

Chapter 8

RESIDENTIAL FACILITIES FOR ELDERLY OR HANDICAPPED PERSONS

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16-08-010 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 by an eleemosynary, charitable, or beneficial organization, including a facility for which the title has been placed in trust for a resident;
 - b. Be consistent with existing zoning of the desired location;
 - c. Be occupied on a 24 hour-per-day basis by eight or fewer elderly persons in a family-type arrangement; and
 - d. conform with applicable standards of the Department of Human Services and be licensed and inspected by that department.
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.
 - a. The owner of a residential facility for elderly persons may not charge residents administrative costs or salaries greater than 15% of that fee.
 - b. A person charging a fee shall:
 - i. keep a record of all expenses and costs related to the fee; and
 - ii. make a record available for inspection by any resident of the facility, the Department of Human Services, and local building officials.

16-08-020 Municipal Ordinances Governing Elderly Residential Facilities.

1. Each county 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 exclusively single-family dwellings.
2. The ordinances shall establish a permit process that may require only that:
 - a. The facility meet all applicable building, safety, zoning, and health ordinances 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. No residential facility for elderly persons be established within three-quarters mile of another residential facility for elderly persons or residential facility for handicapped persons.
- 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.

16-08-030 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 county may decide only whether or not the residential facility for elderly persons conform to ordinances adopted by the county under this part.
 - a. If the county determines that the residential facility for elderly persons complies with the ordinances, it shall grant the requested permit to that facility.
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 part.
3. If a county has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for elderly persons is made, the county shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

16-08-040 Elderly Residential Facilities in Areas Zoned Exclusively for Single-Family Dwellings.

1. For the purpose 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 granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any municipal zoning district that is zoned to permit exclusively single-family use, if that facility:
 - a. Conforms to all applicable health, safety, zoning, 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 county'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 county 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 handicapped persons.

4. 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 applicable health, safety, and building codes.
5. Municipal ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.
 - a. The decision of a county 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 zoning ordinances that allow a specified number of unrelated persons to live together.

16-08-050 Residential Facilities for Handicapped Persons.

1. A residential facility for handicapped persons shall be consistent with existing zoning of the desired location.
2. A residential facility for handicapped persons shall:
 - a. Be occupied on a 24-hour-per-day basis by eight or fewer handicapped persons in a family-type arrangement under the supervision of a house family or manager.
 - b. Conform with applicable standards of the Department of Human Services.
 - c. Be operated by or operated under contract with that department.

16-08-060 Municipal Ordinances Governing Handicapped Residential Facilities.

1. Each county shall adopt ordinances that establish that a residential facility for handicapped persons is a permitted use in any area where residential dwellings are allowed, except an area zoned exclusively single-family dwellings.
2. The ordinances shall establish a permit process that may require only that:
 - a. The facility meet all applicable building, safety, zoning, and health ordinances applicable to similar dwellings;
 - b. The operator of the facility provide assurances that the residents of the facility will be properly supervised on a 24-hour basis;
 - c. The operator of the facility establish a municipal advisory committee through which all complaints and concerns of neighbors may be addressed;
 - d. The operator of the facility provide adequate off-street parking space;
 - e. The facility be capable of use as a residential facility for handicapped persons without structural or landscaping alterations that would change the structure's residential character;
 - f. No residential facility for handicapped persons be established within three-quarters mile of another residential facility for handicapped persons;
 - g. No person being treated for alcoholism or drug abuse be placed in a residential facility for handicapped persons;
 - h. No person who is violent be placed in a residential facility for handicapped persons; and
 - i. Placement in a residential facility for handicapped persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

16-08-070 Approval of Handicapped Residential Facilities.

1. Upon application for a permit to establish a residential facility for handicapped persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the county may decide only whether or not the residential facility for handicapped persons conforms to ordinances adopted by the county under this part.
 - a. If the county determines that the residential facility for handicapped persons complies with those ordinances, it shall grant the requested permit to that facility.
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 handicapped persons or if the structure fails to comply with the ordinances adopted under this part.
3. If a county has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for handicapped persons is made, the county shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

16-08-080 Handicapped Residential Facilities in Areas Zoned Exclusively for Single-Family Dwellings.

1. For the purpose of this section:
 - a. No person who is being treated for alcoholism or drug abuse may be placed in a residential facility for handicapped persons;
 - b. No person who is violent may be placed in a residential facility for handicapped persons; and
 - c. Placement in a residential facility for handicapped 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 granting of a conditional use permit, a residential facility for handicapped persons shall be allowed in any municipal zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:
 - a. Conforms to all applicable health, safety, zoning, and building codes;
 - b. Is capable of use as a residential facility for handicapped persons without structural or landscaping alterations that would change the structure's residential character; and
 - c. Conforms to the county's criteria, adopted by ordinance, governing residential facilities for handicapped persons in areas zoned to permit exclusively single-family dwellings.
3. A county may, by ordinance, provide that no residential facility for handicapped persons be established within three-quarters mile of another existing residential facility for handicapped persons.
4. The use granted and permitted by this subsection is nontransferable and terminates if the structure is devoted to a use other than a residential facility for handicapped persons or, if the structure fails to comply with applicable health, safety, and building codes.
5. Municipal ordinances shall prohibit discrimination against handicapped persons and against residential facilities for handicapped persons.
 - a. The decision of a county regarding the application for a permit by a residential facility for handicapped persons must be based on legitimate land use criteria and may not be based on handicapping condition of the facility's residents.