

SECTION 2 Additional Land Use Topics

2.2 Conditional Uses

1. **Optional.** A municipality may allow for conditional uses by ordinance. 10-9a-507(1)
2. **Standards.** If conditional uses are allowed, the ordinance must require compliance with standards set forth in the ordinance. A conditional use permit application may not be denied unless the denial or condition is based on standards in the ordinance. 10-9a-507(2)(a); *Uintah Mtn. RTC v. Duchesne County*, 2005 UT App 565
3. **Review.** Conditional uses shall be approved if:
 - a. Reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use;
 - b. In accordance with applicable standards; 10-9a-507(2)(a)
 - c. A decision related to a conditional use must be based on substantial evidence in the record. It cannot be based on "vague reservations" expressed by members of the land use authority or members of the public. Public clamor cannot be the basis for a decision related to a conditional use application. *Davis County v. Clearfield*, 756 P.2d 704 (Utah 1988); *Wadsworth v. West Jordan*, 2000 UT App 49
4. **Denial.** Conditional uses may be denied only if the reasonably anticipated detrimental effects of the proposed use cannot be substantially mitigated by reasonable conditions imposed in accordance with applicable standards. 10-9a-507(2)(b)

2.3 Disabled Residents

1. **Ordinance Required.** Each municipality shall adopt an ordinance to provide for residential facilities for persons with a disability (RFPD). 10-9a-520(1)
2. **Mandated Provisions.** The ordinance shall:
 - a. Comply with the Utah Fair Housing Act 57-21; 10-9a-520(2)(a)
 - b. Comply with the Federal Fair Housing Act of 1988, 42 U.S.C. 3601 et. seq.; 10-9a-520(2)(a)
 - c. Provide that an RFPD is a permitted use in any zone where similar residential dwellings that are not RFPDs are allowed to the extent required by federal law. 10-9a-520(2)(b)
3. **Optional Provisions.** The ordinance may:
 - a. Require that RFPDs be disbursed throughout the community;
 - b. Limit the number of occupants in an RFPD;
 - c. Require:
 - i. A security plan satisfactory to local law enforcement authorities; and
 - ii. Twenty-four hour supervision for residents; and
 - iii. Other 24-hour security measures, *but only if*;
 - iv. The RFPD is a substance abuse facility that is within 500 feet of a school; and
 - v. The requirements are in accordance with rules established by the Utah State Department of Human Services under 62A-2, Licensure of Programs and Facilities;
 - d. Require that permits be obtained to verify compliance with the same building, safety, and health regulations as are applicable in the same zone to other facilities that are not RFPDs;
 - e. Prohibit an RFPD that would likely create a fundamental change in the character of a residential neighborhood. (NOTE: This provision may violate the Fair Housing Act; seek guidance from your local counsel.) 10-9a-520(3)
4. **State Licensure Preemption.** The responsibility to license programs or entities that operated RFPDs, as well as to require and monitor the provisions of adequate services to persons residing in an RFPD shall rest with the Utah State Department of Human Services or the Utah State Department of Health. 10-9a-520(4)

5. **Reasonable Accommodation.** Local officials have an affirmative duty to make reasonable accommodation for the needs of disabled residents. A municipality must change any ordinance or rule related to the location of homes for the disabled that is not justified by a compelling state interest. Dissimilar treatment of those with disabilities from other residents triggers harsh scrutiny under the Fair Housing Act. *Episcopal Church of Utah v. West Valley City*, 119 F. Supp.2d 1215 (D. Utah 2000)

2.4 Elderly Facilities

1. **Mandatory Ordinance.** Each municipality must adopt an ordinance for residential facilities for elderly people (RFEP):
 - a. Prohibiting discrimination against elderly persons and against RFEPs; 10-9a-519(5)(a)
 - b. Allowing RFEPs as a permitted use in any zone where residences are allowed except zones that are exclusively single family residential zones. 10-9a-517(1)
2. **Permits.** An RFEP ordinance shall establish a permit process that may only require:
 - a. That the facility meets building, safety, land use, and health ordinances applicable to similar dwellings;
 - b. Adequate off-street parking;
 - c. That the structure or landscaping of the facility not be altered to change its residential character;
 - d. That no persons being treated for alcoholism or drug abuse live at the facility;
 - e. That all who live there do so voluntarily and not in lieu of confinement, rehabilitation, or treatment in a correctional facility. 10-9a-517(2)
3. **Single Family Residential Zones.** Municipalities must also allow RFEPs in exclusively single family zones if:
 - a. No person who is being treated for alcoholism or drug abuse may be placed in an RFEP;
 - b. All who live there do so voluntarily and not in lieu of confinement, rehabilitation, or treatment in a correctional facility;
 - c. The facility conforms to all applicable health, safety, land use, and building codes;
 - d. The structure can be used as an RFEP without structural or landscaping alterations that would change the structure's residential character;
 - e. The proposed RFEP conforms to the municipality's criteria, adopted by ordinance, governing the location of RFEPs in exclusively single family zones. 10-9a-519
4. **Conditional Use Option.** Municipalities may provide that an RFEP in an exclusively single family residential zone be allowed only as a conditional use. 10-9a-519(2) No conditional use permit or other permit may be required to establish an RFEP if the proposed RFEP complies with the municipality's land use ordinance allowing a certain number of unrelated persons to live together. 10-9a-519(6)
5. **Proximity.** Municipalities may provide by ordinance that no RFEP be located within a three-quarter mile of another RFEP or a residential facility for persons with a disability. 10-9a-519(3)
6. **Entitlement.** If a person applies for a permit to establish an RFEP, the municipality shall grant the permit if the proposed facility complies with the state LUDMA provisions related to an RFEP. 10-9a-518(1)
7. **Limitations:** An RFEP:
 - a. May not operate as a business, but may charge for food and necessary costs of operation;
 - b. Must be owned by:
 - i. One of the residents; or
 - ii. An immediate family member of a resident; or
 - iii. A trust holding the facility in trust for a resident;