

MODEL ORDINANCE FOR RESIDENTIAL CARE FACILITIES

TOWN OF YACOLT WASHINGTON

AN ORDINANCE, relating to the establishment and operation of Adult Family Homes, Residential Care Facilities and Supported Living Arrangements, and amending applicable Sections of the Town of Yacolt Municipal Code.

(COMMENT 1)

THE TOWN COUNCIL OF THE TOWN OF

YACOLT

DOES ORDAIN AS FOLLOWS:

SECTION 1. PURPOSE

(COMMENT 2)

The Council finds that housing facilities for special needs populations are protected under provisions of the Federal Fair HOusing Amendments Act of 1988. Location of such facilities within the Town of Yacolt is critical to the well-being of special needs members of the community, and fulfills a needed community service. Further, it is the purpose of this ordinance to facilitate the siting of Residential Care Facilities and Adult Family HOMes in the Town of Yacolt.

SECTION 2. DEFINITIONS

For the purpose of this ordinance, unless otherwise apparent from the context, certain words and phrases used in this ordinance are defined, as follows:

A. "Adult Family HOME" means the regular family abode of a person or persons who are providing personal care, room and board to more than one but not more than four adults who are not related by blood or marriage to the person or persons providing the services; except that a maxium of six adults may be permitted if the Washington State Department of Social Health Services determines that the home and the provider are capable of meeting standards and qualifications provided for by law (RCW 70.128.010). Adult family homes are permitted use in all areas zoned for residential use (RCW 70.128.175.)

B. "Family" means an individual or two or more persons related by blood or marriage, or two or more persons with functional disabilities as defined herein, or a group of not more than two unrelated persons, living together to share a single household unit.

(COMMENT 3)

c. "People with Functional Disabilities" means:

- 1) a person who, because of a recongnized chronic physical or mental condition or disease, is functionally disabled to the extent of:
 - (a) needing care, supervision or monitoring to perform activities of daily living or instrumental activities of daily living, or
 - (b) needing supports to ameliorate or compensate for the effects of the functional disability so as to lead as independent a life as possible, or
 - (c) having a physical impairment which substantially limits one or more of such person's major life activities, or
 - (d) having a record of having such an impairment, or

(2) being regarded as having such an impairment, but such term does not include current, illegal use of or active addiction to a controlled substance.

(Comment 4)

- d. "Housing for People with Functional Disabilities" means housing used, or intended for use, by persons with functional disabilities. The term includes, but is not limited to, Adult Family Homes, Residential Care Facilities, and housing for any Supported Living Arrangement, as herein defined.
- E. "Residential Care Facility" means a facility, licensed by the state, that cares for at least five but not more than fifteen people with functional disabilities, that has not been licensed as an Adult Family Home pursuant to RCW 70.128.175.

(Comment 5)

- f. "Supported Living Arrangement" means a living unit owned or rented by one or more persons with functional disabilities who receive assistance with activities of daily living, instrumental activities of daily living, and/or medical care from an individual or agency licensed and/or reimbursed by a public agency to provide such assistance.

(Comment 6)

SECTION 3. HOUSING FOR PEOPLE WITH FUNCTIONAL DISABILITIES

Housing for people with functional disabilities, as defined herein, which meets the applicable Washington State Licensing requirements, shall be considered a residential use of property for zoning purposes. they shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings.

For the purposes of the ordinance, the conversion of an existing residential structure to housing for people with functional disabilities shall not be deemed a change of use or an abandonment or discontinuity of the prior use of the structure, if such structure constituted a prior nonconforming use.

(Comment 7)

SECTION 4. CONTRADICTIONS

In the event of conflict between this ordinance and any other ordinance or zoning provision for the Town of Yacolt, the provisions of this ordinance shall prevail.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect and be in force (thirty (30) days after) the date of its publication in the manner provided by law.

(Comment 8)

Passed by the Council of the Town of Yacolt, Washington, at a regular meeting thereof, and APPROVED by the Yacolt Town Council, 6 day of AUGUST 1991.

AYES Council Members: Alexander, Robertson, Kaski

NAYES NONE

ABSENT Council Member: Messer, Mason

MAYOR Paul Grooms ATTEST Irene Christiansen

I hereby certify that this is a true and correct copy of Ordinance # 326 as read before the Council and passed on the date herein mentioned and passed according to law.

Irene Christiansen
Irene Christiansen
Clerk/Treasurer

MODEL ORDINANCE ON RESIDENTIAL CARE FACILITIES
COMMENTS ON CONTENT

Comment 1 Recent amendments to the Federal Fair Housing Act now make it unlawful for anyone to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicapping condition of : (a) that buyer or renter, (b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (c) any person associated with that buyer or renter (42 U.S.C.A. q 3204 (f)(3)(B)). The Act is intended to prohibit the application of special requirements through land use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Both the Legislative history and court decisions indicate that local zoning issues fall under the purview of the Act. See House of Representatives Committee Report, H.R. Rep.100-71 at 24. Local jurisdictions are most vulnerable to challenges of discrimination in the siting of group homes for people with handicapping conditions. To avoid potential litigation, local jurisdictions need to modify their land use controls to ensure that such regulations are not used as a means of discrimination.

COMMENT 2 The enactment clause needs to be individualized according to the status of the jurisdiction; i.e., third class city, code city (see RCW 35.24.210, RCW 35.27.290, RCW35A.12.130, RCW35.17.030, or RCW 35.23.300).

COMMENT 3 A similar definition of family was adopted by the City of Salem, Oregon, in order to meet the requirements of the FFHAA of 1988. This definition allows local jurisdictions to limit the number of unrelated individuals living together as a single household, unless they fall within the definition of functionally disabled under the ordinance.

COMMENT 4 This definition was developed from language in the FFHAA of 1988 and from work done by the Washington State Long-Term Care Commission, on definitions of disabilities.

COMMENT 5 This definition is derived from Chapter 427, Laws of 1989. Consistency between state and local definitions is desired. Local jurisdictions should review definitions of "adult family homes" and "residential care facilities" with those of the State Department of Social and Health Services and the State Department of Health, Statutory definitions of facilities which may fall into the category of residential care facilities include, but are not limited to:

- a. Boarding Homes as licensed by RCW 18.20.010 in accordance with WAC 248-16;
- b. Residential Treatment Facility for Psychiatrically Impaired Children and Youth in accordance with RCW 71.12 and WAC 248-23-001 (32);
- c. Adult Residential Rehabilitation Center in accordance with RCW 71.12 and WAC 248-25-002 (3);
- d. Private Adult Treatment Home in accordance with RCW 71.12 and WAC 248-25-002 (28);
- e. Alcoholism Treatment Facility in accordance with RCW 71.12 and WAC 248-26-10 (6);
- f. Congregate Care Facility in accordance with RCW 71.12, RCW 18.20, RCW 74.08.044 and WAC 388-15-560;
- g. Evaluation and Treatment Facility in accordance with RCW 71.34.020 (6);
- h. Group Training Home in accordance with RCW 71A.22.020 (2);
- i. Group Care Facility in accordance with RCW 74.15.010 (3) (a); and,
- j. Foster Family Homes in accordance with RCW 74.15.010 (3) (e).

COMMENT 6 Such arrangements include but are not limited to residences in which people with functional disabilities are assisted by:

- a. Homemaker-Home Health Agencies licensed in accordance with RCW 74.08.530;
- b. Home Care Agencies licensed in accordance with RCW 70.127 and WAC 248-36;
- c. Individual Personal Care Workers reimbursed in accordance with RCW 74.09 and WAC 388-15;
- d. Individual Chore Services Workers reimbursed in accordance with RCW 74.08 and WAC 388-15;

e. Tenant Support Agencies ("non-facility based programs" for people with developmental disabilities) certified in accordance with RCW 71A.20 and WAC 275.26;

f. Respite and Attendant Care Programs provided in accordance with RCW 71A.20 and WAC 275-27;

g. Respite Care Programs provided in accordance with RCW 74.41 and WAC 388-15; and,

h. Mental Health Community Support Services provided in accordance with RCW 71.24 and WAC 275-56.

COMMENT 7 See Chapter 9, Laws of 1989 (RCW 70.128.175)

COMMENT 8 The effective date should be modified to reflect local practice.