



# City of Denton

City Hall  
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Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Department of Development Services

**ACM:** Cassey Ogden

**DATE:** September 26, 2023

### **SUBJECT**

Hold a public hearing and consider approval of an ordinance of the City Of Denton, Texas amending the Denton Development Code's Reasonable Accommodation process and Use Specific Standards, parking minimums, and definitions for Elderly Housing, Community Home, and Group Home uses, specifically amendments to: Table 2.2-A: Summary of Development Review Procedures; Section 2.8: Flexibility and Relief Procedures; Table 5.2-A: Table of Allowed Uses; Section 5.3.1D: Maximum Persons Occupying a Dwelling; Section 5.3.3: Residential Use-Specific Standards; Table 7.9-I: Minimum Required Off-Street Parking; and Section 9.2: Definitions; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted 7-0 to recommend approval of the request. Motion for approval by Commissioner Smith and second by Commissioner Cole. (DCA23-0001B, Reasonable Accommodation, Elderly Housing, Community Home, and Group Home, Julie Wyatt)

<https://dentontx.new.swagit.com/videos/269971?ts=4543>

### **BACKGROUND**

In accordance with federal and state law and existing City policies, the City recognizes the need to provide equal access to housing for all residents without discrimination. In order to implement this principle and ensure that the Denton Development Code (DDC) is consistent with the Denton 2040 Comprehensive Plan and existing city policies, staff recently reviewed regulations related to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes.

Prior to a discussion of the current and proposed DDC amendments, it is important to first explain a few key concepts related to federal and state laws protecting individuals with disabilities:

#### **What is a disability?**

Laws defining disability generally include the following elements:

1. A physical or mental impairment that substantially limits one or more major life activities, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.
2. A record of having such an impairment or being regarded as having such impairment.
3. Disability does not include current use of or addiction to drugs or alcohol. However, individuals in recovery may be considered disabled.

#### **What is a Reasonable Accommodation?**

A change, exception, or adjustment to a rule, policy, or practice that is necessary to remove barriers that keep persons with disabilities from enjoying housing in a similar capacity as persons without disabilities. Courts have determined it must be necessary and reasonable.

Examples:

- For a landlord, assigning a nearby parking spot to a tenant with mobility issues when the apartment complex otherwise does not provide assigned parking.
- A “no-pets” apartment complex may allow a service dog for a blind tenant.
- For a municipality, this may include approving an otherwise non-compliant site plan that has large amounts of paving to facilitate wheelchair mobility for a residential group home.

#### **What are the federal and state rules related to disabilities and housing?**

- **The Federal Fair Housing Act (42 U.S.C. 3601)** and the **Texas Fair Housing Act (Tx. Prop Code Ch 301)** both prohibit discriminatory practices that make housing unavailable to persons due to their disability status
- “Community Homes for the Disabled” or Community Homes are a specific, protected, variety of group home created by Chapter 123 of the Texas Human Resources Code, which specifies the following:
  - Specific operating/licensing requirements
  - Must provide food, shelter, personal guidance, care, habilitation, and supervision
  - No more than 6 residents with disabilities and 2 supervisors
  - Cannot be located within ½ mile of an existing community home
  - Motor vehicles on site cannot exceed the number of bedrooms
  - Does not include persons recovering from addiction in the definition of disability
  - If a proposed Community Home meets the statutory criteria, then it is a permitted use in any residentially zoned district of a municipality.
- “Group home” is an umbrella term for various types of group and communal living arrangements. Texas recognizes 24 different kinds of group/communal living arrangements.

On February 13, February 27, April 10, April 24, May 8, and May 22, 2023, the Development Code Review Committee (DCRC) held discussions regarding the above concepts, how they relate to the current DDC regulations, and potential Code amendments related to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes. Staff’s review of the current regulations found the following areas which could be better clarified for statutory consistency and improved administration of city procedures:

- **Reasonable Accommodation**
  - **Section 2.8.2:** Regulations are outlined under “Minor Modification” procedure, making them difficult to find.
  - Accommodation options are very limited, potentially excluding necessary modifications needed by disabled individuals.
  - Reasonable Accommodation lacks a clear procedure for residents, property owners, and staff within the DDC. It should be noted that there is a separate Reasonable Accommodation process under the Code of Ordinances that does not apply to the DDC.
- **Use Regulations**
  - **Section 5.3.1D:** Maximum persons occupying a dwelling. This provision did not provide an exception for Community Homes, Group Homes, and Elderly Housing facilities.
  - **Section 5.3:** Current Use-Specific Standards for Elderly Housing, Community Homes, and Group Homes are intermingled and include redundancies, unnecessary terms, and terms which have similar meaning, creating confusion about which standards apply.
- **Subchapter 7: Parking.**
  - Parking regulations for Community Home and Group Home refer to “design capacity,” which may be difficult to apply in a residential setting (for example, the capacity of a three-bedroom dwelling).
  - Elderly Housing parking regulations refer to different categories of facilities listed in the Definition. The categories appear to have varying intensities, but it isn’t written in a clear manner.
- **Subchapter 9: Definitions.** Current definitions are either too narrow to be useful or are extraneous and not otherwise used in the DDC.

To address the concerns identified above, the DCRC recommended that the following Code amendments be presented to the Planning and Zoning Commission and City Council through the public hearing process. The table below is a summary of the proposed modifications; a redline draft of the relevant DDC Sections with further discussion can be found in Exhibit 3:

Topic	Type of DDC Modification				
	Process	Use Table	Use-Specific Standards	Parking	Definitions
<b>Reasonable Accommodation</b>	Create a separate Flexibility and Relief Procedure with defined application and approval process, criteria for approval, and post-decision actions	Not applicable	Not applicable	Not applicable	Not applicable
<b>Elderly Housing</b>	Not applicable	Add Use-Specific Standards to MD and MR Districts; add to SC and HC Districts with an SUP; remove from GO District* to prevent incompatibilities with higher-impact uses	Remove size limitation from R6 and R7, as dimensional requirements and SUP will limit the ability to build large structures; remove confusing “assisted living facility” reference; add clarification to which Subchapter 7 Design Standards will apply	Due to variety of possible facility designs, change to Director Determination for each development	Add the following language for clarity: must include at least two of the following: common dining or meals, transportation, housekeeping, organized social activities, special safety and accessibility features, skilled nursing, memory care, and/or assistance with daily activities; remove the unnecessary categories
<b>Community Home</b>	Not applicable	No proposed changes	Separate the Use-Specific Standards from Group Home for clarity; update language for consistency with state law	Change to one space per bedroom for consistency with state law	Add a clarifying statement that this use does not include Recovery Housing as defined by Texas Health and Safety Code Chapter 469

<b>Group Home</b>	Not applicable	Add to R1 and R2 Districts with a Specific Use Permit and Use-Specific Standards for consistency with all Residential districts	Separate the Use-Specific Standards from Community Home for clarity; remove redundancies and unnecessary modifications to standard DDC procedures; clarify specific application requirements	Change to one space per bedroom	Combine Group Home and Group Home for Disabled Persons into one definition to include disabled individuals and persons without disability since they are not separated in Use Table; add language to describe protective care and watchful oversight
<b>Other</b>	None	None	Add exemption for Community Homes, Group Homes, and Elderly Housing to Maximum Persons Occupying a Dwelling	None	Update definition for Disability for consistency with federal and state law and to include former use of controlled substances and/or alcohol; remove definitions for Disabled Persons, Assisted Living Facility, Handicap, Impairment, Physical or Mental, Institution

\*Will impact one property which will require a City-initiated rezoning that will be moving forward in upcoming months under project number SI23-0002.

### ***PLANNING AND ZONING COMMISSION***

The Planning and Zoning Commission held a public hearing for the request at their August 23, 2023 meeting. No members of the public spoke at the hearing.

During the meeting, the Commission asked about the owner's authorization form related to a potential Reasonable Accommodation. Specifically, in those instances with a landlord and tenant, how is the information on owner's authorization form verified to ensure that the property owner is aware of any physical changes to the property needed to accommodate a person with a disability. Staff responded that the information will be confirmed using the Denton County Appraisal District.

The Commission voted [7-0] to approve the request.

See Exhibit 2 for Staff Analysis.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

<b>Date</b>	<b>Council, Board, Commission</b>	<b>Request</b>	<b>Action</b>
April 23, 2019	City Council	Consider 2019 DDC Update	Approved with an effective date of October 1, 2019
February 13, 2023; February 27, 2023; April 10, 2023; April 24, 2023; May 8, 2023	Development Code Review Committee	Consider amendments related to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes	Continued discussion at next meeting
May 22, 2023	Development Code Review Committee	Consider amendments related to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes	DCRC directed staff to proceed with proposed amendments as presented to the P&Z and City Council
June 14, 2023	Planning and Zoning Commission	DDC amendments to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes (DCA23-0001)	Postponed
July 20, 2023	Committee on Persons with Disabilities	Discuss DDC amendments to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes (DCA23-0001)	Meeting cancelled
August 23, 2023	Planning and Zoning Commission	DDC amendments to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes (DCA23-0001)	Recommended Approval
September 21, 2023	Committee on Persons with Disabilities	Discuss DDC amendments to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes (DCA23-0001)	Discussion Only

**OPTIONS**

1. Approve
2. Approval with conditions
3. Deny
4. Postpone Item

**RECOMMENDATION**

Staff recommended **approval** of the amendments related to Reasonable Accommodation, Elderly Housing, Community Homes, and Group Homes as the proposed amendments meet the established criteria for approval for Code Text Amendments as outlined in Section 2.7.4D of the DDC.

Staff would like to note one minor update to the proposal since consideration by the Planning and Zoning Commission. Originally, the recommended appeal process for Reasonable Accommodations followed Denton Development Code Section 2.8.3 without changes, allowing appeals to either City Council or the Zoning Board of Adjustment. Subsequent to the Planning and Zoning Commission meeting, staff determined City Council is the most appropriate decision-making body for an appeal of a Reasonable Accommodation request, therefore, the following modification to the proposed language in DDC Section 2.8.8D.6.d1 is recommended (see page 23 of Exhibit 3):

- **Original language considered by Planning and Zoning Commission:** Appeals. An applicant may appeal the written decision to deny or to grant an alternative reasonable accommodation in accordance with Section 2.8.3 Appeal of an Administrative Decision.
- **Updated language:** Appeals. Only an applicant may appeal the written decision of the City Manager to the City Council in accordance with Section 2.8.3 Appeal of an Administrative Decision. Because this Reasonable Accommodation process is the City's implementation of the FHAA, it is not a zoning decision appealable under Tex. Loc. Govt. Code 211.010.

The Planning and Zoning Commission recommended approval of this request [7-0].

### **EXHIBITS**

Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Staff Analysis

Exhibit 3 - Draft Regulations Pertaining to Reasonable Accommodation, Elderly Housing, Community Home, and Group Home

Exhibit 4 - Presentation

Exhibit 5 - Draft Ordinance

Respectfully submitted:

Tina Firgens, AICP

Deputy Director of Development Services/  
Planning Director

Prepared by:

Julie Wyatt

Principal Planner