Highland City Planning Commission Agenda

Date: Tuesday, January 26, 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
~ December 8, 2009

Item 2: Planning Commission Meeting Schedule ~ Consider Approval

Item 3: Election of Chairman ~ Elect

Item 4: Planning Commission Rules and Procedure ~ Discussion

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

Item 6: Major Development Code Amendments and Plans ~ Discussion

Item 7: Planning Commission Recommendations ~ Discussion

Item 8: Planning Commission Future Business Items ~ 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.

Remember...

10-9a-103. Definitions.

(34) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

10-9a-302. Planning Commission Powers And Duties.

The planning commission shall make a recommendation to the legislative body for:

(1) a general plan and amendments to the general plan;
(2) land use ordinances, zoning maps, official maps, and amendments;
(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
(5) application processes that:
  (a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
  (b) shall protect the right of each:
    (i) applicant and third party to require formal consideration of any application by a land use authority;
    (ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
    (iii) participant to be heard in each public hearing on a contested application.

Renumbered and Amended by Chapter 254, 2005 General Session

Item 2: Planning Commission Meeting Schedule ~ Consider Approval

Motion:

That the Planning Commission move to Approve the Planning Commission Meeting Schedule for the 2010 Calendar Year.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

It is proposed the Highland Planning Commission continue to hold their meetings the 2nd and 4th Tuesday of every month. Any work sessions will be scheduled as needed. All meetings will take place at the Highland City Hall Council Chambers to begin at 7:00 p.m.

January 19
February 9, 23
March 9, 23
April 13, 27
May 11, 25
June 8, 22
July 13, 27
August 10, 24
September 14, 28
October 12, 26
November 9, 23
December 14, 28

* Holidays to Consider:
  - Pioneer Day - Saturday, July 24
  - Columbus Day - Monday, October 11
  - Veteran's Day - Thursday, November 11
  - Thanksgiving Day - Thursday, November 25
  - Christmas Day - Saturday, December 25
  - New Years Day - Saturday, January 1

Legal Authority:

- UCA 52-4-6-(1)

ACTION ITEM

ACTION ITEM

Item 3: Election of Chairman ~ Elect

Background:

Due to the resignation of the current Planning Commission Chair, the Planning Commission will need to elect a new Chair and Vice Chair to fill the necessary positions. The Community Development Department Secretary will provide a ballot similar to the previous election and the results will be given at the beginning of the meeting. Names are listed in alphabetical order. By ordinance, the position will be held until the first meeting in July unless a vacancy occurs after which a similar election shall take place.

- ☐ Kelly Sobotka
- ☐ Melissa Wright
- ☐ Roger Dixon
- ☐ Tony Peckson

Planning Commission Chair _____

Planning Commission Vice Chair _____

ACTION ITEM

ACTION ITEM

Item 4: Planning Commission Rules and Procedure ~ Discussion

Summary Statement:

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 may provide the Planning Commission with information and education related to any option the Planning Commission may consider.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Proposed Action:

That the Planning Commission determine its rules of order and process for future Planning Commission meetings.

Legal Authority:

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

FUTURE BUSINESS

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

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" and "Group Homes for the Elderly" 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. These ordinances should be clarified and it is necessary to be consistent with State and Federal Law. State law requires each municipality to include an ordinance permitting "Residences for Persons with a Disability" wherever single family residential homes are permitted. 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.). 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
- Current Ordinance
- Utah Code and Constitution; UC 10-9a-104, 516-520
- Recent related newspaper article (attached separately)
- 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; 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) **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**

(b) **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 six (6) 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.

(c) 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 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.

(d) 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.

(e) 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.

Proposed Ordinance

FUTURE BUSINESS

ATTACHMENT

(f) 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 without structural or landscaping alterations that would change the structure's residential character. 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 including staff.

(g) Residences for persons with a disability shall not be considered multi-family dwellings; and

(h) "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.

(ii) "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.

(iii) "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.

(i) 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 three-quarter (3/4) mile from another similar use which may include residential facilities for elderly persons; and

(j) 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.

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

(k) Owners of Residential facilities for persons with a disability that are substance abuse facilities and are located within 500 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:

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(i) A security plan satisfactory to local law enforcement authorities;
(ii) 24-hour supervision for residents; and
(iii) Other 24-hour security measures; and

(l) 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

(m) 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.

(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.

(n) 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.

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:

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(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) **Residential Facilities for Elderly Persons. Upon application for a Conditional Use Permit 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 outside of a zone regulated exclusively for single-family homes and shall otherwise comply the following requirements:**
- **(a) 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.**
- **(b) A residential facility for elderly persons shall:**
  - **(i) Meet each building, safety, land use, and health ordinance applicable to similar dwellings; and**
  - **(ii) Provide adequate off-street parking spaces equal to the number of persons within the facility including any person, staff or resident over the age of sixteen (16) years of age; and**

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(iii) Be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and

(iv) 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;

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

(vi) Be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.

(vii) A 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.

(c) 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.

(d) 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.

(e) 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.

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

(g) 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.

(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.

(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 3-4108 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.

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(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) **Residential Facilities for Elderly Persons; please refer to Section 3-4108(5) in this Code.**

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

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

(10) 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.

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(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.

(11) Drilling wells.
(12) 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).

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(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.

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(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

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

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

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

(12) 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.

(13) Drilling wells.

(14) 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

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.

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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

FUTURE BUSINESS

ATTACHMENT

Item 6: Major Development Code Amendments and Plans ~ Discussion

Summary Statement:

There are several opportunities for the Planning Commission to discuss and/or start the process to plan or amend or add ordinances to the Highland City Development Code. The Planning Commission may suggest to Staff these items that are considered important and prioritize these concerns so that Staff may assist the Planning Commission in processing these recommendations. These are some items that may be considered important to the Planning Commission; however, it is certainly not all encompassing and may not be considered as important as several other issues facing Highland.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Background:

There are several issues facing Highland City that have been discussed at some point in the past and some that have not. Some of these issues may be addressed by the Planning Commission with the Development Code and/or through a Planning Process.

Currently, a process has been started to amend the wall and window sign portions of the Development Code. During the last meeting where this was discussed, Staff was directed to invite the Highland City Merchants Committee to address the Planning Commission with their needs in regard to these signs. Staff has contacted those currently involved in the Committee and invited them to attend a Planning Commission meeting for this purpose. Staff has not been successful in receiving a reply by these business owners. Staff will be contacting every business in Highland to obtain their comments prior to placing this item back on the agenda. The Planning Commission may wish to continue this discussion and recommendation on their own if the City is not successful in obtaining comment from the local business community.

The Highland City General Plan indicates that the property south of Lone Peak High School owned by the State School Land Trust should be considered for mixed use. It has been indicated in the past that Highland City has addressed many issues as a result of an application or concern that has surfaced instead of planning for these concerns before hand. This is typically difficult when something new is brought to the City's attention that was not ever considered possible or has been unknown to residents in the past. In this case, the Planning Commission may begin a process to master plan this property prior to the submittal of any application based upon the General Plan.

The Open Space Bonus Overlay has been a great tool for Highland City over time with the City benefitting and obtaining hundreds of acres of open space for existing and future residents in Highland. At the same time these subdivisions have created many issues that were not understood when the ordinance was created. One issue is the placement and treatment of some of the open space. It has been stated many times in the past that this open space should be combined into a large park and/or larger pieces instead of some of the small strips and trails along back yards. The Planning Commission may want to address this issue and ordinance.

Fences have always been a significant land use issue in Highland. In 2006, the fence ordinance was placed on the ballot as a referendum during the election that year. The fence ordinance has been amended several times over the years however many still consider it very restrictive. The Planning Commission may want to consider looking at the fence ordinance.

Proposed Action:

That the Planning Commission provide to Staff a list of items considered important to the Planning Commission that may be addressed by the Planning Commission (Planning/Zoning Items, Ordinances).

List of Attachments:

- Worksheet

MY PRIORITIZED LIST OF HIGHLAND CITY ISSUES

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Item 7: Planning Commission Recommendations ~ Discussion

Summary Statement:

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.

FUTURE BUSINESS

Item 8: 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:

- There are no known upcoming items.

INFORMATION

ACTION ITEM