



CITY COUNCIL COMMUNICATION

October 28, 2008

SUBJECT: HOLD PUBLIC HEARING REGARDING A UNIFIED DEVELOPMENT CODE AND CONSIDER FIRST AND FINAL READING OF ORDINANCE NO. 1833

SUBMITTED BY: Mike Collins, Director of Planning and Development

REFERENCE NO: Ordinance No. 1833, 08-02-UDC

Receive public input and motion to approve Ordinance No. 1833 for a change to the Euless Code of Ordinances Chapter 84 "Unified Development Code" amending Section 84-84, "Permitted Uses Table", and amending Section 84-85, "Special Conditions by Use Type," by adding subsection, (aj) "Transient Dwellings" concurring with the Planning and Zoning Commission's 5-0 recommendation on October 7, 2008.

ALTERNATIVES:

1. Open the Public Hearing and continue it to the next meeting.
2. Open, conduct, and close the Public Hearing
3. Approve the request – *simple majority*
4. Approve the request with modifications – *simple majority*
5. Deny the request – *simple majority*

SUMMARY OF SUBJECT:

Staff is recommending approval of an ordinance relating to the regulation of individuals with disabilities residing in parolee-probationers homes and residential care facilities, defining transient dwelling, and providing for a reasonable accommodation request process for individuals with a disability. The proposed amendments to the Unified Development Code would specifically identify individual land use categories that generally relate to accommodations for individuals with disabilities within the permitted use table and, as importantly, would establish the standards by which this city would provide "reasonable accommodations". A new set of definitions would be adopted to provide clarification and a better understanding of these individual land use categories and related topics. It is through a clear understanding of how to classify these individual land uses, and which federal and state laws are applicable, that the city can establish the authority it needs to help preserve the residential character of single-family residential zoned property in our community. With

the proper legal foundation established, our attorneys believe that through the establishment of a new land use category referred to as “Transient Dwellings,” the city can establish its desired authority.

The following is a summary of the proposed amendments to the Unified Development Code:

The Permitted Uses Table, Table 4-A found in Section 84-84, would be amended by the addition of specific primary use category (SIC 7021) Group Residential to the Residential Accommodations section and by the addition of the following new primary use categories to the Institutional and Educational Facilities: (SIC 8361) Integral Facilities, (SIC 8361) Residential Care Facility, and (SIC 8399) Parolee-Probation Home.

Per our previous discussion with the Planning and Zoning Commission, the parking requirement for Rooming and Boarding Houses and Group Residential would be established as one (1) space per unit plus .5 per bedroom. The standard of one (1) space per unit plus .5 per bedroom and one (1) guest space per every five (5) units would be applied to the primary use categories Integral Facilities, Residential Care Facility, and Parolee-Probation Home.

“Transient Dwellings” would be added as “aj” to the column, Special Condition Section 84-85,” for the following items: Single-family dwellings (detached), Single-family dwellings (attached), Single-family dwellings (townhouse), Group Residential, Integral Facilities, Residential Care Facility, and Parolee-Probation Home.

Section 84-84, “Permitted Uses Table,” Table 4-A, would be amended in the following manner to establish which uses are either permitted by right “P”, or permitted after obtaining a Specific Use Permit “S”, for the following items:

- (7021) Group Residential requires an “S” in the following zoning districts: R-3, R-4, and R-5;
- (8361) Integral Facilities requires an “S” in the following zoning districts: R-3, R-4, and R-5;
- (8361) Residential Care Facility requires an “S” in the following zoning districts: R-3, R-4, and R-5.
- (8399) Parolee-Probation Home requires an “S” in the following zoning districts: C-2, TX-10, LI, I-1, and I-2.

Section 84-85, “Special Conditions by Use Type,” would be amended by adding a new subsection, “(aj)”, to hereafter be and read as follows:

- (aj) Transient Dwellings. Specifically, notwithstanding any other provision of this ordinance, transient dwellings, when such are permitted by federal law and the laws of the State of Texas, shall be regulated and governed by the following use regulations and requirements:

The subsection provides the following definitions:

Bedroom: An enclosed space in a structure that is designed such that it could be used for sleeping purposes and meets the room dimension requirements of the most recent edition of the Uniform Building Code, is not accessed directly from the garage, and has one or more windows.

Block: a tract of land bounded by streets, public parks, railroad rights-of-way, shorelines of waterways or corporate limits.

Boarding or Rooming House: An establishment, other than eleemosynary or other nonprofit institution, primarily engaged in renting rooms, with or without board, on a fee basis, to four or more persons not related by blood, marriage, or adoption.”

Disability, alcohol or drug dependence: A person is considered disabled due to alcohol or drug dependence if they meet the definition of disability, generally and the person is unable to maintain abstinence and recovery in an available independent living situation. A person with an alcohol or drug dependence disability is eligible to reside in a parolee-probationer home or residential care facility if:

- a. The person has been diagnosed as suffering from alcohol or drug dependence;
- b. The person has completed a course of alcoholism or drug dependency treatment in an inpatient or outpatient setting;
- c. The person has been determined to be unable to abstain from alcohol or drugs without continued care in a structured setting; and
- d. Is in need of alcoholism or drug dependency services on an outpatient basis in addition to the structured group residential setting of a parolee-probationer home or residential care facility.

Disability, generally: As more specifically defined under the fair housing laws, a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment, not including current, illegal use of a controlled substance.

Fair Housing Laws: The Federal Fair Housing Act, the Americans with Disabilities Act, and the Texas Fair Housing Act, as each Act may be amended from time to time, and each Act’s implementing regulations.

Group Residential: Shared living quarters, occupied by two or more persons not living together as a single housekeeping unit. This classification includes, without limitation, boarding or rooming houses, dormitories, fraternities, sororities, and private residential clubs, but excludes residential care facilities (general, small licensed, and small unlicensed) and residential hotels.

Individual with a Disability: An individual who meets the definition of disability under the fair housing laws.

Integral Facilities: Any combination of two or more residential care facilities that may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one operation shall be referred to as integral facilities and shall be considered one facility for purposes of applying federal, state and local laws to its operation. Examples of such integral facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

Integral Uses: Any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activities so commonly administered. Any such integral use shall be considered one use for purposes of applying federal, state and local laws to its operation.

Parolee-Probationer: A parolee–probationer includes: (i) any individual who has been convicted of prohibited criminal conduct, and received conditional and revocable release in the community under the supervision of a federal parole officer; (ii) any individual who has been convicted of prohibited criminal conduct, and who is serving a period of parole or community supervision, as defined in Chapter 42 of the Texas Code of Criminal Procedure; (iii) an adult or juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision where said conduct would be considered prohibited criminal conduct, had the adult or juvenile been tried as an adult, and who is serving a period of parole or other applicable community supervision; and (iv) any individual who has been convicted of prohibited criminal conduct and is under the jurisdiction of any federal, state, or county parole or probation officer.

Parolee-Probationer Home: Any residential structure or unit, whether owned and/or operated by an individual or a for-profit, nonprofit, governmental or non-governmental organization, regardless of whether it is regulated by Chapter 464 of the Texas Health and Safety Code, which houses two or more parolees and/or probationers unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee–probationer and/or any public or private entity or person on behalf of a parolee–probationer.

Prohibited Criminal Conduct: Prohibited criminal conduct includes those crimes defined as “violent crimes” or “property crimes” by the Federal Bureau of Investigation’s Uniform Crime Report, 2006, and those crimes defined as “drug-

defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug & Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code, or for which punishment would be classified as Class A misdemeanor as set forth in Section 12.03 of the Texas Penal Code.

Residential Care Facility: Any place, site or building, or group of places, sites or buildings, regardless of whether it is regulated by Chapter 464 of the Texas Health and Safety Code, in which five or more individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding facility staff) is an individual with a disability. A parolee-probationer may not reside in a residential care facility.

Single Housekeeping Unit: The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.

Transient Dwelling: means a single-family attached, single-family cluster, single-family detached, single-family manufactured, single-family townhouse or zero lot line dwelling, as those terms are defined herein, which is used as a transient dwelling. A dwelling shall be considered a transient dwelling:

- a. The dwelling is not a single housekeeping unit, and is operated or used in such a way that it has a turnover in occupancy of more than six times in any continuous twelve (12) month period, it shall create a rebuttable presumption that such dwelling is a transient dwelling.

The remainder of the ordinance outlines a process for making a reasonable accommodation request. In accordance with federal and state fair housing laws, it is the purpose of this subsection to provide reasonable accommodations in the City’s zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

The City Manager would approve, conditionally approve, or deny all applications for a reasonable accommodation. The City Council, acting as the appellate body, may sustain, reverse or modify the decision of the City Manager or remand the matter for further consideration, which remand shall include specific issues to be considered by the City Manager.

A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.

An application would include the following information:

Documentation that the applicant is: (i) an individual with a disability; (ii) applying on behalf of one or more individuals with a disability; or (iii) a developer or provider of housing for one or more individuals with a disability.

1. The specific exception or modification to the zoning, subdivision or other land use provision, policy or practice requested by the applicant.
2. Documentation that the specific exception or modification requested by the applicant is reasonable and necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.
3. Any other information that the Planning Director reasonably concludes is necessary to determine whether the finding required by Section 84-30(a)(1) can be made, so long as any request for information regarding the disability of the individuals benefited complies with applicable federal law and the privacy rights of the individuals affected.

In making these findings, the decision-maker may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood.
2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
3. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's Master/Comprehensive Plan.
4. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

The Planning and Zoning Commission recommends approval.

FINANCIAL CONSIDERATIONS:

Revenue Sources:

Expenditure Accounts:

Budgeted Fiscal Year(s):

Estimated Expenditure:

Over/Under Projection By:

Other Comments:

SUPPORTING DOCUMENTS:

- Ordinance No. 1833
- Draft Minutes – P&Z

APPROVED BY:

_____ **LG** _____

City Manager's Office

_____ **SC** _____

City Secretary's Office