

COMMISSIONERS ORDINANCE O-2016-014

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY CREATING ARTICLE XX OF THE OFFICIAL ZONING ORDINANCE ESTABLISHING CRITERIA AND PROCEDURES FOR DETERMINING REASONABLE ACCOMMODATION IN THE LAND USE AND ZONING REGULATIONS FOR SOBER LIVING FACILITIES IN ACCORDANCE WITH FAIR HOUSING LAWS.

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended by the Federal Fair Housing Amendments Act of 1988 ("FHA"), imposes an affirmative duty on local governments to make reasonable accommodations (modifications or exceptions) in their rules, policies, practices, or services related to land use and zoning regulations when such accommodation may be necessary to afford an individual with a recognized handicap an equal opportunity to use and enjoy housing; and,

WHEREAS, codification of a formal procedure for individuals with recognized handicaps seeking equal access to housing to request reasonable accommodation in the application of the City's land use and zoning regulations, standards, policies, and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the statutory mandates, including the reasonable accommodation mandates of the FHA; and,

WHEREAS, the City has been granted broad police powers to preserve single family characteristics of its single family neighborhoods; and,

WHEREAS, the City has the right to regulate both the number of persons who may reside in a single family home and the manner in which it is used so long as such

regulations do not unfairly discriminate or impair an individual's rights of privacy and association; and,

WHEREAS, individuals and families often purchase houses in single family neighborhoods with the expectation of establishing close and long standing ties with their neighbors and the neighborhood; and,

WHEREAS, along with these expectations, individuals and families commit to making, for the most part, the single largest financial and emotional investments of their lives; and,

WHEREAS, the FHA prohibits enforcement of zoning regulations which would have the effect of discriminating against equal housing opportunities for the handicapped; and,

WHEREAS, the FHA requires the City provide reasonable accommodation to its zoning regulations if such accommodation is necessary to afford an individual with recognized handicaps an equal opportunity to use and enjoy a dwelling; and,

WHEREAS, the City desires to strike a balance between preserving the single family characteristics of residential neighborhoods and providing opportunities for the handicapped to reside in residential zones; and,

WHEREAS, the City has currently seen an increase in the number of single family houses being utilized as alcohol and drug recovery facilities (sober living facilities) for a large number of unrelated individuals; and,

WHEREAS, the increase has generated community concerns and complaints including, but not limited to, overcrowding, clustering of sober living facilities in close proximity to each other, and property value diminution; and,

WHEREAS, the purpose of a sober living facility is to provide a comfortable living environment for persons with alcohol or drug addictions in which they can remain clean and sober and can participate in a recovery program within a residential community environment so that they have the opportunity to reside in the single family neighborhood of their choice; and,

WHEREAS, recognizing that recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered handicapped under the FHA; and,

WHEREAS, concentrations of sober living facilities and the placement of large numbers of recovering addicts in a single dwelling can undermine the benefits of home ownership in single family neighborhoods for those residing nearby which can undermine the single family characteristics of neighborhoods; and,

WHEREAS, the City has determined that most operators of sober living facilities have taken the stance that the FHA prohibits the City from regulating them in any fashion; that they are free to house as many recovering addicts in a single family dwelling as they desire; and, that they are not required to make any showing to obtain an accommodation from the City's zoning regulations; and,

WHEREAS, the City is concerned that some operators may be driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential for recovery or to provide a living

environment which resembles the manner in which the non-disabled use and enjoy a dwelling; and,

WHEREAS, this Ordinance will provide a mechanism for a sober living facility to seek accommodation upon making a showing that such accommodation is reasonably necessary to afford the individual with recognized handicaps the right to use and enjoy a single family dwelling in a manner similar to that enjoyed by the non-handicapped; and,

WHEREAS, permitting six or fewer residents in a sober living facility and establishing distance requirements and other criteria is reasonable and non-discriminatory and not only helps preserve the single family characteristics of single family neighborhoods but also furthers the purpose for which sober living facilities are established; and,

WHEREAS, because of their extremely transient nature and above normal numbers of individuals/adults residing in a single family dwelling and the lack of regulations, sober living facilities present problems not typically associated with more traditional single family uses, including the housing of large numbers of unrelated individuals/adults who may or may not be supervised; disproportionate number of vehicles associated with a single family dwelling which causes disproportionate traffic and utilization of on street parking; the potential for excessive noise, outdoor smoking and potential for littering which may interfere with the use and enjoyment of neighboring properties; creating neighbors which have little to no idea who resides in the dwelling with little to no interaction and a disregard for the impact with and upon the

neighborhood; the disproportional impact upon City services; and the potential influx of individuals with criminal records; and,

WHEREAS, in seeking a balance within the urban residential neighborhood characteristics of the City, a one-thousand foot (1000') distance requirement still provides a reasonable market for the purchase and operation of a sober living facility; and,

WHEREAS, the City recognizes that while not in character with a single family neighborhood, that when operated responsibly, a sober group facility provides a societal benefit by providing the recognized handicapped the opportunity to live in single family neighborhoods, as well as providing recovery programs for individuals attempting to overcome their addiction; and,

WHEREAS, without some regulation there is no manner of ensuring that the individuals entering into a sober living facility are recognized handicapped individuals and entitled to reasonable accommodation; and,

WHEREAS, there is a need for implementing criteria for determining and establishing reasonable accommodation within the City's zoning Ordinance that formalizes procedures related to such accommodation; and,

WHEREAS, this Ordinance has been reviewed for compliance,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, as follows:

SECTION I

That there is hereby created Article XX of the Official Zoning Ordinance to read, as follows:

**ZONING
ARTICLE XX REASONABLE ACCOMMODATION IN LAND USE AND ZONING
REGULATION**

Section 20.0 **Definitions**

For the purposes of this Article, the following terms are defined as follows:

FAIR HOUSING LAWS: The Federal Fair Housing Amendments Act of 1988 (FHA) and the provisions of KRS 344.600 et. seq., as may be amended from time to time (fair housing laws).

HANDICAPPED: An individual recovering from alcohol and/or chemical dependency who has a history or record of alcohol or drug use or addiction but who are not currently using alcohol or illegal drugs and considered handicapped as more specifically defined under the fair housing laws.

OPERATOR: An individual or business entity, whether for profit or non-profit, which provides residential services at a sober living facility.

SOBER LIVING FACILITY: A single family dwelling unit (referred to herein uniformly as a dwelling) used by individuals recovering from a drug and/or alcohol addiction, considered as an individual with a recognized handicap hereunder and under state or federal law. A sober living facility shall not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation

services; social services; medical, dental, nutritional or other health care services; financial management services; legal services; vocational services; and other similar supportive services.

Section 20.1 **Purpose**

Fair housing laws impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with recognized handicaps an equal opportunity to housing in accordance therewith.

In furtherance of the purposes of the fair housing laws, this Article is intended to: preserve the residential character of single family residential neighborhoods; ensure that sober living facilities are actually entitled to reasonable accommodation and not simply avoiding the City's land use or zoning regulations; limit the secondary impacts of sober living facilities by reducing noise and traffic; preserve safety and provide adequate on-street parking; provide an accommodation for the recognized handicapped individuals that is reasonable and actually bears some resemblance to the opportunities afforded non-handicapped individuals to use and enjoy a dwelling in a residential neighborhood; and, to provide a living environment that will enhance the opportunity for the recognized handicapped to be successful in their programs. Pursuant to fair housing laws, this Article is also created to provide individuals with a recognized handicap reasonable accommodation in rules, policies, practices, and procedures to ensure equal access to housing and facilitate the development of housing for individuals with such

recognized handicaps when the same may act as a barrier to fair housing opportunities.

There is hereby established a procedure for making requests for reasonable accommodation in land use and zoning regulations, policies, practices, and procedures to comply fully with the intent and purpose of fair housing laws.

Section 20.2 Applicability

Reasonable accommodation within the context of the land use and zoning regulations means providing individuals with recognized handicaps flexibility in the application of land use and zoning regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

Section 20.3 Notice to the Public of Availability of Accommodating Process

Notice of the availability of reasonable accommodation shall be prominently displayed and provided to requesting individuals, advising the public of the availability of the procedure for eligible applicants.

Section 20.4 Application for Requesting Reasonable Accommodation

- a) Forms for requesting reasonable accommodation shall be available in the Development Services Department.
- b) An application for reasonable accommodation may be made by: any individual with a recognized handicap or his or her representative; the owner of the real

property intended for use as a sober living facility; or, the owner/operator of an entity providing residential services at the location.

c) Requests for reasonable accommodation shall be in writing and provide the following information:

- (1) Name, address, and phone number of the applicant requesting reasonable accommodation;
- (2) Name, address, and phone number of the house manager who is responsible for the day to day operation of the facility, if any;
- (3) Address of the property for which accommodation is requested;
- (4) Name, address, and phone number of the property owner(s) if not the applicant;
- (5) If the sober living facility operator is not the property owner, then a copy of any lease agreement between applicant and owner must be provided as well as written approval from the property owner to operate a sober living facility at the property location;
- (6) Detailed description of the requested accommodation with reference to any known regulation, policy or procedure from which relief is sought;
- (7) Reason that the requested accommodation may be necessary for the individual(s) with the recognized handicap to use the dwelling;
- (8) Copy of the sober living facility rules and regulations including intake procedures and relapse policy;
- (9) Blank copy of all forms that residents or potential residents are required to complete;

- (10) An affirmation by the applicant or owner/operator that only residents with a recognized handicap shall reside at the sober living facility; and,
- (11) Copy of any agreement between applicant or owner/operator and the property owner setting forth or concerning any fee arrangement or financial reimbursement applicable to each resident of the sober living facility.
- d) No person or entity shall open or operate a sober living facility until the information outlined herein has been provided.
- e) The applicant or owner/operator shall be responsible for filing with the City within thirty (30) days, any updates or changes to policies, procedures, ownership, or operating entity.
- f) Any information obtained shall be considered confidential, shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection unless otherwise required by law.
- g) A request for reasonable accommodation to the regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation shall not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.
- h) If an applicant needs assistance in making the request for reasonable accommodation, it shall be provided to ensure that the process is properly undertaken.

- i) An applicant may seek relief from the strict application of the provisions of this Ordinance by submitting such request in writing to the Director of Development Services (hereafter "Director") setting forth specific reasons as to why accommodation over and above the provisions set forth herein is necessary.
- j) No application fee shall be charged.

Section 20.5 **Grounds for Reasonable Accommodation**

The Director shall consider in determining whether to grant a reasonable accommodation the totality of the following factors:

- a) That the property will be used by an individual with a recognized handicap protected under the fair housing laws;
- b) Special needs created by the recognized handicap;
- c) Potential benefit that can be accomplished by the requested modification;
- d) Potential impact on properties within the vicinity;
- e) Physical attributes of the property and dwelling structure;
- f) Alternate accommodations that may provide an equivalent level of benefit;
- g) Whether the requested accommodation would impose an undue financial or administrative burden on the City;
- h) Whether the requested accommodation would require a fundamental alteration in the nature of a City function or service; and,
- i) Whether granting the request would be consistent with the City's Comprehensive Plan.

Section 20.6 General Conditions

- a) The sober living facility shall be limited to six (6) or fewer occupants, not counting a house manager, if any.
- b) The sober living facility shall not be located in an accessory structure on the premises.
- c) All garage and driveway spaces associated with the dwelling shall, at all times, be available for the parking of vehicles. Residents may each park a single vehicle at the dwelling which must be operable and currently used as the primary form of transportation for the resident.
- d) The property must be fully in compliance with all requisite building, zoning, and municipal codes.
- e) No sober living facility shall be located within one-thousand feet (1,000'), as measured from the closest property lines, of any other sober living facility or any other licensed alcoholism or drug abuse recovery or treatment facility.
- f) In addition to the conditions outlined above, the following regulations shall also apply to sober living facilities.
 - 1. All occupants, other than the house manager, if any, must be actively participating in legitimate recovery programs and the sober living facility must maintain current records of meeting attendance under the sober living facilities rules and regulations.
 - 2. The sober living facility rules and regulations must prohibit the use of any alcohol or any non-prescription drugs by any recovering addict either on or off the premises. The sober living facility must

also have a written policy regarding the possession, use, and storage of prescription medications. The facility shall be prohibited from dispensing medications but shall make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed and in the amounts or dosages prescribed.

3. The sober living facility shall have a written visitation policy that shall preclude any visitors who are under the influence of drugs or alcohol.
4. The sober living facility shall have a “good neighbor” policy that shall direct residents to be considerate of neighbors, including refraining from or engaging in excessively loud, profane, obnoxious, or illegal behavior that would unduly impact a neighbor’s use or enjoyment of their property. The “good neighbor” policy shall also include provisions for keeping the premises, including any outdoor areas, clean and free of debris, garbage, and litter. The “good neighbor” policy shall also establish a written protocol to follow when a neighbor’s complaint is received.
5. These rules and regulations shall be posted on site in a common area within the sober living facility.
6. Any violation of these regulations shall be cause for eviction.

Section 20.7

Reviewing Authority

- a) Upon proper application made, requests for reasonable accommodation shall be reviewed by the Director of Development Services using the criteria set forth herein.
- b) The Director shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth below.
- c) If necessary to reach a determination on the request for reasonable accommodation, the Director may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision shall be stayed until the applicant responds to the request.

Section 20.8 **Required Findings**

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors.

- a) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with a recognized handicap as defined herein and protected under fair housing laws.

- b) Whether the requested accommodation is necessary to make housing available to an individual with a recognized handicap protected under the fair housing laws.
- c) Whether the requested accommodation would impose an undue financial or administrative burden on the City.
- d) Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use or zoning regulations, codes or related programs.
- e) The requested accommodation will not result in a direct threat to the health, safety or welfare of other individuals or cause physical damage to the property of others.
- f) Whether the requested accommodation is necessary to make facilities of a similar nature economically viable in light of the particularities of the relevant market and market participants.
- g) Whether the existing supply of facilities of a similar nature and operation in the community is already sufficient to provide individuals with a recognized handicap an equal opportunity to live in a residential setting.
- h) The City shall consider the following factors upon any request for accommodation:
 - 1. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
 - 2. Whether the requested 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 the City's Comprehensive Plan; and
4. 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.

Section 20.9 **Written Decision on the Request for Reasonable Accommodation**

- a) The Director shall render a written decision on the request for reasonable accommodation within thirty (30) days of receipt. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth herein. The written decision shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth below. The notice of decision shall be sent to the applicant by certified mail.
- b) The written decision of the Director shall be deemed final unless an applicant appeals the decision to the Board of Adjustment within the prescribed time period.
- c) In the event the Director fails to render a written decision within the prescribed period of time, the request shall be advanced to the City Manager for final determination, who shall make such written determination within ten (10) days thereof. In the event that a written determination is not issued within forty (40) days of the request it shall be automatically be deemed as granted.

- d) 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.

Section 20.10 Appeals

- a) Within thirty (30) days of the date of the Director's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing to the Board of Adjustment within the prescribed period of time.
- b) If an applicant needs assistance in filing an appeal on an adverse decision, the City will provide assistance to ensure that the appeals process is properly undertaken.
- c) All appeals shall contain a statement of the grounds for the appeal.
- d) Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

SECTION II

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

PASSED: First reading June 21, 2016
PASSED: Second reading June 22, 2016

Jerry R. Peluso, Mayor

ATTEST:

Amy B. Able, City Clerk

PUBLISHED: By title and summary in the Campbell County Recorder the 30th day of June, 2016.