

ORDINANCE NO. 1833

AN ORDINANCE OF THE CITY OF EULESS AMENDING CHAPTER 84 “UNIFIED DEVELOPMENT CODE” OF THE CODE OF ORDINANCES OF THE CITY OF EULESS, TEXAS, RELATING TO THE REGULATION OF INDIVIDUALS WITH DISABILITIES RESIDING IN PAROLEE-PROBATIONERS HOMES AND RESIDENTIAL CARE FACILITIES, DEFINING TRANSIENT DWELLINGS AND PROVIDING FOR A REASONABLE ACCOMMODATION REQUEST PROCESS; BY AMENDING SECTION 84-84, “PERMITTED USES TABLE,” TABLE 4-A, “PERMITTED PRIMARY USES;” AMENDING SECTION 84-85, “SPECIAL CONDITIONS BY USE TYPE,” BY ADDING SUBSECTION (aj), “TRANSIENT DWELLINGS”; PROVIDING A SEVERABILITY CLAUSE; REPEALING ORDINANCE PROVISIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the primary purpose of local land use regulation is to promote the health, safety, and the general welfare and morals of the City and its present and future residents; and

WHEREAS, the adoption of land use regulations is a fundamental function of local government; and

WHEREAS, a function of zoning and land use regulation is to separate incompatible uses as much as is reasonably practical so as to protect and preserve residential areas from the intrusion of essentially non-residential uses, for example; and

WHEREAS, the City Council has conducted a public hearing on October 28, 2008, considered the recommendation of the Planning and Zoning Commission, and has determined that the proposed change is in the best interest of the general welfare of the City of Euless; and,

WHEREAS, the City Council makes the following legislative findings in conjunction with this Ordinance:

1. The City recognizes and agrees that the federal Fair Housing Act and Fair Housing Act Amendments, the Americans with Disabilities Act, and other federal laws provide protections for persons with disabilities. These laws, however, do not preempt local land use regulatory authority and the City may adopt, pursuant to its police power, reasonable land use regulations to protect the public health, safety and the general welfare and morals, which are consistent with federal and state law, including, but not limited to, those regulations specifically authorized by Chapter 244 of the Texas Local Government Code.

2. The City recognizes and agrees that 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 can be considered disabled for the purposes of applying the protections accorded the disabled under applicable fair housing and disability laws, and that drug and/or alcohol addiction can constitute a protected mental or physical disability.
3. Chemical dependency treatment facilities, regardless of whether those facilities are regulated by Chapter 464 of the Texas Health and Safety Code, necessarily concentrate persons with alcohol and drug addictions in one place for the purpose of administering treatment.
4. Just as treatment facilities for medical diseases and conditions and physical impairments can be institutional in character, so too can treatment facilities for chemical addiction, which can be an incompatible use in a single-family residential setting when the treatment facility also serves as a group residence.
5. So-called “sober living homes” where persons in the residence agree to stay “clean and sober” during their residency and where the persons in the residence act as a single housekeeping unit, that is, they act as the functional equivalent of a family where they jointly occupy a single dwelling unit, including the joint use of and responsibility for common areas, and share household activities and responsibilities such as meals, chores, household maintenance, and expenses, can be a compatible use in single-family zoned areas.
6. Where, however, there is evidence of a high degree of transiency among persons living in so-called “sober living homes” (either due to the failure of the occupant to comply with the sober living requirement, the successful completion of the program, or the occupant’s choice simply to leave the program), the fundamental character of the use of the property is no longer compatible with a traditional single-family residential setting where transiency of occupants is limited in nature.
7. The fundamental precept of single-family zoned districts is that individual dwelling units are intended for the occupancy and use of single housekeeping units of any size and makeup, subject to reasonable density and other health and safety regulations. Accordingly, non-single-family uses such as rooming houses, hotels, dormitories, etc. are prohibited in single-family districts, regardless of whether they also provide treatment to the disabled, because they are often transient in nature and are an inherently incompatible use in such districts.

8. The City has received evidence that at least one so-called “sober living home” is located in the City in a single-family zoned district and that it operates more like an institutional boarding house than as a single housekeeping unit due to the turnover of occupants since the home was converted to use as a residential treatment facility.
9. The City has also received a request for a reasonable accommodation from the so-called “sober living home,” but the nature and scope of the request for reasonable accommodation is unclear. The City does not currently have a formal process to evaluate and grant or deny requests for reasonable accommodation. Therefore, the City recognizes the need to implement a formal reasonable accommodation procedure whereby it can objectively evaluate, based on information provided by the applicant, whether a request for reasonable accommodation is appropriate in order to provide equal housing opportunities for the disabled, as the City is required under the law.
10. To ensure that the City complies with federal and state law, the proposed ordinance contains standards and procedures for considering reasonable accommodation requests to its land use regulations when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such accommodation does not cause undue financial or administrative burden or does not result in a fundamental alteration of the City’s land use regulations, as those terms are defined by the applicable law.
11. The City is also aware of pending litigation against another Texas city where a parolee-probationer home for between 40 and 60 residents is attempting to locate in a residential area. The City does not currently adequately address the regulation of such facilities and recognizes the need to provide adequate safeguards so that incompatible institutional facilities do not locate in single-family districts.
12. Community corrections facilities, regardless of whether those facilities are regulated by Chapter 509 of the Texas Government Code, necessarily concentrate persons convicted of violent crimes, property crimes and drug crimes in one place for the purpose of providing counseling in a group residential setting.
13. According to a report entitled, “Parole, Desistance from Crime, and Community Integration,” by the Committee on Community Supervision and Desistance from Crime, the Committee on Law and Justice and the Division of Behavioral and Social Sciences and Education of the National Research Council of the National Academies:

- (a) Every year, approximately 600,000 people are released from prisons in the United States;
 - (b) Of these, approximately 480,000 are subject to parole or some other kind of post-release supervision;
 - (c) The peak rates of committing a new crime or violating the terms of parole occur in the first days, weeks, and months after release;
 - (d) Supervised release programs show some efficacy in reducing recidivism;
 - (e) Such programs can include intensive pre- and post-release counseling, immediate enrollment in drug treatment programs, intense parole supervision, job placement assistance, short-term halfway houses, mentoring, and other assistance in reintegrating into society;
 - (f) On average, even with cognitive behavioral treatment, 45 percent of all offenders will recidivate.
14. According to a study entitled, "The Contribution of Ex-Prisoners to Crime Rates" by Richard Rosenfeld, Joel Wallman and Robert Fornango, 2005:
- (a) The study uses a sample of 30,431 cases, weighted to represent a population of 243,334 prisoners from 13 states (including Texas).
 - (b) "The outcome variables in the study are the number of arrests for violent, property and drug crimes during 1- and 3-year periods following release. Following standard Uniform Crime Reports crime classifications, violent crimes include homicide, rape and other sexual assaults, robbery, and aggravated assault. Property crimes include burglary, larceny, and auto theft. Drug crimes include drug possession, drug trafficking, and other illicit drug offenses."
 - (c) "Released prisoners have arrest rates between 18 and 26 times those of the general population of adults." ... "There is no question that, regardless of race, ex-prisoners pose a substantially elevated risk to the communities in which they are released, as measured by crimes per capita." ... "All else equal, the lower the general population's crime rate, the greater will be the crime attributable to ex-prisoners."
 - (d) Between 1994 and 2001, "the fraction of arrests attributable to released prisoners had nearly doubled for violent and property crimes and increased by a third for drug crimes."

15. Because recidivism rates remain at approximately 45 percent even with the benefit of post-release cognitive behavioral treatment, so-called “halfway houses,” which necessarily concentrate individuals convicted of violent, property or drug crimes in one location, can pose a danger to the inhabitants of single or multi-family zoned districts due to the increased arrest rates of released prisoners compared to the general population.
16. Because so-called “halfway houses” for released prisoners are likely to be institutional in nature, on account of the intensive counseling programs, drug treatment and testing programs and intense parole supervision, this use is inherently incompatible with single-family or multi-family residential districts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

SECTION 1

THAT, Section 84-84, “Permitted Uses Table,” Table 4-A, “Permitted Primary Uses,” “Primary Use” section, “Residential Accommodations,” of Chapter 84 “Unified Development Code” of the Code of Ordinances of the City of Euless, Texas, be amended by the addition of the following new primary use category:

(7021) Group Residential

SECTION 2

THAT, Section 84-84, “Permitted Uses Table,” Table 4-A, “Permitted Primary Uses,” “Primary Use” section, “Institutional and Educational Facilities,” of Chapter 84 “Unified Development Code” of the Code of Ordinances of the City of Euless, Texas, be amended by the addition of the following new primary use categories:

(8361) Integral Facilities

(8361) Residential Care Facility

(8399) Parolee-Probation Home

SECTION 3

THAT, Section 84-84, “Permitted Uses Table,” Table 4-A, “Permitted Primary Uses,” of Chapter 84 “Unified Development Code” of the Code of Ordinances of the City of Euless, Texas, be amended by amending the column, “Table 5A Parking Group,” from “(1)” to “(2)” for the following item:

(7021) Rooming and Boarding House

SECTION 4

THAT, Section 84-84, "Permitted Uses Table," Table 4-A, "Permitted Primary Uses," of Chapter 84 "Unified Development Code" of the Code of Ordinances of the City of Euless, Texas, be amended by adding "(2)" to the column, "Table 5A Parking Group," for the following items:

- (7021) Group Residential
- (8361) Integral Facilities
- (8361) Residential Care Facility
- (8399) Parolee-Probation Home

SECTION 5

THAT, Section 84-84, "Permitted Uses Table," Table 4-A, "Permitted Primary Uses," of Chapter 84 "Unified Development Code" of the Code of Ordinances of the City of Euless, Texas, be amended by adding "(aj)" to the column, "Special Condition Section 84-85," for the following items:

- (0000) Single-family dwellings (detached)
- (0000) Single-family dwellings (attached)
- (0000) Single-family dwellings (townhouse)
- (7021) Group Residential
- (8361) Integral Facilities
- (8361) Residential Care Facility
- (8399) Parolee-Probation Home

SECTION 6

THAT, Section 84-84, "Permitted Uses Table," Table 4-A, "Permitted Primary Uses," of Chapter 84 "Unified Development Code" of the Code of Ordinances of the City of Euless, Texas, 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 7

THAT, Section 84-85, “Special Conditions by Use Type,” of Chapter 84 “Unified Development Code” of the Code of Ordinances of the City of Euless, Texas, be amended by the addition of a new subsection, (aj) “Transient Dwellings,” 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:

- (1) For purpose of this section the following words and phrases are defined as follows:

“bedroom” means 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” means a tract of land bounded by streets, public parks, railroad rights-of-way, shorelines of waterways or corporate limits.

“boarding or rooming house” means 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” means 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” means 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” means 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” means 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” means an individual who meets the definition of disability under the fair housing laws.

“integral facilities” means 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” means 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” 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” means 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” means 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” means 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” means 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. If 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.

(2) Reasonable Accommodation Requests.

- a. Purpose.

In accordance with federal and state fair housing laws, it is the purpose of this Chapter 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.

b. Review Authority.

The City Manager, or his designated representative, is hereby designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then an applicant may request that the City Manager hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. If the applicant does not request a simultaneous hearing, then the request for reasonable accommodation shall not be heard until after a final administrative decision has been made regarding all discretionary permits or approvals required by any federal or state law or local ordinance.

c. Application for a Reasonable Accommodation.

1. Applicant. 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.
2. Application. An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on the form provided by the Planning Department. No fee shall be required for a request for reasonable accommodation, but if the project requires discretionary permit(s), then the prescribed fees for said permit(s) shall be paid by the applicant or the applicant's representative. An application for reasonable accommodation shall not be unreasonably withheld.
3. Required Submittals. In addition to materials required under other applicable provisions of this Code, an application for reasonable accommodation shall include the following:
 - (a) 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.

- (b) The specific exception or modification to the zoning, subdivision or other land use provision, policy or practice requested by the applicant.
- (c) 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.
- (d) Any other information that the Planning Director reasonably concludes is necessary to determine whether the finding required by Section 84-85(aj)(3)(a.) below 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.

(3) Decision.

- a. City Manager Action and Appeals. The City Manager shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with Section 84-85(aj)(2)(b.) above within fourteen (14) days of the date of receipt of a completed request for reasonable accommodation, which shall be served on the applicant in person or by certified United States mail. If the City Manager's written determination is not made within the time limits provided herein, the applicant's request for a reasonable accommodation shall be deemed granted. In the event of appeal of the City Manager's written determination, applicants shall file with the City Secretary a notice of appeal on the form provided by the City no later than fourteen (14) days following the date the City Manager issues a written determination. Notices of appeal filed after that date shall be considered untimely and the City Manager's written determination shall be considered a final determination. The standard of review on appeal shall be de novo appeal to the City Council. 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 final decision regarding an applicant's appeal of the City Manager's written determination regarding a reasonable accommodation shall be made within thirty (30) days after the date the City receives an applicant's notice of appeal, which shall be served on the applicant in person or by certified United States mail. If the City Council does not issue a final decision regarding an applicant's appeal of the City Manager's written determination regarding a reasonable accommodation, the applicant's request for a reasonable accommodation shall be deemed granted.

- b. Findings. The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:
1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws or other applicable federal or state law.
 2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
 3. The requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws, interpretive case law, or other applicable federal or state law.
 4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws, interpretive case law, or other applicable federal or state law.
 5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

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

- c. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
 - 1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
 - 2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.
 - 3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.
 - 4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

- d. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program.
 - 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.

- e. Rules While Decision is Pending. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
- f. Effective Date. No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make a written determination or appeal, as applicable. In the event an appeal is filed, the reasonable accommodation shall not become effective until a final decision is made by the City Council on such appeal under the provisions of Section 84-85(aj)(3)(a.) above, or until the expiration of time to issue a final decision, as applicable.

(4) Expiration, Time Extension, Violation, Discontinuance and Enforcement.

- a. Expiration. Any reasonable accommodation approved in accordance with the terms of this Chapter shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:
 - 1. A building permit has been issued and construction has commenced;
 - 2. A certificate of occupancy has been issued;
 - 3. The use is established; or
 - 4. A time extension has been granted.
- b. Time Extension. The City Manager may approve a time extension for a reasonable accommodation for good cause for a period not to exceed twenty-four (24) months. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date. There is no limit on the number of extensions that may be granted so long as the use established is continuous and uninterrupted and the reasonable accommodation remains reasonably necessary to provide disabled individuals with an equal opportunity to use and enjoy the dwelling in question.

- c. Notice. Notice of the City Manager's or City Council's decision, as applicable, shall be provided as specified in Section 84-85(aj)(3)(a.) above. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in Section 84-85(aj)(4)(d.) below.
- d. Appeal of Determination. A decision regarding a request for a time extension for a reasonable accommodation shall be final unless appealed to the City Council within fourteen (14) calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Section 84-85(aj)(3)(a.) above.
- e. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this Code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.
- f. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for ninety (90) consecutive days. If a disabled person initially occupying a residence for which a reasonable accommodation has been granted vacates the residence, the reasonable accommodation shall remain in effect only if the Planning Director determines that: (1) the reasonable accommodation is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code; or (2) the reasonable accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. Within thirty (30) days of occupying the residence in question, the disabled person replacing the vacating disabled person shall provide to the Planning Director documentation establishing that he or she is a person with a disability who would otherwise qualify for the reasonable accommodation already in effect. Failure to provide such documentation within thirty (30) days of occupying the residence in question shall constitute grounds for discontinuance of a previously approved reasonable accommodation.
- g. Enforcement. If the established use for which a reasonable accommodation granted under this Code is discontinued, or the applicant violates the terms of the reasonable

accommodation, the City Attorney on behalf of the City may institute an injunction, mandamus, abatement, or other appropriate action to prevent, abate, remove or enjoin the violation of this Chapter.

(5) Revocation Proceedings.

- a. Proceedings to revoke a reasonable accommodation granted by the City shall be initiated by the City Manager by giving the notice of a public hearing as provided in Section 84-85(aj)(5)(b.) below. Not less than ten (10) days prior to the public hearing, the City Manager shall issue a written recommendation to revoke a reasonable accommodation, explaining the reasons for said recommendation, which shall be served on the applicant by posting it in a conspicuous place on the property in question and by mailing it to the applicant by certified United States mail. The City Council, acting as the reviewing 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. The City Council may also hear statements and other evidence at the public hearing, in compliance with applicable Open Meetings law. A written final decision regarding revocation of a reasonable accommodation shall be made within thirty (30) days after the date of the public hearing, which shall be served on the applicant in person or by certified United States mail. If the City Council does not issue a final decision regarding revocation of a reasonable accommodation, the reasonable accommodation shall remain in effect.
- b. Notice of proceedings. The City Manager shall fix a time and a place for a public hearing, and give public notice thereof by mailing notice to owners of all property within a distance of three hundred feet of the exterior boundaries of property described in the application, using addresses from the last-adopted tax roll; or by publication in a newspaper of general circulation and posting said notice in conspicuous places close to the property. Such notice shall be given not less than ten (10) days before the date of the public hearing.

(6) Amendments.

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning

Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

SECTION 8

SEVERABILITY CLAUSE. That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 9

SAVING CLAUSE. That applicable chapters of the Code of Ordinances, City of Euless, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 10

EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Euless City Charter and the laws of the State of Texas.

PRESENTED AND APPROVED ON FIRST AND FINAL READING at a regular meeting of the Euless City Council on the 28th day of October, 2008, by a vote of _____ ayes, _____ nays, and _____ abstentions.

APPROVED:

APPROVED AS TO FORM:

Mary Lib Saleh, Mayor

Bob McFarland, City Attorney

ATTEST:

Susan Crim, TRMC, City Secretary