

ADMINISTRATIVE REGULATION NO. 02-2016

ISSUED BY: 
Tim Moore, Interim City Manager

4-29-16
Date

Topic:

This regulation construes and interprets the requirements of Section §21.04.030(p) of the Grand Junction Zoning and Development Code pertaining to the physical separation of group living facilities (more specifically §§ 21.04.030(p)(8)(ii) and 21.04.030(p)(16)(ii)).

Background and Purpose:

By and through the authority created in Section 2.12.010 of the Grand Junction Municipal Code, the Director may interpret and implement a means to effectuate the purpose(s) of ordinances and ensure that the same are given full and reasonable effect.¹ The purpose of an administrative regulation is to interpret, clarify and effectuate the provisions of the Grand Junction Zoning and Development Code pertaining to separation of group living facilities.

Sections 21.04.030(p)(8)(ii) and 21.04.030(p)(16)(ii) of the Grand Junction Zoning and Development Code require separation of group living facilities by 750 feet. The provisions require that "[t]he group living facility is at least 750 feet from every other group living facility," but do not specify how the distance between the facilities is to be determined. The separation requirement, adopted in 2000, most likely was intended to serve the purpose of protecting neighborhoods of a single-family use character from an over-concentration of group living facilities and causing such facilities to be more generally dispersed throughout the community, for the benefit of both the single-family neighborhoods and the residents of group living facilities (to allow their living environment to be as non-institutional and normalized as possible by integrating them into the community with other homes).

The separation requirement also mirrors a state regulation requiring spacing of 750 feet of "Community Residential Home[s] for Persons with Developmental Disabilities" accommodating at least four but no more than eight adults and licensed by the state.² It is likely that the separation is intended to prevent over-concentration of such facilities in a given single family neighborhood, given that density range affected is that which typically defines a household in municipal codes. Furthermore separation is not required for facilities housing more than eight persons, which would most likely be allowed only in zones where multifamily residential development is allowed.

The Fair Housing Amendments Act (FHAA) makes it difficult for a municipality to apply a separation requirement where the distinction is not based on density and the zone district in

¹ *The Department Directors of the various departments of the City may promulgate, after public notice, administrative regulations for the purposes of interpreting, clarifying and effectuating the purposes of this code. A violation of an administrative regulation shall constitute a violation of this code. 2.12.070 GJMC*

² 6 CCR 1011-1, Chapter 8, §3.2(B), promulgated pursuant to Section 25-1.5-103 and 25-3-101 *et seq.*, C.R.S.

which the facility is located, or some other uniform attempt to limit the number of residents to prevent overcrowding.³ Given the definition of *group living facility* under the Zoning and Development Code⁴ and the way the Fair Housing Act (FHA) defines "handicap,"⁵ virtually all residents of a group facility in the City will fall within the federal definition of handicapped persons. The effect of this is that it is a violation of law to bar or place different regulatory burdens on group living facilities that function like a residential use allowed by right in the zone district. In particular, spacing requirements for group living facilities have been struck down because they have a discriminatory effect on handicapped individuals or do not further a legitimate governmental purpose.⁶

Regarding the means of measurement, measuring the 750-foot separation "as the crow flies" can be unreasonably restrictive for group living facilities, especially in and/or between zone districts which allow multi-family housing and/or where the direct route includes no such direct public access between the two points.

Applying and measuring the 750 foot separation in the manner provided in this Administrative Regulation will allow group living facilities to be distributed throughout the City and integrated into the community while still protecting the density limitations of the zoning districts and significantly reducing the possibility of a discriminatory effect on group living facilities.

Administrative Regulation:

1. Where a separation provision is not firmly grounded in a legitimate land-use distinction such as (but not limited to) density considerations, it could be considered discriminatory under the Fair Housing Act; therefore, the 750 foot separation requirement for group living facilities under the Zoning and Development Code will not be applied to a group living facility that is located in a zone district where multi-family housing is allowed or that is within 750 feet of a group living facility that is located in a zone district where multi-family housing is allowed.
2. In addition, where it applies in accordance with No. 1 above, the 750 foot separation requirement for group living facilities under the Zoning and Development Code shall be measured in the following manner:

Computed by direct measurement from the nearest property line of the land used for a group living facility to the nearest property line of an existing group living facility, using a route of direct public pedestrian access, measured as a person would walk safely and properly, without trespassing, with right angles at crossings and with the observance of traffic regulations and traffic signals (see Fig. 1); except that a group living facility shall not be located directly adjacent to another even if by such route the distance is greater than 750 feet.

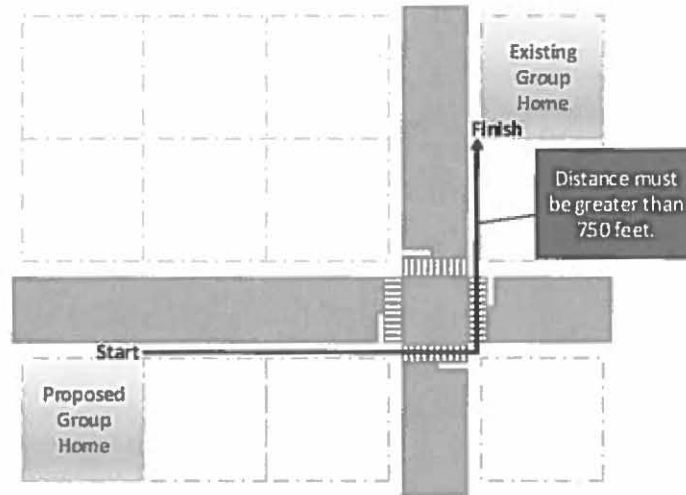
³ 42 U.S.C. §3607(b)(1).

⁴ Section 21.04.030(p) defines a group living facility as a facility where the residents receive personal care involving assistance with the basic activities of living.

⁵ 42 U.S.C. §3602(h)

⁶ *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1002), *aff'd*, 995 F.2d 217 (3rd Cir. 1993); *Larkin v. Michigan Department of Social Services*, 89 F.3d 285 (6th Cir. 1996); *Association for Advancement of Mentally Handicapped v. Elizabeth N.J.*, 876 F.Supp. 614 (D.N.H. 1994).

Figure 1



This Administrative Regulation is duly posted this 29th day of April 2016 and shall be effective on the 29th day of May 2016. In the interim public comment on the proposed regulation is invited and will be considered by the Director.