

CITY OF DAYTON, KENTUCKY

ORDINANCE 2022#7

**AN ORDINANCE CREATING A NEW SECTION
CHAPTER 158, "REASONABLE ACCOMMODATIONS IN
RESIDENTIAL NEIGHBORHOODS," UNDER TITLE XV
OF THE CITY OF DAYTON CODE OF ORDINANCES TO
ESTABLISH CRITERIA AND PROCEDURES FOR
DETERMINING REASONABLE ACCOMMODATIONS
FOR SOBER-LIVING FACILITIES IN THE CITY
ACCORDANCE WITH FAIR HOUSING LAWS AND
OTHER LAWS AND CODES.**

WHEREAS, the City of Dayton, Kentucky ("City") desires to comply with state and federal law related to housing regulations and provide a stable living environment for the citizens of the City; and

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended by the Federal Fair Housing Amendments Act of 1988 ("FHA"), imposes an affirmative duty on local governments to make reasonable accommodations (modifications or exceptions) in their rules, policies, practices, or services related to building, land use, and zoning regulations when such accommodation may be necessary to afford an individual with a recognized disability an equal opportunity to use and enjoy housing; and

WHEREAS, codification of a formal procedure for individuals with recognized disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's building, land use, and zoning regulations, standards, policies, and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair, and efficient handling of such requests in accordance with the statutory mandates, including the reasonable accommodation mandates of the FHA; and

WHEREAS, the City has been granted broad police powers to preserve single-family characteristics of its single-family neighborhoods; and

WHEREAS, the City has the right to regulate both the number of persons who may reside in a single-family home and the manner in which it is used so long as such regulations do not unfairly discriminate or impair an individual's rights of privacy and association; and

WHEREAS, many individuals and families who purchase houses in single-family neighborhoods do so with the expectation of establishing close and long-standing ties with their neighbors and the neighborhood; and

WHEREAS, along with these expectations, individuals and families commit to making, for the most part, the single largest financial and emotional investments of their lives in purchasing a single-family home in a residential neighborhood; and

WHEREAS, the FHA prohibits enforcement of building, land-use, and zoning regulations that would have the effect of discriminating against equal housing opportunities for the disabled; and

WHEREAS, the FHA requires the City provide reasonable accommodations to its building, land-use, zoning, and other regulations if such accommodations are necessary to afford an individual with recognized disabilities an equal opportunity to use and enjoy a dwelling; and

WHEREAS, the City desires to strike a balance between preserving the single-family characteristics of its residential neighborhoods and providing opportunities for the disabled to reside within its residential zones; and

WHEREAS, the City has been notified of an increase in the number of single-family houses being utilized as alcohol and drug recovery facilities (sober-living facilities) for unrelated individuals; and

WHEREAS, the increase has generated community concerns and complaints from residents near these facilities, including, but not limited to overcrowding, clustering of sober living facilities in close proximity to each other, late-night activities at these homes, the expanded use of limited city right-of-way for parking, increased police-call activities, and property-value diminution; and

WHEREAS, the purpose of a sober-living facility is to provide a comfortable living environment for persons with alcohol or drug addictions where they can remain clean and sober and can participate in a recovery program within a residential community environment so that they have the opportunity to reside in the single-family neighborhood of their choice; and

WHEREAS, recognizing that recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered disabled individuals under the FHA; and

WHEREAS, the concentration of sober-living facilities and the placement of large numbers of recovering addicts in a single dwelling can undermine the benefits of home ownership in single-family neighborhoods for those residing nearby, which in turn can undermine the single-family characteristics of neighborhoods; and

WHEREAS, the City has determined that most operators of sober-living facilities have taken the stance that the FHA prohibits the City from regulating them in any fashion; that they are free to house as many recovering addicts in a single-family dwelling as they desire; and that they are not required to make any showing to obtain an accommodation from the City's building, land-use, and zoning regulations; and

WHEREAS, the City is concerned that some operators may be driven more by a motivation to profit rather than to provide a safe and comfortable living environment in which recovering addicts have a realistic potential for recovery or to provide a living environment that resemble the manner in which non-disabled individuals use and enjoy a dwelling; and

WHEREAS, this ordinance provides a mechanism for a sober-living facility to seek accommodation upon making a showing that such accommodation is reasonably necessary to afford an individual with recognized disabilities the right to use and enjoy a single-family dwelling in a manner similar to that enjoyed by the non-disabled; and

WHEREAS, permitting six or fewer residents in a sober-living facility and establishing distance requirements and other criteria is reasonable and non-discriminatory and not only helps preserve the single-family characteristics of single-family neighborhoods but also furthers the purpose for which sober-living facilities are established; and

WHEREAS, because of their extremely transient nature and the high number of unrelated individuals/adults who reside in a single-family dwelling, and the lack of regulations for these facilities, sober-living facilities present problems not typically associated with more traditional single-family uses, including, but not limited to, the housing of large numbers of unrelated individuals/adults who may or may not be supervised in the facility; disproportionate number of vehicles associated with a single-family dwelling, which causes disproportionate traffic and utilization of on street parking in a residential area; creating neighbors who have little to no idea who resides in the dwelling with little to no interaction and a disregard for the impact with and upon the neighborhood; the disproportional impact upon City services; and the potential influx of individuals with criminal records; and the potential for excessive noise, particularly at night, as well as outdoor smoking and partying, the potential for littering, and other disruptions that may interfere with the use and enjoyment of neighboring properties;

WHEREAS, in seeking a balance within the urban residential neighborhood characteristics of the City, 650-foot distance requirement between sober-living facilities provides a reasonable market for the purchase and operation of these facilities; and

WHEREAS, the City recognizes that while they are not in character with single-family neighborhoods, when operated responsibly, sober-living facilities provide a societal benefit by providing those individuals with this recognized disabled the opportunity to live in single-family neighborhoods as well as provide recovery programs for these individuals who attempting to overcome their addiction; and

WHEREAS, without some regulation, the City cannot ensure that individuals seeking to live into sober-living facilities are recognized as disabled individuals who are entitled to reasonable accommodation; and

WHEREAS, a need exists for implementing criteria to determine and establish reasonable accommodations within the City's building, land-use, and zoning regulations that formalizes procedures related to such accommodation; and

WHEREAS, this ordinance has been reviewed for compliance with state and federal laws and regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DAYTON, KENTUCKY:

A new section of the Dayton Code of Ordinances is added as Title XV, Chapter 158, of the Code as follows:

Section I

REASONABLE ACCOMMODATIONS IN RESIDENTIAL NEIGHBORHOODS

SECTION 158.01 DEFINITIONS:

For the purposes of this Article, the following terms are defined as follows:

FAIR HOUSING LAWS. The Federal Fair Housing Amendments Act of 1988 (“FHA”) and the provisions of KRS 344.600 et seq., as may be amended from time to time (collectively, “fair housing laws”).

GROUP HOME. A residential facility for the care of seven or fewer unrelated individuals living in a single housekeeping unit and recognized as disabled individuals under the Fair Housing Act and American with Disabilities Act, or even fewer residents based on maximum occupancy restrictions established by the International Property Maintenance Code. A sober-living facility shall be considered as a Group Home for all purposes consistent herewith.

DISABLED. A person with disabilities. For purposes of this ordinance, the term “disabled” shall have the same meaning as set forth in the federal Fair Housing Act and the American with Disabilities Act, i.e., is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of a controlled substance is not.

OPERATOR. An individual or business entity, whether for profit or non-profit, which provides residential services at a group home.

REASONABLE ACCOMMODATION. The act of making a dwelling unit or housing facility(ies) readily accessible to and usable by a person with disabilities, through the removal of constraints in the city’s building, zoning, land-use, permit, and processing procedures. All accommodations may not be reasonable, and the reasonableness of a request will be determined by the City.

SOBER-LIVING FACILITY. A single-family dwelling unit used by individuals recovering from a drug and/or alcohol addiction, considered as a disabled individual under state or federal law. A sober-living facility shall not provide on-site supportive services to residents, including the following: mental-health services; clinical rehabilitation services; social services; medical, dental, nutritional or other healthcare services; financial management services; legal services; vocational services; and other similar supportive services. See GROUP HOME.

SECTION 158.02 PURPOSE:

A. Fair housing laws impose an affirmative duty on local governments to make reasonable accommodation in their building, land-use, and zoning regulations and practices when such accommodation may be necessary to afford disabled individuals an equal opportunity for housing.

B. In furtherance of the purposes of the fair housing laws, this ordinance is intended to preserve the residential character of single-family residential neighborhoods; ensure that group homes, including sober-living facilities, are actually entitled to reasonable accommodation; limit the secondary impacts of group homes, including sober-living facilities, by reducing noise and traffic; preserve safety and provide adequate on-street parking in residential areas; provide an accommodation for disabled individuals that is reasonable and actually bears some resemblance to the opportunities afforded non-disabled individuals to use and enjoy a dwelling in a residential neighborhood; and to provide a living

environment that will enhance the opportunity for the disabled to be successful in their programs. Pursuant to fair housing laws, this ordinance also is created to provide disabled individuals with reasonable accommodation in rules, policies, practices, and procedures to ensure equal access to housing and to facilitate the development of housing for individuals with such recognized disabilities when these disabilities may act as a barrier to fair-housing opportunities.

C. This ordinance establishes a procedure for making requests for reasonable accommodation in building, land-use, and zoning regulations, policies, practices, and procedures to comply fully with the intent and purpose of fair housing laws. Unless a group home has been granted reasonable accommodation as provided in this ordinance, group homes shall comply with all building, land-use, and zoning regulations, policies, practices, and procedures applicable to the zoning classification in which they are located.

SECTION 158.03 APPLICABILITY:

Reasonable accommodation within the context of land-use and zoning regulations means providing individuals with recognized disabilities some flexibility in the application of land-use and zoning regulations, policies, practices, and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

SECTION 158.04 NOTICE TO THE PUBLIC OF AVAILABILITY OF ACCOMMODATING PROCESS:

Notice of the availability of reasonable accommodation shall be prominently displayed and provided to requesting individuals, advising the public of the availability of the procedure for eligible applicants.

SECTION 158.05 APPLICATION FOR REQUESTING REASONABLE ACCOMMODATION:

A. Forms for requesting reasonable accommodation shall be available in the Dayton Code Enforcement Department.

B. An application for reasonable accommodation may be made by any disabled individual or his or her representative; the owner of the real property intended for use as a group home; or, the owner/operator of an entity providing residential services at the location.

C. Requests for reasonable accommodation shall be in writing and provide the following information:

1. Name, address, phone number, and email address of the applicant requesting reasonable accommodation;

2. Name, address, phone number, and email address of the house manager who is responsible for the day-to-day operation of the facility, if any;
3. Address of the property for which accommodation is requested;
4. Name, address, phone number, and email address of the property owner(s), if not the applicant;
5. If the operator is not the property owner, then the operator must provide a copy of any lease agreement between applicant and owner as well as written approval from the property owner to operate a group home at the property location;
6. Detailed description of the requested accommodation with reference to any known regulation, policy, or procedure from which relief is sought;
7. Reason that the requested accommodation may be necessary for disabled individual(s) to use the dwelling;
8. Copy of the group home rules and regulations, including intake procedures and relapse policy;
9. Blank copy of all forms that residents or potential residents are required to complete;
10. An affirmation by the applicant or owner/operator that only disabled residents shall reside at the group home; and
11. Copy of any agreement between applicant and/or owner/operator and/or property owner setting forth or concerning any fee arrangement or financial reimbursement applicable to each resident of the group home.
12. The applicant or owner/operator shall be responsible for filing with the city within thirty (30) days, any updates or changes to policies, procedures, ownership, or operating entity.
13. Any information obtained by the City shall be considered confidential, shall be retained in a manner so as to respect the privacy rights of the applicant, and shall not be made available for public inspection unless otherwise required by law.
14. A request for reasonable accommodation to the regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation shall not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.
15. If an applicant needs assistance in making the request for reasonable accommodation, it shall be provided to ensure that the process is properly undertaken.

16. An applicant may seek relief from the strict application of the provisions of this article by submitting such request in writing to the Code Enforcement Director (hereafter "Director") setting forth specific reasons as to why accommodation over and above the provisions set forth herein is necessary.

17. No fee will be charged for an application to obtain a reasonable accommodation under this ordinance.

SECTION 158.06 GROUNDS FOR REASONABLE ACCOMMODATION:

In determining whether to grant a reasonable accommodation, the Director shall consider the totality of the following factors:

A. The property will be used by an individual with a recognized disability protected under the fair housing laws;

B. Special needs created by the recognized disability;

C. Potential benefit that can be accomplished by the requested modification;

D. Potential impact on properties within the vicinity;

E. Physical attributes of the property and dwelling structure;

F. Alternate accommodations that may provide an equivalent level of benefit;

G. Whether the requested accommodation would impose an undue financial or administrative burden on the city;

H. Whether the requested accommodation would require a fundamental alteration in the nature of a City function or service; and

I. Whether granting the request would be consistent with the city's Comprehensive Plan.

SECTION 158.07 DISTANCE REQUIREMENT:

No group home shall be located within 650 feet, as measured from the closest property lines, of any other group home.

SECTION 158.08 INSURANCE AND MORTGAGE NOTIFICATION REQUIREMENT:

A. The owner or operator of any group home shall be required to maintain and provide proof to the City of liability insurance coverage in the amount of \$300,000 per person and \$1,000,000 per occurrence, for personal injury to persons or property damage.

B. The owner or operator shall be required to provide proof to the City that any mortgage lien holder on the subject property has been notified of the use of the premises as a group home.

SECTION 158.09 REVIEWING AUTHORITY:

A. Upon proper application made, requests for reasonable accommodation shall be reviewed by the Director of Code Enforcement using the criteria set forth herein.

B. The Director shall issue a written decision on a request for reasonable accommodation within 30 days of the date of the application, and he or she may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth below.

C. If necessary to reach a determination on the request for reasonable accommodation, the Director may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the 30-day period to issue a decision shall be stayed until the applicant responds to the request.

SECTION 158.10 REQUIRED FINDINGS:

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors.

A. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with a recognized disability as defined herein and protected under fair housing laws.

B. Whether the requested accommodation is necessary to make housing available to an individual with a recognized disability protected under the fair housing laws.

C. Whether the requested accommodation would impose an undue financial or administrative burden on the city.

D. Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use or zoning regulations, building codes, or related programs adopted by the City, including but not limited to Section 404.4, "Bedroom and living room requirements," and Section 404.5, "Overcrowding," of the International Property Maintenance Code.

E. The requested accommodation will not result in a direct threat to the health, safety or welfare of other individuals or cause physical damage to the property of others.

F. Whether the requested accommodation is necessary to make facilities of a similar nature economically viable in light of the particularities of the relevant market and market participants.

G. Whether the existing supply of facilities of a similar nature and operation in the community is already sufficient to provide individuals with a recognized disability an equal opportunity to live in a residential setting.

H. The city shall consider the following factors upon any request for accommodation:

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood;

2. Whether the requested accommodation would result in a substantial increase in traffic or congestion in the neighborhood, create insufficient on-street parking, or increase noise in the neighborhood,

3. Whether granting the requested accommodation would substantially undermine any express purpose of the city's Comprehensive Plan; and

4. Whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

SECTION 158.11 WRITTEN DECISION ON THE REQUEST FOR REASONABLE ACCOMMODATION:

A. The Director shall render a written decision on the request for reasonable accommodation within thirty (30) days of receipt. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth herein. The written decision shall give notice of the applicant's right to appeal and request reasonable accommodation in the appeals process, as set forth below. The notice of decision shall be sent to the applicant by certified mail.

B. The written decision of the Director shall be deemed final unless an applicant appeals the decision to the Board of Adjustment within the prescribed time period.

C. In the event the Director fails to render a written decision within the prescribed period of time, the request shall be advanced to the City Manager for final determination, who shall make such written determination within ten days thereof. In the event a written determination is not issued within forty 40 days of the request, it shall automatically be deemed as granted.

D. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

E. The Director shall be required to maintain records of requests for reasonable accommodation or modification and the response thereto, including final written decisions.

SECTION 158.12 APPEALS:

A. Within 30 days of the date of the Director's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing to the Board of Adjustment within the prescribed period of time.

B. If an applicant timely requests assistance in filing an appeal, the city will assist the applicant to ensure that the applicant properly undertakes the appeals process.

C. All appeals shall contain a statement of the grounds for the appeal.

D. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

Section II

Severability. If any section, subsection, sentence, clause or phrase of this legislation is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council for the City of Dayton hereby declares that it would have passed this law, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

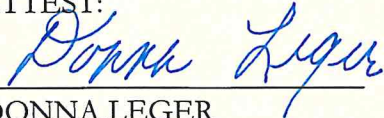
First Reading: April 19, 2022

Second Reading: MAY 3, 2022

PASSED this 3 day of MAY, 2022.



MAYOR BEN BAKER

ATTEST:


DONNA LEGER
CITY CLERK/TREASURER