

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Community Development Dept.
Reviewed by: Dept. of Law
For reading: December 8, 2015

ANCHORAGE, ALASKA
AO No. 2015-133

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE (NEW CODE) SECTIONS 21.03.050B., 21.03.240J., 21.05.030B., AND 21.14.040, AND TABLES 21.05-1 AND 21.10-4, TO MODIFY LAND USE REGULATIONS REGARDING ASSISTED LIVING FACILITIES AND HABILITATIVE CARE FACILITIES IN ACCORDANCE WITH THE CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND THE MUNICIPALITY OF ANCHORAGE REGARDING FAIR HOUSING ACT AND OTHER FEDERAL LAWS COMPLIANCE IN TITLE 21.

WHEREAS, on May 5, 2014, the Assistant Secretary of HUD's Office of Fair Housing and Equal Opportunity filed a complaint against the Municipality alleging violations of the Fair Housing Act (the "Act") in the Municipality's land use regulations. Specifically, the Assistant Secretary alleged the Municipality violated Sections 804(f)(1) and 804(f)(2) of the Act by discriminating against persons with disabilities. Alleged violations included: the exclusion of group homes for disabled persons from residential districts where other similar residential uses are allowed, restrictions based on particular disabilities (alcoholism), and spacing and procedural requirements (including conditional use permits and administrative variances) imposed upon group homes for persons with disabilities that are not imposed on similar residences for persons who are not disabled; and

WHEREAS, the Municipality denied having violated the Act, but in the best interests of the city the Municipality agreed to settle the claims in the complaint by entering into a conciliation and voluntary compliance agreement, without admitting to any culpability or violations of the Act or other federal laws; and

WHEREAS, the conciliation and voluntary compliance agreement was signed by the Municipal Manager and the Assistant Secretary of HUD's Fair Housing and Equal Opportunity, and became effective on April 15, 2015; and

WHEREAS, as part of the agreement, the Municipality agreed to retain an independent expert consultant to review the Municipality's land use regulations with respect to Assisted Living Facility and Habilitative Care uses in Title 21 of the Anchorage Municipal Code, and to make recommendations for affirmative compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act; and

WHEREAS, as part of the agreement, the Municipality agreed to present an ordinance to the Assembly to implement the recommendations of the consultant, and to approve, adopt, and implement the ordinance; the agreement notes that "the

Assembly may make amendments to the ordinance as long as the final ordinance repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Fair Housing Act”; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code (new code) section 21.03.050 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.03.050 Appeals

*** *** ***

B. Appeals to Zoning Board of Examiners and Appeals

1. Jurisdiction of Board

The zoning board of examiners and appeals shall hear appeals from decisions of the municipal staff regarding:

*** *** ***

j. Determination of use classification under Section 21.03.220.

k. [ADMINISTRATIVE VARIANCE FOR OCCUPANCY LIMITS IN ASSISTED LIVING FACILITIES UNDER SUBSECTION 21.03.240 J.

L.] Denial of a verification of legal nonconforming status under Section 21.03.250.

[[m]. Alleging an error in the enforcement or interpretation of the flood hazard area under subsection 21.07.020 E.

*** *** ***

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

Section 2. Anchorage Municipal Code (new code) section 21.03.240 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.03.240 Variances

*** *** ***

J. Administrative Variances

1. Process

a. Application Submittal

Applications for an administrative variance shall contain

the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

b. Notice

Notice shall be provided in accordance with subsection 21.03.020H.

c. Time for Approval

The director shall make a determination on an application within 45 days of submittal, and shall provide written findings of the decision. Notification of approval or denial shall be posted electronically on the department's municipal web site and furnished in writing to the applicant by mail or delivered by electronic means.

d. Appeals

If the request for an administrative variance is denied, the applicant may apply for a public hearing variance before the urban design commission under this section 21.03.240. Additionally, denial of requests for reasonable accommodation [ADMINISTRATIVE VARIANCE FROM OCCUPANCY LIMITS FOR ASSISTED LIVING FACILITIES] may be appealed by any person with standing to request reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f).

2. Reasonable Accommodation [FROM OCCUPANCY LIMITS FOR ASSISTED LIVING FACILITIES]

a. Intent

The intent of this section is to provide a procedure to allow persons with disabilities and assisted living providers to request reasonable accommodation from the department in accordance with 42 USC 3604(f)(3)(B). [WHEN ACCESS TO DECENT SAFE, ACCESSIBLE AND AFFORDABLE HOUSING WITH ASSISTED LIVING WOULD NOT BE AVAILABLE ABSENT A REASONABLE ACCOMMODATION. THIS ADMINISTRATIVE VARIANCE PROCEDURE IS AVAILABLE TO ADDRESS APPLICATION FOR MINOR VARIANCE IN DIMENSIONAL AND SETBACK REQUIREMENTS TO ACCOMMODATE SPECIAL NEEDS OF PERSONS WITH DISABILITIES AND TO ADDRESS APPLICATION FOR VARIANCE IN OCCUPANCY LIMITS OF NO MORE THAN THREE PERSONS.]

b. Standards

In deciding to approve or deny an application, the

department shall review the application and written comments addressing factors relevant to the request for reasonable accommodation, including but not limited to, the extent to which the application demonstrates the following, as related to the particular request of the applicant:

i. [FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS IN R-1, R-1A, R-2A AND R-2D DISTRICTS, THE EXTENT TO WHICH THE ACCOMMODATION AND THE ASSISTED LIVING PROVIDER SEEK TO PROTECT AND PRESERVE THE PRIMARILY RESIDENTIAL CHARACTER OF THE DISTRICT. FACTORS MAY INCLUDE TRAFFIC PATTERNS, ON-STREET PARKING PATTERNS, THE CONTROL EXERCISED BY THE ASSISTED LIVING PROVIDER TO MITIGATE ENVIRONMENTAL DISTURBANCE ASSOCIATED WITH INGRESS AND EGRESS OF FACILITY STAFF WORKERS AT SHIFT CHANGE, AND ANY OTHER MEASURES TAKEN BY THE ASSISTED LIVING PROVIDER TO ENSURE THE COMMERCIAL ASPECTS OF THE FACILITY DO NOT DETRACT FROM ITS RESIDENTIAL PURPOSE AND THE PRIMARILY RESIDENTIAL CHARACTER OF THE DISTRICT. AN EXAMPLE OF A COMMERCIAL ASPECT IS IF RESIDENTIAL TRASH CONTAINERS WERE STANDARD IN THE NEIGHBORHOOD AND THE ASSISTED LIVING PROVIDER USED ONE OR MORE DUMPSTERS DUE TO VOLUME. AN EXAMPLE OF A MITIGATION MEASURE FOR THIS ASPECT THE ASSISTED LIVING PROVIDER MIGHT TAKE IS TO SCREEN THE DUMPSTER.]

[ii. FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS, ECONOMIC HARDSHIP ON THE INTENDED OCCUPANTS IF THE VARIANCE IS DENIED. COST AND AVAILABILITY OF OTHER HOUSING ALTERNATIVES MAY BE ADDRESSED IN PREPARATION AND REVIEW OF THE APPLICATION.]

[iii]. Whether the requested accommodation is [AND THE ASSISTED LIVING PROVIDER ARE] implementing [ACCIDENT PREVENTION AND] safety measures specific to the needs of the

residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under Title 23.

ii[v]. Whether the accommodation requested is advancing housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood [WITH COMMERCIAL ASPECTS OF OPERATION].

iii[v]. Whether the requested accommodation is necessary to comply with the provisions of the federal Fair Housing Act. [FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS, WHETHER THE PROPOSED SIZE OF THE FACILITY IS NECESSARY FOR THE FACILITY'S FINANCIAL VIABILITY.]

iv[i]. External characteristics and impacts of the proposed accommodation [FACILITY], including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting, and sidewalks.

v[ii]. Quantifiable risks to the health, safety, and quality of life of area residents and users.

vi[ii]. Administrative and economic burden on the municipality, in either approval or denial of the variance.

vii[ix]. Other factors deemed relevant to the applicant or the department in review of the application.

c. Conditions

In approving a variance, the department may impose reasonable conditions designed to address the standards in subsection J.2.b.[5.] or mitigate impacts created by the variance.

*** *** ***

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

Section 3. Anchorage Municipal Code (new code) table 21.05-1 is hereby amended to read as set out in Exhibit A (*the remainder of the table is not affected and therefore not set out*).

Section 4. Anchorage Municipal Code (new code) section 21.05.030 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.05.030 Residential Uses: Definitions and Use-Specific Standards

*** *** ***

B. Group Living

*** *** ***

1. Assisted Living Facility

a. Definition

A facility that provides housing and ancillary care services on a residential basis to three or more adults, and adolescents in appropriate cases as allowed by exception. A small assisted living facility is defined as a group of three to eight residents. A large assisted living facility is defined as a group of nine or more residents.

b. Use-Specific Standards for [SMALL] Assisted Living Facilities

i. [HOUSEKEEPING UNIT]

An assisted living facility may only occupy a type of household living structure that is permitted in the zoning district. [A SMALL ASSISTED LIVING FACILITY SERVING FIVE OR FEWER RESIDENTS SHALL BE CONSIDERED A SINGLE HOUSEKEEPING UNIT.]

ii. All construction after January 1, 2016, shall comply with the applicable residential design standards in section 21.07.110, Residential Design Standards.

iii. Assisted living facilities shall comply with the dimensional standards in table 21.06-1 of the applicable residential structure type.

iv. If the elements of the facility that are not directly related to residential uses, such as administrative offices, classrooms, auditoriums, and the like, exceed 20 percent of the total gross floor area of the assisted living facility, then the facility shall require conditional use approval.

**[ii. ADMINISTRATIVE VARIANCE NEEDED
IN THE R-1, R-1A, R-2A, AND R-2D ZONES, A
SMALL ASSISTED LIVING FACILITY SERVING**

FIVE OR FEWER RESIDENTS IS PERMITTED BY RIGHT. AN ADMINISTRATIVE VARIANCE PURSUANT TO SECTION 21.03.240J. IS REQUIRED TO SERVE SIX TO EIGHT RESIDENTS.]

- [c. USE-SPECIFIC STANDARDS FOR LARGE ASSISTED LIVING FACILITIES
LARGE ASSISTED LIVING FACILITIES SHALL COMPLY WITH THE USE-SPECIFIC STANDARDS SET FORTH FOR "ADULT CARE FACILITIES WITH NINE OR MORE PERSONS" BELOW.]

*** *** ***

3. Habilitative Care Facility

a. Definition

A residential facility, other than a correctional center or transitional living facility, the principal use or goal of which is to serve as a place for persons seeking rehabilitation or recovery from any physical, mental, or emotional infirmity, or any combination thereof, [IN A FAMILY SETTING] as part of a group rehabilitation and/or recovery program utilizing counseling, self-help, or other treatment or assistance, including, but not limited to, substance abuse rehabilitation. Such care for persons age 18 and under, who are under the jurisdiction of the state division of juvenile justice, shall be considered habilitative care, and not a correctional community residential center. A small habilitative care facility shall provide housing for no more than eight residents, including any support staff living at the facility. A medium habilitative care facility shall provide housing for nine to 25 residents, including any support staff living at the facility. A large habilitative care facility shall provide housing for 26 or more residents, including any support staff living at the facility.

b. Use-Specific Standards

- i. An habilitative care facility may only occupy a type of household living structure that is permitted in the zoning district.
- ii. Habilitative care facilities constructed after January 1, 2016, shall comply with the applicable residential design standards in section 21.07.110, Residential Design Standards.
- iii. Habilitative care facilities shall comply with the dimensional standards in table 21.06-1 of the

applicable residential structure type.

- iv. If the elements of the facility that are not directly related to residential uses, such as administrative offices, classrooms, auditoriums, and the like, exceed 20 percent of the total gross floor area of the habilitative care facility, then the facility shall require conditional use approval.

[A SMALL HABILITATIVE CARE FACILITY SHALL PROVIDE HOUSING FOR NO MORE THAN SIX RESIDENTS, INCLUDING ANY SUPPORT STAFF LIVING AT THE FACILITY. A MEDIUM HABILITATIVE CARE FACILITY SHALL PROVIDE HOUSING FOR SEVEN TO 25 RESIDENTS, INCLUDING ANY SUPPORT STAFF LIVING AT THE FACILITY. A LARGE HABILITATIVE CARE FACILITY SHALL PROVIDE HOUSING FOR 26 OR MORE RESIDENTS, INCLUDING ANY SUPPORT STAFF LIVING AT THE FACILITY.]

*** *** ***

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO No. 2014-58, § 1, 5-20-14)

Section 5. Anchorage Municipal Code (new code) table 21.10-4 is hereby amended to read as set out in Exhibit B (*the remainder of the table is not affected and therefore not set out*).

Section 6 Anchorage Municipal Code (new code) section 21.14.040 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.14.040 Definitions

*** *** ***

Family

Any number of [ONE OR MORE] persons related by blood, adoption, or marriage, or no more than five unrelated persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a roominghouse, club, fraternity house, or hotel.

*** *** ***

Household

A domestic unit consisting of any number of [A] persons related by blood, adoption, or marriage, or no more than five unrelated persons [GROUP OF PEOPLE] who share living arrangements. Members of a household have common access to, and common use of, all living areas and all facilities within the dwelling unit. A household occupies a single dwelling unit, so that its

members live and eat separately from any other persons in the building, and have access to the outside of the building either directly or through a common hall.

*** *** ***

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

Section 7. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 20__.

Chair of the Assembly

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

Assembly Memorandum

No. AM 735-2015

Meeting Date: December 8, 2015

From: MAYOR

Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE (NEW CODE) SECTIONS 21.03.050B., 21.03.240J., 21.05.030B., AND 21.14.040, AND TABLES 21.05-1 AND 21.10-4, TO MODIFY LAND USE REGULATIONS REGARDING ASSISTED LIVING FACILITIES AND HABILITATIVE CARE FACILITIES IN ACCORDANCE WITH THE CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND THE MUNICIPALITY OF ANCHORAGE REGARDING FAIR HOUSING ACT AND OTHER FEDERAL LAWS COMPLIANCE IN TITLE 21.

In April 2014, the U.S. Department of Housing and Urban Development initiated a review of the Municipality's land use regulations. Thereafter, in May 2014, The Assistant Secretary for Fair Housing and Equal Opportunity filed a complaint against the Municipality of Anchorage alleging that the city is using or will use zoning or land use ordinances to discriminate against disabled populations.

Over the next year the Municipality negotiated a Conciliation Agreement and Voluntary Compliance Agreement ("Agreement") with HUD - attached hereto. As part of that Agreement, the Municipality committed to retaining an independent expert consultant to review the Anchorage Municipal Code and make recommendations for affirmative compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act. The Municipality retained Clarion and Associates, who provided its Report and Recommendations on August 3, 2015.

The Agreement commits the Municipality to presenting to the Assembly an ordinance in substantial accordance with the Consultant's recommendations and, furthermore:

Within 90 days or the next available voting opportunity from the date of the presentation of the Ordinance, whichever occurs later, the Assembly shall approve, adopt, and implement the Ordinance. The Assembly may make amendments to the Ordinance as long as the final Ordinance adopted by the Assembly repeals, amends,

supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the Consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504 and the Act.

This ordinance proposes the following changes:

- Revisions to the definitions of “family” and “household” to limit the number of unrelated persons and revision to the definition of “habilitative care facility” to include the size distinctions in the definition.
- Revisions to Tables 21.05-1 and 21.10-4 to increase the districts where assisted living and habilitative care facilities are permitted.
- Revisions and additions of use-specific standards for Assisted Living Facilities and Habilitative Care Facilities in AMC (new code) 21.05.030B.1. and B.3.
- Clarification that the dimensional standards are the same dimensional standard applicable to the type of structure being occupied or constructed.
- Changes to the development approval procedures and criteria, including the elimination of administrative variance from the jurisdiction of the Zoning Board of Examiners and Appeals, including “reasonable accommodations” as applications to be decided under the administrative variance procedure, and changes to the standards for consideration of such requests.

The proposed changes are all consistent with the recommendations offered by the Consultant in the Report, and with the terms of the Agreement.

THE ADMINISTRATION RECOMMENDS APPROVAL.

Prepared by: Erika McConnell, Current Planning Supervisor
Community Development Department
Approved by: Hal H. Hart, Planning Director
Concur: Lance R. Wilber, Director
Office of Management and Budget
Concur: Christopher M. Schutte, Executive Director
Office of Economic and Community Development
Concur: William D. Falsey, Municipal Attorney
Concur: Michael K. Abbott, Municipal Manager
Respectfully submitted: Ethan A. Berkowitz, Mayor

AO Implementing HUD Conciliation Agreement

EXHIBIT A

TABLE 21.05-1: TABLE OF ALLOWED USES – RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND OTHER DISTRICTS
P = Permitted Use S = Administrative Site Plan Review C = Conditional Use M = Major Site Plan Review
For uses allowed in the A, TA, and TR districts, see section 21.04.050.
All other uses not shown are prohibited.

		RESIDENTIAL														COMMERCIAL					INDUST.			OTHER					Definitions and Use-Specific Standards	
Use Category	Use Type	R-1	R-1A	R-2A	R-2D	R-2M	R-3	R-4	R-4A	R-5	R-6	R-7	R-8	R-9	R-10	B-1A	B-1B	B-3	RO	MC	I-1	I-2¹	MI	AF	DR	PR	PLI	W		
RESIDENTIAL USES																														
*** *** ***																														
Group Living	Assisted living facility (3-8 residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P										21.05.030B.1.	
	Assisted living facility (9 or more residents)	C	C	C	C	P	P	P	P	P	C	C				P	P[C]	P	P	C							C		21.05.030B.1.	
	Correctional community residential center																C	C			C	C					C		21.05.030B.2.	
	Habilitative care facility, small (up to 8[6] residents)	P	P	P	P	P	P	P	P	P	P	P					P	P	P								P		21.05.030B.3.	
	Habilitative care facility, medium (9[7]-25 residents)	C	C	C	C	C	P[C]	P[C]	P[C]	C	C	C					P[C]	P[C]	P[C]								C		21.05.030B.3.	
	Habilitative care facility, large (26+ residents)						P[C]	P[C]	P[C]								P[C]	P[C]	P[C]								C		21.05.030B.3.	
	Roominghouse					C	P	P	P	C	C	C	C	C		P	P	P	P										21.05.030B.4.	
	Severe alcohol dependent housing																		C	C		C					C		21.05.030B.5.	
	Transitional living facility						P	P	P									P	P									C		21.05.030B.6.
*** *** ***																														

AO Implementing HUD Conciliation Agreement

EXHIBIT B

TABLE 21.10-4: TABLE OF ALLOWED USES – CHUGIAK-EAGLE RIVER RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND OTHER DISTRICTS
P = Permitted Use S = Administrative Site Plan Review C = Conditional Use M = Major Site Plan Review T = Special Land Use Permit for Marijuana
For uses allowed in the CE-TR and CE-AD districts, see section 21.10.040.
All other uses not shown are prohibited.

		RESIDENTIAL												COMMERCIAL			INDUSTRIAL			OTHER			OV			
Use Category	Use Type	CE-R-1	CE-R-1A	CE-R-2A	CE-R-2D	CE-R-2M	CE-R-3	CE-R-5	CE-R-5A	CE-R-6	CE-R-7	CE-R-8	CE-R-9	CE-R-10	CE-B-3	CE-RO	CE-RC	CE-I-1	CE-I-2	CE-I-3	CE-DR	CE-PR	CE-PLI	CE-DO ¹	CE-EVO	Definitions and Use-Specific Standards
COMMERCIAL USES																										
*** *** ***																										
Group Living	Assisted living facility (3-8 residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P							P-R	P	21.05.030B.1.
	Assisted living facility (9 or more residents)	C	C	C	C	P	P	C	C	C	C				P	P	P							P	C	21.05.030B.1.
	Correctional community residential center														C		C	C	C	C			C	C-B		21.10.050C.3. 21.05.030B.2.
	Habilitative care facility, small (up to 8[6] residents)	P	P	P	P	P	P	P	P	P	P				P	P	P							P	P	21.05.030B.3.
	Habilitative care facility, medium (9[7]-25 residents)	C	C	C	C	C	P[C]	C	C	C	C				P	P[C]	P[C]						C	P[C]	C	21.05.030B.3.
	Habilitative care facility, large (26+ residents)						P[C]								P	P[C]	P[C]							P		21.05.030B.3.
*** *** ***																										
<div>¹ For uses allowed in the CE-DO (Downtown Eagle River Overlay District), when the abbreviation of the approval process is followed by a “-R”, that indicates the use is allowed only in the portion of the overlay district where the underlying zoning is RO. When the abbreviation of the approval process is followed by a “-B”, that indicates the use is allowed only in the portion of the overlay district where the underlying zoning is B-3. If the abbreviation of the approval process has no suffix, then the use is allowed anywhere in the overlay district. For example, “P-R” means that the use is permitted only in the portion of the overlay district where RO is the underlying district.</div> <div>² Uses with structures with a gross floor area over 20,000 square feet require a major site plan review through subsection 21.07.120A., <i>Large Commercial Establishments</i>.</div>																										

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO 2013-139, § 2, 1-28-14; AO No. 2014-40(S), §§ 2(Att. A), 3, 4, 5-20-14; AO No. 2014-58, § 4(Att. C), 5-20-14)



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Pam Weiss
Assistant Municipal Attorney
Municipality of Anchorage
632 W. 6th Avenue Suite 700
Anchorage, AK 99501

APR 16 2015

Dear Representative (of Municipality of Anchorage):

Subject: Housing Discrimination Complaint
Assistant Secretary for FHEO v. Municipality of Anchorage, AK
Inquiry No.: 380017
HUD Case No.: 101402008
ADA Compliance Review No.: 10-14-R001-D
Section 504 Compliance Review No.: 10-14-R001-4
Title VI Compliance Review No.: 10-14-R001-6

Attached is a copy of a closure document sent to your client, relating to the subject housing discrimination complaint.

Sincerely,

A handwritten signature in black ink, which appears to read "Calvin Low", is written over the typed name.

Calvin Low, Acting Regional Director
FHEO, Region X-Seattle

Enclosures



**UNITED STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT**

**CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE
AGREEMENT**

Between

**U.S. Department of Housing and Urban Development
Assistant Secretary for the Office of Fair Housing and Equal Opportunity**

(Complainant)

and

The Municipality of Anchorage

(Respondent/Recipient)

**TITLE VIII CASE NAME: Assistant Secretary for FHEO v. Municipality of
Anchorage**

TITLE VIII CASE NUMBER: 10-14-0200-8

DATE FILED: May 5, 2014

ADA COMPLIANCE REVIEW NUMBER: 10-14-R001-D

SECTION 504 COMPLIANCE REVIEW NUMBER: 10-14-R001-4

TITLE VI COMPLIANCE REVIEW NUMBER: 10-14-R001-6

A. PARTIES

1. The U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity ("HUD" or the "Department") conducted a Multi-jurisdictional Compliance Review ("Review") of the Municipality of Anchorage ("Municipality"), a recipient of HUD funds through the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME) and Emergency Solutions Grant (ESG) Programs. The Review was conducted under the following authorities:
 - a. Title II of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibits discrimination on the basis of disability in all activities, services and programs of public entities. 28 C.F.R. § 35.190 identifies HUD as the designated federal agency for ensuring the ADA compliance of state and local governments that administer housing assistance and referral or public housing programs.
 - b. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), which prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance. 24 CFR 8.56(a) of the Department's regulations implementing Section 504 provides for the conduct of periodic reviews of the practices of HUD recipients to ascertain their compliance with Section 504.
 - c. Title VI of the Civil Rights Act of 1964, as amended (Title VI), which prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive federal financial assistance. 24 CFR 1.7(a) of the Department's regulations implementing Title VI provides for the periodic review of the practices of HUD recipients to determine whether they are in compliance with Title VI.
2. Complainant in Fair Housing Equal Opportunity ("FHEO") Case Number 10-14-0200-8 (the "Complaint") is the Assistant Secretary for Fair Housing and Equal Opportunity (the "Assistant Secretary") of the U.S. Department of Housing and Urban Development. The Assistant Secretary will be executing this conciliation agreement and voluntary compliance agreement (the "Agreement").
3. Respondent to the above cited FHEO Case Number is the Municipality of Anchorage. The Municipality was represented by the Municipal Attorney's Office. An authorized representative will execute the Agreement for the Municipality.

B. STATEMENT OF FACTS

4. On April 4, 2014, the Department initiated the Review of the Municipality to investigate the Municipality's land use regulations in relation to the ADA, Section 504, and Title VI.
5. On May 5, 2014, the Assistant Secretary filed the Complaint against the Municipality alleging violations of the Fair Housing Act (the "Act") in the Municipality's land use regulations. Specifically, the Assistant Secretary alleged the Municipality violated Sections 804(f)(1) and 804(f)(2) of the Act by discriminating against persons with disabilities. Alleged violations included: the exclusion of group homes for disabled persons from residential districts where other similar residential uses are allowed, restrictions based on particular disabilities (alcoholism), and spacing and procedural requirements (including conditional use permits and administrative variances) imposed upon group homes for persons with disabilities that are not imposed on similar residences for persons who are not disabled.
6. The Municipality denied having violated the Act. The Municipality agrees to settle the claims in the underlying action by entering into this Agreement. It is understood that this Agreement does not constitute an admission by the Municipality of any violation of the Act, the ADA, Section 504, Title VI or any other law.

C. TERM OF AGREEMENT

7. For the purposes of this Agreement, "days" refers to calendar days. If the date of compliance with this Agreement should fall on a weekend or federally recognized holiday, the date of compliance shall be the next business day after the weekend or federally recognized holiday.

D. EFFECTIVE DATE

8. The parties expressly agree this Agreement constitutes neither a binding contract under state or federal law, nor a Conciliation Agreement pursuant to the Act, nor a Voluntary Compliance Agreement under the ADA, Section 504, or Title VI unless and until such time as it is executed by the Municipality and the Department through the Assistant Secretary.
9. The Agreement shall become effective on the date that it is approved and executed by the Assistant Secretary.

E. GENERAL PROVISIONS

10. The parties acknowledge that this Agreement is a voluntary and full settlement of the Complaint and the Compliance Review. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
11. The Municipality acknowledges it has an affirmative duty not to discriminate under the Act, the ADA, Section 504, and Title VI, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. The Municipality further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act, the ADA, Section 504, and Title VI.
12. This Agreement, after it has been approved by the Assistant Secretary, or his or her designee, is binding upon the Municipality, its employees, heirs, board members, successors and assigns and all others in active concert. In addition, this Agreement applies to the Municipality's projects, related facilities, programs, services, benefits and activities funded in whole or in part with CDBG funds, and shall be binding upon the Municipality, its officers, trustees, directors, agents, successors, assignees, sub-recipients, contractors, and sub-contractors who own, control, operate or sponsor said projects, facilities, programs, services, benefits and activities.
13. It is understood that pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the Assistant Secretary or his or her designee, it is a public document.
14. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Municipality made pursuant to the Act, the ADA, Section 504, Title VI or any other complaint within the Department's jurisdiction.
15. This Agreement does not in any way limit or restrict the Municipality's ability to effectuate changes to its land use provisions subsequent to compliance with all the terms of this Agreement, if the Municipality determines that it is necessary to do so and does so in accordance with the Act, the ADA, Section 504, Title VI, or other required provisions.
16. This Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under the Act, the ADA, Section 504, or Title VI.
17. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.

18. This Agreement does not supersede or in any manner change the rights, obligations, and responsibilities of the parties under any and all court orders or settlements of other controversies involving compliance with federal or state civil rights statutes.
19. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter contained in the Agreement. Any and all prior discussions, negotiations, commitments, or understandings related to the Agreement, if any, are hereby merged in this Agreement. No representations, oral or otherwise, have been made by any party to this Agreement. No other agreements not specifically contained in this Agreement, oral or otherwise, shall be deemed to exist or to bind any of the parties to this Agreement.
20. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the Assistant Secretary, or his or her designee.
21. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
22. The parties agree to accept scanned or faxed copies of executed signature pages as true, official, and original executions of this Agreement.
23. The Department hereby forever waives, releases, and covenants not to sue the Municipality, its executors, assigns, agents, representatives, officials, employees, board members and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.
24. The Municipality hereby forever waives, releases, and covenants not to sue the Department, their board members, heirs, executors, assigns, agents, representatives, officials, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.

F. RELIEF IN THE PUBLIC INTEREST

25. The Municipality acknowledges that it is unlawful to discriminate by denying or otherwise making unavailable housing to persons with disabilities.

26. The Municipality acknowledges that it is unlawful to discriminate in the terms, conditions, or privileges offered to persons on the basis of their disability.
27. Within 60 days of the effective date of this Agreement, the Municipality shall retain an independent expert consultant ("Consultant") to review the Municipality's regulations with respect to Assisted Living Facility and Habilitative Care uses contained in Title 21 of the Municipality's Code of Ordinances. The Consultant shall set forth recommendations for affirmative compliance with Title VI, Section 504, the ADA, and the Act.
- a. The Consultant shall be an independent third party, not an employee of the Municipality, and shall be qualified to evaluate land use regulations for compliance with fair housing law pertaining to disability and group homes.
 - b. The Consultant shall review and provide recommendations for any changes to Title 21 of the Anchorage Municipal Code to ensure that any restrictions on housing for persons with disabilities are equivalent to restrictions on housing for an equal or greater number of persons without disabilities.
 - c. The Consultant shall also review and provide recommendations for any changes to the provisions of Title 21 of the Anchorage Municipal Code, in the following areas:
 - i. Occupancy Limits: The Consultant shall evaluate the Municipality's occupancy limits for approval by right of assisted living facilities and habilitative care facilities under Title 21.
 - ii. Administrative Variance Procedures: The Consultant shall evaluate the Municipality's administrative variance requirements and procedures for assisted living facilities in the R-1, R-1A, R-2A, R-2D, and R-2M zones under Title 21 and determine whether any changes are needed.
 - iii. Conditional Use Permit Requirements: The Consultant shall evaluate the Municipality's conditional use permit requirements and procedures applicable to assisted living facilities and habilitative care facilities under Title 21.
 - d. All costs and expenses associated with the Consultant shall be borne by the Municipality.
 - e. Within 90 days from the date the Consultant is retained by the Municipality, the Consultant shall present the recommendations described above to the Municipality in writing.

- f. Within 120 days from the date the Consultant provides written recommendations to the Municipality, the Municipality shall present to the Assembly an Ordinance to repeal, amend, supplement and/or otherwise modify the provisions of Title 21 of the Anchorage Municipal Code, in substantial accordance with the Consultant's recommendations and to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.
- g. Within 90 days or the next available voting opportunity from the date of the presentation of the Ordinance, whichever occurs later, the Assembly shall approve, adopt, and implement the Ordinance. The Assembly may make amendments to the Ordinance as long as the final Ordinance adopted by the Assembly repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the Consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.

28. Refund and Waiver of Administrative Variance and Conditional Use Permit Fees:

- a. The Municipality agrees to allocate a sum of up to \$5,000 to provide refunds of permit fees to those individuals described in the subsections below.
- b. Within 60 days of the effective date of this Agreement, the Municipality shall conduct a thorough review of its records to identify and provide permit fee refunds to all permit applicants who meet the following criteria:
 - i. The applicant submitted his or her permit application on or after January 1, 2012.
 - ii. The applicant sought an administrative variance or conditional use permit.
 - iii. The applicant sought a land use permit for Severe Alcohol Dependent Housing (SADH), an assisted living facility housing up to eight residents, or a habilitative care facility housing up to eight residents.
- c. Refunds shall be delivered to qualifying applicants with a certified delivery receipt.
- d. A list of fee refunds will be provided to HUD within 10 days of completion of the refunds.
- e. Within fourteen (14) days after execution of this Agreement, the Municipality shall prepare, present, recommend, and advance an ordinance for prompt adoption by the Assembly to eliminate fees for applications for administrative variances and conditional use permits for assisted living or habilitative care

facilities for up to 8 residents, pending the adoption of the Ordinance described in Paragraph 27.

G. MONITORING

29. If HUD believes the Municipality is in violation at any time with the terms of this Agreement, HUD shall advise the Municipality in writing of the alleged violation, the reasons for its reasonable belief there has been a violation, and advise the Municipality what steps it should take to correct the alleged violation.
30. Prior to the expiration of any timeframe in this Agreement, the Municipality may submit to the Department a reasonable request for an extension of that time frame. The Department shall not refuse such an extension unless it establishes that the Municipality is requesting the extension for purposes of delay.

H. REPORTING AND RECORDKEEPING

31. Within 10 days of retention of the Consultant, as described in Paragraph 27, the Municipality shall certify its compliance in writing to the Department. The written certification shall include the name of the Consultant and a copy of any contract or agreement entered into to retain said Consultant.
32. Within 10 days of the presentation of recommendations to the Municipality by the Consultant, as described in Paragraph 27, the Municipality shall provide a copy of the written recommendations to the Department.
33. Within 10 days of presenting an ordinance to repeal, amend, supplement and/or otherwise modify the Assisted Living Facility and Habilitative Care Facility provisions of Title 21 of the Code of Ordinances to the Assembly, as described in Paragraph 27, the Municipality shall provide a copy of the proposed ordinance to the Department.
34. Within 10 days of the Assembly's approval of any Ordinance to amend or modify the relevant code provisions in accordance with Paragraph 27 in this Agreement, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinance, and any policies or procedures adopted by the Municipality in conjunction with the ordinance.
35. Within 10 days of refunding any fees and adopting any ordinances in accordance with Paragraph 28, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinances, the identities of parties who received refunds, an accounting of the original charges

assessed against the applicants, the amount of the refunds, copies of payment checks, and certified mail delivery receipts demonstrating delivery of the refunds.

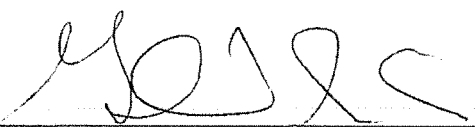
All required certifications and documentation of compliance must be submitted to:

Region X Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Attn: Conciliation Monitoring
909 First Avenue, Suite 200
Seattle, WA 98104

I. CONSEQUENCES OF BREACH

36. Whenever the Department has reasonable cause to believe that the Municipality has breached this Agreement, and after providing notification required in Paragraph 31 and providing an opportunity for the Municipality to correct the alleged breach, and if the Municipality refuses to implement the corrections set forth by the Department in its notice, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.
37. If the Municipality is found to have breached the Agreement, said breach may lead the Department to reactivate the ADA, Section 504 and/or Title VI compliance reviews. If those reviews are concluded and result in supported findings of non-compliance and the findings cannot be resolved by informal means, the Department may seek to effect compliance with these authorities by means of a referral of the matter to the Department of Justice for appropriate enforcement proceedings, the termination of or refusal to grant or continue federal financial assistance, the initiation of debarment proceedings, or any other means authorized by law.
38. If the Municipality is found to have breached the agreement, said breach may also provide evidence indicating that the Municipality is not in compliance with its civil rights related program requirements under the CDBG, HOME and ESG programs, and may lead the Department to question the Municipality's affirmatively furthering fair housing certifications and other civil rights certifications submitted pursuant to regulations at 24 C.F.R. §§ 91.225(a)(1), 91.225(b)(6) and 570.601.

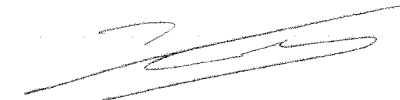
RESPONDENT SIGNATURE



The Municipality of Anchorage
By: George Vakalis
Title: Municipal Mgr

4/14/15
Date

COMPLAINANT SIGNATURE



Gustavo Velasquez
Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

4/15/15

Date



Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs
On behalf of the Department of Housing and Urban Development

4/15/15
Date