Highland City Planning Commission Agenda

Date: Tuesday, February 23 , 2010
Place: Highland City Building,
5400 West Civic Center Drive Suite 1
Time: 7:00 P.M.

Parliamentary Procedure is followed at Highland City Planning Commission Meetings. Parliamentary Procedure refers to the rules of democracy – that is, the commonly accepted way in which a group of people come together, present and discuss possible courses of action, and make decisions. Parliamentary rule is based upon the will of the majority; the right of the minority to be heard; protection of the rights of absentees; courtesy and justice for all; and consideration of one subject at a time.

Item 1: Minutes ~ Consider Approval
~ January 26, 2010
~ February 9, 2010

Item 2: Planning Commission Rules and Procedure ~ Consideration to Adopt

Item 3: 3-4108(5)/3-4208(5): Residential Facilities for the Disabled - Consideration of a Code Amendment ~ Discussion Only

Item 4: 3-4108(6)/3-4208(6): Residential Facilities for the Elderly - Consideration of a Code Amendment ~ Discussion Only

Item 5: 10-102: Definitions - Consideration of a Code Amendment for the purpose of defining "Disability, Residences for the Disabled, and Residential Facilities for the Elderly" ~ Discussion Only

Item 6: Town Center Overlay Ordinance - Consideration of a Code Amendment ~ Discussion Only

Item 7: Planning Commission Future Business, Questions & Recommendations ~ Discussion

This Agenda and a Full Agenda are available on the City Web Site at www.highlandcity.org

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Gina Peterson, City Recorder, 756-5751 ext. 4506, at least three working days prior to the meeting.

US Supreme Court: Zoning

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is the process by which a local government regulates the use of privately owned land within its jurisdiction. A municipality or county usually derives authority to engage in zoning from an enabling statute adopted by the state legislature. The enabling statute constitutes a delegation of the state's police power to regulate land use to promote the public welfare. Under this authority, the local legislative body, such as the city council, enacts a comprehensive zoning scheme by which the entire community is carved into discrete sections or zones. Certain uses are allowed in each zone. For example, only residences may be permitted in one area, whereas factories may be authorized elsewhere.

Predicated on traditional principles of common-law nuisance, zoning became popular early in the twentieth century. Nonetheless, the notion of zoning was not uncritically embraced by the judiciary. State courts initially disagreed as to whether zoning ordinances were constitutional, and the decisions conflicted regarding the validity of excluding certain uses from certain areas. Debate centered on questions of due process, equal protection, and taking private property without just compensation. Ultimately, the constitutionality of zoning as a land-control device was sustained by the Supreme Court in the seminal case of Euclid v. Ambler Realty Co. (1926).

Notwithstanding the Euclid decision, many aspects of zoning required refinement and further judicial scrutiny. The fundamental problem was that, although a zoning scheme might be reasonable in general terms, it could have an inappropriately harsh impact on certain parcels of land. The Supreme Court recognized this possibility in Euclid and in the subsequent case of Nectow v. City of Cambridge (1928) actually found a zoning ordinance unconstitutional as it applied to a specific tract. Nectow was the forerunner of much of our modern zoning litigation; today, landowners frequently assert that a local zoning ordinance is invalid with respect to a particular parcel of property.

A local legislative body may rezone to correct deficiencies in its original zoning scheme. Furthermore, zoning ordinances contain administrative mechanisms designed to fine-tune the general scheme and thereby avoid disparate impact on landowners in the community. An administrative agency, such as a board of zoning appeals, is generally authorized to grant variances when the zoning scheme produces "unnecessary hardship" on individual landowners. The same body also has the power to grant conditional use permits for which provision has been made in the ordinance itself. Moreover, nonconforming uses that antedate the zoning ordinance are permitted to continue.

Since the mid-twentieth century, the zoning concept has been utilized in novel ways to address various urban and suburban problems. Regulating land use to promote aesthetic values, to preserve landmarks or historical districts, and to manage growth are a few examples. These modern adaptations have often been challenged, and after 1970 a number of land-use regulation cases reached the Supreme Court.

During this period, the Court frequently considered whether certain zoning or related action by a local government exceeded its regulatory authority and constituted taking property without compensation. In Penn Central Transportation Co. v. City of New York (1978), the city employed a landmark preservation

ordinance to prevent construction of an office building over Grand Central Terminal. The Supreme Court upheld the constitutionality of this action, noting that under the ordinance the landowner could still make reasonable use of the premises and could transfer development rights to other parcels. Conversely, in Lucas v. South Carolina Coastal Commission (1992), the Court held that (absent state nuisance or property law dictating a contrary result) an uncompensated "per se" taking occurred when a state statute forbidding any significant development on two oceanfront building lots eliminated "all economically beneficial use" of those parcels.

The Court also addressed a vexing question regarding remedies available to an aggrieved landowner. In First English Evangelical Lutheran Church of Glendale v. County of Los Angeles (1987), the Court recognized the right of a landowner to obtain compensation for the temporary taking of property that may result from the adverse impact of an ordinance ultimately declared invalid. However, in Tahoe Sierra Preservation Council v. Tahoe Regional Planning Agency (2002), the Court concluded that building moratoria do not amount to per se takings for the duration that they are in place.

Notwithstanding such Supreme Court decisions, it remains difficult to ascertain when a land-use regulation constitutes a permanent or temporary taking. Hence, the regulation/taking controversy continues.

Bibliography

•Daniel R. Mandelker, Land Use Law, 5th ed. (2003)
— Jon W. Bruce

http://www.answers.com/topic/zoning

Zoning

History of Zoning and the Police Power., The Elements of Zoning., Subdivision Controls

The most prevalent method of local land use controls in the United States is zoning. Other methods include subdivision controls, housing codes, building codes, historic preservation and aesthetics, and natural resource protection (such as coastal zones). The exercise of local land use controls is firmly rooted in the police power—the power to regulate in order to protect the health, safety, morals, and welfare of the people. In most jurisdictions, that power is delegated from the state—the repository of police power—to units of local government through enabling statutes.

History of Zoning and the Police Power.

Zoning developed very late in American history, but its roots go back several centuries. Indeed, land use controls can be traced back to seventeenth-century England. Laws in the American colonies dealt extensively with land use controls for more than the abatement of common-law nuisance; some of these took the form of building laws. Some commentators point to the use of restrictive covenants running with the land in the early regulation of land use in the United States as a basis for later public controls.

Remember...

Land use restrictions on building heights were upheld by the Supreme Court as early as 1909. The bulk of land use controls by local zoning came after 1900, with increasing urbanization. During the nation's first century, the abundance of land coupled with a largely agrarian economy and a strong belief in private property rights combined to confine most land use disputes to those involving nuisance. But it is in the police power, not the common law of nuisance, that land use controls are firmly grounded.

New York City enacted the first comprehensive zoning ordinance, in 1916, though more rudimentary forms had appeared in both Boston and Los Angeles at least ten years earlier. The New York law divided the city into zones according to permitted uses of land, minimum lot size, and maximum building heights. The Supreme Court decision in Village of Euclid v. Ambler Realty Co. (1926) upholding the general authority to impose zoning under the police power, coupled with promulgation of the Standard Zoning Enabling Act gave land use controls a strong impetus. The drafting of a standard zoning-enabling act, its dissemination by the U.S. Department of Commerce, and its adoption by dozens of states were principally responsible for the spread of land use controls throughout the nation. The act was the product of an advisory commission appointed by Herbert Hoover, then secretary of commerce; the first printed version of the act (1924) sold over fifty-five thousand copies. By 1923, 208 municipalities with 22 million inhabitants, representing 40 percent of the urban population of the United States, were zoned. By 1930, forty-seven states had adopted zoning-enabling legislation in accordance largely with the Standard Zoning Enabling Act, and 981 municipalities, representing 67 percent (46 million) of the urban population, had adopted the zoning ordinance as the most useful technique to control the use of land.

The 1920s also saw the judicial creation of a limitation on land use controls, based on the theory that a land use regulation, if too onerous, constituted a taking of property without compensation, contrary to the Fifth Amendment to the Constitution. The Supreme Court in Pennsylvania Coal Co. v. Mahon (1922) held that Pennsylvania had "taken" property without compensation by passing a law forbidding the mining of coal under private property in a way that caused the land surface to subside. In the now famous words of Justice Oliver Wendell Holmes: "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."

After five decades of silence on this topic, the Court suggested in Penn Central Transportation Co. v. City of New York (1978) that the economic effect of regulations on a landowner, together with the landowner's "distinct, investment-backed expectation," would figure prominently in deciding regulatory takings cases. In Lucas v. South Carolina Coastal Council (1992), the Court held that a regulation leaving landowners with no "economically beneficial use" constituted a regulatory taking regardless of such expectation, unless the regulating government could prove that the regulation either abated a nuisance or reflected a "background principle" of the state's law of property, in which case the right to use land contrary to the regulation was not a part of the landowner's title to begin with.

The Elements of Zoning.

State zoning-enabling acts or statutes permit, but do not require, local governments to divide the land area in their jurisdiction into districts, or zones, and to list permitted uses, their permitted height and density ("bulk" regulation), and conditional uses in each zone. The map upon which the districts are drawn is called the "zoning map," and the lists of uses and bulk regulations are collectively called the "text." The text also contains administrative regulations setting forth how the zoning ordinance restrictions on a particular piece

of property may be changed and, usually, a section dealing with uses permitted at some past date but no longer conforming to the existing land use regulations for the district, called collectively "non conformities." The principal vehicles for administration and enforcement of a local zoning ordinance are the zoning officer or administrator, the zoning board of appeals, the local legislative body, and the plan commission.

Among the troublesome issues confronting early zoning ordinance draftsmen were the potential hardships caused to individual property owners by the literal application of the zoning ordinance to a particular piece of property. This problem is addressed through the "variance" (sometimes called a variation or special exception). The Standard Zoning Enabling Act provided for a local zoning board of appeals for the particular purpose of granting variances after a hearing, but some jurisdictions converted such boards into hearing agencies only, with the variance granted by the local legislative body.

Variances are usually granted in cases of special or unique hardship, and the zoning regulation is varied only to the extent necessary to relieve the applicant of that hardship. Hardship usually is determined by a three-step test: (1) the land cannot yield a reasonable return if used only for the permitted use; (2) the proposed use will not alter the community's essential character; and (3) the need for the variance is due to unique circumstances and not general neighborhood conditions.

The rapid spread of comprehensive zoning to most urban areas of the United States after the Euclid case resulted in many structures and uses no longer permitted in the new use districts in which they found themselves. Non conformities may be created by a rezoning or map amendment or by changes in the list of permitted or special uses in an existing district. To qualify for nonconformity status, a use or structure must have been legally commenced or used ab initio. Most state zoning-enabling acts provide expressly for such non conformities, and local governments are generally prohibited from immediately eliminating most nonconforming uses and buildings. The law of non conformities has assumed increased importance in recent years owing to the current prominence of vested rights issues and cases, the theories for which grew directly from the law of non conformities.

While courts originally held that non conformities must be permitted until they slowly wasted away, most jurisdictions now permit the termination of certain non conformities over time. The validity of such termination often depends upon such factors as the type and value of the nonconformity, its useful life, and whether it is a nonconforming use or a nonconforming structure. Junkyards and nuisance-type non conformities appear to be particularly vulnerable to quick termination, as are relatively low-value uses such as signs and billboards. Of particular use in the elimination of non conformities is the technique of amortization, whereby the nonconformity is terminated after a period during which the user is theoretically able to recapture all or part of the investment therein. Courts have generally upheld the concept as applied to signs, junkyards, billboards, sites of adult entertainment, and similar structures.

Subdivision Controls.

The regulation of land and the dedication of public improvements through the subdivision process is a relatively modern land use control technique. The modern subdivision ordinance developed from local responses to so-called "plat acts," by which, as legislative policy, no parcels of land should be divided and sold without the filing of a "plat"—a scaled drawing of the parcel showing the division or divisions into which it had been carved. The purpose of such plat acts was to aid "conveyancing," or the process of buying and selling land.

At first, subdivision ordinances dealt primarily with an increasing volume of design standards, such as width and composition of streets and sidewalks, perimeter linkage, and uniformity of building setback from the street. Street and road standards often came from formally referring to and incorporating the language and illustrations in an "official map" showing where the community had decided to place its streets. From the design and location of public facilities needed to serve new subdivisions, it was an easy step to require construction of such facilities as a condition of subdivision approval. Thus, many state enabling acts directed local subdivision codes to require the building and dedication to the community of the streets, sewers, water mains, sidewalks, and other public facilities. By the 1950s the subdivision ordinance was well on its way to becoming a development code.

A logical step from regulating the design and dedication of public facilities was the "mandatory showing" of open space and public building sites on subdivision plats. The first step—the showing of such public uses and consequently the prohibition, even if for a short time, of an owner's developing such sites—was both common and practical. After all, increasing residential construction logically increases the need for schools, police and fire stations, and parks.

The next step was more problematic: the required "dedication" of such park, public-building, and school sites. The theory was much the same as that supporting public-improvement requirements and dedication: if an owner of property sought to develop it in such a fashion as to add to the population of a local government area in a particular section of its jurisdiction, that property owner should provide its share of the park, school, and public-building needs thereby generated. If the subdivision was too small to generate the need for a "whole" such site, then cash would do, to be paid into a fund for the purchase of the site as other subdivisions were approved. Indeed, in a spate of recent cases, such mandatory dedication schemes have been upheld in a number of jurisdictions, usually so long as the dedication of land is required to fill a need attributable to the developer being asked to make the dedication or cash contribution. Such subdivision "exactions" are therefore increasingly commonplace and are often viewed as an acceptable growth-management tool.

"Takings" and Land Development Conditions.

The requirements to dedicate streets, roads, and similar public facilities have generally been upheld on the grounds that the subdivision is creating the need for such facilities and that the facilities will benefit the subdivision almost exclusively. Exactions of land, money, or both for other facilities and services pose significant "taking" problems, particularly if these exactions are for public facilities extrinsic to the development. Land developments often generate a need for off-site improvements and facilities. This, together with drastic reductions of available federal government funds for such facilities and citizen revolts against increases in property taxes (the other major source of local government funds), led to the creation of the "impact fee." An impact fee is levied upon a land development to pay for public facilities, the need for which is generated by that development. The developer must therefore pay a proportionate share of the cost of the facility that is attributable to the development. This is called the "rational nexus test." Approved by many state courts in the 1970s, the test was boosted considerably when the Supreme Court in Nollan v. California Coastal Commission (1987) used an "essential nexus test" in deciding that a state agency could not require the dedication of lateral public-beach access across the rear of a private beachfront lot in exchange for granting permission to the owner to rebuild a beach house. The Court reasoned that there was no connection or essential nexus between the condition—access—and the problems, if any, that

rebuilding the house would cause. The Court followed this decision with Dolan v. City of Tigard (1994), in which it added that the condition or dedication must be "roughly proportional" to the need generated by the proposed land development. Impact fees are accordingly used to fund such facilities as streets and roads, water, wastewater, solid waste, schools, parks, public libraries, police and fire facilities, and even public housing. The fees commonly add from a few hundred to over ten thousand dollars per unit to the cost of residential development.

State and Regional Land Use Controls.
While traditional zoning and other local land regulatory ordinances continue to be the primary method of controlling the use of land, a "quiet revolution" in land use controls in the 1960s and 1970s moved much of the broad policy decision-making to the states in many developing regions. Essentially, the states took back some of the powers delegated to their local governments by zoning- and planning-enabling legislation so as to exercise a variety of state and regional land use controls themselves. They did so for a variety of reasons, principally (1) a perception that local governments were unwilling or unable to make decisions of supra-local impact except on narrow, parochial grounds; (2) a response to a crisis regarding a particularly large development or a particularly critical natural feature or resource threatened by actual or pending land development; and (3) the threatened imposition of federal land use controls.

There are many such systems of state control of land today, but four—those in Hawaii, Vermont, Florida and Oregon—have achieved particular notoriety, due in part to their unique but disparate features, the frequent challenges thereto, and their considerable impact on growing populations. The systems have several common threads, one of the most prominent being a reliance on state-wide planning of some sort as an initial or later addition to the basis for exercising land use controls. All four systems supercede in some fashion the local land use regulatory function, and all have running or incipient controversies over plan "conformance." All attempt to preserve certain identified critical natural resources and to control developments that would have a regional impact.

Bibliography and More Information about Zoning

•Fred P. Bosselman and David L. Callies, The Quiet Revolution in Land Use Controls, 1971.
•Robert H. Freilich and Michael Schultz, National Model Subdivision Regulation, Planning, and Law, 1995.
•Richard F. Babcock, The Zoning Game, 1996.
•Barry Cullingworth, Planning in the U.S.A., 1997.
•Julian Juergensmeyer and Thomas E. Roberts, Land Use Planning and Control Law, 1998.
•David L. Callies, Robert H. Freilich, and Thomas E. Roberts, Cases and Materials on Land Use, 3d ed., 1999.
•Robert Meltz, Dwight Merriam, and Richard Frank, The Takings Issue, 1999.
•Patrick Rohan, The Law of Planning and Zoning (Eric Damian Kelly, ed.), 10 vols., 2001.
David L. Callies

Read more: Zoning - History of Zoning and the Police Power., The Elements of Zoning., Subdivision Controls http://law.jrank.org/pages/19174/Zoning.html#ixzz0fiVV8mz5
http://law.jrank.org/pages/19174/Zoning.html

FUTURE BUSINESS

Item 2: Planning Commission Rules and Procedure ~ Consideration to Adopt

Motion:

That the Planning Commission Adopt Rules and Procedures as proposed by the Planning Commissioners according to HCDC 3-2-203(3)

The Planning Commission will need to specifically list any additional conditions or recommendations in the motion that the Planning Commission would like to impose that have not been specifically identified by staff.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Recommendation:

That the Planning Commission review the previously proposed documents defining Rules and Procedures for Planning Commission meetings page by page and adopt, by vote, rules and procedures for operation of these meetings.

Findings:

The Planning Commission may use findings to approve or not approve this consideration

Background:

The Highland City Development Code indicates that the Planning Commission "shall adopt rules consistent with this Code for its own organization and for the transaction of business" HCDC 3-2-203(3). This is especially important when making motions, addressing a person or Commissioner, or similar. The typical process that is followed in Municipal government is Roberts Rules of Order on which the City Council has determined is the best procedure to base their meetings. Staff shall continue to provide the Planning Commission with information and education related to any option the Planning Commission may consider.

Legal Authority:

Highland City Development Code (HCDC) 3-2-203(3)

Fiscal Impact:

N/A

List of Attachments:

- Planning Commission Procedures (as edited by the Planning Commission)
- Simplified Roberts Rules of Order (as edited by the Planning Commission)

ACTION ITEM

Abe
Christopher
Jay
Kelly
Melissa
Roger
Steve
Tim
Staff

RULES OF PROCEDURE FOR CONDUCTING THE BUSINESS OF THE HIGHLAND CITY PLANNING COMMISSION (should this be added to the Development Code and perhaps to the Municiple Code as well? Or do we want a separate manual for city procedures?)

Draft: 2/27/98jn

OFFICERS

The officers of the Commission shall be a Chairperson and a Vice Chairperson. The Vice Chairperson will preside at the meeting and assume the responsibilities of the Chairperson in the absence of the Chairperson. In the absence of both the Chairperson and the Vice Chairperson, the members present at such a meeting may elect a Chairperson pro-tem only for the meeting at which he/she is appointed or until relieved of the Chair by the Chairperson or Vice Chairperson.

RESPONSIBILITIES OF THE CHAIRPERSON/Vice chair as appropriate. The Vice Chair will assume the duties of the chair as indicated. If there are separate duties of the Vice Chair, they should be listed separately.

The primary function of the chair is to preside at the meeting. This means two things: First, see that the procedural rules for the commission are adhered to, and second, see that the rules of conduct for the public and the commission are abided by. (I learned this during training in Salt Lake over the weekend - ULCT *Powers and Duties Handbook*, p. 62) To meet with the mayor and community development director proir to each meeting to develop the agenda to ensure timely development and delivery to each pc member. I will communicate with Mayor Ritchie about his philosophy on this concept.

MEETINGS

The regular meetings of the Commission shall be held on the second and fourth Tuesday of each month, providing that:

A. A quorum of the Commission at any such regular meeting may, by formal action, substitute another day for a regular meeting for the ensuing month.

B. If, for any reason, the business to be considered at a regular meeting cannot then be completed, the Commission may, at such meeting, designate the time for an adjourned meeting to consider any matter that can properly be considered at a regular meeting, provided that such action shall serve an adequate notice to members present at such meeting and, with respect to members not present, it shall be the standing order that the Secretary shall endeavor to advise absentee members of the determination to hold such adjourned meeting.

C. In the event of lack of quorum at a regular meeting, the Chairperson or Vice Chairperson or Chairperson pro-tem, in that order, shall adjourn the meeting to another date and if such adjourned meeting is not at the same time as a regular meeting, then, such declaration of adjournment shall serve as sufficient notice thereof to all members present and it shall be the duty of the Secretary to employ such reasonable means as may be necessary to notify the absentees.

D. Special meetings may be called:

1. By action of the Commission at a regular or adjourned meeting.

2. By order of the Chairperson or, in his/her absence, by the Vice Chairperson or Chairperson pro-tem, in that order.

*3. By written request from four or more members of the Commission. Written notice for special meetings shall be provided to members of the Commission by the Secretary. In the event of emergency, a telephoned notice shall suffice provided a written waiver of other notice is signed by a majority of the entire Commission present at such special meeting. Action on matters at special meetings shall be limited to subjects announced in the call for such special meeting. Either a 2 business day notice should be required and/or telephone conferencing for those that cannot be physically in attendance.

4. By order of the City Council. I assume this would be done at a regular meeting so at least a week notice would be given. I would assume this also.

* I do not understand #3. Does it refer to the process for calling a special meeting; i.e., four of us would submit a request in writing? Or, does it refer to the process for notifying us that a special meeting has been called? Or both? It just needs to be re-written. Either way, I agree with Tim's suggestion. I concur

AGENDA FOR REGULAR MEETINGS

A. A copy of the agenda for every regular meeting of the Planning Commission shall be provided each member no later than five business days (I think 5 calendar days is sufficient) prior to the time of the meeting at which such agenda is to be considered.

B. Except by specific approval of the Planning Commission given at a regular or special meeting, none of the following subject matters shall be placed on the agenda for any given meeting, nor shall any such meeting consider any of the following subject matters, which are not formally filled with the City in the manner provided by law at least fourteen calendar days prior to the date of the Planning Commission meeting at which such matter or matters are to be considered.

1. Subdivision plats.
2. Applications for amendments to zoning or other official plan ordinances.
3. Applications for Variances or Conditional Uses.
4. Application for, or proceeding initiated by the Planning Commission for the consideration of the General Plan or Elements thereof, or specific plans, or any amendments thereof.
5. Any matter not enumerated in the foregoing which, by law, is required to be considered at public hearings.

C. When any matter is filed with the City for consideration and action by the Planning Commission, the City Planner shall notify such offices, departments, and agencies as identified by the Planning Commission Chairperson or City Administrator of the impending matter. The City Planner shall include in any such notification any pertinent information, maps or other material and data as will clearly indicate the type of action under consideration. Under the direction of the Chairperson, the City Planner shall present such staff reports to the Commission for consideration.

We need to move this to the left to align with other topics MINUTES AND RECORDS

A. It shall be the duty of the Secretary of the Commission to keep the minutes of all official meetings of the Planning Commission, including public hearings, and any resolutions referred to therein. These minutes shall be included with the agenda for the subsequent meeting of the Commission, and shall be approved at that time. Substantive changes to the minutes should be presented for consideration to the Commission at the time of their approval. Corrections for "typos" and the like should be sent directly to the Secretary before the meeting. After the minutes are approved by the Commission, the Secretary shall file the minutes and post them to the website within 2 days, so that they may be easily accessed by the residents of Highland.

B. The Secretary shall transmit to each member of the Commission a full and complete copy of the minutes of the previous meeting, including copies of any resolutions referred to therein. With the agenda of the meeting where it will be approved. We may be able to delete letter B altogther, as it seems to restate what was already said. Yes, let's drop this one.Agreed let's drop.

C. Formal resolutions considered by the Planning Commission shall constitute a part of the minutes of the meeting at which such resolution was considered, provided that the text of any such resolution may be considered as being contained in the minutes when such minutes make proper reference to such resolutions. WHAT??Why not just say, "Formal resolutions considered by the Planning Commission shall be included in the minutes whether approved or disapproved by a vote of those present." Or, am I missing something? Is this paragraph restating letter A? I think so, let's drop this one as well. Let's drop

D. All resolutions shall be clearly identified by number, nature or subject matter and by date, so as to be clearly identified by reference, and each such resolution shall contain as part thereof a record of the names of the Commissioners voting aye, the names of Commissioners voting no, and the names of the Commissioners absent.

E. The following format should be used in recording the action on any issue brought before the Commission:

1. "Moved by (Commissioner _____, seconded by (Commissioner _____) that _____ be adopted (approving or denying, as the case my be, and referring to the application, precise plan, general plan, or any other subject matter involved) based on (the following findings of fact, the nature of the action, the specific conditions, if any, and all pertinent matters developed at the hearing)."

2. It shall be the Commission's responsibility to make the determinations, identify the major findings of fact and indicate the conditions to be imposed, if any. In making the motion the Mover should, as far as possible, recite those things. Other members can, at the time, add items and all shall be combined in the proper form in the motion.

3. If possible, the Commission should make its decision during the same meeting in which the presentation of a matter or a public hearing occurs. A Suitable time for debate and deliberation should be allowed after which the chair should ask for a motion and a vote. However, if the Commission feels a need to have formal Finding of Fact developed, then a motion should take the form: "Move that the planning proposal, amendment, etc. be recommended for **further investigation** and that the (attorney) (planner) (secretary) (commission member) be instructed to prepare written findings of fact and recommended action to the Planning Commission for final approval." The Mover and other commissioners should summarize their reasons for their vote so the preparer of the written findings and recommended course of action

would have sufficient information. If time does not allow for debate and conclusion for the matter, then the matter may be held over to the next meeting.

4. If the preparation of written Findings of Fact has been assigned to be developed, then the final approval of the findings and recommended action of the Planning Commission should be an agenda item at the first meeting after their receipt by the preparer if it is held over to another meeting. If the body desires to follow the recommendation of the preparer, the following motion would be in order: "Move to accept the findings of _____ and approve the recommendations(s)" or "Move to accept the findings of _____ and approve the recommendations(s) except _____."

5. When made, seconded and passed, such action shall be deemed to constitute conclusive determination as to the import of the action as of the date of such action. All actions should be constructed in a manner as to approve, approve with conditions, or disapprove.

F. All approved motions and resolutions shall be communicated to the City Council in the form as approved by the Planning Commission. by the chair or designee within 2 days of action. This may be difficult to adhere to. Oftentimes the issue may not come before the City Council for several weeks and they may forget what the Planning Commission decided by that time.

HEARINGS

The procedures to be followed in the conduct of a public hearing and resolution of a public hearing matter:

A. Notice of hearing

1. In the case of a zoning amendment, a written notice of the hearing should be mailed to the concerned parties at least two weeks prior to the day of the hearing.

2. If a public hearing is required by State Law or Local Ordinance, public notice must be published in a newspaper of general circulation at least once, 10 days prior to the hearing. The notice must indicate the time and place of the hearing.

B. Conduct of the Hearing I suggest we re-order this:

1. **Call to order**: The Chairperson calls the hearing to order, at the announced time, even if it occurs in the middle of a planning commission meeting in which other matters are being discussed. The Chairperson should gavel for attention and state: "I now call to order the hearing in the matter of "_____".

2. **Recorded Documents:** The Chairperson should then state the documents that will be a part of the record, and should recite theses documents into the record. For example: "The record will include the zoning applicant form, a copy of the notice of hearing, an affidavit of mailing of the clerk showing who was mailed the notice of hearing, and an affidavit of publication stating that the notice of hearing was published in the newspaper on '_____'." **Do we need this or is it automatically included in the staff report?** Seems that it would fit well in #3, the staff report; so, we could drop this item.

3. **Appearances of Record:** The Chairperson next should ask for appearances of record. Each person who wishes to appear and make a statement should state his/her name and whether he/she is appearing in favor of or **opposed** to the **proposal** statement. This may be accomplished by circulating a sign-in sheet for those wishing to speak. This sheet should be first submitted to the Chairperson for the conduct of the meeting and then filed with the Secretary. Is this the best way to handle this? Passing a sheet around seems a bit awkward. We could have people fill out a 3X5 card or just ask for a show of hands. Perhaps the latter is the easiest to manage.

4. **Staff Report:** At this point the Chairperson should ask for the staff report. This should be presented by the City Planner or assigned staff. The person should describe the proposal, explain its relation to the General Plan in the event of a zoning change, the effect of the proposal on the community, the documents that will be a part of the record and make recommendations. If staff is not in attendance the hearing Chairperson should explain the proposal as precisely as possible.

5. **Questions on the Staff Report:** Members of the commission and Applicant of Record should be asked if they have any questions of the person making the report. If a party is represented by a lawyer he/she should be allowed to question the person directly. Otherwise questions should be directed to the Chairperson, who in turn questions the person making the Staff Report. Why not just let those with questions ask them of the staff directly? Good idea. I concur

6. **Applicant's Presentation:** The Applicant if offered the opportunity to present his/her application or case.

7. **Questions:** The Applicant, or the Applicant's Official Representative may be questioned (note: these should be questions for clarification – not statements, comments or rebuttal) by members of the commission.

8. **Appearances:** The Chairperson should then call on the persons who requested appearances: usually the proponents to the

action are allowed to speak first, followed by the opponents to the action. If a party is represented by an attorney, the attorney should be allowed to present witnesses to the Commission. This should be done in an informal fashion. At the conclusion of a witness' testimony, the Chairperson should ask whether there are any questions of the witness, from other parties? or from the Planning Commissioners. Commissioners and attorneys should be allowed to question the witness directly. To keep order, questions from other parties? should be directed to the Chairperson who in turn questions the witness. Again, why not allow the questions to be asked directly of the witness? With the commissioners I agree. I do as well. However, to allow the chair to stay in control, the questions should be handled from others by the chair. Preferably in writing from the others. Who constitutes "other parties?" I think we may be able to take out references to "other parties."

9. **Additional Statements:** At the conclusion of all testimony of parties of record, the Chairperson should ask for any other statements from the audience. This is to afford all citizens an opportunity to speak to the matter. Individuals who have already given testimony should not be afforded additional time in the interest of fairness.? I don't think fairness is the issue, doing the right thing is the issue and what we are charged with. The person should identify him or herself and where he/she resides and make his or her statement. The Chairperson or Commission may impose time limits. If we decide to require people to register to speak, either by a 3 x 5 card or by sending around a clipboard, I don't know if we should turn again to the audience for final comment if everyone has already had their say.

10. **Summary:** The Applicant is then given time to present a summary and concluding remarks. If there has been identified a Representative in Opposition to the applicant, such Representative should be given time to present a summary and concluding remarks.

11. **Questions by the Commission:** The members of the Planning Commission may ask questions to clarify issues. These should be questions for clarification – not statements, comments or rebuttal. Commissioners should resist the temptation to argue, make editorial comments or position statements during a public hearing. Such discussion by the Commission Members should be during the Planning Commission's debate on the issue after the Public Hearing.

12. **Closing the hearing:** After all of the testimony has been presented, the Chairperson should announce: "The hearing is closed and the matter will be taken under advisement."

C. Continued hearings: If it is desired to continue the hearing to a future date so that additional testimony can be taken or to allow for negotiations, the chairperson should announce: "The hearing is continued to _____ _____(Date)_____at _____(Time)_____ _____."

D. Minutes: It is important that the Secretary of the Commission take concise and accurate minutes of the hearing. Following is a skeleton outline of the points to be included:

1. Heading:
   a. Title of Matter
   b. Place
   c. Date
   d. Time
   e. Names of Commissioners in attendance
2. The hearing was called to order by Chairperson _____ and the record documents were made a part of the record. Time convening the hearing should be noted.
3. Appearances were made by the following parties:
4. Name of each person speaking and summary of his/her testimony.
5. The hearing was closed and the matter taken under advisement. Time of closing the hearing should be noted.

QUORUM & VOTING

A. A majority of (4) of the members of the Commission shall constitute a quorum for the conducting of routine business, and a majority of members present at a meeting shall be sufficient to act.

B. All regular members including the Chairperson are entitled to one vote on all matters. All matters must be decided by a simple majority of a quorum of the Planning Commission. A tie vote means that the matter fails and must go back for discussion or go forward to the City Council without a recommendation? What if only 5 members are present?

C. Reports of official acts and recommendations of the Planning Commission shall be made in writing to the City Council and shall indicate how each member of the Commission voted. Any member of the Commission may also make a concurring or dissenting report or recommendation to the City Council if he or she so desires. Concurring and dissenting reports must be submitted to the Commission Secretary and made a part of the minutes of the meeting and transmitted to the City Council with the Planning Commission's Report of Official Action and Recommendation on the matter.

RULES OF ORDER **I recommend that we substitute the Simplified Version of the Robert's Rules of Order here.** **I concur** **So do I.**

Planning Commission Rules of Procedure

1

A. The Chairperson shall conduct all meeting in such a manner as to fairly and expeditiously carry out the business of the meeting, the Chairperson shall employ the use of Robert's Rules of Order in the conduct of meetings of the Planning Commission.

B. Any regular member may make or second a motion at any time when recognized by the Chairperson. The Ex Officio Member may not make any or second any motion. Nor vote.

ACTION ITEM

ATTACHMENT

Abe
Christopher
Jay
Kelly
Melissa
Roger
Steve
Tim
Staff

Simplified Roberts Rules of Order

ACTION ITEM

Simplified Roberts Rules of Order For the Highland City Planning Commission

- **Main ideas:**
  - Anyone who wishes to speak should first be recognized by the Chair. This is what the previous council did and it is more like being in first grade. We are adults and we should be able to speak to each other, including staff, without asking for permission. This would only apply to discussion. Making motions, seconds, and changing motions would require recognition by the chair. I think that it works better to be recognized by the Chair. It is a formal proceeding and this approach keeps us on track and generally turns out to be more efficient. The rules on interruptions should be sufficient. So for me or anyone to participate in the discussion we have to be recognized by the chair each and every time. This is a time waster and an insult to open discussion. I strongly disagree. Is there a "Nice" way that we could be recognized by the chair? Would we raise our hands? Would Melissa remain vigilant and call for our opinion? I like the idea of organization, not shouting over each other. What would prevent that from happening in a debate in which each commissioner might have a "strong" difference of opinion? What prevents a "strong" commissioner from dominating the meetings, all hung up on "his or her" ideas. I know in our first meeting, I had things to say but didn't quite know how or when to interject. Going in order of seats might find someone with nothing to contribute. I think there has got to be a way to allow organization, yet not chaos, nor waste the valuable time. I like the idea of equal time to interested commissioners. Melissa will do well with this. Good comments, Steve. Based on what I saw at the first meeting we don't have any yellers. We may have some passionate commissioners but as adults we all should be able to make this work. I suggest giving the discussion a try without the timewasting recognition approach. We should have an agenda item giving each commissioner an opportunity to raise issues that have not already been raised. I have confidence in Melissa being able to keep the meeting on track. I am not sure that there is a logical connection between authorizing the chair to call on people to speak and wasting time, insulting the idea of open discussion and acting like adults. My view and experience is that meetings are more efficient, gain more input from a broad variety of people and are more orderly when the chair recognizes a Commission member's desire to speak. We would only need indicate a desire to speak to the chair, raise of hand or a nod work well, who then calls on people in the order in they have asked to speak. This is a good procedure for the

ATTACHMENT

public during an open comment time at the beginning of the meeting and during public hearings. We should be able to live with the same rule and for the same reasons. Well said. In training materials I received last weekend, (and in my own experience) it is clear that some formal rules should be in place. "Formal rules of procedure....will result in respectful speakers and respect for the process. Less formal rules of procedure can lead to chaos, contention and incivility." ULCT, p. 71

- Everyone has the. right to speak once if they wish, before anyone may speak a second time. Good luck keeping track of this. I agree this would definitely be difficult to track, and I think the intent of the statement is more of a good reminder for us to be considerate to all members of the group.
- Everyone has the right to know what is going on at all times.
- Only urgent matters may interrupt a speaker.
- **The Commission discusses** only one agenda item at a time.

- **How to do things:**

1. **You want to bring up a new topic before the group.**
   After recognition by the **Chair**, present your topic. A motion should be made to put it on the agenda for a future pc meeting. A second should not be necessary just a simple vote. We have had opportunity to make suggestions for agenda items. I don't think we should have extensive discussion on items that have not been posted as part of the agenda. I agree. Yes, we have been doing this towards the end of the meeting and it is an agenda item. A second is required for the motion to go to the floor for debate, or consideration.
2. **You want a motion just introduced by another person to be killed. I propose we remove this and rely on the motion dying for lack of a second.**
   Without recognition from the Chair simply state, "I object to consideration." This must be done before any debate. This motion requires no second, is not debatable and requires a 2/3 vote (to do what? Bring it back?) To kill the motion. A motion is also killed if there is no second.
3. **You want to change some of the wording in a motion under debate.**
   After recognition by the Chair, move to amend by
   a. adding words;
   b. striking words; or
   c. striking and inserting words.
4. **You like the idea of a motion under debate, but you want to reword it beyond simple word changes.**
   Move to substitute your motion for the original motion. If it is seconded, debate will continue on both motions and eventually the body will vote on which motion they prefer.
5. **You want more study and/or investigation given to the idea under debate.**
   Move to refer to a committee. Try to be specific as to the charge of the committee. In general, we would be moving to refer to the staff for additional work.
6. **You want more time personally to study the proposal under debate.**
   Move to postpone to a definite time or date.
7. **You are tired of the current debate.**

Simplified Roberts Rules of Order

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Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3 vote.

8. **You have heard enough debate.**
Move to close the debate. Requires a 2/3 vote.
Or move to previous question. This cuts off debate and brings the assembly to a vote on the pending question only. Requires a 2/3 vote.

9. **You want to postpone a motion until some time later time.**
Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3 vote. A majority is required to table a motion without killing it.

10. **You want to take a short break.**
Move to recess for a set period of time.

11. **You want to end the meeting.**
Move to adjourn.

12. **You are unsure that the Chair has announced the results of a vote correctly.**
Without recognition, call for a "division of the house". At this point a voice vote will be taken.

13. **You are confused about a procedure being used and want clarification.**
Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry". The Chair will ask you to stat your question and will attempt to clarify the situation.

14. **You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.**
Move to reconsider. If the majority agrees, the motion comes back on the floor as though thought the vote had has not occurred.

15. **You want to change an action voted on at an earlier meeting.**
Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, a 2/3 vote is required.

- **You may INTERRUPT a speaker for these reasons only:**
  - to get information about business – **point of information**
  - to get information about rules – **parliamentary inquiry**
  - if you can't hear, safety reasons, comfort, etc. – **question of privilege**
  - if you see a breach of the rules – **point of order**
  - if you disagree with the Chair's ruling – **appeal -** I don't see how a chair can make a "ruling" because the business of the Planning Commission is done by the group and not by an individual. I propose we delete this...unless I'm missing something.
- **You may influence WHAT the [members] discuss:**
  - if you would like to discuss something – **motion ? Not sure what this means I agree this is not relevant given the fact that we have an agenda which determines what we are going to discuss. Could this possibly be referring to item #1 under "How to do things" above?**
  - if you would like to change a motion under discussion – **amend or move for a substitute motion.**

Simplified Roberts Rules of Order

ACTION ITEM

Simplified Roberts Rules of Order

- **You may influence HOW and WHEN the [members] discuss a motion:**
  - if you want to limit debate on something – **limit debate**
  - if you want a committee to evaluate the topic and report back – **commit**
  - if you want to discuss the topic at another time – **postpone or lay it on the table**
  - if you think people are ready to vote – **previous question**

In addition I want to be sure that members of the public can speak to any issue on the agenda or any other pc issue after being recognized by the chair and limited to 2 minutes. It should not have to be a public hearing to hear from the residents we serve. I agree with this even though it runs the danger of having a few citizens show up regularly and dominate the time. The limitation of 2 minutes is a good idea. I do think the citizens should be limited to the subject being considered by the Commission. For other matters, I like the idea of having a time for citizen statements at the beginning of the meeting as is done on the City Council agenda. Agreed
More training info: "There is no right for any individual member of the public to actively participate in the meeting (althogh there is nothing wrong about allowing it to)." ULCT p.69 I'm all for public input and like the idea of public appearance at the beginning of the meeting similar to CC to speak to anything. During discussion items as listed on the agenda, we can also have input from the public, **BUT ONLY IF NO ACTION IS SCHEDULED FOR THAT ITEM**. If we do allow public comment, time definitely needs to be limited. It's a great way to keep the public involved. We may need to outline a "procedures of public comment" to be available to residents so they understand the appropriate times to comment and under which conditions. There is nothing more frustrating than to feel confused about when your voice can be heard.

Parliamentary Procedure Motions Chart

Adjourn	S			M	
Recess	S		A	M	
Table	S			M	
Close Debate	S			2/3	R
Limit Debate	S		A	2/3	R
Postpone To Later Time	S	D	A	M	R
Refer To Committee	S	D	A	M	R
Amend Amendment	S	D		M	R
Postpone Indefinitely	S	D	A	M	R
Main Motion	S	D	A	M	R

S = Must Be Seconded D = Debatable A = Amendable 2/3 = Requires A 2/3 Vote
M = Requires Simple Majority Vote R = May Be Reconsidered Or Rescinded

I like this summary motions chart and I apologize to Melissa and Kelly; it appears that I was wrong about the need for a second to adjourn. **No problem**.

ACTION ITEM

ATTACHMENT

Item 3: 3-4108(5)/3-4208(5): Residential Facilities for the Disabled - Consideration of a Code Amendment ~ Discussion Only

Summary Statement:

The Planning Commission addressed this particular ordinance at length approximately two years ago. State Law requires that every City adopt an ordinance for residential facilities for persons with a disability (Utah Code 10-9a-520). This particular law also requires that the ordinance "provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed." Highland City's ordinance currently identifies this use as a Conditional Use which is not consistent with this State law.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

Staff has been aware for some time that a Code Amendment to Sections 3-4102, 3-4108; and Sections 3-4202, and 3-4208 in the Highland City Development Code for "Group Homes for the Disabled" are required by State Law to be considered Permitted Uses wherever residential uses are permitted. This process started in 2008 and the Planning Commission discussed this item during several meetings over several months and a public hearing was held during that process (see attached minutes). These ordinances should be clarified and it is necessary to be consistent with State and Federal Law. Federal Law refers to a "Residence for person with a disability" as a "Group Home for the Disabled". The current Highland City ordinance refers to "Residences for Persons with a Disability" or "Group Homes for the Disabled" as "Residential Facilities for Handicapped Persons" and requires a Conditional Use Permit for approval which is not consistent with the above referenced laws. Staff is recommending these ordinances be amended to be consistent with these requirements. Staff has included this item on the agenda so the Planning Commission may have time to consider the text prior to a future meeting.

There are several issues regarding the Federal Court findings, HUD (Federal Division of Housing and Urban Development), State Law, and our current ordinance with regard to "Residences for Persons with a Disability" which are separated from group homes in general (a basic group home is simply a residence with several unrelated persons living in it). **First of all**, Federal Law states that housing discrimination for the disabled cannot be enforced upon homes whether persons are related or not. Per the City Attorney, this is typically based upon a City's ability (or inability) to show that the public interest is harmed by having a group of unrelated people in a home compared to an unlimited number of persons that are related to each other.

The federal Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, national origin and disability.

The **second issue** is the current definition of a disability as written in state law. According to State Law definitions Utah Code 10-9a-103 defined disability as follows;

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substance Act, 21 U.S.C. 802.

Recent court arguments question the definition of "disabled" and include group home for persons who are no longer using controlled substances but are in a group home provided for the purpose of recovering from those experiences. Group homes provided for this purpose are currently not permitted by state or federal law to provide prescriptions or controlled substances to their residents with the understanding that the persons staying in these facilities have already completed treatment and are simply finalizing their recovery. Persons under this category are considered disabled under state and federal law.

"Under the Fair Housing Act, persons recovering from drug or alcohol addiction are protected from discrimination in housing because they are recovering from addiction. Persons who are currently using illegal drugs, however, are not protected by the disability provisions of the Fair Housing Act."

The **third issue** would be the number of non-related persons within a group home for the disabled. Basically, the Fair Housing Act states that group homes for the disabled or persons who are disabled should not be restricted above that which is allowed for typical homes within neighborhoods for persons who are not disabled and in addition, a municipality is required by law to provide what is referred to as a "reasonable accommodation" for the number of persons allowed within a group home of this type. It should be consistent with what is permitted for any other residential home in Highland. Again, this does not matter whether they are related or not and obviously persons who are in homes for this purpose are not typically related to each other.

*The federal Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, **familial status**, national origin and disability. Since Jan. 1, 2001, the Justice Department's Civil Rights Division has filed 215 cases to enforce the Fair Housing Act, 97 of which have alleged discrimination based on disability. More information about the Civil Rights Division and the laws it enforces is available at www.usdoj.gov/crt.*

The largest potential liability may come from a limit for the number of persons that Highland defines for a group home for the disabled. The definition of a "family" in Highland may have to be discussed during this process however and exception may be made for Residences for Persons with a Disability without having to amend the current ordinance, limiting renting a portion of a home to 2 or less unrelated people. After extensive research and discussion with the City Attorney, it has been agreed that permitting 8 persons is sufficient to meet the requirements of the law and recent events. Considering the average household size for Highland from the 2000 Census was 4.59 persons per household allowing for 8 persons is a generous step above the average. This number assumes that nearly every household in Highland would have less than 8 persons. It is the opinion of the City Attorney and Staff that this number is generous and legitimate for this purpose.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the

group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

Federal Law (Fair Housing Act) does not allow a municipality to require "unreasonable accommodations" in restricting the number of persons permitted to reside within a group home for the disabled. The current definition of a family provides for 2 or fewer unrelated persons to reside within a home. Because the average persons per household is currently considered 4.59, and we are required to consider group homes for the disabled just as we would a typical family permitted to reside in Highland, it is understandable to determine that 2 unrelated persons would most likely be considered unreasonable. Using this theory, providing a group home for the disabled the opportunity to allow up to 8 unrelated individuals would most likely be considered a reasonable accommodation.

The City Attorney has included an e-mail directed to the Planning Commission. In addition, there is still question on whether the city should require a business license and if this requirement will be beneficial. Staff will continue to work with the City Attorney on this matter. The Planning Commission may wish to continue this item until these questions are answered. The current or proposed ordinance does not and can not prohibit these types of uses from coming to Highland. The proposed ordinances do accommodate for a reasonable exception the number of persons allowed within a residence for the disabled. In addition, the ordinance provides for these uses according to current State and Federal law.

Proposed Action:

That the Planning Commission direct Staff regarding this ordinance

Legal Authority:

- HCDC (Highland City Development Code) Chapter 9 Amendments to Title and Zone Map
- Utah Code 10-9a-520 Residences for persons with a disability
- Utah Code 10-9a-104 Stricter Requirements

Fiscal Impact:

Potentially significant

List of Attachments:

- Proposed Ordinance (**blue bold** indicates proposed text, **green bold** indicates proposed text taken from Orem City's ordinance, **red bold** indicates proposed text taken from Lindon City's ordinance. ~~Red Strikeout~~ indicates proposed deletions of text, **grey text** indicates text that will not be amended from the original ordinance. The black text associated with the numbering is simply Microsoft Word formatting and applies to the color adjacent to the number.
- Current Ordinance
- Planning Commission Public Hearing Minutes 2008
- Utah Code and Constitution; UC 10-9a-104, 520
- Letter to the Planning Commission from the City Attorney as previously discussed in 2008

Proposed Ordinance

FUTURE BUSINESS

3-4102: Permitted Uses. (Amended: 2/18/97, 7/15/08, 12/2/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-40 Zone upon compliance with requirements set forth in this Code:

(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.

(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.

(3) Public utility lines and subject to 5-114(6).

(4) Household pets.

(5) Fences, walls, hedges.

(6) Gardens, fruit trees, and field crops.

(7) Keeping of animals subject to the following requirements:

- **(a)** All large animals shall be provided shelter or cover. The shelter or cover where animals are normally fed, watered, and corralled shall be at minimum of one hundred (100) feet from any residence, except that it may be a minimum of seventy-five (75) feet from the animal owner's residence.
- **(b)** All large animals shall be enclosed in a fence and no part of the enclosure shall be nearer than twenty (20) feet from any residential structure.
- **(c)** No large animal shall be kept on a lot of less than 30,000 square feet in area. Two (2) large animals may be kept on a lot with a minimum area of 30,000 square feet and four (4) large animals may be kept on a lot with a minimum area of 40,000 square feet. One additional large animal may be kept on a lot for each 10,000 square feet of area of the lot in excess of 40,000 square feet. No small animal shall be kept on a lot of less than 20,000 square feet. No more than twelve (12) small animals shall be kept per 20,000 square feet of lot area. In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.
- **(d)** Pigs shall not be kept on any lot.

(8) **Residences for persons with a disability shall be a permitted use in all residential zones and requires site plan approval by the City Council; provided that the building and use is consistent with Utah Code 10-9a-520 and complies with Title 57, Chapter 21, Utah Fair Housing Act, and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.**

- **(a)** **Disabled or Disability under this section shall mean, with respect to a person, a person who has a physical or mental impairment which substantially limits one or more of that person's major life activities or has a history of having such an impairment.**
  - **(i)** **"Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.**
  - **(ii)** **Disabled or Disability also does not mean an impairment or limitation resulting from or related to kleptomania, pyromania, or any sexually related addiction or disorder, including but not limited to; sex and pornography addictions, transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders (those not resulting from physical impairments), or any other sexual behavior disorder.**
- **(b)** **Residences for persons with a disability shall not be considered multi-family dwellings; and**
- **(c)** **"Residential facility for persons with a disability" means a residence:**
  - **(i)** **in which more than one person with a disability resides; and**

A. is licensed or certified by the State of Utah Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

B. is licensed or certified by the State of Utah Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(d) Persons occupying a residence for persons with a disability exceeding two (2) unrelated persons shall meet all of the requirements of a person with a disability according to the definition of "disability" per State Law, Utah Code 10-9a-103; and

(i) Shall provide adequate personal space for each resident as follows:

A. A residential facility for the elderly shall ensure that each bedroom space in the facility has a floor area, exclusive of closet space, of at least 74 square feet for the initial occupant and 50 square feet for each other occupant in the space.

(e) No more than four (4) unrelated persons may occupy a residence for persons with a disability not including caretakers of which the number shall be defined by state law determined by the number of persons occupying the home; or the home shall not be occupied by more than four (4) unrelated individuals who meet the criteria set forth in this ordinance including paid professional staff.

(i) The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;

(ii) Occupancy by any staff member shall only be allowed if such occupancy is primarily for the purpose of serving the residents and not primarily a benefit of employment to the staff member.

(iii) The home shall be occupied only by individuals who meet the following criteria (and staff members):

A. Individuals who have been diagnosed with an addiction to alcohol or a controlled substance (as defined in Utah Code Section 58-37-2, as amended);

B. Individuals who are unable to abstain from the use of alcohol or controlled substances without the structured supportive setting offered by a residence for the disabled; and

C. Individuals who have completely abstained from the use of alcohol and all controlled substances for a continuous period of at least thirty (30) days immediately prior to becoming a resident of the home.

(iv) All residents in the home must completely abstain from using alcohol and controlled substances during the period that they are residents in the home. Any resident of a residence for the disabled who uses alcohol or a controlled substance, whether on or off the premises, shall be immediately expelled from the home and shall not be readmitted for a period of at least 60 days following the violation. However, nothing contained herein shall be construed to prohibit a resident from taking a prescribed medication for which a resident has a valid and current prescription.

(f) No alcohol or controlled substance shall be allowed on the premises of the home. A first violation of this requirement shall result in a warning to the permit holder. A second violation occurring within a twelve month period shall result in a fine of five hundred dollars ($500) to the permit holder. A third violation occurring within a twelve month period shall result in the revocation of a permit to operate a residence

Proposed Ordinance

FUTURE BUSINESS

for the disabled for the purpose of substance abuse and no permit shall be reissued to the permit holder (or principals of the permit holder if the permit is an entity) for a period of at least one year following such revocation. The City shall have the right to deny a permit to any individual or entity that has had more than one revocation of a permit to operate a residence for the disabled.

(i) The permit holder shall be required to perform a hair follicle test on each potential resident before allowing such person to become an occupant in a residence for the disabled operating for the purpose of substance abuse patient care. The permit holder shall not allow any person whose hair follicle test results indicate the use of alcohol or drugs in the previous thirty (30) days to become an occupant of the home. The permit holder shall conduct random urinalysis testing (or other equally effective testing methods) on each of the residents at least twice per month to verify ongoing abstinence from alcohol and drugs. Any resident who test positive for alcohol or drugs or who refuses to submit to a test shall be immediately expelled from the home. The permit holder shall maintain records of the initial hair follicle testing and the ongoing urinalysis test results and shall submit to the City a monthly report representing an accurate accounting of these tests.

(g) Residency within a residence for a person with a disability shall be strictly voluntary and not part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility, nor a condition of probation/parole. A residential facility for the disabled shall not include any persons referred by the Utah State Department of Corrections or any adult juvenile court.

(h) Residency within a residence for a person with a disability shall not be available to or occupied by any individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(i) The owner/operator of the facility shall conduct an individualized assessment of each person desiring to become a resident of the facility to determine if such person would constitute a threat prior to allowing occupancy of the facility by such a person.

(ii) The assessment shall be conducted by a properly licensed psychologist, social worker or other licensed individual qualified to perform such assessments properly licensed in the State of Utah.

A. Assessments shall include, but not be limited to, consideration of such things as past criminal histories and/or violent acts of the individual, the amounts of time that have lapsed since such acts, and treatments the individual has received.

B. Evaluations of individuals who have committed acts of sexual aggression or criminal sex acts shall also include psycho-sexual evaluations by a licensed psychiatrist or an individual holding a PhD in psychology.

C. No individual determined to pose a risk for commission of sexual offenses, or being classified as having predatory tendencies may be accepted as a resident.

(iii) Prior to the initial occupancy of a residence for persons with a disability at least quarterly, the owner/operator of the facility shall certify, in a sworn

affidavit, that the individualized assessments have been performed on each resident and that each resident meets the requirements of this section.

(i) Owners or operators of Residences for persons with a disability shall provide training or treatment programs for residents with disabilities which are in compliance with the State of Utah Department of Human Services standards as set forth in the Utah Administrative Code.

(j) The facility shall comply with all applicable state and federal laws, including laws related to access.

(k) To ensure the safety of the residents and surrounding community, the facility operators shall develop of safety plan demonstrating adequate supervision and control of the residents.

(i) The safety plan shall be reviewed by law enforcement officials an shall be approved by the City Council.

(l) Residential facilities for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood shall be excluded from this zone.

(i) A residence for the disabled located within an existing residential dwelling or located within a residential zone shall be capable of use as such facility, which includes being fully handicap accessible, without structural or landscaping alterations that would change the structure's residential character.

A. A site plan must be submitted showing any alteration of the structure and landscaping and must be approved by the City Council before a permit is issued.

B. Any new structure constructed for use as a residential home for the disabled shall be of a size, scale and design that is in harmony with other residential homes and residential uses in the neighborhood and subdivision.

(ii) At least four off-street parking stalls shall be provided to serve the needs of residents, visitors and staff members and, at minimum, there shall be at least one parking stall per individual occupying the home over the age of sixteen (16) including staff and at least 0.5 parking stalls per individual occupying the home for visitors.

(iii) A residence for the disabled shall include a six (6) foot sight obscuring fence along the side and rear yards that is constructed in a manner consistent with the residential character of the neighborhood. Such fencing shall be constructed and maintained in accordance with Highland City ordinances.

A. A chain link fence with slats shall not be considered sight obscuring for the purposes of this section.

B. The Planning Commission shall approve the style and design of any fencing; and

(m) Residences for persons with a disability shall be reasonably dispersed throughout Highland as follows:

(i) Residences for Persons with a Disability shall not be located within one (1) mile from another similar use which may include residential facilities for elderly persons, a juvenile group home, or transitional victim home as measured in a straight line between the closest property lines of any group home listed above.; and

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(ii) Owners of Residential facilities for persons with a disability that are substance abuse facilities for persons with a disability with a residents with disabilities related to any form of substance abuse or that have a history of past violence, sexual aggression or any offense involving a weapon or which resulted in serious bodily injury to another person and are located within 1000 feet of a school, are required to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

A. A security plan satisfactory to local law enforcement authorities;

B. 24-hour supervision for residents; and

C. Other 24-hour security measures; and

(iii) No residence for persons with a disability with a residents with disabilities related to any form of substance abuse or that have a history of past violence, sexual aggression or any offense involving a weapon or which resulted in serious bodily injury to another person shall be established within 500 feet of a license day care, or public or private school as measured in a straight line between the closest property lines of these uses as defined above.

(n) Owners of Residences for persons with a disability shall provide to the City a copy of the following documentation prior to occupying a Residence for Persons with a Disability:

(i) Verification of a State License to operate a Residence for Persons with a Disability; and

(ii) Copies of any required reports and/or inspections provided by the Department of Human Services and/or the Department of Heath or required by the owner/ operator to these departments, whichever may apply; and

(iii) Proof and verification to the City that each of the residents admitted to the facility falls within the definition of disability as set forth in this section and that the disability substantially limits the resident in a major life function; and

(iv) The facility operator shall provide the City proof of adequate insurance for the program's vehicles, hazard insurance on the home and liability insurance to cover residents and third party individuals; and

(v) Any additional required information, documentation, testing, or other data as required by this ordinance.

(o) Owners of Residential facilities for persons with a disability shall be required to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and

(p) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(i) For programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(ii) For programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

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(iii) Representatives of the City shall have the right to enter onto the premises of a residential home for the disabled at any time and without prior notice to verify compliance with the provisions of this section. As part of the permit application for a residential home for the disabled, the applicant shall provide the City with written authorization to enter upon the premises of the residence at any time. Failure of the permit holder, any staff member, or any tenant to immediately allow the City to enter upon the premises in accordance with this section, shall result in a fine to the permit holder in the amount of two-hundred fifty dollars ($250) for the first violation, five hundred dollars ($500) for the second violation, and one thousand dollars ($1,000) for a third violation and every subsequent violation occurring in any twelve month period.

(q) Any permit granted under this subsection is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with any applicable requirement as defined in this Code.

(r) All Residences for the Disabled shall be subject to 3-4102(10) of this Code.

(9) Residential Facilities for Elderly Persons. Residential facilities for elderly persons shall be considered a permitted use in any residential zone and shall require site plan approval. Upon application to establish a residential facility for elderly persons in any area where residential dwellings are allowed, the City shall grant the requested permit to the facility if the facility is proposed complies with the following requirements:

(a) For the purpose of this ordinance, an elderly person shall be considered anyone who is 60 years of age or older.

(b) Each residential facility for elderly persons is subject to state licensing procedures and must provide the city proof of a valid license issued by the Utah State Division of Licensing and compliance with the Department of Human Services.

(c) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this section.

(d) A residential facility for elderly persons shall:

(i) Require site plan approval by the City Council; and

(ii) Meet each building, safety, land use, and health ordinance applicable to similar dwellings; and

(iii) Provide adequate personal space for each resident as follows:

A. A residential facility for the elderly shall ensure that each bedroom space in the facility has a floor area, exclusive of closet space, of at least 74 square feet for the initial occupant and 50 square feet for each other occupant in the space.

(iv) Provide adequate off-street parking spaces equal to one (1) parking space for each person within the facility including any person, staff or resident over the age of sixteen (16) years of age and a minimum of 0.5 parking spaces per persons within the facility for visitors.

A. The facility operator shall provide the City proof of adequate insurance for the program's vehicles, hazard insurance on the home and liability insurance to cover residents and third party individuals; and

(v) Be capable of use as a residential facility for elderly persons, which includes being fully handicap accessible, without structural or landscaping alterations that would change the structure's residential character.

A. A site plan must be submitted showing any alteration of the structure or landscaping and must be approved by the City Council before a permit can be issued; and

(vi) Be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;

(vii) Be consistent with any existing, applicable land use ordinance affecting the desired location; and

(viii) Be occupied on a 24-hour-per-day basis by four (4) or fewer unrelated elderly persons in a family-type arrangement or four or fewer unrelated elderly persons in a live-in care provider arrangement.

(ix) Include a six (6) foot sight obscuring fence along the side and rear yards that is constructed in a manner consistent with the residential character of the neighborhood. Such fencing shall be constructed and maintained in accordance with Highland City ordinances.

A. A chain link fence with slats shall not be considered sight obscuring for the purposes of this section.

B. The Planning Commission shall approve the style and design of any fencing; and

(x) A residential facility for elderly persons shall not be established within one (1) mile of another existing residential facility for elderly persons, residential facility for persons with a disability, a juvenile group home, or transitional victim home as measured in a straight line between the closest property lines of any group home listed above.

(xi) Comply with all applicable State and Federal laws, including laws related to access.

(e) A residential facility for elderly persons may not operate as a business.

(i) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

(f) For purposes of this section:

(i) No person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and

(ii) Placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(g) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(h) Discrimination against elderly persons and against residential facilities for elderly persons shall be prohibited.

(i) All Residences for the Elderly shall be subject to 3-4102(10) of this Code.

(10) Procedure for Approval and Annual Review of a Residence for the Elderly and Residence for the Disabled.

(a) At least ten (10) days before the City Council hears the application for a Residence for the Elderly and Residence for the Disabled, the City shall provide written notification by mail to all citizens living within or owning property within 500 feet of

the proposed site as measured in a straight line between the closest property line of the proposed facility.

(b) Upon review of an application for a new Residence for the Elderly and/or Residence for the Disabled and upon determination of compliance with all of the above requirements, the application may be approved.

(i) However, where in the opinion of the City Council the information provided by the applicant is insufficient for the Residence for the Elderly and Residence for the Disabled in compliance with 3-4102(8) and 3-4102(9), the application may be denied.

(c) If approved, the City shall provide written notice of approval for the proposed Residence for the Elderly and/or Residence for the Disabled to all citizens living within 500 feet of the proposed Residence for the Elderly and Residence for the Disabled as measured in a straight line between the closest property line of the proposed facility.

(d) If denied, the City shall provide the applicant written notice of the decision to deny the application.

(e) The notice of approval or denial shall be in addition to the notice required in 3-4102(10)(a) and shall be provided by mail within one week (seven days) of the decision.

(f) Upon receipt of approval from the City Council, the owner/operator of the Residence for the Elderly and/or Residence for the Disabled shall be eligible to secure an annual permit from the City. Said permit shall be valid for one calendar year and shall be reviewed annually and be subject to:

(i) The receipt to a renewal application that shall include the information and certifications required under 3-4102(8) or 3-4102(9) above and a certification that none of the residents pose a threat as of the date of the renewal; and

(ii) At least ten (10) days prior to the City Council hearing the renewal application, the City shall provide written notification by mail to all citizens living within or owning property within 500 feet of the existing facility.

(iii) A finding by the City Council that during the preceding year that the Residence for the Elderly and/or Residence for the Disabled operated under compliance with the terms of 3-4102(8) or 3-4102(9) and any other conditions of approval.

(g) A permit to operate a Residence for the Elderly and/or Residence for the Disabled shall be:

(i) Non-transferable an shall terminate if the structure is devoted to a use other than a Residence for the Elderly and/or Residence for the Disabled or the structure fails to comply with all building, safety, health and zoning requirements of Highland City.

(ii) Shall terminate if at any time it is demonstrated to the City Council that:

A. The structure fails to comply with the requirements of 3-4102(8) or 3-4102(9); or

B. The program has failed to operate in accordance with the requirements of 3-4102(8) or 3-4102(9).

3-4108: Conditional Uses. (Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 12/2/2008)The following buildings, structures and uses of land shall be allowed in the R-1-40 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use

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permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.

(2) Churches, not including temporary facilities.

(3) Libraries, museums, art galleries.

(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.

(a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:

(i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and

(ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and

(iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) ~~Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:~~

(a) ~~The facility conforms to all applicable health, building and safety codes;~~

(b) ~~The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;~~

(d) ~~Not more than two handicapped persons reside at the facility;~~

(e) ~~The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~The facility shall not house any person who is violent;~~

(h) ~~Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(i) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(6) ~~Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:~~

(a) ~~The building conforms to all applicable health, safety, zoning, and building codes;~~

(b) ~~The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.~~

(d) ~~Not more than four elderly persons reside at the facility;~~

(e) ~~The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(h) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(7) ~~Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.~~

(5) Churches, public buildings and grounds, including storage yards and repair shops.

(6) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

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(7) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary City held events.
(8) Communications and other towers, masts or towers.
(9) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.
(10) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.
(11) Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:
- (a) Model home is used for lot/home sales within the city.
- (b) The maximum number of personnel shall not exceed three at any given time.
- (c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
- (d) No model home use shall exceed two years.
- (e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
- (f) Signage shall be regulated by existing sign ordinance.
- (g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
- (h) Garages used as sales office shall be converted back before occupancy is permitted.
- (i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
- (j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(12) Drilling wells.

3-4202: Permitted Uses. (Amended 2/18/97, 7/15/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-20 Zone upon compliance with requirements set forth in this Code:
(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.
(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.
(3) Public utility lines and subject to 5-114(6).
(4) Household pets.
(5) Fences, walls, hedges.
(6) Gardens, fruit trees.
(7) Keeping of animals subject to the following requirements: **Please refer to Section 3-4102(7) in this Code.**
- (a) ~~All large animals kept in this zone shall be subject to conditions listed in paragraph 3-4102 (9), (a) (b) & (d). As long as lot sizes are consistent with R-1-40 zone for large animals, then large animals will be continued as grand fathered rights not to be diminished.~~
- (b) ~~No small animal shall be kept on a lot of less than 14,000 square feet. Small animals shall be kept a minimum of twenty (20) feet from any residential structure. No more than twelve (12) small animals shall be kept per 14,000 square feet of lot area.~~
- (c) ~~In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.~~
- (d) ~~Pigs shall not be kept on any lot.~~

(8) **Residences for persons with a disability; please refer to Section 3-4102(8) in this Code.**
(9) **Residences facilities for elderly persons; please refer to Section 3-4102(9) in this Code.**

3-4208: Conditional Uses.(Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 6/15/04, 11/1/05, 12/2/08)The following buildings, structures and uses of land shall be allowed in the R-1-20 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.

(2) Churches, church grounds, and accessory buildings associated with the maintenance of those grounds, not including temporary facilities.

(3) Libraries, museums, art galleries.

(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.

(a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:

(i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and

(ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and

(iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) ~~Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:~~

(a) ~~The facility conforms to all applicable health, building and safety codes;~~

(b) ~~The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;~~

(d) ~~Not more than two handicapped persons reside at the facility;~~

(e) ~~The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~The facility shall not house any person who is violent;~~

(h) ~~Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(i) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(6) ~~Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:~~

(a) ~~The building conforms to all applicable health, safety, zoning, and building codes;~~

(b) ~~The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.~~

(d) ~~Not more than four elderly persons reside at the facility;~~

(e) ~~The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(h) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(7) ~~Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.~~

(5) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

(6) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary City held events.

(7) Communications and other towers, masts or towers.

(8) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.

(9) Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:

- (a) Model home is used for lot/home sales within the city.
- (b) The maximum number of personnel shall not exceed three at any given time.
- (c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
- (d) No model home use shall exceed two years.
- (e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
- (f) Signage shall be regulated by existing sign ordinance.
- (g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
- (h) Garages used as sales office shall be converted back before occupancy is permitted.
- (i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
- (j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(10) Drilling wells.

(11) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.

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3-4102: Permitted Uses. (Amended: 2/18/97, 7/15/08, 12/2/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-40 Zone upon compliance with requirements set forth in this Code:

(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.
(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.
(3) Public utility lines and subject to 5-114(6).
(4) Household pets.
(5) Fences, walls, hedges.
(6) Gardens, fruit trees, and field crops.
(7) Keeping of animals subject to the following requirements:
    (a) All large animals shall be provided shelter or cover. The shelter or cover where animals are normally fed, watered, and corralled shall be at minimum of one hundred (100) feet from any residence, except that it may be a minimum of seventy-five (75) feet from the animal owner's residence.
    (b) All large animals shall be enclosed in a fence and no part of the enclosure shall be nearer than twenty (20) feet from any residential structure.
    (c) No large animal shall be kept on a lot of less than 30,000 square feet in area. Two (2) large animals may be kept on a lot with a minimum area of 30,000 square feet and four (4) large animals may be kept on a lot with a minimum area of 40,000 square feet. One additional large animal may be kept on a lot for each 10,000 square feet of area of the lot in excess of 40,000 square feet. No small animal shall be kept on a lot of less than 20,000 square feet. No more than twelve (12) small animals shall be kept per 20,000 square feet of lot area. In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.
    (d) Pigs shall not be kept on any lot.

3-4108: Conditional Uses. (Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 12/2/2008)The following buildings, structures and uses of land shall be allowed in the R-1-40 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.
(2) Churches, not including temporary facilities.
(3) Libraries, museums, art galleries.
(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.
    (a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:
        (i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and
        (ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and
        (iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:
- (a) The facility conforms to all applicable health, building and safety codes;
- (b) The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;
- (c) The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;
- (d) Not more than two handicapped persons reside at the facility;
- (e) The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;
- (f) The facility shall not house any person being treated for alcoholism or drug abuse;
- (g) The facility shall not house any person who is violent;
- (h) Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;
- (i) Such other conditions as the Planning Commission may require as part of the conditional use approval process.

(6) Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:
- (a) The building conforms to all applicable health, safety, zoning, and building codes;
- (b) The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
- (c) The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.
- (d) Not more than four elderly persons reside at the facility;
- (e) The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;
- (f) The facility shall not house any person being treated for alcoholism or drug abuse;
- (g) Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;
- (h) Such other conditions as the Planning Commission may require as part of the conditional use approval process.

(7) Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.

(8) Churches, public buildings and grounds, including storage yards and repair shops.

(9) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

(10) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary City held events.

(11) Communications and other towers, masts or towers.

(12) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.

(13) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.

(14) Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:
- (a) Model home is used for lot/home sales within the city.

(b) The maximum number of personnel shall not exceed three at any given time.
(c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
(d) No model home use shall exceed two years.
(e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
(f) Signage shall be regulated by existing sign ordinance.
(g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
(h) Garages used as sales office shall be converted back before occupancy is permitted.
(i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
(j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(15) Drilling wells.

3-4202: Permitted Uses. (Amended 2/18/97, 7/15/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-20 Zone upon compliance with requirements set forth in this Code:

(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.
(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.
(3) Public utility lines and subject to 5-114(6).
(4) Household pets.
(5) Fences, walls, hedges.
(6) Gardens, fruit trees.
(7) Keeping of animals subject to the following requirements:
(a) All large animals kept in this zone shall be subject to conditions listed in paragraph 3-4102 (9), (a) (b) & (d). As long as lot sizes are consistent with R-1-40 zone for large animals, then large animals will be continued as grand fathered rights not to be diminished.
(b) No small animal shall be kept on a lot of less than 14,000 square feet. Small animals shall be kept a minimum of twenty (20) feet from any residential structure. No more than twelve (12) small animals shall be kept per 14,000 square feet of lot area.
(c) In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.
(d) Pigs shall not be kept on any lot.

3-4208: Conditional Uses.(Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 6/15/04, 11/1/05, 12/2/08)The following buildings, structures and uses of land shall be allowed in the R-1-20 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.
(2) Churches, church grounds, and accessory buildings associated with the maintenance of those grounds, not including temporary facilities.
(3) Libraries, museums, art galleries.
(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have

memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.

(a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:

(i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and

(ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and

(iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:

(a) The facility conforms to all applicable health, building and safety codes;

(b) The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;

(c) The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;

(d) Not more than two handicapped persons reside at the facility;

(e) The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;

(f) The facility shall not house any person being treated for alcoholism or drug abuse;

(g) The facility shall not house any person who is violent;

(h) Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;

(i) Such other conditions as the Planning Commission may require as part of the conditional use approval process.

(6) Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:

(a) The building conforms to all applicable health, safety, zoning, and building codes;

(b) The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;

(c) The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.

(d) Not more than four elderly persons reside at the facility;

(e) The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;

(f) The facility shall not house any person being treated for alcoholism or drug abuse;

(g) Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;

(h) Such other conditions as the Planning Commission may require as part of the conditional use approval process.

(7) Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.

(8) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

(9) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park

and attached to a restroom facility), and temporary facilities associated with temporary City held events.

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- (a) Model home is used for lot/home sales within the city.
- (b) The maximum number of personnel shall not exceed three at any given time.
- (c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
- (d) No model home use shall exceed two years.
- (e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
- (f) Signage shall be regulated by existing sign ordinance.
- (g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
- (h) Garages used as sales office shall be converted back before occupancy is permitted.
- (i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
- (j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(13) Drilling wells.

(14) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.

Existing Ordinances

FUTURE BUSINESS

10-9a-104. Stricter requirements.

(1) Except as provided in Subsection (2), a municipality may enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.
(2) A municipality may not impose stricter requirements or higher standards than are required by:
(a) Section 10-9a-305;
(b) Section 10-9a-514;
(c) Section 10-9a-516; and
(d) Section 10-9a-520.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-520. Residences for persons with a disability.

(1) Each municipality shall adopt an ordinance for residential facilities for persons with a disability.
(2) Each ordinance under Subsection (1) shall:
(a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and
(b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.
(3) Subject to Subsection (2), an ordinance under Subsection (1) may:
(a) require residential facilities for persons with a disability:
(i) to be reasonably dispersed throughout the municipality;
(ii) to be limited by number of occupants;
(iii) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:
(A) a security plan satisfactory to local law enforcement authorities;
(B) 24-hour supervision for residents; and
(C) other 24-hour security measures; and
(iv) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and
(b) provide that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.
(4) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:
(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and
(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Renumbered and Amended by Chapter 254, 2005 General Session

BLAISDELL & CHURCH, P.C.

ATTORNEYS AT LAW

5995 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84123
Email: bclaw@xmission.com

DAVID R. BLAISDELL
DAVID L. CHURCH

TEL (801) 261-3407
FAX (801) 261-3503

March 25, 2008

To: Members of the Highland City Planning Commission
Subject: Group Homes for the disabled

Lonnie has referred to me the following questions that you have regarding the law on group homes for people with disabilities.

1. What can be done about the number of vehicles at a group home?
2. Is it possible to restrict people with a violent history of crimes and limit the home to those who have not had run-ins with the law?
3. Who determines whether the individuals are a threat?
4. Is it a liability for the city if people get injured by someone from one of these group homes? If so, the commission wants more say on how the home is structured.
5. Is there guidance given by the law as to how many of the homes that the city needs to have?
6. The commission would like to know the rational of how the number is determined.

There are three general legal principles that apply to this issue and these questions. First, under Utah law (Utah Code 10-9a-520) residential facilities for the disabled must be a permitted used in any residential zone in the City. Second, under the federal fair housing act the City may not discriminate against the disabled. Third, under the American's with Disabilities Act the City is required to make reasonable accommodations for the disabled when providing municipal permits and services. With these principles in mind the following are my best opinions on your questions.

1. Number of vehicles. The City may not have an ordinance on number of vehicles that applies to only residential facilities for the disabled. This would be direct discrimination against those with a disability. The City may enact reasonable vehicle limitation ordinances that apply to all residences. Such an ordinance could be applied to group homes (as well as every home) unless the disabled residents could show that some accommodation from the ordinance is necessary to allow those with the disability to enjoy the same rights enjoyed by those without a disability, and the requested accommodation is reasonable. An accommodation is deemed reasonable if it necessary and does not result in a fundamental change in the character of the residential neighborhood.

2. Criminal back ground. It would not be possible to limit the residents based on criminal history or records in any respect that we did not also regulate whether or not people with a criminal record can live in the typical single family home in the City. We do not currently "zone out" people with criminal records and in my opinion such a general zoning ordinance would not be legal (with the limited exception to ordinances that control where sexual predators can live which have been upheld as legal in some states).
3. Who determines whether or not the residents are a threat? The state law specifically provides that the licensing of the homes and monitoring the service is the responsibility of the Utah Department of Human Services and the Utah Department of Health. It is these Utah departments that are to make the determination as to who is eligible to be a resident and who is the provider of any services.
4. Liability. The city incurs no liability if someone is injured as a result of this facility anymore so than if someone is injured by any resident of the City. The City is responsible only for its own acts and negligence. The City in this instance does not license or regulate the residential facility.
5. Number of facilities. There is no guidance in the law on how many of these facilities there can be or needs to be. Utah law does allow ordinances that "reasonably disperse" the facilities throughout the City. However there are some federal cases that hold such dispersal ordinances as being discriminatory since the ordinances only apply to homes for the disabled.
6. Rationale for number of residents allowed. I presume this question is about how the City arrived on the number of 8 for the proposed facility. State law allows ordinances that limit by number of residents. Federal law requires no discrimination and the possibility for reasonable accommodation. If the City has an ordinance that limits the number of persons that can occupy a house it must be applied to the disabled and the able equally. In addition if we do have such a limiting ordinance the applicant for the facility can request an accommodation and argue for its reasonableness. In this case, as you probably know, the City ordinance limits the number in the group home to no more than 4 persons. The Disability Law Center, on behalf of the applicant, requested an accommodation for 12 persons. They argued that the home was built for a large family and that while 12 residents in one house would be a large family in Highland City it was not unheard of. They also argued that this number would not result in a change in the residential character of either the home or neighborhood. The City, recognizing that the average household in the City is just fewer than 5 persons, offered to compromise at the number of 8 residents, assuming that with an average of 5 residents, this number more accurately reflected what the larger families in the City.

I hope this information is helpful. If you have any questions please feel free to give me a call.

Sincerely,
David L. Church

Item 4: 3-4108(6)/3-4208(6): Residential Facilities for the Elderly - Consideration of a Code Amendment ~ Discussion Only

Summary Statement:

The Planning Commission has not discussed this particular ordinance specifically to date however this particular ordinance is similar to "residential facilities for the disabled" in that State Law requires this use to be considered a permitted use "in any area where residential dwellings are allowed". State Law requires that every City adopt an ordinance for residential facilities for elderly persons (Utah Code 10-9a-517). Highland City's ordinance currently identifies this use as a Conditional Use which is not consistent with this State law.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

Staff has been aware for some time that a Code Amendment to Sections 3-4102, 3-4108; and Sections 3-4202, and 3-4208 in the Highland City Development Code for "Group Homes for the Elderly" are required by State Law to be considered Permitted Uses wherever residential uses are permitted. A process started in 2008 regarding residential facilities for the disabled and the Planning Commission discussed that item at length during several meetings however residential facilities for the elderly were not discussed. These ordinances should be clarified and it is necessary to be consistent with State Law. State Law requires that "Group Homes for the Elderly" are required to be permitted wherever single family homes are permitted except where "an area zoned to permit exclusively single-family dwellings" (a zone does not exist in Highland where single family dwellings are exclusively permitted. Highland City's single family zones permit churches, parks, city buildings, schools, etc.). The current Highland City ordinance contains a reference to Residential Facilities for Elderly Persons however it requires a Conditional Use Permit for approval which is not consistent with the above referenced laws. In addition, the Planning Commission may determine that this ordinance be consistent with "residential facilities for the disabled" where possible such as "reasonably dispersed" opportunity (such as the distance between a similar facility or a residential facility for the disabled). Staff is recommending these ordinances be amended to be consistent with these requirements. Staff has included this item on the agenda so the Planning Commission may have time to consider the text prior to a future meeting.

Proposed Action:

That the Planning Commission read the attached ordinance and prepare any proposed amendments and questions for the acting City Attorney.

Legal Authority:

- HCDC (Highland City Development Code) Chapter 9 Amendments to Title and Zone Map
- Utah Code 10-9a-516-519 Residences for Elderly Persons

Fiscal Impact:

Potentially significant

List of Attachments:

- Proposed Ordinance (please refer to Item 3 for text color references)
- Current Ordinance
- Utah Code and Constitution; UC 10-9a-104, 516-519

Proposed Ordinance

FUTURE BUSINESS

3-4102: Permitted Uses. (Amended: 2/18/97, 7/15/08, 12/2/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-40 Zone upon compliance with requirements set forth in this Code:

(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.

(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.

(3) Public utility lines and subject to 5-114(6).

(4) Household pets.

(5) Fences, walls, hedges.

(6) Gardens, fruit trees, and field crops.

(7) Keeping of animals subject to the following requirements:

- **(a)** All large animals shall be provided shelter or cover. The shelter or cover where animals are normally fed, watered, and corralled shall be at minimum of one hundred (100) feet from any residence, except that it may be a minimum of seventy-five (75) feet from the animal owner's residence.
- **(b)** All large animals shall be enclosed in a fence and no part of the enclosure shall be nearer than twenty (20) feet from any residential structure.
- **(c)** No large animal shall be kept on a lot of less than 30,000 square feet in area. Two (2) large animals may be kept on a lot with a minimum area of 30,000 square feet and four (4) large animals may be kept on a lot with a minimum area of 40,000 square feet. One additional large animal may be kept on a lot for each 10,000 square feet of area of the lot in excess of 40,000 square feet. No small animal shall be kept on a lot of less than 20,000 square feet. No more than twelve (12) small animals shall be kept per 20,000 square feet of lot area. In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.
- **(d)** Pigs shall not be kept on any lot.

(8) **Residences for persons with a disability shall be a permitted use in all residential zones and requires site plan approval by the City Council; provided that the building and use is consistent with Utah Code 10-9a-520 and complies with Title 57, Chapter 21, Utah Fair Housing Act, and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.**

- **(a)** **Disabled or Disability under this section shall mean, with respect to a person, a person who has a physical or mental impairment which substantially limits one or more of that person's major life activities or has a history of having such an impairment.**
  - **(i)** **"Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.**
  - **(ii)** **Disabled or Disability also does not mean an impairment or limitation resulting from or related to kleptomania, pyromania, or any sexually related addiction or disorder, including but not limited to; sex and pornography addictions, transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders (those not resulting from physical impairments), or any other sexual behavior disorder.**
- **(b)** **Residences for persons with a disability shall not be considered multi-family dwellings; and**
- **(c)** **"Residential facility for persons with a disability" means a residence:**
  - **(i)** **in which more than one person with a disability resides; and**

(iii) Representatives of the City shall have the right to enter onto the premises of a residential home for the disabled at any time and without prior notice to verify compliance with the provisions of this section. As part of the permit application for a residential home for the disabled, the applicant shall provide the City with written authorization to enter upon the premises of the residence at any time. Failure of the permit holder, any staff member, or any tenant to immediately allow the City to enter upon the premises in accordance with this section, shall result in a fine to the permit holder in the amount of two-hundred fifty dollars ($250) for the first violation, five hundred dollars ($500) for the second violation, and one thousand dollars ($1,000) for a third violation and every subsequent violation occurring in any twelve month period.

(q) Any permit granted under this subsection is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with any applicable requirement as defined in this Code.

(r) All Residences for the Disabled shall be subject to 3-4102(10) of this Code.

Proposed Ordinance

(9) **Residential Facilities for Elderly Persons.** Residential facilities for elderly persons shall be considered a permitted use in any residential zone and shall require site plan approval. Upon application to establish a residential facility for elderly persons in any area where residential dwellings are allowed, the City shall grant the requested permit to the facility if the facility is proposed complies with the following requirements:

(a) For the purpose of this ordinance, an elderly person shall be considered anyone who is 60 years of age or older.

(b) Each residential facility for elderly persons is subject to state licensing procedures and must provide the city proof of a valid license issued by the Utah State Division of Licensing and compliance with the Department of Human Services.

(c) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this section.

(d) A residential facility for elderly persons shall:

(i) Require site plan approval by the City Council; and

(ii) Meet each building, safety, land use, and health ordinance applicable to similar dwellings; and

(iii) Provide adequate personal space for each resident as follows:

A. A residential facility for the elderly shall ensure that each bedroom space in the facility has a floor area, exclusive of closet space, of at least 74 square feet for the initial occupant and 50 square feet for each other occupant in the space.

(iv) Provide adequate off-street parking spaces equal to one (1) parking space for each person within the facility including any person, staff or resident over the age of sixteen (16) years of age and a minimum of 0.5 parking spaces per persons within the facility for visitors.

A. The facility operator shall provide the City proof of adequate insurance for the program's vehicles, hazard insurance on the home and liability insurance to cover residents and third party individuals; and

(v) Be capable of use as a residential facility for elderly persons, which includes being fully handicap accessible, without structural or landscaping alterations that would change the structure's residential character.

FUTURE BUSINESS

A. A site plan must be submitted showing any alteration of the structure or landscaping and must be approved by the City Council before a permit can be issued; and

(vi) Be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;

(vii) Be consistent with any existing, applicable land use ordinance affecting the desired location; and

(viii) Be occupied on a 24-hour-per-day basis by four (4) or fewer unrelated elderly persons in a family-type arrangement or four or fewer unrelated elderly persons in a live-in care provider arrangement.

(ix) Include a six (6) foot sight obscuring fence along the side and rear yards that is constructed in a manner consistent with the residential character of the neighborhood. Such fencing shall be constructed and maintained in accordance with Highland City ordinances.

A. A chain link fence with slats shall not be considered sight obscuring for the purposes of this section.

B. The Planning Commission shall approve the style and design of any fencing; and

(x) A residential facility for elderly persons shall not be established within one (1) mile of another existing residential facility for elderly persons, residential facility for persons with a disability, a juvenile group home, or transitional victim home as measured in a straight line between the closest property lines of any group home listed above.

(xi) Comply with all applicable State and Federal laws, including laws related to access.

(e) A residential facility for elderly persons may not operate as a business.

(i) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

(f) For purposes of this section:

(i) No person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and

(ii) Placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(g) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(h) Discrimination against elderly persons and against residential facilities for elderly persons shall be prohibited.

(i) All Residences for the Elderly shall be subject to 3-4102(10) of this Code.

(10) Procedure for Approval and Annual Review of a Residence for the Elderly and Residence for the Disabled.

(a) At least ten (10) days before the City Council hears the application for a Residence for the Elderly and Residence for the Disabled, the City shall provide written notification by mail to all citizens living within or owning property within 500 feet of

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the proposed site as measured in a straight line between the closest property line of the proposed facility.

(b) Upon review of an application for a new Residence for the Elderly and/or Residence for the Disabled and upon determination of compliance with all of the above requirements, the application may be approved.

(i) However, where in the opinion of the City Council the information provided by the applicant is insufficient for the Residence for the Elderly and Residence for the Disabled in compliance with 3-4102(8) and 3-4102(9), the application may be denied.

(c) If approved, the City shall provide written notice of approval for the proposed Residence for the Elderly and/or Residence for the Disabled to all citizens living within 500 feet of the proposed Residence for the Elderly and Residence for the Disabled as measured in a straight line between the closest property line of the proposed facility.

(d) If denied, the City shall provide the applicant written notice of the decision to deny the application.

(e) The notice of approval or denial shall be in addition to the notice required in 3-4102(10)(a) and shall be provided by mail within one week (seven days) of the decision.

(f) Upon receipt of approval from the City Council, the owner/operator of the Residence for the Elderly and/or Residence for the Disabled shall be eligible to secure an annual permit from the City. Said permit shall be valid for one calendar year and shall be reviewed annually and be subject to:

(i) The receipt to a renewal application that shall include the information and certifications required under 3-4102(8) or 3-4102(9) above and a certification that none of the residents pose a threat as of the date of the renewal; and

(ii) At least ten (10) days prior to the City Council hearing the renewal application, the City shall provide written notification by mail to all citizens living within or owning property within 500 feet of the existing facility.

(iii) A finding by the City Council that during the preceding year that the Residence for the Elderly and/or Residence for the Disabled operated under compliance with the terms of 3-4102(8) or 3-4102(9) and any other conditions of approval.

(g) A permit to operate a Residence for the Elderly and/or Residence for the Disabled shall be:

(i) Non-transferable an shall terminate if the structure is devoted to a use other than a Residence for the Elderly and/or Residence for the Disabled or the structure fails to comply with all building, safety, health and zoning requirements of Highland City.

(ii) Shall terminate if at any time it is demonstrated to the City Council that:

A. The structure fails to comply with the requirements of 3-4102(8) or 3-4102(9); or

B. The program has failed to operate in accordance with the requirements of 3-4102(8) or 3-4102(9).

3-4108: Conditional Uses. (Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 12/2/2008)The following buildings, structures and uses of land shall be allowed in the R-1-40 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use

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permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.

(2) Churches, not including temporary facilities.

(3) Libraries, museums, art galleries.

(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.

(a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:

(i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and

(ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and

(iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) ~~Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:~~

(a) ~~The facility conforms to all applicable health, building and safety codes;~~

(b) ~~The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;~~

(d) ~~Not more than two handicapped persons reside at the facility;~~

(e) ~~The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~The facility shall not house any person who is violent;~~

(h) ~~Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(i) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(6) ~~Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:~~

(a) ~~The building conforms to all applicable health, safety, zoning, and building codes;~~

(b) ~~The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.~~

(d) ~~Not more than four elderly persons reside at the facility;~~

(e) ~~The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(h) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(7) ~~Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.~~

(5) Churches, public buildings and grounds, including storage yards and repair shops.

(6) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

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(7) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary City held events.
(8) Communications and other towers, masts or towers.
(9) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.
(10) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.
(11) Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:
- (a) Model home is used for lot/home sales within the city.
- (b) The maximum number of personnel shall not exceed three at any given time.
- (c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
- (d) No model home use shall exceed two years.
- (e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
- (f) Signage shall be regulated by existing sign ordinance.
- (g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
- (h) Garages used as sales office shall be converted back before occupancy is permitted.
- (i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
- (j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(12) Drilling wells.

3-4202: Permitted Uses. (Amended 2/18/97, 7/15/08)
The following buildings, structures, and uses of land shall be permitted in the R-1-20 Zone upon compliance with requirements set forth in this Code:
(1) Single-family dwellings, conventional construction, which include a garage of sufficient size for storage of two automobiles *(see 10-102(16) for definition of Dwelling)*.
(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, and swimming pools.
(3) Public utility lines and subject to 5-114(6).
(4) Household pets.
(5) Fences, walls, hedges.
(6) Gardens, fruit trees.
(7) Keeping of animals subject to the following requirements: **Please refer to Section 3-4102(7) in this Code.**
- (a) ~~All large animals kept in this zone shall be subject to conditions listed in paragraph 3-4102 (9), (a) (b) & (d). As long as lot sizes are consistent with R-1-40 zone for large animals, then large animals will be continued as grand fathered rights not to be diminished.~~
- (b) ~~No small animal shall be kept on a lot of less than 14,000 square feet. Small animals shall be kept a minimum of twenty (20) feet from any residential structure. No more than twelve (12) small animals shall be kept per 14,000 square feet of lot area.~~
- (c) ~~In determining the number of animals allowed on any lot based on its area, no proration of numbers shall be allowed within the area increments specified in this paragraph.~~
- (d) ~~Pigs shall not be kept on any lot.~~

(8) **Residences for persons with a disability; please refer to Section 3-4102(8) in this Code.**
(9) **Residences facilities for elderly persons; please refer to Section 3-4102(9) in this Code.**

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3-4208: Conditional Uses.(Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04, 6/15/04, 11/1/05, 12/2/08)The following buildings, structures and uses of land shall be allowed in the R-1-20 Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.

(2) Churches, church grounds, and accessory buildings associated with the maintenance of those grounds, not including temporary facilities.

(3) Libraries, museums, art galleries.

(4) Nonprofit country clubs used for recreational purposes as defined in this Section by members of the club. A non-profit country club shall be limited to golf. Preparation and serving of food and/or beverages associated with golf, on property specifically associated for these uses may be approved with Conditional Use. Sale of equipment and/or supplies may be approved with the conditional Use. Preparation and serving of food and/or beverages and the sale of equipment and/or supplies shall be a secondary and ancillary use to golf. Non-profit country clubs shall have memberships and regular periodic dues associated with the country club. A minimum of 50% of the proposed property associated with a non-profit country club shall be landscaped. The proposed landscaping area shall be limited to 15% non-living material. The applicant shall submit annually to Highland City a copy of the certified annual report required by the Utah Department of Commerce.

(a) Applicants desiring to obtain a nonprofit country club conditional use shall provide the following information when applying for a Conditional Use:

(i) Legal evidence and documentation of their non-profit corporation status with the Utah State Department of Commerce; and

(ii) Two (2) copies of detailed Architectural elevations (1/8" scale) for any structures and associated site plan (1" = 20' scale); and

(iii) Two (2) copies of a detailed Landscaping Plan (1" = 20' scale).

(5) ~~Residential facilities for handicapped persons sess sections 10-102 (24), (52); provided that the building to be used for such purposes and the use thereof conform to the following requirements:~~

(a) ~~The facility conforms to all applicable health, building and safety codes;~~

(b) ~~The facility is capable of use without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other existing residential facility for handicapped persons;~~

(d) ~~Not more than two handicapped persons reside at the facility;~~

(e) ~~The operator of the facility provides assurance satisfactory to the Planning Commission that the residents of the facility will be adequately supervised on a 24-hour basis;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~The facility shall not house any person who is violent;~~

(h) ~~Placement of any person in such facility shall be voluntary and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(i) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

(6) ~~Residential facilities for elderly persons see section 10-102(24), providing that the building to be used for such purpose and the use thereof conform to the following requirements:~~

(a) ~~The building conforms to all applicable health, safety, zoning, and building codes;~~

(b) ~~The building is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;~~

(c) ~~The facility is located not closer than three-quarters of a mile from any other residential facility for elderly persons or residential facility for handicapped persons.~~

(d) ~~Not more than four elderly persons reside at the facility;~~

(e) ~~The facility shall be owned by one of the residents or an immediate family member of one of the residents for which title has been placed in trust for a resident;~~

(f) ~~The facility shall not house any person being treated for alcoholism or drug abuse;~~

(g) ~~Placement of any person in such a facility shall be voluntary and may not be part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution;~~

(h) ~~Such other conditions as the Planning Commission may require as part of the conditional use approval process.~~

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(7) ~~Any conditional use permit granted under subsections (5) or (6) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.~~

(5) Permanent public maintenance buildings that may include storage yards, storage structures and repair shops.

(6) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbeque pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary City held events.

(7) Communications and other towers, masts or towers.

(8) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.

(9) Model Homes used for the sale of homes/lots within a subdivision in Highland, provided that the model home thereof conforms to the following requirements:

- (a) Model home is used for lot/home sales within the city.
- (b) The maximum number of personnel shall not exceed three at any given time.
- (c) Off street parking shall be provided such that it does not impede, disrupt, or cause a hazard to the flow of traffic or pedestrians.
- (d) No model home use shall exceed two years.
- (e) Outdoor lighting shall be limited to outdoor and landscape lighting normally permitted in a residential setting limited to the hours of dusk to 9:00 p.m.
- (f) Signage shall be regulated by existing sign ordinance.
- (g) A model home shall operate only between the hours of 7:00 a.m. To 9:00 p.m. Monday through Saturday.
- (h) Garages used as sales office shall be converted back before occupancy is permitted.
- (i) All homes permitted under this section shall have a final inspection prior to conversion as residential use.
- (j) All pre-existing use prior to January 15, 2002 shall have six months to come into compliance.

(10) Drilling wells.

(11) Basement Apartments for residential property *(see Chapter 4, Conditional Use Procedure in this Code)*.

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10-9a-104. Stricter requirements.

(1) Except as provided in Subsection (2), a municipality may enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.
(2) A municipality may not impose stricter requirements or higher standards than are required by:
(a) Section 10-9a-305;
(b) Section 10-9a-514;
(c) Section 10-9a-516; and
(d) Section 10-9a-520.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-516. Residential facilities for elderly persons.

(1) A residential facility for elderly persons may not operate as a business.
(2) A residential facility for elderly persons shall:
(a) be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;
(b) be consistent with any existing, applicable land use ordinance affecting the desired location; and
(c) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.
(3) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-517. Municipal ordinances governing elderly residential facilities.

(1) Each municipality shall adopt ordinances that establish that a residential facility for elderly persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.
(2) The ordinances shall establish a permit process that may require only that:
(a) the facility meet each building, safety, land use, and health ordinance applicable to similar dwellings;
(b) adequate off-street parking space be provided;
(c) the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;
(d) residential facilities for elderly persons be reasonably dispersed throughout the municipality;
(e) no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and
(f) placement in a residential facility for elderly persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-518. Municipal approval of elderly residential facilities.

(1) Upon application for a permit to establish a residential facility for elderly persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the municipality shall grant the requested permit to the facility if the facility is proposed outside of a zone

regulated exclusively for single-family homes and shall otherwise comply with Section 10-9a-519 if the facility is proposed in a land use zone regulated exclusively for single-family homes.
(2) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this section.
(3) If a municipality has not adopted ordinances under this section at the time an application for a permit to establish a residential facility for elderly persons is made, the municipality shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-519. Elderly residential facilities in areas zoned exclusively for single-family dwellings.

(1) For purposes of this section:
(a) no person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and
(b) placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.
(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any zone that is regulated to permit exclusively single-family dwelling use, if that facility:
(a) conforms to all applicable health, safety, land use, and building codes;
(b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and
(c) conforms to the municipality's criteria, adopted by ordinance, governing the location of residential facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.
(3) A municipality may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for persons with a disability.
(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.
(5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.
(b) The decision of a municipality regarding the application for a permit by a residential facility for elderly persons must be based on legitimate land use criteria and may not be based on the age of the facility's residents.
(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing land use ordinances that allow a specified number of unrelated persons to live together.

Renumbered and Amended by Chapter 254, 2005 General Session

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Item 5: 10-102: Definitions - Consideration of a Code Amendment for the purpose of defining "Disability, Residences for the Disabled, and Residential Facilities for the Elderly" ~ Discussion Only

Summary Statement:

Related to the previously discussed Item, Staff would like to propose to add a definition for "disabled" and amend the existing definition for "handicapped persons" to be consistent with State Law.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

Staff has been aware for some time that a Code Amendment to Sections 3-4102, 3-4108; and Sections 3-4202, and 3-4208 in the Highland City Development Code for "Residences for persons with a disability" and "Residential facilities for elderly persons" are required by State Law to be considered Permitted Uses wherever residential uses are permitted. These uses are currently not defined within the definitions section of the Highland City Development Code or the existing definitions are not consistent with current State Statute. Staff would like to propose the Planning Commission consider amending 10-102: Definitions within the Highland City Development Code to be consistent with State Law. Staff has included proposed text for the ordinance that the Planning Commission may comment on/amend. Staff has included this item on the agenda so the Planning Commission may have time to consider the text prior to a future meeting.

Proposed Action:

That the Planning Commission read the attached ordinance and prepare any proposed amendments and questions for the acting City Attorney.

Legal Authority:

- HCDC (Highland City Development Code) Chapter 9 Amendments to Title and Zone Map
- Utah Code 10-9a-103, 104, 520 Residences for Elderly Persons

Fiscal Impact:

N/A

List of Attachments:

- Proposed Ordinance
- Current Ordinance
- Utah Code and Constitution; UC 10-9a-103, 104, 520

10-102: Definitions. (Amended: 3/2/04, 3/1/05, 6/7/05, 3/7/06, 8/1/06, 10/3/06, 5/15/07) The following words, as used in this Title, shall have the meaning ascribed to them:

(15) Development -- Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(16) Disability – A physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment

(a) Disability does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(1~~6~~**7**) Dwelling Unit -- One or more rooms in a building designed for living purposes (bathing, eating, and sleeping) and occupied by one family.

(5~~5~~**6**) Residential Facility for Elderly Persons -- A single-family or multiple-family dwelling unit that meets the requirements of Utah Code ~~Annotated 1953 Section 10-9-501, et sec, as amended. It does not include a health care facility~~ **Section 10-9a-516 through 10-9a-519, but does not include a healthcare facility as defined by Utah Code, Section 26-21-2**.

~~(56) Residential Facility for Handicapped Persons -- A one-family or multiple-family dwelling unit, consistent with existing zoning of the desire location, that is occupied on a 24-hour basis by four or fewer handicapped persons in a family-type arrangement under the supervision of a house family or manager, and that conforms to all applicable standards and requirements of the Utah State Department of Social Services, and is operated by or operated under contract with that department.~~

(57) Residential Facility for Persons with a Disability -- A residence:

(a) in which more than one person with a disability resides; and

(b) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, Utah Code.

(5~~7~~**8**) Setback -- The shortest distance between the property line and outside surface of the foundation, wall, or main frame of the building Exclusive of fireplace chases.

Proposed Ordinance

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10-9a-103. Definitions.
As used in this chapter:

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(42) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a healthcare facility as defined by Section 26-21-2.
(43) "Residential facility for persons with a disability" means a residence:
(a) in which more than one person with a disability resides; and
(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

10-9a-104. Stricter requirements.

(1) Except as provided in Subsection (2), a municipality may enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.
(2) A municipality may not impose stricter requirements or higher standards than are required by:
(a) Section 10-9a-305;
(b) Section 10-9a-514;
(c) Section 10-9a-516; and
(d) Section 10-9a-520.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-520. Residences for persons with a disability.

(1) Each municipality shall adopt an ordinance for residential facilities for persons with a disability.
(2) Each ordinance under Subsection (1) shall:
(a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and
(b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.
(3) Subject to Subsection (2), an ordinance under Subsection (1) may:
(a) require residential facilities for persons with a disability:
(i) to be reasonably dispersed throughout the municipality;
(ii) to be limited by number of occupants;
(iii) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:
(A) a security plan satisfactory to local law enforcement authorities;

(B) 24-hour supervision for residents; and
(C) other 24-hour security measures; and
(iv) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and
(b) provide that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.
(4) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:
(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and
(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Renumbered and Amended by Chapter 254, 2005 General Session

Utah Code 10-9a-103, 104, 520

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Item 6: Town Center Overlay Ordinance - Consideration of a Code Amendment ~ Discussion Only

Summary Statement:

On February 2, 2010 the City Council passed a resolution, placing a moratorium on the Town Center Overlay Ordinance for the purpose of reviewing the text and cleaning up several perceived inconsistencies and suggesting the final approval be determined by the City Council.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

On February 2, 2010 the City Council passed a resolution, placing a moratorium on the Town Center Overlay Ordinance for the purpose of reviewing the text and cleaning up several perceived inconsistencies and suggesting the final approval be determined by the City Council. Staff has provided the Planning Commission previously with a document indicating the history of the Town Center ordinance. Staff has included a report with this agenda indicating the reasons behind the recommended text that the Town Center Committee proposed which the Council previously adopted. The text may help the Planning Commission understand the purpose and background behind the text which was previously adopted as recommended by the Town Center Committee. Staff chaired the Town Center Committee, drafted the many ordinance amendments as requested by the Planning Commission and Council, and created the Commercial Design Standards with many years worth of comments and input from Planning Commissioners and Council persons (adopted and attached to the Town Center Overlay Ordinance). There appears to be several misunderstood portions of the existing ordinance and it may helpful to the Planning Commission if background was provided explaining the genesis behind the text.

Significant portions of the existing ordinance text as adopted by the previous City Council was thoroughly examined, studied and recommended by the Town Center Committee with a purpose (The Town Center Committee consisted of professional persons highly experienced in the following: residential and non-residential planning and development, commercial financing and development, residential and non-residential building and construction, residential and non-residential real estate and title transactions, private business, public and private urban planning, master planning and code writing, and civil engineering) and included representation from the remaining major stakeholders (property owners) within the Town Center. It was understood by the Council that the surrounding residents were represented during an 8 year approval process with the initial ordinance and master plan and the most recent committee was charged to recommend a "useful ordinance that will help the Town Center be successful." The Planning Commission and City Council will need to carefully review the ordinance and determine what should be amended and what should be clarified. The recent appeal identifies some areas of the ordinance that should be clarified in any case. The Planning Commission may request a work session with the City Council at any point during this process. The City Council may request an open house and public meeting at some point. State Law and Highland City ordinances require a Code Amendment process to include a public hearing and recommendation by the Planning Commission prior to consideration for approval by the City Council.

Proposed Action:

That the Planning Commission review the attached documentation and provide input and/or proposed amendments to Staff for changes that may be made prior to a work session and/or public hearing.

Legal Authority:

- HCDC (Highland City Development Code) Chapter 9 Amendments to Title and Zone Map

List of Attachments:

- Staff report on purpose behind significant portions of the Town Center Overlay ordinance text as proposed by the Town Center Committee and adopted by the previous City Council on April 7, 2009.
- Town Center Committee Notes (provided to the City Council on October 2, 2008 and January 20, 2009.
- Cover letter from the Town Center Committee to the City Council provided on October 2, 2008 and January 20, 2009.
- Copy of Powerpoint presentation presented to the City Council (and Planning Commissioners present) on October 2, 2008 and January 20, 2009.
- Copy of building height study presented to the City Council on March 3, 2009

ARTICLE 4.7

Article 4.7 Adopted: 9/22/99, Amended 4/7/09

TOWN CENTER OVERLAY

The following information is a brief explanation behind the previously approved ordinance as discussed with the Planning Commission, Town Center Committee and City Council. Throughout the ordinance, entire sections were moved from their original locations in the previous ordinance text for the purpose of consistency, ease of reading and simplicity. These were all identified by color to the Council during the final two work sessions/open houses prior to adoption. In addition, over many years and during many meetings the Planning Commissioners and City Council persons determined that a traditionally planned development pattern was preferred over a conventionally planned development pattern. This was the basis behind a majority of this ordinance. The original ordinance and master plan was confusing relative to this in the fact that the master plan illustrations reflected a traditional development pattern while at the same time showing site plans more consistent with a conventional development pattern. Please read the Town Center Master Plan text attached separately with this agenda.

3-4701: Purpose

A previous section indicated "to provide residential opportunities in harmony with traditional highland homes on lots which require minimal maintenance from the owner occupants" was deleted intentionally to provide for diversity in residential opportunity as defined within the General Plan. In addition, it was amended to take advantage of the available ground with density.

3-4702: Definitions

Definitions were added to simplify some of the verbiage used in the ordinance per the request of several Planning Commissioners and Council persons during the previous amendment process.

3-4703: Land Area

This was not amended however the land use maps attached with the Commercial Design Standards no longer included the Town Center Meadows subdivision in the Town Center Overlay with the code amendments.

3-4704: Density

This section was amended significantly to define the existing densities previously permitted in the Town Center (Highland Village otherwise known as "Town Center Overlay Urban Subdivision" and Coventry Subdivision otherwise known as the "Town Center Transitional Housing Overlay". In addition, it was recommended in this section (and adopted by Council) that the flex use zone density simply be limited by parking requirements and height restrictions (see 3-4704(3)) with the understanding that this flexibility would allow the market to determine the best use of the property based upon the price of the ground and best understood use available to the land owner.

3-4705: Permitted Uses

These uses were taken from an exceptionally long process that the Planning Commission went through when determining conditional uses and permitted uses that should be allowed in Highland (State Law changed in 2005 requiring these to be listed along with requirements the City wanted to place on these uses or the City could not require them or limit them if the ordinance was not specific. Council did not adopt those recommended changes after that process). In addition, these were uses that either already existed in Highland and were considered welcomed or a combination of uses that were already allowed within the other existing non-residential zones in Highland were added to the list. Uses that were not desired in the Town Center were eliminated. Some uses were eliminated based upon their compatibility with other uses in a mixed use environment and traditionally developed zone. In the beginning the ordinance required a high percentage of upper floor residential based upon the traditional development pattern however the Council and Town

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Center Committee determined that "requiring" upper floor residential may not provide the flexibility needed to allow the market to determine the best use of the land. 3-4704(d) actually referred to a small overlay district that was proposed to the west of City Hall incorporated on the east end of the Highland Village and Coventry developments. The Council did not approve this specific district and requested that this be removed however this was unintentionally left when the ordinance was completed. Each district was specified in this section which was not the case in the original ordinance and now requires retail on the ground floor along the major highways (which was also not defined in the original ordinance). The definition of permitted uses was not new. The previously adopted Commercial Retail (CR) zone otherwise known as the Highland Marketplace (north of Kohlers, north side of SR-92) defined the desired uses defined by the City Council as permitted and simply required site plan and architectural approval. The CR Zone does require final approval of the site plan and architecture by the City Council. After significant research and market data it was determined that Highland could not expect non-residential use on the interior of the Town Center away from the highway traffic and visibility. It was also understood by the Town Center Committee that in order for the Town Center to be successful the ordinance would have to be flexible to allow the market to determine the most successful use while allowing the use and buildings to evolve over time.

3-4706: Conditional Uses
This section was amended and identified uses that were known to be associated with some of the permitted uses however it was determined they may have a greater impact such as gasoline islands, auto services, outdoor sales, hotels, and similar. The Council agreed.

3-4707: Prohibited Uses
Again, these uses were identified by the Planning Commission during a lengthy process and the Council agreed

3-4708: Change of Use
This was simply amended to reflect the new changes in the ordinance and specifically identify requirements if a use is proposed to change.

3-4709: Non-Conforming Structures and Uses
This section was not amended.

3-4710: Lot Coverage
This was amended to reference a requirement to adhere to the Commercial Design Standards as well as the ordinance.

3-4711: Location of Open Space
This was separated from what was "lot coverage and open space" and now requires all property not used for a structure, sidewalk, parking or parking access to be landscaped. The original ordinance referenced the original Town Center Master Plan for required landscaping which in fact did not indicate any requirement for landscaping. In addition the ordinance now references the Town Square Park and indicates the exaction fee as part of the park improvement costs.

3-4712: Architectural Standards
This section was significantly amended from what was previously very vague referencing the Commercial Design Standards as a requirement for architectural design.

3-4713: Architectural Design
This section was amended significantly based upon complaints from developers, architects, Planning Commissioners, and City Council persons over the past 6 years. The previous ordinance was very vague

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leaving the design and material completely up to the architect and developer however this was not a benefit to either when submitting for approval to the Commission and Council. Based upon several years of suggestions, requests, and options from staff with final input from the Planning Commission and Council with the use of papers, presentations and photographs from the Council and Commission, Staff prepared a very specific ordinance for architectural requirements (staff provided architectural background, building examples and similar to the Council Planning Commission on a few occasions to try and obtain suggestions for preferred architecture. In addition, staff provided the City Council and the Planning Commission with disposable cameras to photograph preferred buildings of which many were returned and included at the end of the Commercial Design Standards as preferred examples of architectural design). The current ordinance requires specific architectural styles that have stood the test of time for a long term product that may be easily modified, renovated and maintained without the requirement to demolish if the use changes over time. The typical shopping center/strip mall similar to the Highland Marketplace is expected to only last 20-30 years. It was the intent of this ordinance to develop a traditionally planned town center that may last 100+ years successfully without a need to demolish entire structures if change occurs. In addition, there were many architectural elements and requirements common with the architectural styles chosen by the Council and Commissioners and common in Highland City with previously approved commercial buildings now identified by ordinance.

This section included several items that have been recently discussed such as building height and building location. Traditional development patterns require buildings to be located adjacent to the street with parking located on the interior while conventional development prefers parking along a road with the building located at the back of the property. There are many sources from both sides of these development types that can be used to determine the best options for writing an ordinance. The Council and Commission previously determined that the Traditional development pattern was the preferred method which is typical in small towns and main streets and large cities across the country and the world an accommodates both the vehicle and pedestrian but directed more toward the pedestrian experience and social interaction, however this may change. The traditional development pattern tries to create a window/store front pedestrian shopping and walking experience adjacent to a street with a flexible design approach allowing the form of a building define the street edge. The conventional development pattern provides easier access for parking and driving and is designed to accommodate the vehicle rather than the pedestrian and is typical in suburban communities that have developed after the advent of the car.

Building height was discussed and presented to the Council on March 3, 2009 and they were provided with illustrations and presented with a powerpoint presentation identifying the impact on adjacent properties based upon different building heights (see attached). The illustrations were created using AutoCad and represent the difference of impact based upon what was already permitted by the previous ordinance and the various building types and options presented in the proposed ordinance. The Town Center Committee originally proposed 56' feet as the maximum height (to the top of a cornice or bottom of an eave - to promote sloped roofs) to the Council based upon typical building heights with a 3-4 story structure (depending upon use). The previous ordinance already permitted an office building to be 50' in height in the Town Center. The Council determined that 50' should be the maximum height and a cap of 70' was added for a sloped roof (previous versions of the proposed ordinance did not define a cap in height). Historically, the Council and Planning Commissioners comments have leaned toward a preference for sloped roofs on non-residential structures in Highland however the Town Center Committee had to recommend an ordinance that did not penalize someone that wanted to construct a building with a preferred roof type based upon their preference or the Planning Commission's request.

3-4714: Signs / Sign Illumination

The new ordinance referenced the existing sign ordinance and provided detail on an allowed monument sign that was not previously defined or identified in the sign ordinance.

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3-4715: Lighting
The new ordinance defined the type of street light and defined the town center street light specifically which was not defined in the previous ordinance.

3-4716: Residential Use
This section was added by the Town Center Committee to define additional architectural and site design requirements for residential uses. A minimum of three stories for residential use was required with this section of the ordinance because it was determined that it would be highly unlikely that a ground floor would be converted to another use (retail, office) if the unit only included two floors. In addition, it was determined that this plan should provide for long term planning and consideration with the understanding that there was limited space in Highland for the nontypical land uses and the space should be utilized for long term buildings (uses other than R-1-40/20 including multi-family, retail, commercial, office, etc.). In continuation, there was much discussion regarding retail on the ground floor on the interior of the Town Center. The Town Center Committee believed that ground floor conversion would be successful for live-work type uses and small offices such as an attorney, realtor, insurance agent or similar for many years before a larger retail use would be interested in locating away from the highway until density/population and traffic provide a market driven need.

3-4717: Location of Gasoline Pumps
This was slightly amended to increase the setback from an adjacent road.

3-4718: Substructures / Storage / Refuse Collections / Etc
This was simply reorganized for simplicity in reading by category.

3-4719: Utilities / Equipment
This was amended to avoid utilities being placed between a building and street frontage line while avoiding visible utilities on a building which was not specifically defined in the previous ordinance.

3-4720: Roadways
The amendments for this section identified the developer as the responsible party for pedestrian and vehicle public improvements specifically tied to a land use map within the Commercial Design Standards which was not defined in the previous ordinance.

3-4721: Parking
This section was significantly amended with regard to the location of parking, screening of parking, pedestrian circulation within the parking area and landscaping within the parking area. A parking ratio that is typical with multi-family residential was added however there has been concern over this requirement and discussion of increasing this number.

3-4722: Loading
This was amended to simply require screening and define location for non-residential loading areas.

3-4723: Driveway and Curb Openings
The amendments for this section included the elimination of already required specifications defined by AASHTO standards adopted by Highland City. In addition, this section was amended to reference the master transportation plan in the Commercial Design Standards which was not previously defined by ordinance.

3-4724: Landscaping
This section was amended to require a minimum of 15% landscaping for every project in the Town Center and add the following language “all areas not incorporated in the building footprint, parking area or access drives shall be landscaped. In addition, the new text specifies tree sizes, maintenance, landscaped planters between

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tree grates and street trees, and additional landscaping including the parkway detail along the major highways. The previous ordinance simply indicated what should be included with a landscaping plan with requirements similar to the surrounding commercial zones which were not consistent with traditional zoning techniques. Previous references to open space were attached to the previous Town Center Master Plan which did not specify where landscaping would be required other than road cross sections. Road cross sections are now defined within the Commercial Design Standards and include additional landscaping requirements now required by ordinance.

3-4725: Landscaping Maintenance
This was not amended

3-4726: Hardscape
This was amended to clean up text that was not related to hardscape and in addition required hardscape with each project and defined that hardscape. The previous ordinance indicated a few types of hardscape options but limited the type of hardscape and did not restrict what was considered undesired hardscape such as stamped concrete or colored asphalt. In addition, the new text required some pedestrian elements/amenities and defined plazas and paseos for the purpose of providing spaces where people can interact, sit, etc.

3-4727: Submittal Requirements
During the Town Center Committee process as previously explained, the Committee determined that the only viable and presently available incentive to locate in the Town Center was process for approval. Based upon many complaints over the years by businesses trying to locate in Highland it was proposed by the Committee that approval should only be required with the Planning Commission. It was suggested that if an ordinance existed that provided enough detailed direction and specific requirements for uses that were considered desired for the Town Center the Planning Commission should be able to review an application and grant approval. It is common knowledge now that this is not a preference of the City Council and this portion of the ordinance will need to be amended. In addition, the sections of the ordinance should be consistent and clear with regard to approval requirements and the approval body.

3-4728: Irrigation Water Requirements
This section was amended to simply refer to the correct section in the Development Code.

3-4729: Grading
This section was amended simply to be consistent with the ordinance format and to add a sentence indicating that the property shall not be graded to drain onto adjacent property.

3-4730: Development Review Committee
This section was amended from “design review board” to “design review committee” defining who would be on that committee and eliminating the requirement to hire a licensed architect and licensed landscape architect to review the initial plans. Staff can explain the difficulties with the design review board that existed several years ago if the Planning Commission needs to hire this information.

3-4731: Action of Site Plan and Architectural Building Elevations
This section was amended as previously discussed to allow the Planning Commission to be the final approving body. Architecture final approval by the Planning Commission was already allowed with the previous and original ordinance with appeals to the City Council. The site plan was previously granted final approved by the City Council. The Planning Commission will need to recommend what part, if not all, the Council should approve. As stated before, there are only two approvals to be granted with permitted uses - architecture and site plan. If it is determined that the Council should be the final approving body then this will need to be amended to specifically reflect that. In addition, 3-4731(1)(a) should be amended unless it is determined that

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an individual letter from each department is necessary. This has not been common practice to date, typically Planning Staff has included the comments from each department in the staff report attached to each relevant agenda item.

3-4732: Nuisances
This section was not amended except for consistency in formatting with the Development Code.

3-4733: Appeals
This section was amended to be consistent with the rest of the sections in the Development Code referring all appeals to the Appeal Authority section (Chapter 2, Article 3).

3-4734: Security: Site Improvement/Project Completion
This section was amended to be consistent with the rest of the sections in the Development Code referring to Chapter 6, Guarantee of Performance where this is now defined and amended and updated approximately 2 years ago to be consistent with Highland's bonding process.

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Item 7: Future Planning Commission Items ~ Information

Summary Statement:

The Planning Commission has requested a list of possible upcoming Planning Commission Items. Typically, items are immediately placed on the Planning Commission Agenda as soon as they are applied for and would not be seen as upcoming items with the following exceptions:

1. Town Center Overlay Ordinance, work session, and ordinance recommendations
2. Residences for the Disabled Code Amendments, public hearing and recommendations
3. Residences for the Elderly Code Amendments, public hearing and recommendations
4. Amendment to Permanent Sign Ordinance Sections in the Development Code per the request of the Highland City Merchants Committee
5. Master Plan State Training School property south of Lone Peak High School
6. Buhler property subdivision revisited

In addition, the Planning Commission requested the opportunity to discuss ideas, concerns and or proposed Code Amendments/Additions of which they have authority. This item is simply to give each Planning Commissioner the opportunity to discuss these items.

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