

MEMORANDUM

To: Dublin Planning and Zoning Commission
Steve Langworthy, Director of Planning

From: Stephen Smith, Law Director
Jennifer Readler, Assistant Law Director

Date: March 24, 2014

Re: Regulating Adult Family Homes

INTRODUCTION

There is very little cities can do to regulate adult family homes within residential areas. Specifically, Ohio law permits the operation of adult family homes, as long as the facility is licensed by the State. Since this state law has been deemed a law of a general nature, it prevails over any attempt by cities to regulate the operation of adult family home facilities.

MAIN POINTS OF THE LAW

- A person or entity may operate a licensed residential facility that provides accommodations and personal care services for one to five unrelated persons as a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision. Such facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.¹
- Local zoning provisions are exercises of local police power. The Ohio Attorney General opined in 2006 that adult family home regulations are laws of a general nature. Therefore, the State law prevails.
- Adult family homes must still comply with general fire and building restrictions such as area, height, yard, and architectural compatibility.
- Additionally, prior to obtaining its state license, adult family home facilities must be inspected and approved by a local certified building department.

¹ Ohio Revised Code Section 5119.341(A), which was recently renumbered from Ohio Revised Code Section 5119.22(E).

DISPERSAL REQUIREMENTS

The City may restrict the “density” of these adult family homes. Ohio Revised Code section 5119.341(D)(1) states in pertinent part that, “a political subdivision that has enacted a zoning ordinance or resolution may limit the excessive concentration of licensed residential facilities” City Council must pass legislation to impose this density restriction.

With the emergence of multiple adult family homes in the City, City Council has directed that a dispersal ordinance be prepared. The distance for dispersal purposes has been addressed in multiple court decisions. In *Larkin v. State of Michigan Dept. of Social Service*,² the Sixth Circuit Court of Appeals was asked to review a 1,500 foot buffer between group homes.³ The Court reviewed this buffer under the Fair Housing Amendments Act (“FHAA”), which was “explicitly intended . . . to apply to zoning ordinances and other laws that would restrict the placement of group homes.”⁴ The Court concluded that the 1500 foot buffer violated the FHAA. Similarly, in *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*,⁵ the court held that the 2,500 foot buffer did not provide a “reasonable accommodation” under the FHAA and the Americans with Disabilities Act (“ADA”). In *Horizon House Development Services, Inc. v. Township of Upper Southampton*,⁶ the Court ruled that a 1,000 foot buffer was unlawful under the Fair Housing Act (“FHA”) and the Equal Protection Clause of the United States Constitution.⁷ The Court went on to say that the buffer requirement was “plainly illegal.”⁸

While the Ohio Attorney General has not issued an opinion regarding buffer requirements, several other states have addressed this issue. The Maryland Attorney General held that a 1,000 foot requirement was “illegal under the Fair Housing Act.”⁹ Additionally, Delaware invalidated a 5,000 buffer, Kansas invalidated a 1,000 foot buffer and North Carolina invalidated a ½ mile buffer.¹⁰

On the other hand, a Federal District Court in Ohio recently upheld a 500 foot buffer between adult group homes. In *Harding v. City of Toledo*,¹¹ the City of Toledo enacted an Ordinance requiring a 500 foot buffer between adult group homes.¹² The Court reviewed the buffer requirement under both Ohio law and federal law and concluded that “the 500-foot spacing requirement at issue here is reasonable” and that City, in enacting the spacing requirement, did not violate any “state or federal laws.”¹³ Accordingly, the City should consider amending its current restriction to be consistent with the *Harding* decision.

² 89 F.3d 285.

³ In this case, the individual wished to operate a home to provide care for up to four handicapped adults. 89 F.3d at 287.

⁴ Id.

⁵ 300 F.3d 775 (2002).

⁶ 804 F.Supp. 683 (1992).

⁷ Initially this buffer was 3,000 feet.

⁸ 804 F.Supp. at 695.

⁹ 804 F.Supp. at 694.

¹⁰ Id.

¹¹ 433 F.Supp.2d 867 (2006).

¹² The buffer was initially 990 feet, but was amended to 500 feet pursuant to settlement agreement.

¹³ 433 F.Supp.2d at 872-873.

CONCLUSION

We have drafted the attached proposed revisions to the Dublin Code, which add adult family homes and adult care facilities to the list of permitted uses in single and multiple family residential districts, respectively, and impose a 500 foot buffer requirement for such uses.

We would ask the Commission to provide a recommendation of approval of this zoning code amendment to City Council.