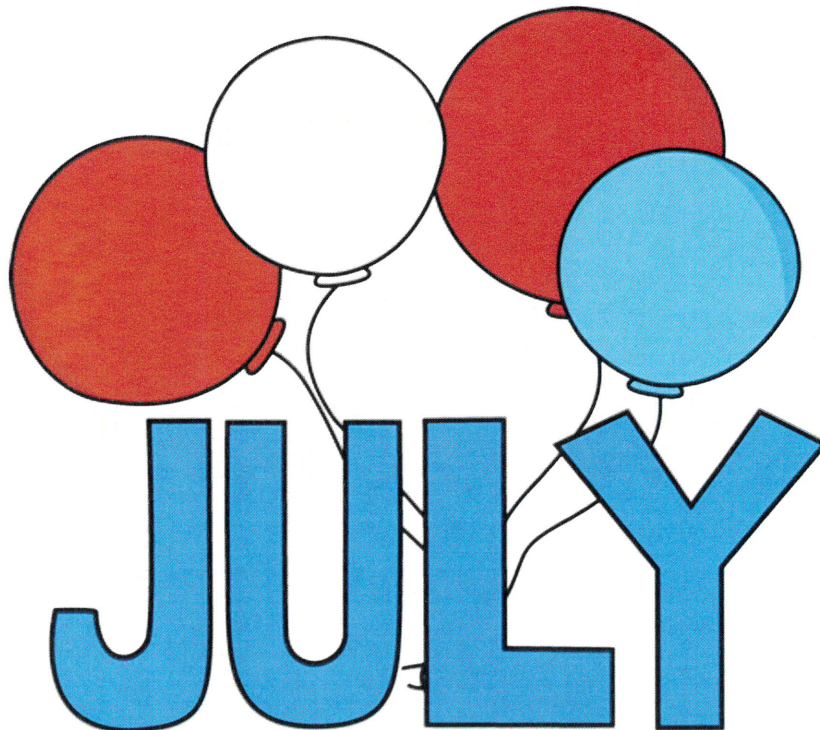


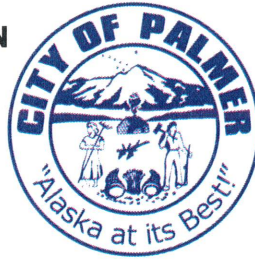


**City of Palmer**  
**Planning and Zoning Commission Packet**

*July 20, 2023*



**PLANNING & ZONING COMMISSION**  
**REGULAR MEETING**  
**6 PM, THURSDAY, JULY 20, 2023**  
**CITY COUNCIL CHAMBERS**  
**231 W. EVERGREEN AVENUE, PALMER**  
[www.palmerak.org](http://www.palmerak.org)



CHAIR CASEY PETERSON  
VICE CHAIR PENNY MOSHER  
COMMISSIONER LINDA COMBS  
COMMISSIONER LISBETH JACKSON  
COMMISSIONER JOHN MURPHY  
COMMISSIONER KRISTY THOM BERNIER  
VACANT

**AGENDA**

- A. Call to Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Approval of Agenda
- E. Minutes of Previous Meetings
  - 1. Regular Meeting of October 20, 2022
  - 2. Regular Meeting of January 19, 2023
  - 3. Regular Meeting of March 16, 2023
  - 4. Regular Meeting of April 20, 2023
- F. Reports
- G. Audience Participation
- H. Public Hearings
- I. Unfinished Business
  - 1. Committee of the Whole: Discuss IM 23-007, Review PMC Title 17 Zoning code language regarding Residential Care Facilities in residential districts (Note: Action may be taken by the Commission following the committee of the whole)
- J. New Business
- K. Plat Reviews
  - 1. IM 23-012: Pre-Application Routing Slip Review – To create two lots from Lot 4, Block 2, Bailey Heights subdivision, Plat No. 7-46, located outside Palmer city limits
  - 2. IM 23-013: Preliminary Plat Review – To create four lots from Tax Parcels A26, A28 & A29 in Section 9, Township 17 North, Range 2 East, Seward Meridian, located outside Palmer city limits
  - 3. IM 23-014: Pre-Application Routing Slip Review – To change the common lot line between Lots 4 and 5, Block 1, ARRC #1 subdivision, located inside Palmer city limits
- L. Public Comments
- M. Commissioner Comments
- N. Adjournment



## Minutes



# Meeting Minutes

The minutes for the October 20, 2022, January 19, March 16 & April 20, 2023 Planning and Zoning Commission meeting were not ready in time to be included with your packet.

When the minutes are received, a copy will be emailed to each Commissioner and will be available at the meeting.

**PLANNING & ZONING COMMISSION  
CITY OF PALMER, ALASKA**

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**REGULAR MEETING  
THURSDAY, JUNE 15, 2023  
6:00 P.M. - COUNCIL CHAMBERS**

**A. CALL TO ORDER:**

The regular meeting of the Planning and Zoning Commission was called to order by Chair Peterson at 6:00 p.m.

**B. ROLL CALL:**

Present and constituting a quorum were Commissioners:

Casey Peterson, Chair  
Penny Mosher, Vice Chair  
Lisbeth Jackson  
John Murphy  
(Vacant)

Absence(s) excused without objection:

Linda Combs  
Kristy Thom-Bernier

Also present were:

Brad Hanson, Community Development Director  
Kimberly McClure, Community Development Specialist  
Pam Whitehead, Recording Secretary (via Zoom teleconference)

**C. PLEDGE OF ALLEGIANCE:** The Pledge was performed.

**D. APPROVAL OF AGENDA:**

The agenda was approved as presented without objection by all members present.  
[Murphy, Jackson, Mosher, Peterson; *Absent:* Combs, Thom-Bernier]

**E. MINUTES OF PREVIOUS MEETING(S):**

1. Regular Meeting of October 20, 2022 - pending
2. Regular Meeting of January 19, 2023 – pending
3. Regular Meeting of March 16, 2023 – pending
4. Regular Meeting of April 20, 2023 - pending

**G. REPORTS:**

Staff Report: Director Hanson:

- Director Hanson reported regarding status of the library noting decisions will be made soon as to repairing, renovating, or replacing the library expected to be announced at the June 27 City Council meeting.

**G. AUDIENCE PARTICIPATION:** None.

**H. PUBLIC HEARINGS:**

1. **Resolution No. 23-004:** A Resolution of the Palmer Planning and Zoning Commission

Recommending City Council Approve a Zoning Map Amendment to expand the Public Use (P) Zoning of Tract 5, Cedar Hills Subdivision, Unit 2, Phase 1 for establishment of an Emergency Medical Facility building to include Fire and Telecommunication services, Located in Section 29, Township 18 North, Range 2 East, Seward Meridian.

Chair Peterson confirmed there were no *ex parte* contacts related to this public hearing.

Staff Report: Director Hanson provided a staff report including site location and information including its history, to expand the public use zoning to include fire and telecommunications on Tract 5, Cedar Hills, Unit 2, Phase 1. The applicant is the Matanuska-Susitna Borough. Notification and publication requirements pursuant to code have been met. On May 30, 2023, 205 public hearing notices were mailed to property owners within 1200' of the site. A total of 7 written comments were received in response, with 4 in favor, 3 opposed, and 0 no objection. He outlined the considerations and code requirements. See area map in packet on page 10.

Findings of Fact:

Pursuant to PMC 17.80.036 C, the report of the Commission shall give consideration as to what effect the proposed change would have on public health, safety, welfare and convenience, and for a map amendment, show whether:

Fact 1: The proposed change is in accordance with the borough and city comprehensive plans.

Staff finds the following support in the Comprehensive Plan:

- Chapter 5, Transportation, Goal 1, states, "Shape the character and use of the Glenn Highway."
- Chapter 6, Land Use, Goal 3, Objective A states: "Provide for the continuation and expansion of Palmer's traditional role as a center for institutional and governmental users for the Mat-Su Borough and State."
- Chapter 4, Public Services, Facilities & Infrastructure, Goal 1, Objective B states, "Fire & Emergency Services – Provide adequate fire protection measures and services in Palmer to respond to current and future anticipated emergency service needs."
- Chapter 7, Economic Vitality, Goal 1, states: "Strengthen Palmer's competitiveness as the region's institutional center."

Staff finds the following facts in support:

- a) Tract 5 is large enough to support the development of an EMS, Fire and telecommunications building and achieve sufficient setbacks from the residential development to the west and future medium density residential development to the north.
- b) Accomplish objective of monitoring the needs of existing institutional uses and working with the organizations to meet their needs.
- c) Mat-Su Borough provides emergency medical services for the City of Palmer, and the City of Palmer provides fire and rescue. Locating the facility on the Glenn Highway will provide for faster and more efficient response times for medical emergencies. Fire response times will be improved if Dan Contini Fire Station (Palmer Fire and Rescue station 3-1) continues to operate.

Fact 2) The proposed change is compatible with surrounding zoning districts and the established land use pattern.

Staff finds:

- a) Tract 5's original use was a nursery. Nurseries are a permitted use within the agriculture district, which can have a higher intensity of use than low density residential. The property has had limited

use since 1966. Tract 5's previous zoning of Commercial Limited (CL) indicated the property was to be developed to a higher intensity than low density residential. Tract 5 has been rezoned from CL-Commercial Limited to P-Public with the use limited to an emergency medical facility building (EMS) since June 2020. Expanding the use to include Fire and telecommunications is compatible with the current zoning designation and will continue to be compatible with surrounding zoning districts.

- b) The land is surrounded on the south by a working farm and to the east by commercial and a church. The expansion of the public use of an EMS building to include Fire and Telecommunications would be an acceptable use of property considering land use patterns around the property are as high of an intensity as a public use zone.
- c) Public use (P) zones are compatible with surrounding zoning districts because of the safeguards established in Palmer Municipal Code 17.40.050 requiring commission approval to ensure compatibility. The petitioner has provided a site plan, by Architects Alaska, showing orientation of the building, setbacks, snow storage, access and a parking plan for review and approval, if appropriate, by the Commission as required by PMC 17.40.050.
- d) Tract 5 contains a 30' wide greenbelt buffer along the west and north side of the property along with appropriately orienting the placement of the building to minimize the impacts to the low density residential to the west as shown on the submitted site plan.

Fact 3) Public facilities such as schools, utilities and streets are adequate to support the proposed change.

Staff finds:

- a) Public facilities such as schools and utilities are established in Cedar Hills. A facility will have access to city sewer and water. Gas and electric are accessible to the property.
- b) The current approved zoning of Public for this property limits the use to an emergency medical facility. The expansion of use to include Fire services is conditional on plan review from all city Departments and any required necessary upgrades to water or sewer services to be provided by the applicant as required by City of Palmer Public Works Director.
- c) Facility vehicular access points will need approval from the Alaska Department of transportation Public Facilities (AK DOT/PF). The City of Palmer recommends acceptance of access as described in the rezone application.
- d) On June 7, 2023, State of Alaska Department of Transportation and Public Facilities (SOA DOT&PF) requested agency comments for the Glenn Highway, Arctic Avenue to Palmer-Fishhook Road Safety and Capacity Improvements project upgrades. The project includes acquisition of the Glenn Highway of up to 300'. Currently, there is 70' from the centerline of the Glenn Highway to Tract according to Plat No. 2017-60. Additional site plan review will be warranted if SOA DOT&PF has any taking of Tract 5.

Fact 4) Changed conditions affecting the subject parcel or the surrounding neighborhood support the proposed change.

Staff finds:

- a) Improvements to the Glenn Highway have spurred development in the area around Marsh Road. A proposed development of an emergency medical facility with fire and telecommunication services that is well conceptualized and appropriately placed will serve the greater Palmer community.
- b) Residential growth on Fishhook Roads and Farm Loop roads has necessitated the evaluation of how emergency services can better serve the public and the placement of facilities.
- c) Recent improvements to the Glenn Highway have increased safety for ingress and egress onto the highway.

Fact 5) The proposed change is consistent with the public welfare and does not grant a special privilege to the owner(s).

Staff finds:

- a) The proposed map amendment is consistent with the public welfare as an appropriately placed facility will improve efficiency and response times for EMS and fire services.
- b) The map amendment request to expand the current public use for an emergency medical facility building to include Fire and telecommunications services does not grant a special privilege to the owners as this 5.72-acre parcel is large enough to sufficiently minimize impacts on non-compatible uses.

Staff Recommendation:

Based on the information provided by the applicant, public comments received before publication of this report and staff analysis, staff recommends approval of the request to expand the Public Use (P) of the property for an establishment of an Emergency Medical facility building to include Fire and telecommunication services to be located on Tract 5, Cedar Hills #2 Phase 1, is consistent with, and in conformance with the Palmer Comprehensive Plan. Pursuant to PMC 17.40.050, site plans have been provided showing side, front, and rear yard setbacks, landscaping, off-street parking, snow storage access for review and approval by the Planning and Zoning Commission.

If following the Public Hearing, the Commission finds that the applicant's proposal conforms to the Palmer Comprehensive Plan and Zoning Code provisions, then staff recommends that the Commission approve this request for zoning map amendment to expand the Public Use (P) of the property for an establishment of an Emergency Medical facility building to include Fire and telecommunications services for Tract 5, Cedar Hills #2 Phase 1 with the following considerations and forward a recommendation for approval to the City Council:

- A. The Public Use (P) of the property is limited to the establishment of an emergency medical facility, Fire and telecommunications building that is oriented in such a way that provides access to the Glenn Highway, as outlined in applicant's response.
- B. Development is limited to site plan provided that has been reviewed and approved by the Planning and Zoning Commission; any changes in setbacks, access, parking, building footprint or landscaping requires reevaluation by the City of Palmer Planning and Zoning Commission pursuant to PMC 17.40.050.
- C. The expansion of use to include Fire services is conditional on plan review from all city Departments and any required necessary upgrades to water or sewer services to be provided by the applicant.
- D. On June 7, 2023, State of Alaska Department of Transportation and Public Facilities (SOA DOT&PF) requested agency comments for the Glenn Highway, Arctic Avenue to Palmer-Fishhook Road Safety and Capacity Improvements project upgrades. The project includes acquisition of the Glenn Highway of up to 300'. Currently, there is 70' from the centerline of the Glenn Highway to Tract according to Plat No. 2017-60. Additional site plan review will be warranted if SOA DOT&PF has any taking of Tract 5.

Public Hearing: Chair Peterson opened the public hearing at 6:15 p.m.

Applicant's Presentation: Matanuska-Susitna Borough  
**Lisa Gray**, Land Management Agent,  
**Ken Barkley**, Emergency Services Director, and



**Don Gibbs, Project Manager**

- Testified or were present to answer any questions concerning the proposed project to establish an all-inclusive Emergency Medical Facility building located on the corner of Marsh and the Glenn Highway to include EMS, fire, and telecommunications;
- New facility will serve Palmer, Greater Palmer, Butte, Knik River Road, Sutton, and surrounding areas;
- Responded to Commissioner questions concerning the increased amount of traffic on the Glenn, whether there would be a traffic light, and DOT's plans to widen the highway.

There being no others coming forward, Chair Peterson closed public testimony on this topic at 6:28 p.m. and called for the motion.

There was discussion regarding DOT planned improvements for the Glenn and expression of understanding for those who have submitted comments in opposition, but most felt it was important for the community as a whole.

**Main Motion: For approval of Resolution No. 23-004, A Resolution of the Palmer Planning and Zoning Commission Recommending Approval of a Zoning Map Amendment to expand the Public Use (P) Zoning of Tract 5, Cedar Hills Subdivision, Unit 2, Phase 1 for establishment of an Emergency Medical Facility building to include Fire and Telecommunication services, located in Section 29, Township 18 North, Range 2 East, Seward Meridian, including Staff Findings of Fact 1-5, Staff Recommendation as presented, and move forward to City Council with a recommendation for approval.**

Moved by:	Jackson
Seconded by:	Mosher
Vote:	Unanimous [Murphy, Jackson, Mosher, Peterson [Absent: Combs, Thom-Bernier]
Action:	Motion Carried.

2. **Resolution No. 23-005:** A Resolution of the Palmer Planning and Zoning Commission Granting Conditional Use Permit to Construct an Electrical Substation in an R-1, Single-family Residential District at 1424 South Margaret Drive, Palmer, Located on Lot 2, Lucas Acres Subdivision.

Chair Peterson confirmed there were no *ex parte* contacts related to this public hearing.

Staff Report: Director Hanson provided a staff report including site location and information for a conditional use permit to construct an electrical substation in Lucas Acres Subdivision. The applicant/owner is R&M Consultants, Inc. on behalf of Matanuska Electric Association, Inc.

Notification and publication requirements pursuant to code have been met. On May 30, 2023, 158 public hearing notices were mailed to property owners within 1200' of the site. A total of 2 written comments were received in response, with 1 in favor, 0 opposed, and 1 no objection. He outlined the considerations and code requirements. See area map on page 54 of the packet.

Findings of Fact:

Pursuant to PMC 17.72.050, in the granting of a conditional use permit, the Commission must make the following findings:

Fact 1: The conditional use will preserve the value, spirit, character and integrity of the surrounding area.

Staff finds the following support in the Comprehensive Plan:

- Chapter 6, Goal 1 speaks of guiding growth to make Palmer an increasingly attractive place to live, invest, work and visit; and
- Chapter 6, Land Use, of the Comprehensive Plan Goal 2 of the Comprehensive Plan encourages maintaining high quality residential neighborhoods; promote development of a range of desirable new places to live in Palmer; and
- Chapter 6, Goal 2 under Objective A recommends promoting a diverse range of quality housing, from attractive higher density housing in or near downtown to outlying housing in more rural settings.

Staff finds the following facts support a finding that this conditional use will preserve the value, spirit, character and integrity of the surrounding area:

- a) The property is surrounded by the remaining 19 acres of a gravel operation to the north and west, and 47 acres of undeveloped commercial land to the south. Within the nearby vicinity are the residential neighborhoods of Brittany Estates Phase 1, Greatland Terrace and Hidden Ranch. The proposed electrical substation will provide a more reliable service and increase capacity for the surrounding areas and for future growth to promote continued development of new places to live, work, and invest in Palmer.
- b) The proposed electrical substation will be screened with appropriate landscaping to provide stabilization and minimize any visual impact thereby preserving the value, spirit, character and integrity of the surrounding area.
- c) The use/development of Lot 2 is limited due to the lot being platted as a utility lot with no water or septic on the lot, and the southern 60 feet of the lot being encumbered by an electric right of way easement. Permitting the lot to be used for the construction of an electrical substation through the conditional use permit process will allow the Commission to incorporate any safeguards that are necessary to preserve the value, spirit, character and integrity of the surrounding area.

Fact 2) The conditional use fulfills all other requirements of this title pertaining to the conditional use in question.

Staff finds the following facts support a finding that this conditional use fulfills all other requirements of this title pertaining to the conditional use in question:

- a) The proposed electrical substation fulfills all other requirements of this title pertaining to the conditional use in question as there is ample space on the property to meet setback requirements.
- b) In accordance with PMC 17.72.030, a detailed site plan was provided showing the proposed location of all buildings and structures on the site, access points, drainage, vehicular and pedestrian circulation patterns, parking areas and the specific location of the use. Landscaping requirements will be met with the screening vegetation being provided around the substation.
- c) Per PMC 17.20.050, the maximum building height in the R-1 district is 25 feet, excluding chimneys, steeples, antenna, and similar appurtenances which have no floor area. Appurtenances may not exceed 35 feet in height. This project does not include any enclosure that would exceed 25 feet in height. There are steel pole and multi-pole structures with a designed height of 51 feet above grade within the substation fence and transmission structures with a design height of 84 feet above grade located outside the substation fenced area. The pole and multi-pole structures are required as part of the utility substation, necessary to transmit/distribute electricity.

Fact 3) Granting the conditional use permit will not be harmful to the public health, safety, convenience and comfort of the neighborhood.

Staff finds the following facts support a finding that this conditional use permit will not be harmful to the public health, safety, convenience and comfort of the neighborhood:

- a) The lighting plan and fencing around the proposed substation are safeguards to ensure the public health and safety of the neighborhood.
- b) The proposed electrical substation will not be harmful to the public health, safety, convenience, and comfort of the neighborhood because it will not increase the demand on public services such as sewer, water, traffic and public schools.
- c) The proposed electrical substation will be operated in compliance with the standards and conditions outlined in this conditional use permit and any applicable codes, laws and regulations.
- d) As commented by City of Palmer Fire Chief, the roadway to the location will need to meet the requirements to be a "Fire Apparatus Access Road" as described in the International Fire Code, Appendix D.

Fact 4) Sufficient setbacks, lot area, buffers, or other safeguards are being provided to meet the conditions.

Staff finds the following facts support a finding that sufficient setbacks, lot area, buffers, or other safeguards are being provided to meet the conditions:

- a) The proposed electrical substation will exceed the required minimum setbacks of 25' front and rear yard and 10' side yard for the R-1, Single-family Residential District.
- b) Lot 2 exceeds the required minimum lot width of 60 feet and the required minimum lot area of 8,400 square feet for the R-1, Single-family Residential District.
- c) The landscaping and fencing will provide a visual and physical buffer to the proposed substation. Additional safeguards being provided will include administrative controls to prevent unauthorized entry; grid design to mitigate electrical touch potential hazards to the public and workers; and improved equipment safety, clearances and controls.
- d) The view of the utility substation will be obscured by the natural topography of the property and adjacent properties.

Fact 5) If the permit is for a public use or structure, is the proposed use or structure located in a manner which will maximize public benefits.

Staff finds:

- a) The requested conditional use permit is not for a public use or structure as the proposed property is under the private ownership of Matanuska Electric Association.

Staff Recommendation:

A utility substation is a Conditional Use allowed in an R-1, Single-family Residential District. Based on our review of the request, Community Development recommends approval of the Conditional Use Permit to allow for the construction of an electrical substation in an R-1, Single-family Residential District, with the following conditions:

- 1) All development must comply with all federal, state and local regulations.
- 2) Obtain all necessary building permits from the City of Palmer.
- 3) Remain in compliance with the quiet hours established in Palmer Municipal Code Chapter 8.36.025.
- 4) The roadway to the location will need to meet the requirements to be a "Fire Apparatus access Road" as described in the International Fire Code, Appendix D.

It is recommended that the Planning Commission adopt the Staff’s analysis and findings and grant the requested Conditional Use Permit. The permit would allow the construction of an electrical substation in an R-1, Single-family Residential District.

Public Hearing: Chair Peterson opened the public hearing at 6:47 p.m.

Applicant’s Presentation: Matanuska Electric Association

**Tim McCullough**, Project Lead for MEA, and

**Van Le**, representing MEA for the CUP for Lucas Avenue Substation relocation and upgrade

- Testified in support and responded to Commissioner questions concerning the project.
- Noted the upgrade will replace the aging infrastructure and improve overall grounding, safety, and system reliability.
- Testified that she and the MEA team agree with staff recommendations.

There being no others coming forward to testify, Chair Peterson closed public testimony at 7:03 p.m.

**Main Motion: For approval of Resolution No. 23-005, granting a Conditional Use Permit to Construct an Electrical Substation in an R-1, Single-family Residential District at 1424 South Margaret Drive, Palmer, located on Lot 2, Lucas Acres Subdivision, including both Staff Findings of Fact 1-5 and Staff Recommendation as presented.**

Moved by:	Jackson
Seconded by:	Mosher
Vote:	Unanimous [Murphy, Jackson, Mosher, Peterson [Absent: Combs, Thom-Bernier]
Action:	Motion Carried.

Director Hanson recited the appeal process for the Commission’s action pursuant to PMC 17.98 within 20 calendar days of the decision.

I. **UNFINISHED BUSINESS:** None.

J. **NEW BUSINESS:**

1. **Committee of the Whole:** Discuss **IM 23-007**, Review PMC Title 17 Zoning code language regarding Residential Care Facilities in residential districts (Note: Action may be taken by the Commission following the committee of the whole)

**Main Motion: To enter Committee of the Whole for open and ease of discussion regarding IM 23-007.**

Moved by:	Mosher
Seconded by:	Murphy
Vote:	Unanimous [Murphy, Jackson, Mosher, Peterson [Absent: Combs, Thom-Bernier]
Action:	Motion Carried.

[The Commission entered Committee of the Whole at 7:10 p.m.; exited at 7:52 p.m.]

Director Hanson summarized the need to upgrade the language in Title 17 regarding residential care facilities in residential districts and recommended a review of the code and provide comments and feedback should further action be requested. (See PMC Title 17.08 Definitions, packet pp. 77-105) The Commission

was asked to review and provide feedback.

Somewhat lengthy committee of the whole open discussion took place regarding the differences between residential care facilities, assisted living, childcare facilities, etc. and compliance with federal regulations. The Commission was requested to review and be prepared for input at the next meeting.

[Chair Peterson declared exit of Committee of the Whole at 7:52 p.m.]

**K. PLAT REVIEWS:**

1. **IM 23-009:** Abbreviated Plat Review – To create two lots from Parcel 1, Waiver 99-36-PWm (Tax Parcel A39) in Section 32, Township 18 North, Range 2 East, Seward Meridian, to be known as Breezy Meadows, located outside Palmer city limits.

Director Hanson directed attention to packet p. 116, map showing close proximity to city limits and packet p. 111 for City Department comments by Community Development and Fire Chief. Other City Departments had no comments.

The Commission had no additional comments.

**L. PUBLIC COMMENTS:** None.

**M. COMMISSIONER COMMENTS:**

**Commissioner Jackson:**

- Inquired about the BED status of the Railroad Right-of-Way and expressed encouragement for it to move forward;
- Also inquired about MEA current substation and neighboring storage, if they have plans to relocate it away from the city center.

**Commissioner Peterson:**

- Commented in appreciation for staff's work on tonight's Resolutions;
- Inquired if there will be a joint City Council/P&Z meeting this year.

**N. ADJOURNMENT:**

There being no further business, the meeting adjourned without objection at 8:00 p.m.

**APPROVED by the Planning and Zoning Commission this \_\_\_\_ day of July, 2023.**

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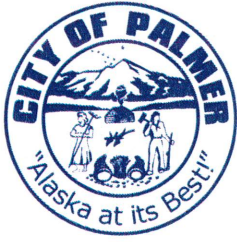
Casey Peterson, Chair

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Brad Hanson, Community Development Director



**Unfinished Business**



**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  
May 18, 2023 (cancelled)  
June 15, 2023  
July 20, 2023

**ACTION:** Review and comment

**\*Attachment(s):** 1) PMC 17.08 Definitions related to group living/family  
2) PMC 17 Assisted Care Uses & Zoning Table  
3) Example definitions of Family  
4) Joint Statement HUD and DOJ regarding Fair Housing Act

**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.

**Update:** A copy of the Joint Statement of the Department of Housing and Urban Development and the Department of Justice regarding State and Local Land Use Laws and Practices and the Application of the Fair Housing Act dated November 10, 2016, is attached. Please review the information along with our current pertinent definitions and be prepared to discuss the following points:

1. Which classes are protected under the Fair Housing Act and which ones are not protected by the Fair Housing Act;
2. Review our current definition of family and discuss if the definition should be modified based on the Fair Housing Act;
3. Define terms within our code for group living ("family") types and which types are permitted and non-permitted uses in R-1, R-1E and RR districts in compliance with FHA

## 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.

### **17.08.172 Family child care.**

See "Home child care."

### **17.08.218 Home child care.**

"Home child care" means providing care and supervision for compensation for not more than six children total. Home child care is a home occupation.

### **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.

### **17.08.223 Hospice facility.**

"Hospice facility" means a facility where terminally ill individuals and their families receive support services from a team of health care providers and others to meet their physical, psychological, social, emotional, and spiritual needs.

### **17.08.225 Hospital.**

"Hospital" means an institution providing health services and medical or surgical care to persons, primarily inpatients, suffering from physical and mental illnesses, disease, injury, deformity and other abnormal physical conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, or training facilities.



## PMC Title 17.08 Definitions

### **17.08.295 Mental health facility.**

"Mental health facility" means a facility or institution for diagnosing, treating, caring for or counseling people requiring mental health services in confinement.

### **17.08.320 Nursing home.**

"Nursing home" means a facility managed, supervised, or in the general care of a nursing home administrator currently and duly licensed as such by the state of Alaska, which facility is operated in connection with a hospital or in which nursing care, intermediate care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery with the state for the accommodation of convalescents or other persons who are not acutely ill but who do require skilled or intermediate nursing care and related medical services; the term "nursing home" is restricted to those facilities the purpose of which is to provide skilled or intermediate nursing care and related medical services for a period of not less than 24 hours a day to individuals admitted because of illness, disease or physical or mental infirmity.

### **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.

## PMC Title 17.08 Definitions

### **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.

## PMC 17 Assisted Care Uses & Zoning Districts Table

	R-1	R-2	R-3	R-4	R-1E	RR
<p><u>Assisted Living Home</u>  <i>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</i></p>						P
<p><u>Child Care Facility</u>  <i>a facility wherein care, supervision, education and/or special needs care is provided for more than six children</i></p>	CUP	P	P	P	CUP	P
<p><u>Day Care</u>  <i>providing care and supervision services for compensation between 6:00 a.m. and 10:00 p.m.</i></p>	CUP	P	P	P	CUP	P
<p><u>Home Child Care</u>  <i>providing care and supervision for compensation for not more than six children total. Home child care is a <b>home occupation</b>.</i></p>	P	P	P	P	P	P
<p><u>Home Special Needs Care</u>  <i>providing special needs care for not more than five people for compensation in a dwelling. Home special needs care is a <b>home occupation</b></i></p>	P	P	P	P	P	P
<p><u>Hospice facility</u>  <i>means a facility where terminally ill individuals and their families receive support services from a team of health care providers and others to meet their physical, psychological, social, emotional, and spiritual needs.</i></p>						P
<p><u>Hospital</u>  <i>means an institution providing health services and medical or surgical care to persons, primarily inpatients, suffering from physical and mental illnesses, disease, injury, deformity and other abnormal physical conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, or training facilities.</i></p>						

## PMC 17 Assisted Care Uses & Zoning Districts Table

	R-1	R-2	R-3	R-4	R-1E	RR
<p><b><u>Mental health facility</u></b>  <i>means a facility or institution for diagnosing, treating, caring for or counseling people requiring mental health services in confinement</i></p>						
<p><b><u>Nursing home</u></b>  <i>means a facility managed, supervised, or in the general care of a nursing home administrator currently and duly licensed as such by the state of Alaska, which facility is operated in connection with a hospital or in which nursing care, intermediate care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery with the state for the accommodation of convalescents or other persons who are not acutely ill but who do require skilled or intermediate nursing care and related medical services; the term "nursing home" is restricted to those facilities the purpose of which is to provide skilled or intermediate nursing care and related medical services for a period of not less than 24 hours a day to individuals admitted because of illness, disease or physical or mental infirmity</i></p>						
<p><b><u>Residential Care Facility</u></b>  <i>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</i></p>		CUP (4 or less)	CUP (8 or less)	CUP (8 or less)		
<p><b><u>Roominghouse</u></b>  <i>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</i></p>		P (4 or less)	P (8 or less)	P		

## PMC 17 Assisted Care Uses & Zoning Districts Table

	R-1	R-2	R-3	R-4	R-1E	RR
<p><b><u>Senior Citizen Housing</u></b>  <i>means housing in which each dwelling unit is occupied by individuals representing one or more of the following classifications:</i>  <i>A. One or more senior citizens;</i>  <i>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;</i>  <i>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;</i>  <i>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.</i>  <i>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.</i></p>						P
<p><b><u>Special Needs Day Care Facility</u></b>  <i>means a facility wherein special needs day care is provided for more than five people</i></p>	CUP	CUP	CUP	CUP	CUP	CUP
<p><b><u>Special Needs Housing</u></b>  <i>means a residential facility where tenants are physically or mentally disabled or are senior citizens</i></p>						

# PMC 17 Assisted Care Uses & Zoning Districts Table

## **State of Alaska's definition of assisted living home:**

(2) "assisted living home"

(A) means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for services regardless of the number of adults served; the department shall consider a facility to be an assisted living home if the facility

(i) provides housing and food services to its residents;

(ii) offers to provide or obtain for its residents assistance with activities of daily living;

(iii) offers personal assistance as defined in [AS 47.33.990](#); or

(iv) provides or offers any combination of these services;

(B) does not include

(i) a correctional facility;

(ii) an emergency shelter;

(iii) a program licensed under [AS 47.10.310](#) for runaway minors;

(iv) a type of entity listed in [AS 47.32.010\(b\)\(6\)](#) — (10) or (c)(2);

Excerpt from "Fair Housing  
Issues in Land Use & Zoning"  
developed by Mental Health  
Advocacy Services, Inc.

**Recommended Revisions:**

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**Example #1:** One or more persons living together as a single housekeeping unit in a dwelling unit.

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This definition complies with federal and state fair housing laws and court decisions interpreting fair housing land use and zoning restrictions as well as the Adamson case discussed above. A city or county that uses this definition must also include a definition of "single housekeeping unit" and "dwelling unit" in its ordinance.

**Single housekeeping unit:** One person or two or more individuals living together sharing household responsibilities and activities which may include, sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social, economic and psychological commitments to each other.

**Dwelling unit:** Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.<sup>14</sup>

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**Example #2:** Any group of individuals living together as the functional equivalent of a family where the residents may share living expenses, chores, eat meals together and are a close group with social, economic and psychological commitments to each other. A family includes, for example, the residents of residential care facilities and group homes for people with disabilities. A family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries or nunneries.

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This definition is in itself a description of a single housekeeping unit and it is unlikely that any other terms within would need further explanation.

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**Example #3:** One or more persons, related or unrelated, living together as a single integrated household in a dwelling unit.

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A jurisdiction that uses this definition must also define "integrated household" and "dwelling unit."

**Integrated household:** A household that functions as a united group.

**Dwelling unit:** See definition provided under example #1.

The California Land Use and Zoning Campaign reported that many cities retain illegal, restrictive, definitions of "family" in their zoning code but that they are not enforced.<sup>15</sup> Local governments should repeal illegal definitions of family to notify the public that the definition is no longer enforced. Retaining an illegal definition in a zoning ordinance is both misleading and confusing to the public. Additionally, a restrictive definition in a municipal zoning ordinance has a chilling effect on developers of housing for people with disabilities who based on that definition determine that it will not be possible to obtain approval for a development.



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE**  
**CIVIL RIGHTS DIVISION**

*Washington, D.C.*  
*November 10, 2016*

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**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION  
OF THE FAIR HOUSING ACT**

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**INTRODUCTION**

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),<sup>1</sup> which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.<sup>2</sup> The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act



Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),<sup>3</sup> Section 504 of the Rehabilitation Act of 1973 (“Section 504”),<sup>4</sup> and Title VI of the Civil Rights Act of 1964.<sup>5</sup> In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

## **Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning**

### **1. How does the Fair Housing Act apply to state and local land use and zoning?**

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

<sup>3</sup> 42 U.S.C. §12132.

<sup>4</sup> 29 U.S.C. § 794.

<sup>5</sup> 42 U.S.C. § 2000d.

## **2. What types of land use and zoning laws or practices violate the Fair Housing Act?**

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

## **3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?**

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.<sup>6</sup>

#### **4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?**

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*<sup>7</sup> The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”<sup>8</sup>

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<sup>6</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

<sup>7</sup> \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507 (2015).

<sup>8</sup> *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

**5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?**

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

**6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?**

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and  
Local Land Use and Zoning Regulation of Group Homes**

**7. Who qualifies as a person with a disability under the Fair Housing Act?**

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

#### **8. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

**9. In what ways does the Fair Housing Act apply to group homes?**

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

**10. What is a reasonable accommodation under the Fair Housing Act?**

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

**11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?**

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.



**12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?**

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

**13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?**

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.<sup>9</sup>

#### **14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?**

In *Olmstead v. L.C.*,<sup>10</sup> the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

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<sup>9</sup> Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

<sup>10</sup> 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

**15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?**

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

**16. Can a state or local government impose health and safety regulations on group home operators?**

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

**17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?**

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

**18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?**

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

**19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?**

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

**Questions and Answers on the Fair Housing Act and  
Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

**20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?**

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

**21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?**

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

## **22. What is the procedure for requesting a reasonable accommodation?**

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

**23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?**

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.



**24. What if a local government fails to act promptly on a reasonable accommodation request?**

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

**25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?**

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of  
Complaints Involving Land Use and Zoning**

**26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?**

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

### **27. How can I find more information?**

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or [http://www.hud.gov/offices/fheo/disabilities/reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

For more information on state and local governments' obligations under Section 504:

- HUD website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, [www.ADA.gov](http://www.ADA.gov), or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.



## Plat Reviews



**CITY OF PALMER  
PLANNING & ZONING COMMISSION  
INFORMATION MEMORANDUM 23-012**

**SUBJECT:** Pre-application Routing Slip Request for Comments: Bailey Heights, Lot 4, Block 2

**AGENDA OF:** July 20, 2023

**ACTION:** Review and comment

**Attachment(s):** 1) Staff Comments  
2) Pre-application package from MSB Platting Division

**Summary:** The request is to create two lots from Lot 4, Block 2, Bailey Heights, Plat No. 7-46, located outside Palmer city limits.

**Recommendation:** The staff comments regarding the pre-application routing slip packet are attached.



## DEPARTMENT OF COMMUNITY DEVELOPMENT

Brad Hanson  
Director

Beth Skow  
Library Director

Bret Chisholm  
Acting Parks & Facilities Manager

Vacant  
Building Inspector

Mail: 231 W. Evergreen Ave.  
Location: 645 E. Cope Industrial Way  
Palmer, AK 99645-6748  
Phone: 907-745-3709  
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# MEMORANDUM

TO: Fred Wagner, Chief of Platting  
FROM: Kimberly McClure, Community Development  
DATE: July 6, 2023  
LOCATION: Lot 4, Block 2, Bailey Heights  
SUBJECT: Pre-application Routing Slip – Creating two lots  
TAX ACCT#: 53003B02L004  
Site Address: 3201 N. Hilltop Dr.  
 Inside City Limits  Outside City Limits

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We have distributed the pre-application packet for the subject project and have received the following comments from the following departments:

1. City Manager: No changes necessary.
2. Building Inspector: N/A
3. Community Development: If the proposed lots were located inside Palmer city limits and zoned R-1, Single-family Residential, the minimum required lot width would be 60 feet and the minimum required lot area would be 8,400 square feet. The proposed lots will have access from N. Hilltop Drive and N. 3<sup>rd</sup> Street.
4. Fire Chief: No comments.
5. Public Works: As part of this platting action, the City of Palmer is seeking a 20-foot-wide Right of Way dedication from the owner along their entire border on Hilltop Drive. This will allow the City to properly plow Hilltop Drive and provide Right of Way continuity along the entire Hilltop Drive.
6. Planning and Zoning Commission: The proposed platting action is scheduled to be reviewed at the July 20, 2023, Planning & Zoning Commission meeting; any additional comments will be forwarded at that time.