

MEMORANDUM

To: Members of Dublin City Council

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

Date: April 24, 2014

Re: Ordinance 22-14 -Amending Chapter 153 of the Codified Ordinances of the City of Dublin to Permit Adult Family Homes in All Districts Where Single-Family Dwellings are Permitted and to Permit Adult Care Facilities in all Districts Where Multiple Family Dwellings are Permitted; and Section 153.234 “Amendments” to Modify the Notification Requirements for Public Hearing

SUMMARY

The proposed amendment includes two separate changes for review and approval. The first is a request to amend portions of the Zoning Code to define and allow adult family homes as a permitted use in all districts where single-family dwellings are permitted, with a required 500-foot distance requirement between such uses. This amendment will also permit adult care facilities in all districts where multiple-family dwellings are permitted, with a required 500 foot distance requirement between such uses. Adequate off-street parking will also be required for employees of these facilities.

The second change is to amend portions of the Zoning Code regarding noticing for public hearings.

OVERVIEW & BACKGROUND

Adult Family Homes and Adult Care Facilities

In recent months, the location of adult family homes within existing single-family neighborhoods was brought to the City’s attention. City Council directed the Law Director’s office to provide draft Zoning Code regulations to address adult family homes and adult care facilities. The proposed amendment provides definitions for these uses, allows them as permitted uses in residential districts, requires a distance of 500 feet between property lines of these facilities, and requires the provision of adequate parking for employees. The Ohio Revised Code limits the restrictions a City may enact regarding these uses, with case law upholding the 500-foot limitation.

At the April 3, 2014, Planning and Zoning Commission meeting, this matter was tabled so that Staff could meet with residents adjacent to one of these types of homes to further explore the issues discussed. Staff had the opportunity to meet with a group of residents on April 9, 2014. At that meeting, the case law and state and federal restrictions on the regulation of adult family homes were discussed in detail. Although the residents would prefer a larger dispersal distance requirement than 500 feet, the residents understood the City's position in desiring the most defensible ordinance possible. Through discussion, the residents raised their interest in pursuing clarifying revisions to the Ohio Revised Code statutes regulating these types of uses to better ensure the compatibility of these uses with the neighborhoods they inhabit.

Noticing Requirements

Currently, the Code limits distribution of a notice of public hearing through the newspaper. The proposed modification to the noticing requirements would provide for additional advertisement options to ensure the 30-day required notice can be met for rezoning applications. This is in line with current practice.

On April 17, 2014, the Planning and Zoning Commission recommended approval to City Council of these proposed amendments to the Zoning Code.

DETAILS

Definitions (153.002)

Most uses provided in the Zoning Code have specific definitions, as contained in Section 153.002, (A) Uses Definitions. Given the specifics outlined in the Ohio Revised Code (ORC), two new definitions that mimic the ORC have been incorporated in the definitions section, which differentiate between an adult family home and an adult care facility. An adult family home is a residential facility for one to five unrelated persons where accommodations and personal care services are provided. An adult care facility is a residential facility for three to sixteen persons where accommodations, supervision, and personal care services are provided. Both types of facilities are licensed by the State of Ohio.

Comprehensive Residential and Neighborhood Improvement (153.073)

The previous version of the proposed amendment added adult family homes within the single-family districts and adult care facilities within the multiple-family districts. The revised version proposes modification to the Comprehensive Residential and Neighborhood Improvement, which will apply to all residential districts, including single-family Planned Developments. The proposed language specifies adult family homes and adult care facilities shall not be located within 500 feet of another adult family home or care facility. The distance measured from property line to property line by the shortest distance. The provisions also require adequate off-street parking for employees.

Noticing Requirements

The proposed modification to the noticing requirements would provide for additional advertisement options to ensure the 30-day required notice can be met for rezoning applications. The proposed amendment will be consistent with Council Rules of Order.

RECOMMENDATION

The Law Director's office recommends City Council approve Ordinance 22-14 at the second reading/public hearing on May 5, 2014.

RECORD OF ORDINANCES

Ordinance No. 22-14

Passed _____, 20____

AN ORDINANCE AMENDING CHAPTER 153 OF THE CODIFIED ORDINANCES OF THE CITY OF DUBLIN, TO PERMIT ADULT FAMILY HOMES IN ALL DISTRICTS WHERE SINGLE-FAMILY DWELLINGS ARE PERMITTED AND TO PERMIT ADULT CARE FACILITIES IN ALL DISTRICTS WHERE MULTIPLE-FAMILY DWELLINGS ARE PERMITTED, AS REQUIRED BY THE OHIO REVISED CODE, PROVIDED CERTAIN DISTANCE REQUIREMENTS ARE MET; AND SECTION 153.234 "AMENDMENTS" TO MODIFY THE NOTIFICATION REQUIREMENTS FOR PUBLIC HEARING.

WHEREAS, Chapter 153 of the Codified Ordinances of the City of Dublin ("Codified Ordinances") provides zoning regulations for the City of Dublin (the "City"); and

WHEREAS, section 153.073 of the Codified Ordinances establishes general development standards applicable to all residential and neighborhood improvements; and

WHEREAS, the City desires to add Adult Care Facilities as a permitted use in each of the Districts that permit multiple-family dwellings, subject to certain limitations, and to define Adult Care Facility in section 153.002 of the Codified Ordinances; and

WHEREAS, the City desires to add Adult Family Homes as a permitted use in each of the Districts that permit single-family dwellings, subject to certain limitations, and to define Adult Family Homes in section 153.002 of the Codified Ordinances; and

WHEREAS, the City desires to add methods for advertising public hearings for rezonings.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring, that:

Section 1. Existing section 153.002 of the Codified Ordinances of the City of Dublin be amended to include a definition of Adult Care Facility and Adult Family Home as follows:

§ 153.002(A)(1)(b) **ADULT CARE FACILITY.** A residential facility licensed by the department of mental health and addiction services under section 5119.34 of the Ohio Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

§ 153.002(A)(1)(c) **ADULT FAMILY HOME.** A residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility by the State of Ohio and meets the criteria specified in Ohio Revised Code section 5119.34(A)(9)(b).

Section 2. Section 153.073 be amended to include adult care facilities as a permitted use in any zoning districts where multiple-family dwelling structures are permitted and to include adult family homes as a permitted use in any zoning districts where single-family dwelling structures are permitted, subject to restrictions prohibiting these facilities within 500 feet of another one of these facilities, as outlined below.

RECORD OF ORDINANCES

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§ 153.073 COMPREHENSIVE RESIDENTIAL AND NEIGHBORHOOD IMPROVEMENT.

(E) *Adult Family Homes and Adult Care Facilities.*

- (1) Adult family homes, as defined in Section 153.002(A)(1)(c), shall be permitted in any zoning district where single-family dwelling structures are permitted.
- (2) Adult care facilities, as defined in Section 153.002(A)(1)(b), shall be permitted in any zoning district where multiple-family dwelling structures are permitted.
- (3) Adult care facilities and adult family homes shall not be within 500 feet from another adult care facility or adult family home. The 500 foot separation distance required under this section shall be measured from property line to property line by the shortest distance.
- (4) Adequate off-street parking for employees shall be provided.

(F) *Corrective action by municipal officials.*

- (1) All violations of this section which remain uncorrected after not less than ten days notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.
- (2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.
- (3) Violations occurring on construction sites may result in the issuance of a stop-work order until the site is brought into compliance.
- (4) The City may also take any other judicial actions provided by law to address violations of this section.

(G) *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

Section 3. Section 153.234 be amended to provide additional methods of advertising the public hearing for rezonings, as outlined below.

§153.234 AMENDMENTS

- (C) Procedure for consideration of proposed change or amendment.
 - (3) Notice of hearing. Notice setting forth the time and place of such public hearing and the nature of the proposed change or

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amendment shall be published on the City's website or other generally accepted medium, as designated by City Council.

Section 4. This Ordinance shall take effect and be in force from and after the earliest date permitted by law.

Passed this _____ day of _____, 2014.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

§ 153.002(A)(1)(b) **ADULT CARE FACILITY.** A residential facility licensed by the department of mental health and addiction services under section 5119.34 of the Ohio Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

§ 153.002(A)(1)(c) **ADULT FAMILY HOME.** A residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility by the State of Ohio and meets the criteria specified in Ohio Revised Code section 5119.34(A)(9)(b).

§ 153.073 COMPREHENSIVE RESIDENTIAL AND NEIGHBORHOOD IMPROVEMENT.

(E) *Adult Family Homes and Adult Care Facilities.*

- (1) Adult family homes, as defined in Section 153.002(A)(1)(c), shall be permitted in any zoning district where single-family dwelling structures are permitted.
- (2) Adult care facilities, as defined in Section 153.002(A)(1)(b), shall be permitted in any zoning district where multiple-family dwelling structures are permitted.
- (3) Adult care facilities and adult family homes shall not be within 500 feet from another adult care facility or adult family home. The 500 foot separation distance required under this section shall be measured from property line to property line by the shortest distance.
- (4) Adequate off-street parking for employees shall be provided.

~~(E)~~ (F) *Corrective action by municipal officials.*

- (1) All violations of this section which remain uncorrected after not less than ten days notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.
- (2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.
- (3) Violations occurring on construction sites may result in the issuance of a stop-work order until the site is brought into compliance.
- (4) The City may also take any other judicial actions provided by law to address violations of this section.

~~(F)~~ ~~(G)~~ *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

§153.234 AMENDMENTS

(C) Procedure for consideration of proposed change or amendment.

(3) *Notice of hearing.* Notice setting forth the time and place of such public hearing and the nature of the proposed change or amendment shall be published on the City's website or other generally accepted medium, as designated by City Council ~~given by Council in a newspaper of general circulation in the municipality.~~



City of Dublin

Land Use and Long
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PLANNING AND ZONING COMMISSION

RECORD OF ACTION

APRIL 17, 2014

The Planning and Zoning Commission took the following action at this meeting:

3. Zoning Code Amendment – Notification and Adult Family Home Amendments 14-006ADMC Administrative Request

Proposal: Amending the Dublin Code of Ordinances (Zoning Code) Code Section 153.234(C)(3) to modify the notification requirements to be consistent with City Council Rules of Order; and Amending Chapters 153.002, 153.019 through 153.023, 153.025, and 153.059 to add requirements regarding Adult Family Homes.

Request: Review and recommendation of approval of a Zoning Code amendment under the provisions of Zoning Code Sections 153.232 and 153.234.

Applicant: Marsha Grigsby, City Manager, City of Dublin.

Planning Contact: Jennifer M. Rauch, AICP, Senior Planner

Contact Information: (614) 410-4690, jrauch@dublin.oh.us

MOTION: Mr. Hardt moved, Mr. Taylor seconded, to recommend approval to City Council of the Zoning Code Amendment request.

VOTE: 5 – 0.

RESULT: To forward the Zoning Code Amendment application was approved.

RECORDED VOTES:

Chris Amorose Groomes	Yes
Richard Taylor	Yes
Amy Kramb	Yes
John Hardt	Yes
Joseph Budde	Absent
Victoria Newell	Yes

STAFF CERTIFICATION

Jennifer M. Rauch, AICP
Senior Planner

**3. Zoning Code Amendment – Notification and Adult Family Home Amendments
14-006ADMC Administrative Request**

Chris Amorose Groomes introduced the application for a request for amending the Dublin Code of Ordinances (Zoning Code) Section 153.234(C)(3) to modify the notification requirements to be consistent with City Council Rules of Order; and Amending Chapters 153.002, and 153.073 to add requirements regarding Adult Family Homes.

Jennifer Readler said this case was tabled at the April 3, 2014 meeting with direction from the Commission for staff to meet with the residents and discuss in more detail, the residents' concerns that were voiced at that meeting. She said they had the opportunity to meet with the residents on April 9, 2014 and discussed the case law and the state and federal regulations that govern these types of uses. She reported the residents would like a larger dispersal distance than is being proposed in the Code Amendment tonight. She said while state law permits municipalities to limit the excessive concentration, it does not define the parameters so it was suggested that the residents get the City's assistance seeking verification for what that really means. She said they revised the Code Amendment so all the regulations are in one place.

Ms. Readler presented the proposed Code Amendment to:

- Add adult family homes as permitted uses in single-family residential districts, as required by the Ohio Revised Code (1-5 unrelated adults)
- Add adult care facilities as permitted uses in multiple family residential districts, as required by the Ohio Revised Code (3-16 unrelated adults)
- Add definitions for adult family homes and adult care facilities in section 153.022
- Add 500-foot minimum distance requirements for above facilities measured from property line to property line by shortest distance
- Require adequate off-street parking for employees
- Revise the notice requirements for rezoning hearings to provide additional methods of advertising such as the City's website or other generally accepted medium, as designated by City Council
- Place all other amendments in one new code section – Section 153.073

Ms. Readler concluded that the Law Department and Planning recommend that the Planning and Zoning Commission recommend approval of this amendment to City Council.

Ms. Amorose Groomes asked the Commissioners if there were any questions for Ms. Readler. [There were none.]

Ms. Amorose Groomes invited public comment and asked Deb Mitchell to step forward and state her name and address for the record.

Deb Mitchell, 178 Longview Drive, said she wanted to extend her presentation from the previous meeting and reiterate a few points that the residents would like to make in response to the April 9, 2014 meeting with Frost Brown Todd. She said one of the key priorities for Dublin per the City's website is a liveable, sustainable, and safe set of neighborhoods. She said one of the phrases that they have developed among the residents and used in several works by legal and planning scholars is the notion of "balanced neighborhoods" that are sustainable. She explained when the single-family nature of the neighborhoods are maintained, including diverse groups of folks living in adult family facilities as well as those living in traditional configurations, there is sustainable balance. She said based on law and research done on this shared topic, the whole notion of the law is to make sure disabled have every opportunity and right to live in residential settings along with everyone else, to live, thrive, and grow, without barriers. She said the

FHAA amendments in 1988 solidified this. She said a neighborhood cannot be residential or "normal" if several adult family residential facilities are located there.

Ms. Mitchell reiterated that the neighbors welcome diversity but making sure there is that balance is also important. She stated there is no magic number and asked how much is too much. She noted that many municipalities as well as states have passed ordinances reflecting that balance is consistent with what many legal and planning scholars have said such as roughly one adult family facility per street and not clustered in any one neighborhood or area. She provided examples in several cities where they adopted the 100-foot to 1,325-foot dispersal distance ordinances to maintain balance. She said the real estate market and home values have dropped in the last five years allowing more ease for developers and entrepreneurs to buy multiple homes for adult facilities. She said she is all for capitalism but she is a neighbor, too.

Ms. Mitchell said clustering was likely to happen in Dublin without adequate dispersal distance if left at 500 feet. She noted on one particular street, a developer has actively tried to buy additional houses on that street for this use. She explained that some neighborhoods disproportionately attract some developers who wish to grow their adult family facilities in number and footprint which will force an imbalance. She presented a map that showed an area that contained an existing adult residential facility and provided a hypothetical scenario to show dispersal of 500 feet. She said this area in mid-century Dublin could have 6 – 9 facilities, depending on where the property lines are drawn and the residents recommend more than 500 feet for dispersal and balance.

Ms. Mitchell said not much action has been taken in Ohio and asked that the City of Dublin take the leadership position. She noted that the residents do not believe a defensible, zero-risk position would ensure balance. She said they are willing to accept some uncertainty about a possible legal challenge and acknowledge a trade-off because they care about balance. She said one neighborhood is being actively pursued with two or three homes per street. She encouraged the Commission to weigh the risks with potential outcomes and presented some scenarios in the form of a decision tree.

Roger Vogel, 177 Longview Drive, said they met the other night with Legal but had questions that reflected what the residents of Dublin have. He referred to the memorandum from the Legal team that showed the main bullet points, specifically points one and three:

- Such facilities may need to be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residents, within the district or zone.
- Adult family homes must comply with general fire and building restrictions such as area, height, yard, and architectural compatibility.

He referred to Section 153.073 of the existing Code that we are considering amending, titled Comprehensive Residential and Neighborhood Improvement. He questioned the section that deals with Home Occupation (B) and assumed that an adult family home would come under the heading of home occupation.

Ms. Readler said it would not. She explained there was a sub section that is applicable only to home occupations and state law specifically says to treat these facilities as single-family homes.

Mr. Vogel said they have to comply with area, height, yard, and architectural compatibility requirements.

Ms. Readler said that is applicable to ANY single-family homes.

Mr. Vogel asked how removing garaged doors and turning garages into bedrooms is not a violation.

Ms. Readler said that is not a violation.

Mr. Vogel again challenged the architectural compatibility as it pertains to the garage and the stipulation that there should be no change in the outside appearance of the building or premise.

Ms. Readler said that only applied to home occupations.

Mr. Vogel then asked about the parking provision where home occupation parking on non-curbed streets is prohibited.

Ms. Readler said they created a parking restriction in this new amendment, requiring off-street parking for employees.

Mr. Vogel questioned the Code referring to cars of customers and so forth does not apply to the single-family homes.

Ms. Readler stated that applies only to home occupations.

Mr. Vogel said he was puzzled about the conformity.

Richard Taylor said there are a whole bunch of requirements in the Zoning Code that apply to single-family homes, beyond the section Mr. Vogel is referring to.

Mr. Vogel asked for clarification that none of these under 153.073 apply to single-family homes.

Ms. Readler said the subsection he is delineating is only applicable to home occupation. She explained the City of Dublin has a Code Enforcement Department that oversees any violations reported.

Ms. Amorose Groomes asked if there was anyone else that wanted to speak with regards to this application.

Mary Ellen Wissel, 57 Longview Drive, said she had the 1954 survey of the old Longview Addition for Longview Drive. She said a 500-foot distance between property lines would allow every fifth residential property to be an adult family home on Longview Drive. She said she was concerned with the possibility of that excessive concentration and the dispersal distance of 500 feet is not adequate or appropriate in this specific context.

Ms. Amorose Groomes asked if Ms. Readler wanted to respond at this time to the initial questions of defensibility.

Ms. Readler reported that there is a case of 500-foot dispersal decided in the 6th Circuit of Court of Appeals in Michigan that struck down a 1,500 foot distance. She said the distance in dispersals is not clear but the 500-foot distance has been considered by court and upheld which prompted the rationale behind suggesting that number.

Ms. Amorose Groomes said Ms. Mitchell made some outstanding points of the policy decisions as it relates to these and when this is forwarded to City Council, it does not become the Zoning Code. She said it goes to them to weigh in on the policy aspects, getting to the hands that it really belongs in, who are the policy decision makers for the City of Dublin who are capable of taking calculated risks. She explained that is not the role of the Commission. She encouraged them to get the best representation through their elected

officials on City Council whereas the Planning and Zoning Commissioners are volunteers. She emphasized the need to stay engaged and fight for the integrity of their neighborhoods.

Ms. Newell asked if there were other ways to come up with dispersion without putting a limitation on what that distance in feet but perhaps a stipulation of one or two residence per street be permitted. Ms. Readler said there were other options such as one per street, one per block, and other different delineations besides using that firm number.

Ms. Newell asked if there were other cases found where they used another form that was upheld.

Ms. Readler answered no.

Motion and Vote

Mr. Hardt moved, Mr. Taylor seconded, to recommend approval to City Council of the Zoning Code Amendment request.

The vote was as follows: Ms. Kramb, yes; Ms. Newell, yes; Ms. Amorose Groomes, yes; Mr. Taylor, yes; and Mr. Hardt, yes. (Approved 5 – 0)

Planning Report

Thursday, April 17, 2014

Zoning Code Amendment

Case Summary

Agenda Item	3
Case Number	14-006ADMC
Proposal	Amending the Dublin Code of Ordinances (Zoning Code) Code Section 153.234(C)(3) to modify the notification requirements to be consistent with City Council Rules of Order; and amending Zoning Code Section 153.073 to add requirements regarding Adult Family Homes and Adult Care Facilities.
Request	Review and recommendation of approval of a Zoning Code amendment under the provisions of Zoning Code Sections 153.232 and 153.234.
Applicant	Marsha Grigsby, City Manager, City of Dublin.
Contact	Jennifer D. Readler, Frost Brown Todd; Jennifer M. Rauch, AICP, Senior Planner.
Contact Information	(614) 559-7253, jreadler@fbtlaw.com and (614) 410-4690, jrauch@dublin.oh.us
Recommendation	<i>Recommendation of approval to City Council.</i> The proposed modifications to the Zoning Code for hearing notification requirements and adult family homes and adult care facilities are appropriate and in conformance with state laws and City practices. Planning recommends the Planning and Zoning Commission recommend approval of this amendment to City Council.

Facts	Zoning Code Amendment
Update – Adult Care Facilities	<p>At the April 3, 2014 Planning and Zoning Commission meeting, this case was tabled to provide staff the opportunity to meet with the residents to further explore the issues discussed. Planning and the Law Director met with a group of concerned residents on April 9, 2014 and outlined recent case law, and state and federal restrictions on the regulation of adult family homes. Although the residents would prefer a larger distance dispersal requirement than 500 feet, the residents understood the City's position in desiring the most defensible ordinance possible.</p> <p>Through discussion, the residents raised their interest in pursuing clarifying revisions to the Ohio Revised Code statutes regulating these types of uses to better ensure the compatibility of these uses with the neighborhoods they inhabit. They would like to request the City's support in seeking clarification of these Ohio Revised Code statutes with the State Legislature.</p>
Case Summary	<p>The proposed amendment includes two separate changes for review and recommendation to City Council.</p> <p>The first is a request to amend portions of the Zoning Code to define and allow adult family homes as a permitted use in all districts where single-family dwellings are permitted, with a required 500 foot distance requirement between such uses. This amendment will also permit adult care facilities in all districts where multiple family dwellings are permitted, with a required 500 foot distance requirement between such uses.</p> <p>This second change is a request to amend portions of the Zoning Code regarding noticing for public hearings. This amendment will coordinate with the notice practices of the City Clerk.</p>
Background	<p>Adult Family Homes and Care Facilities</p> <p>In recent months, it was brought to the City's attention regarding the location of adult family homes within existing single-family neighborhoods. City Council directed the Law Director's office to provide draft Zoning Code regulations to address adult family homes and adult care facilities. The proposed amendment provides definitions for these uses, allows them as permitted uses in residential districts, requires a distance of 500 feet between property lines of these facilities, and requires the provision of adequate parking for employees. The Ohio Revised Code limits the restrictions a City can enact regarding these uses, with significant case law upholding the 500 foot limitation. A detailed memo provided by the Law Director's office has been provided for your reference.</p> <p>Noticing Requirements</p> <p>Currently, the Code limits distribution of a notice of public hearing through the newspaper. The proposed modification to the noticing requirements would provide for additional advertisement options to ensure the 30-day required notice can be met for rezoning applications. This is in line with current practice.</p>

Details		Zoning Code Amendment
Process	Code Section 153.232(B)(9) provides the Planning and Zoning Commission with "other powers and duties" which includes making recommendations to City Council for amendments to the Zoning Code. The Commission should review the modifications, provide input, and vote on the changes. The proposed amendment will be forwarded to City Council for its consideration. The following sections summarize the major components and considerations of each section of the zoning regulations proposed for the amendment.	
Definitions (153.002)	Most uses provided in the Zoning Code have specific definitions, as contained in Section 153.002, (A) Uses Definitions. Given the specifics outlined in the Ohio Revised Code (ORC), two new definitions that mimic the ORC have been incorporated in the definitions section, which differentiate between an adult family home and an adult care facility. Adult family homes are a residential facility for one to five unrelated persons where accommodations and personal care services are provided. Adult care facilities are a residential facility for three to sixteen persons where accommodations, supervision, and personal care services are provided. Both types of facilities are licensed by the State of Ohio.	
Comprehensive Residential and Neighborhood Improvement (153.073)	The previous version of the proposed amendment added adult family homes within the single-family districts and adult care facilities within the multiple-family districts. The revised version proposes a modification to the Comprehensive Residential and Neighborhood Improvement which will apply to all residential districts including single-family Planned Developments. The proposed language specifies adult family homes and adult care facilities shall not be located within 500 feet of another adult family home or care facility. The distance measured from property line to property line by the shortest distance. The provisions also require adequate off-street parking for employees.	
Noticing Requirements (153.234(C)(3))	The proposed modification to the noticing requirements would provide for additional advertisement options to ensure the 30-day required notice can be met for rezoning applications. The proposed amendment will be consistent with Council Rules of Order.	

Recommendation		Approval
Approval	Planning recommends the Planning and Zoning Commission recommend approval of the proposed amendments to City Council.	

EXISTING CODE SECTION 153.073

§ 153.073 COMPREHENSIVE RESIDENTIAL AND NEIGHBORHOOD IMPROVEMENT.

(A) *Purpose.*

(1) The purpose of this section shall be the enhancement of the public health, safety and welfare by eliminating conditions favorable to pestilence, disease and general unsafe conditions, while at the same time improving the quality and appearance and most likely, the value of residential property for all residents of the municipality.

(2) In conjunction therewith, it is important to maintain residential areas as residential areas and confine occupational uses to areas properly zoned for commercial and related nonresidential uses of property.

(B) *Home occupation.* Home occupation shall be those limited occupations which are hereafter defined and which may be carried on in residential neighborhoods.

(1) *Standards for home occupations.* No home occupation shall hereafter be established, altered or enlarged in any residential district unless such home occupation is permitted by this chapter and complies with the following restrictions or standards:

(a) No person other than members of the family residing on the premises shall be engaged in a home occupation in any Residential District.

(b) No sign shall be used in connection with a home occupation, nor shall any display be used that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling.

(c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, which would change the essential character thereof as a dwelling.

(d) The space devoted for use of the home occupation must be within the main dwelling or basement and shall occupy not more than 300 square feet. Accessory buildings such as garages or sheds, whether attached or unattached, shall not be used for home occupations.

(e) No mechanical or electrical equipment shall be used except normal domestic or household equipment, adding machines, typewriters, copy machines and similar equipment, or any equipment necessary and essential to any of the permitted home occupations.

(f) No home occupation shall be used in such a manner as to create offensive noise, vibration, smoke or other particular matter, heat, humidity, glare, electronic interference or otherwise constitute a nuisance or safety hazard to any occupant of adjacent or nearby properties.

(g) There shall be no outdoor storage of equipment or materials used in the home occupation.

(h) Not more than four motor vehicles, used by customers of the home occupation, shall be parked at the location of the home occupation at one time.

(i) The home occupation shall not generate traffic greater in volume than normal for residential neighborhood.

(j) All automobiles used by customers shall be parked in the driveway or along the street curb abutting the premises, unless other more satisfactory arrangements are required and approved by Director of Land Use and Long Range Planning after a public notice home occupation parking on non-curbed streets is prohibited. No truck other than one van-type truck may be used in connection with a home occupation. If this vehicle is stored on-site, it must be enclosed by a structure so that the vehicle cannot be entered upon or seen from an adjacent lot or street.

EXISTING CODE SECTION 153.073

(2) *Permit.* All persons conducting home occupations which are presently existing, or which are established, changed or enlarged after this chapter is in effect shall be required to obtain a permit from the City Engineer or his agent. The initial permit shall be valid for a period of two years after the date of issuance. A renewal permit must be secured for each subsequent two-year period thereafter.

(3) *Permitted home occupations.* The following shall be illustrative of permitted home occupations: handicrafts, art or music lessons, dressmaking, millinery, laundry, preserving and home cooking. Other uses shall be permitted by the Manager, if determined that such uses are in keeping with the intent and purpose of this section. It shall not be the intent of this section to prohibit the maintenance by a homeowner of a private professional office (e.g., doctor's, lawyer's or architect's) on his premises, provided that the provisions of this section regarding signage, traffic and other provisions regulating home occupations are adhered to.

(C) *Condition of premises; waste accumulation.* No person, firm, or other property owners or residents shall:

(1) Cause or permit waste, garbage, trash or any debris such as lumber and building materials, unused tires or other material to accumulate or remain on their property except as follows:

(a) Trash and garbage properly located for normal and regular pickup, provided that no such items shall be permitted to remain exposed to open view beyond normal pickup times.

(b) All trash and debris associated with or resulting from the construction of either residential or commercial structures permitted hereby shall be contained on the construction site in a stable and secure enclosure no smaller than ten cubic yards. The permit holder shall maintain the enclosure and site so as to control litter and debris at all times, and remove and dispose of the debris in an approved landfill. The enclosure shall be removed from the site within ten days of issuance of the occupancy permit or within ten days of cessation of active construction work.

(2) Permit commercial vehicles or non-private passenger vehicles exceeding four to be parked or remaining in open view upon the premises of a residential neighborhood except in connection with repair or construction work being undertaken at the premises and only during such periods of repair or construction.

(3) Fail to keep the exterior of all residential and commercial premises in good condition, and well-maintained, including painting, if necessary, and such persons shall, within a reasonable time, after notice, remove or remedy all unsightly, dirty and unsafe conditions.

(4) Keep all vacant lots mowed as often as necessary in keeping with the character of the neighborhood to prevent pestilence, insect infestation, and to discourage use of the property for dumping or landfill purposes.

(a) All such vacant property shall be kept free of hazardous and unhealthful accumulations of water and other conditions affecting the health and welfare of residents of the municipality.

(b) In those instances where such vacant property is being used contrary to municipal zoning laws and other ordinances, the property owner, upon notice, shall take appropriate remedies to prevent such unlawful uses in cooperation with municipal officials.

(c) All vacant lots shall be kept seeded or maintained in such manner as to prevent erosion of the property and excess drainage onto adjoining lands and kept free of trash and debris.

(D) *Model homes in residential districts.* Regulation of model homes is intended to preserve the opportunity for potential residents of the city to inspect housing available within the municipality; to provide home builders a forum to demonstrate housing styles and options; to preserve the quality of residential life for nearby residents; and to protect residential areas from the potential adverse effects of non-residential uses.

(1) *Application.* This section shall apply to all residential districts, including residential planned

EXISTING CODE SECTION 153.073

districts, unless specific provisions of the applicable development text specify otherwise.

(2) *Approval.* The Administrative Official or designee shall be permitted to issue a Certificate of Zoning Plan Approval (CZPA) for model homes, sales offices, and sales trailers in residential districts, provided specific criteria are met.

(a) Model homes and sales offices may be approved for up to two years.

1. Certificates of Zoning Plan Approval may be approved for up to an additional two years until the residential development as defined in the application for a CZPA is 75% occupied.

2. When the residential development is greater than 75% occupied but less than 95% occupied, a CZPA may be approved by the Administrative Official for up to one year.

3. Operation of the model home or sales office shall be discontinued within 90 days once the residential development is 95% occupied.

4. For the purposes of this section, the term **OCCUPIED** shall refer to residential units that are being used as a dwelling, or residential units that are vacant and owned by an entity other than the developer or a home builder.

5. Once operation of the model home or sales office is discontinued, all improvements made for the purposes of the model home or sales office use, including but not limited to signs and associated landscaping, lighting, and architectural modifications, shall be removed and restored to conditions typical of a residential development within 90 days.

(b) Sales trailers may be permitted for a maximum of two years, or until a model home or sales office is constructed, whichever occurs first.

(c) Approval of a CZPA for model homes and sales offices in residential districts shall be subject to the following:

1. The building which serves as the office/sales facility shall be sited within the development to ensure that the model home is easily accessible and identifiable and shall not detract from the residential and architectural character of the neighborhood.

2. External lighting may be approved provided it does not detract from the residential character of the building. In no case shall exterior lighting other than usual and customary residential lighting be permitted after 9:00 p.m. All interior lighting, with the exception of lighting in a maximum of two rooms, shall be turned off by 9:00 p.m. and remain off until 8:00 a.m. daily.

3. One identification sign is permitted for model homes and sales offices, not exceeding eight square feet in area and six feet in height. Signs shall maintain a minimum eight-foot setback from the right-of-way. A sign permit is required for all signs.

4. All structures shall comply with all applicable requirements of the city and any additional development standards for the zoning district.

5. Locations for parking for sales staff and customers shall avoid creating disruptions to surrounding residents. Parking for model homes and sales offices shall be provided either on-site or on-street adjacent to the facility, except as provided in division 6. below. Parking lots for sales trailers or sales offices shall meet all requirements of this chapter related to parking lots.

6. Freestanding, off-site parking lots for model homes shall be permitted only on residential lots adjacent to unoccupied lots with the exception of the model home and only after obtaining a special permit according to the procedures of § 153.231(G). The parking lot shall not extend beyond the rear elevation, nor

EXISTING CODE SECTION 153.073

project forward of the front elevation, of the model home. A sidewalk shall be provided from the parking lot to the model home. The parking lot and sidewalk must be removed within 90 days after a building permit is obtained for the adjacent vacant lot or the model home operation is discontinued.

7. An application for a CZPA shall include information regarding hours of operation, number and type of employees with the maximum number of employees expected on site at any time, provision of parking for employees and customers, and a description of the proposed facility's compliance with the standards of this section.

(3) *Number of model homes.* If the Administrative Official determines that the number of model homes in any residential district is excessive or is affecting the residential character of the neighborhood or the development, the applicant shall be required to obtain a special permit in accordance with the requirements of § 153.231(G) prior to operating the model home or sales office.

(4) *Notices.* The city shall notify any registered homeowners associations and all property owners within 300 feet of the site of a proposed model home, sales office, or sales trailer in a residential district within ten days from the receipt of a complete application for a CZPA. The notice shall, at a minimum, indicate the property that is the subject of the request, describe the nature of the request, and indicate when and where written comments will be received concerning the request. At least 14 days shall be provided for public comment prior to a determination by the Administrative Official.

(E) *Corrective action by municipal officials.*

(1) All violations of this section which remain uncorrected after not less than ten days notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.

(2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.

(3) Violations occurring on construction sites may result in the issuance of a stop-work order until the site is brought into compliance.

(F) *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

('80 Code, § 1183.04) (Ord. 10-84, passed 4-2-84; Am. Ord. 23-84, passed 5-22-84; Am. Ord. 30-89, passed 4-17-89; Am. Ord. 61-00, passed 9-17-01; Am. Ord. 28-08, passed 5-19-08; Am. Ord. 26-10, passed 8-9-10) Penalty, see § 153.999

EXISTING CODE SECTION 153.234

§ 153.234 AMENDMENTS.

(A) *Amendments by Council.* Council may change or amend the text of the zoning ordinance, or the zoning district map.

(1) *Initiation by resolution.* Proposed changes or amendments may be initiated by Council by resolution or by motion of the Planning and Zoning Commission.

(2) *Initiation by application.* Proposed changes or amendments may be initiated by one or more owners or lessees of land within the area that is proposed to be changed by amendment of the zoning district map or by one or more owners or lessees of land to be affected by change or amendment of other provisions of the zoning ordinance.

(3) *Resubmission of application.* If a proposed amendment or supplement initiated by application is disapproved by Council another application for amendment or supplement affecting the land included in the disapproved application shall not be submitted within one year from the date of disapproval, except with a statement by the Planning and Zoning Commission of changed or changing conditions affecting the land sufficient to warrant reconsideration.

(B) *Initiation of action by owner or lessee of land.* Two copies of a provided application form shall be filed with the city not less than 20 days prior to the public hearing of the Planning and Zoning Commission at which the proposal is to be considered.

(1) *Application.* The application for any proposed change or amendment shall contain:

- (a) A description or statement of the present and proposed provisions of the zoning ordinance or the proposed change of the district boundaries of the zoning district map.
- (b) A description by map or text of the property to be affected by the proposed change or amendment.
- (c) A statement of the relation of the proposed change or amendment to the general health, safety and welfare of the public in terms of need or appropriateness within the area by reason of changed or changing conditions and the relation to appropriate plans for the area.
- (d) A list of owners of property within 300 feet of the property lines of the area proposed to be rezoned. Such list to be in accordance with the Franklin County Auditor's current tax list.

(2) *Fees.* A fee as set forth from time to time by ordinance shall be paid to the municipality for each application for any proposed change or amendment to cover the necessary administrative and advertising costs.

(C) *Procedure for consideration of proposed change or amendment.*

(1) *Procedure.* Upon receipt of an application from an owner or lessee of land or a resolution by City Council, or the passage of a motion by the Planning and Zoning Commission, the Planning and Zoning Commission shall review the proposed amendment and shall submit a recommendation to City Council. The recommendation of the Planning and Zoning Commission shall be transmitted to City Council at which time City Council shall set a date for a public hearing upon the proposed amendment.

(2) *Hearing date.* In setting the date of such a public hearing, Council shall give at least 30 days notice thereof.

(3) *Notice of hearing.* Notice setting forth the time and place of such public hearing and the nature of the proposed change or amendment shall be given by Council in a newspaper of general circulation in the municipality.

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(a) If the ordinance, measure or regulation intends to rezone or redistrict ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council by first class mail, at least 30 days before the date of the public hearing to the owners of property within and contiguous to and directly across the street from such parcel or parcels to the addresses of such owners appearing on the County Auditors current tax list or the Finance Director's mailing list and to such other list or lists that may be specified by Council, and such list of names and addresses shall be supplied by the applicant to the Clerk of Council at the time of filing.

(b) During such 30 days the text or copy of the text of such ordinance, measure or regulation, together with the maps or plans or copies thereof forming part of or referred to in such ordinance, measure or regulation and the maps, plans and reports submitted by the Planning and Zoning Commission, board or officer shall be on file, for public examination, in the office of the Clerk of Council or in such other office as is designated by Council.

PROPOSED CODE MODIFICATION

§ 153.002 DEFINITIONS

(A) Uses definitions.

(1)(b) **ADULT CARE FACILITY.** A residential facility licensed by the department of mental health and addiction services under Section 5119.34 of the Ohio Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults.

(1)(c) **ADULT FAMILY HOME.** A residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility by the State of Ohio and meets the criteria specified in Ohio Revised Code Section 5119.34(A)(9)(b).

§ 153.073 COMPREHENSIVE RESIDENTIAL AND NEIGHBORHOOD IMPROVEMENT.

(E) *Adult Family Homes and Adult Care Facilities.*

(1) Adult family homes, as defined in Section 153.002(A)(1)(c), shall be permitted in any zoning district where single-family dwelling structures are permitted.

(2) Adult care facilities, as defined in Section 153.002(A)(1)(b), shall be permitted in any zoning district where multiple-family dwelling structures are permitted.

(3) Adult care facilities and adult family homes shall not be within five hundred (500) feet from another adult care facility or adult family home.

(a) The 500 foot separation distance required under this section shall be measured from property line to property line by the shortest distance.

(4) Adequate off-street parking for employees shall be provided.

~~(E)~~ (F) *Corrective action by municipal officials.*

(1) All violations of this section which remain uncorrected after not less than ten days' notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.

(2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.

(3) Violations occurring on construction sites may result in the issuance of a

PROPOSED CODE MODIFICATION

stop-work order until the site is brought into compliance.

(4) The City may also take any other judicial actions provided by law to address violations of this section.

~~(F)~~ (G) *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

§ 153.234 AMENDMENTS

(C) Procedure for consideration of proposed change or amendment.

(3) *Notice of hearing.* Notice setting forth the time and place of such public hearing and the nature of the proposed change or amendment shall be published on the City's website or other generally accepted medium, as designated by City Council. ~~given by Council in a newspaper of general circulation in the municipality.~~



City of Dublin

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PLANNING AND ZONING COMMISSION

RECORD OF ACTION

APRIL 3, 2014

The Planning and Zoning Commission took the following action at this meeting:

**2. Zoning Code Amendment – Notification and Adult Family Home Amendments
14-006ADMC Administrative Request**

Proposal: Amending the Dublin Code of Ordinances (Zoning Code) Code Section 153.234(C)(3) to modify the notification requirements to be consistent with City Council Rules of Order; and Amending Chapters 153.002, 153.019 through 153.023, 153.025, and 153.059 to add requirements regarding Adult Family Homes.

Request Review and recommendation of approval of a Zoning Code amendment under the provisions of Zoning Code Sections 153.232 and 153.234.

Applicant: Marsha Grigsby, City Manager, City of Dublin.

Planning Contact: Jennifer M. Rauch, AICP, Senior Planner.

Contact Information: (614) 410-4690, jrauch@dublin.oh.us

MOTION: Joseph Budde moved, John Hardt seconded, to table this administrative request.

VOTE: 5 – 0.

RESULT: This Administrative Request was tabled.

RECORDED VOTES:

Chris Amorose Groomes	Absent
Richard Taylor	Yes
Amy Kramb	Yes
John Hardt	Yes
Joseph Budde	Yes
Victoria Newell	Yes

STAFF CERTIFICATION

Claudia D. Husak, AICP
Planner II

**2. Zoning Code Amendment – Notification and Adult Family Home Amendments
14-006ADMC Administrative Request**

Mr. Taylor said the following application to modify the Zoning Code regarding the notification requirements for public hearings and requirements for Adult Family Homes was an administrative request.

Mr. Taylor swore in witnesses that intended to address the Commission on this case.

Ms. Jennifer Readler said the Law Director's office is proposing several amendments and presented an overview of those amendments. She said the first revision is to add adult family homes as a permitted use in single-family residential districts, which is permitted and required by the Ohio Revised Code. She said the proposed modifications are intended to update the Code to reflect the State Law. She said this is the same for the second set of facilities, the adult care facilities, which is permitted and required by the Ohio Revised Code. She stated an adult care facility is a larger facility that is permitted in multiple family districts. She said the proposal also adds a 500-foot minimum distance requirement between these types of facilities, which is the one stipulation the Ohio Revised Code states municipalities are able to include.

Ms. Readler said an unrelated amendment is to revise the notice requirements for rezoning hearings to add additional methods of publication.

Ms. Readler said the Ohio Revised Code provides that anyone can operate an adult family home that provides accommodations and personal care services for up to 5 unrelated individuals in any single-family residential district. She said adult family homes must follow all Code requirements that pertain to single family homes. Ms. Readler said these types of facilities do not include alcohol or drug addiction services, facilities licensed to provide methadone treatment, or homeless facilities.

Ms. Readler said municipalities are permitted to adopt zoning regulations under our police power. She said cities cannot adopt any regulation that would conflict with a general law. She stated general laws are areas the State governs and general laws preempt local laws. She said the Ohio Attorney General has given an opinion that adult family home regulations are general laws, so State Law prevails over local law. She said adult family homes have to comply with fire, building restrictions, locations of accessory uses, and can be governed exactly as any other single-family homes.

Ms. Readler said the Ohio Revised Code gives municipalities one additional power, which is to restrict the density or the concentration of these homes. She said the specific Code Section of the Revised Code says they can adopt regulations that limit the excessive concentration of such facilities. She said they have been directed by City Council to prepare a dispersal ordinance, but want to ensure the distance will be upheld in court. She stated a court within Ohio has held that 500 feet is a permissible minimum distance between these facilities, which is recommended with the proposed modification. She showed a slide of summaries of court cases and attorney general opinions where larger distance requirements have been invalidated. She said those distances range from 1,000 feet and upwards.

Ms. Readler said the unrelated notification amendment currently limits the City in advertising for public hearings for rezoning in a newspaper of general circulation. She said this amendment will expand the outlets that could the City can advertise. She said the proposed amendment allows advertisement on the City's website or other generally accepted medium, as designated by City Council.

Ms. Readler said the Law Department and Planning recommend the Planning and Zoning Commission recommend approval of this amendment to City Council.

Mr. Taylor invited the public to provide comments.

Deborah Mitchell, 178 Longview Drive, representing Mid-Century Dublin Neighbors Association, said she has prepared a PowerPoint presentation and had printed copies of the presentation.

Ms. Mitchell said this is a short presentation to re-iterate that their neighborhood and plenty of concerned residents do understand the law. She said when people first encounter this topic they react with surprise and sometimes negatively but they have made a point to try and help folks understand the law and understand it themselves. She said beginning with the 1968 Fair Housing Act and later with the 1988 Fair Housing Act Amendments, it is illegal to discriminate housing and the FHAA in 1988 was about extending protections to the disabled and the disabled is a broad category includes many different kinds of disabilities. She said this came from a movement in the 1950's but did not take hold until the FHA was passed so that people can be guaranteed access to housing even if they were disabled and started primarily for developmental disabilities, but today it does cover a broad range including Alzheimer's and Dementia patients. She said it is true it does not cover any alcohol or drug addiction treatment, but does include sober living accommodations for people that are transitioning out of that kind of treatment. She said if anyone is curious about what kinds of disabilities are covered, the Law and the Code for the State of Ohio is very clear. She said the powers of these laws are very strong and many states have affirmed them as the State of Ohio has. She said the Law is to provide for community residential facilities so that the disabled can have access to housing.

Ms. Mitchell said in Ohio there are different classifications depending on the number of individuals in the home, but there are not real classifications based on the type of disabilities. She said many people do not know that the business models for these kinds of residential facilities vary dramatically, some are for profit and some are for not-for-profit. She said some take insurance, including Medicaid or Medicare and some are self-pay with very high margin businesses with an interest in growing this segment among businesses. She said it is a myth these homes only go into less affluent neighborhoods where the homes may not be as expensive, because with a self-pay business model these homes can go anywhere. She said there was one in Weston, an affluent suburb in Maryland, a home that went in recently where people pay 650.00 a night not covered by insurance and the home is a 1.59 million dollar home, 5,000-square-foot home for up to 6 individuals that are transitioning from being in a mental hospital to being able to live on their own or live elsewhere.

Ms. Mitchell said plenty of legal scholars, Planning scholars and a section of case law, affirms the premise that the disabled need to be in residential neighborhoods and the neighborhoods need to stay residential and therefore they cannot become clustered with too many community residential buildings because the whole point of mainstreaming from the 1950's on and affirmed by the FHAA was the notion that the disabled should be able to live in residential neighborhoods where normalization is the goal so that the people are able to experience a normal residential neighborhood experience.

Ms. Mitchell said the question becomes how much is too much and people struggle with how many homes in one area are too many, there is no magic number or rule. She said some say there should not be more than one per street block, others such as the state of New York say they are not going to put a number on this or the amount of space between each one because it is context dependent. She showed a few graphics to show just how contextual this can be. She said New York uses a model that mandates dispersal or putting a certain amount of space between residential facilities so that they do avoid the clustering phenomena, but they do not put a number out there. She said in general a lot of states have these dispersal ordinances on the books and new ones continue to be created. She said Chandler, Arizona had a 1,200 feet dispersal ordinance for the larger group homes and now extending it to adult family homes with 3 to 5 residents. She said Prescott, Arizona has similar changes in their dispersal ordinance and New Port Beach, California and other communities both at the state and municipal levels.

Ms. Mitchell said if a community wants to enact to something like this to make sure that the disabled don't end up in a social services ghetto and they don't end up in a neighborhood that is no longer residential because the nature has been changed by the number of these kinds of facilities in them there

are a couple of guidelines to think about. She said it should not violate the law and should allow a residential neighborhood to maintain its residential nature while absorbing the introduction of residential facilities. She said there are a certain number of facilities a neighborhood can absorb and still maintain its residential nature, but too many and it starts to change.

Ms. Mitchell said the category of Ohio and the 6th circuit case law, the Larkin Case in the State of Michigan was mentioned already. She said the 1,500-foot separation between each residential facility and a restrictive notification was struck down. She said in *Harding vs. City of Toledo* nothing was judicially mandated, Toledo already had a dispersal regulation of 990 feet and it was going to be challenged so they voluntarily brought it down to 500 feet and the Judge agreed. She said in the *City of Montgomery, Ohio vs. Our Family Home*, the City of Montgomery tried to sue to try and keep this home out in violation of the FHAA and the State Law, but in that case *Our Family Home* was upheld and the City of Montgomery was told the home was permitted per State Law and the Judge unilaterally said for one year or until the City of Montgomery can pass its own dispersal ordinance there could not be another home within 750 feet. She said there is no one magic number.

Ms. Mitchell said this becomes clearer when you look outside the 6th circuit. She said there is a very famous case that is in all the law books is *Familystyle of St. Paul vs. the City of St. Paul, Minnesota*, which held up under appeal a dispersal regulation of 1,320 feet or a ¼ of mile which has held up since the early 90's found to be constitutionally in-line with the FHAA and continues to be held up. She said *Jennings vs. New York, State Office of Mental Health* since the early 90's the *Padavan Law* has been upheld, mandated dispersal but spacing is context dependent of each request to put a home in. She said *Oconomowoc Residential Programs vs. the City of Milwaukee* rule requiring 2,500 feet spacing was a complicated ordinance saying if there was a home within 2500 feet they had to have a special variance, the court said requiring special variances have not been fondly looked upon because communities would require special variances to keep homes out and so the court struck it down because they do not like special use provisions because they are used to keep homes out, so it was less about the 2500 feet or dispersal and more about what Milwaukee was trying to do vis-à-vis *Oconomowoc Residential Programs*.

Ms. Mitchell said the upshot to all this is that there is conflicting results in case law, but clearly support for dispersal and not at necessarily at 500 feet and that there is no magic number and 500 is not the typical number that is seen in dispersal ordinances if looking broadly across many situations and in fact that 750 feet was suggested by a judge within Ohio. She said States like Minnesota and New York have had on their books dispersal rules that are greater than 500 feet and as much 1,320 feet since the early 90's and have been challenged and held up on appeal.

Ms. Mitchell said the goal for the disabled is to live in a balanced neighborhood. She showed graphics using the on-line tools provided by the City of Dublin and was able to map the different neighborhoods within Dublin the effects of 500 feet dispersal, included was south of Downtown Dublin, Amberleigh, and Muirfield Golf Club Areas. She said the Mid-Century Dublin Neighbors Association and other concern residents are strongly recommending consideration of dispersal ordinance greater than 500 feet because they want something that is not going to violate the Law but there is plenty of Law to make this more ambiguous or more complicated than perhaps what is shown or what they have seen so far with regards to the *Harding and Toledo Case*. She said they also want something that is going to ensure balanced neighborhoods and they feel very strongly that 500 feet will not ensure a balanced neighborhood.

Ms. Mitchell said currently the ordinance recommends parking for community residential facilities for two off-street spaces for employees and they realize the parking section of any ordinance about community residential homes cannot be overly restrictive because that could be potentially viewed as discriminatory and they also believe it is important to consider how many of these can be on one street. She showed an example of a current residential facility at 50 Longview Drive which is be repurposed into an adult family home and the garage has become two bedrooms and the driveway is very short. She showed examples of the street widths of 18 feet with no on-street parking providing a narrow space of a broom width

between two cars on Longview Drive. She said they have collected data on police runs, ambulance runs that are typical at adult family homes. She said parking can seem mundane until you can't find a parking spot or until there are people parking in your yard because there is no parking on the street and this affects the residential nature of the neighborhood.

Ms. Mitchell said as a neighborhood they wanted to make sure that if the City of Dublin is going to pass an ordinance about dispersal and in general anything related to community residential facilities that the whole span of the categories were considered from adult foster on up the larger group homes. She said there is merit toward bigger dispersal in the Law to encourage further and deeper consideration rather than adoption of 500 feet dispersal. She said the nature and balance of neighborhoods is going to be affected if only 500 feet dispersal was approved and they need to keep the neighborhoods residential so that the disabled can enjoy all the benefits that they are entitled to under the FHAA and State Law. She encouraged the Planning and Zoning Commission and City Council to take these factors into consideration because the law is not straight forward on this and there are many laws on the books that advocate much bigger dispersal, there two States that have held it up for over 20 years and when you look at Dublin neighborhoods you can see that it is not necessarily like the west side of Columbus or any part of Columbus in many ways.

Roger Vogel, 177 Longview Drive, said he is the president of the Mid-Century Dublin Neighborhood and the neighborhood has been anxious for and urging for this ordinance because they are in a neighborhood where a home has come in and wanted to see the regulations enacted soon, but having looked at this topic further and done the research, the neighborhood wants to get this right and if it means stepping back and taking a further look then they support that.

Sid Beavers, 163 Longview Drive, said he is moving into this neighborhood on Monday, said he was unaware of the facility. He said he understands there is a need for the facility, but witnessed a concern with the narrowness of the street, as their furniture truck was parked along the edge of the road and they had to drive off the pavement to get around the truck. He recommended they take a ride down Longview and see what is there and see how wide it is. He said if they go and see for themselves they will see 500 feet it is not very far and the roads are not wide and there will be a problem if there are fire trucks, ambulances and delivery trucks. He said you can barely get two cars passed much less a big truck or a fire truck or ambulance.

Tom Smith, 8217 Glencullen Court, Amberleigh, said he is here at the request of the homeowners association to just be present and show support, he questioned if there is notification when one of these homes move into a neighborhood, is there an application to City Council.

Ms. Readler indicated there is no such application.

Mr. Smith asked if they know how many homes are operating within Dublin. Ms. Readler said they believe there are three.

Mr. Smith asked if there were any in Amberleigh South. Ms. Readler said she believes there is one on Tonti Drive, Longview Drive and Avery Road.

Mr. Smith asked if these homes because of their nature use City services at a disproportionate level to a normal residential service or do they shift some of their costs onto the tax payers by using more calls to emergency services or ambulance calls or something more than a normal resident would use.

Ms. Readler said she is not aware of any. She said the Avery Road location has been operating for a period of time and she is not aware of any kind of differential amount of emergency responses. She said the Tonti Drive facility is new and the Longview Drive is not operational.

Mary Ellen Wissel, 57 Longview Drive, said she lives across the street from 58 Longview that was pictured in the slide. She said she bought her house almost 20 years ago from Sherman Sheldon former City Manager of Dublin and said she recently retired and worked hard in her life and when she looked across the street today there were 9 vehicles and felt for the first time that she was living across the street from a business.

Mr. Taylor asked if she knew if the people had moved in yet or were the cars contractor vehicles. Ms. Wissel said she did not know what they were but there were 9 and 7 were personal vehicles.

Erin Sheen, 191 Longview, said she lives on the other end of the street of the current group home and thought there is a mix of care givers and they are doing work at the house and they will be moving in soon. She said she spoke with the woman that lives next to the Tonti Drive facility, Nancy Gwyn, and stated the neighbor's frustration was no one in the neighborhood was informed when the other Our Family Home moved in, it just appeared and her concerns which involved parking primarily went unnoticed. She said Ms. Gwyn stated parking on her street is a huge concern and the FedEx truck has had trouble getting passed the cars on the street and at any given time there could be 4 to 7 cars in the street. She said as a neighborhood they do welcome the one house that is moving and understands that if you have a loved one that needs a place this it could be a really nice option. She said they became alarmed as a neighborhood when they found out a press release stated the owner wanted to triple the number of homes that he owns from 9 to 27 this year and then found out he was looking at the another house in the neighborhood at the end of the street. She said the press release stated he wants to dramatically increase the number of houses that he owns and has been seen looking at a house that was for sale on their street and that is why they are concerned about balance.

Ms. Readler said there was a significant case law discussed during the public comment and she wanted to make several clarifications. She said the Toledo case was not a settlement agreement. She said Toledo has an ordinance mandating the 500 foot distance requirement and that ordinance has been analyzed by a court. She said the Montgomery situation was in State Court and then another lawsuit was filed in Federal Court. She stated their office has spoken to the Law Director's office in Montgomery and there was a consent decree so the parties went through a mediation and Our Family Home agreed to certain things in that settlement that they were not obligated under the Law to do and they agreed to notify for a certain period in exchange for certain give and take on the settlement. She said the 750 feet is not something they think was judicially blessed, but part of a consent decree of that mediation. She said they appreciate the reference to larger distance requirements in other states that have not been challenged, but they have a list of case law where courts explicitly found that similar distance requirements were too much.

Mr. Taylor asked if these homes have to be inspected and approved by the Building Department prior to occupying the house.

Ms. Readler said the building inspections are related to remodeling and they have been out there prior to the license being granted. She said they are far into the remodeling part of it before they get a state license.

Mr. Taylor confirmed a building permit application would be required to be submitted prior to the work being done. Ms. Readler agreed and said an application was filed for the conversion of a garage and that is filed by a contractor, but is not necessarily a red flag it will be an adult family home.

Mr. Taylor asked for the Commissioners comments.

Ms. Kramb said if they are going to restrict parking on the street because it is a narrow street then it would have to go through Engineering. She said one option of the neighborhood would be for them to

petition no parking on the street, but that would apply to everyone not just the group home. Ms. Readler agreed.

Ms. Kramb agreed with the 500 feet because of the case law and the research that has been done and would defer to the Law Director's office. She said she does not see a way to regulate parking despite the concerns raised.

Mr. Hardt said it seems like the City does not have a lot of options given the case law that they have seen. He asked in the presentation mentioned the 3 types of homes and asked why all three were not included in the ordinance.

Ms. Readler said they didn't look at the adult foster home with one to two residents because the legislation was aimed at dealing with some of the issues the City has experienced with adult family homes. She said the adult care facilities were added because those facilities would be the two types of facilities that would have the most impact.

Mr. Hardt said the proposed Code modification includes language that state adequate off-street parking for employees shall be provided and asked if there is a notion for a typical number of employees is for one of these facilities. Ms. Readler said she believes one person will be onsite at all times and there could others in and out with different types of therapies.

Mr. Hardt said the situation on Longview Drive is in part exasperated because of the remodeling going on and anyone could have their homes remodeled and have 4, 6, or 8 work trucks in front for a brief period of time. He said long term the number of employees becomes the critical issues and hypothetically if there is only two it seems the driveway however short it may be could accommodate two vehicles much like any single-family home driveway could, but if there are more than that he can see where that would be a problem. He confirmed a community can govern the parking aspect but it applies to everyone within the neighborhood. Ms. Readler agreed.

Mr. Budde said he was interested in the State Licensing aspect of this use and what the lead time is to apply for a license and when notification comes if the State is required to notify the City.

Ms. Readler said the State is not required to notify the City. She said they have had several conversations with the Licensing Department and the license comes after the home is purchased and secured and the facility would have to be fully ready to get the license granted.

Mr. Budde asked if the State Licensing is transparent or do they list the addresses of the approved licensees or a procedure where a search is done once a month or quarter. Ms. Readler said there are searchable databases.

Mr. Budde said he would support the recommendation of the Law Department and hoped they have a citizenry that is vigorously monitoring what is going on in their neighborhoods and they feel compelled to notify the City if they see something that would violate the Zoning requirements.

Mr. Hardt said the proposed Code Amendment allows the use alternative communication methods to notify residents of zoning cases and asked if it was his understanding that it is not their intention to use the website in lieu of the newspaper, it is their intention to expand the number of notification methods.

Ms. Readler said the way the revision is worded it would be website or other generally excepted medium designated by Council. She said they will still use the newspaper; it will not be the only method they have to use.

Mr. Hardt said they are broadening their options, not narrowing. Ms. Readler agreed.

Ms. Newell said she has a lot of concern in terms of parking and equally the quantity of residents that occupy the house. She said it does not seem appropriate to take a garage and turn it into bedrooms. She said she knows there are provisions in the Zoning Code in terms of Home Occupation and limitations that are placed on parking. She asked if they could make a correlation and take into account at least one full time staff member is working in that facility on regular bases and potential family members come and visit. She said she has two family members in her own family that live in an adult care facility like this for developmental disability and one because they were hit as a child riding a bicycle and left with a traumatic brain injury and is tri-plegic. She said she is compassionate to having these facilities in their neighborhoods, but equally the 500 feet is not necessarily a good magic number and she doesn't know enough about case laws that have been presented if there is other ways they could look at that dispersal and not simply say 500 feet.

Ms. Readler said she appreciates the parking concerns but unfortunately in this situation the difference between home occupation and the adult family home is that State Law has decided to govern in the area of adult family homes. She said the State Legislature has told them what they can regulate with regard to the adult family homes and parking beyond what would be required for a single family residence is not explicitly permitted. She said they feel they do not have the authority to require additional parking restrictions that are applicable only to these facilities in an amount that is over what would be used in a typical single family home.

Ms. Newell asked if there was a different way they could look at the dispersion and not purely on distance.

Ms. Readler said because these regulations are so heavily regulated by the Ohio Revised Code they wanted to have the most defensible ordinance they could if it were challenged. She said if they go to some formula that has not been tested in the courts they are vulnerable to a lawsuit where they are interpreting it in an arbitrary manor. She said the 500-foot was explicitly upheld by an Ohio Court and a City already has that on the books. She said they felt that was the strongest argument that restriction is going to be defensible in court.

Ms. Newell asked if they looked at other options other than dispersion.

Ms. Readler said they talked about larger distance, looking at the type of streets, and they came back that they wanted to go with something that had been tested and the 500 feet was tested.

Ms. Newell said asked if there was spaces reserved for home occupation or do they have to prove there are spaces to have visitors at their home.

Mr. Gunderman said they are not required to do something extraordinary they are expected to have spots within their driveway, but in most cases a garage would have two spaces.

Ms. Newell said in this presentation there is the potential that the garage is going to be lost, so you are looking at only 2 spaces available and one will always be occupied by the superintendent of the facility and others by therapists and family visitors, so very quickly there will not be adequate parking. She said this is the one aspect that she is really concerned about especially with 5 residents the parking can fill up very quickly. She said when these facilities do get licensed they do have to have an occupancy permit when they go through renovations of a facility before they can receive their license similarly like a day care facility. She said there are legitimate concerns that they could look beyond just saying they get to do nothing.

Ms. Readler said they do have the requirement that there be two spaces for employees.

Ms. Newell asked how it would be singling out if there is outside therapist coming to that facility to care for someone and not giving a place to park. She said residents are there with vehicles and those vehicles should have permanent spaces and there should be guest spaces for people that come and go from that facility. She said she does not think that is singling them out not to keep them out of the residential neighborhood or keeping the facility out, but the Zoning Code has a line for adequate parking but no definition to what adequate parking is and there should be a definition.

Ms. Readler said they feel constrained when there could be a single family home with three teenagers and everyone has a car and there are guests and there could be parking impacts that are created by single-family homes. She said going beyond requiring that there are certain employee parking available leaves them vulnerable.

Ms. Newell asked if there any other case laws in other communities that have tried to establish parking. She said it is appropriate to provide parking for people living in the facility or the superintendents of the facilities and guest parking and does not think that is unreasonable.

Ms. Readler said they could explore that issue, but could not require more parking than they would have with a typical single-family home and part of the concern is if the garage is converted or if something is done to the driveway, there would be adequate off-site parking for the number people who would have cars in that facility. She said they could put a condition on the recommendation that they explore and see if there are any alternatives for requiring more parking at the facility before it is taken to Council.

Ms. Newell said she would be more comfortable with that, rather than just passing what they have this evening. She said she would rather spend more time looking at and thinking how best they could approach this for the City.

Ms. Readler said to keep it on track they could explore that and have a suggestion on the parking for the first reading of Council.

Mr. Budde said there is State Licensing and permitting for remodeling what is keeping them including in the Code modification requiring register their use with the City and have a determination made that what they want to do complies with the ordinance.

Ms. Readler said State Law says they have to be treated as a permitted use and as a single family home and the only thing they can do is the dispersal requirement. She said to add a layer of registration would be stricken by a court.

Mr. Hardt said he agrees with Ms. Newell and would like to have the parking explored. He said the regulation says that adequate off street parking for employees shall be provided and he interprets that if a particular location has three employees, those three cars have got to be accommodated off the street on the driveway somehow and that makes him feel better, but he wasn't thinking of the others such as therapist and deliveries. He said one of the primary differences is that the average person has guests it is the rare occurrence such as the Super Bowl party that happens once a year and not every single day. He said he would like to pass this onto Council with a request or recommendation that some more thought be put into the parking to see what they can do.

Mr. Taylor thanked everyone for participating.

Mr. Taylor asked if the language was precipitated by the residents bringing it to the city. Ms. Readler said it was and that given the new facility and the potential proliferation they wanted to make sure they retain the residential character and were as aggressive as they could be under the restrictions they have.

Mr. Taylor asked if there was a rush on the City's part to move this along. Ms. Readler said City Council has directed that they wanted to get this back to them as quickly as possible

Mr. Taylor said they want to get this right and there is some time for additional consideration on this and the presentation from Ms. Mitchell outlining the desire to achieve balance. He said the question is what does that mean and in which way is it balanced, what proportions and what are the methodology's to do that and while he completely understands the Law Director's conclusion that the dispersal is the most effective and defensible way to achieve some balance. He said he is not sure this could not be enhanced by additional conversation between the city, residents and the Law Director's office. He said he is not prepared to send this forward to City Council with a recommendation either way at this point and would like this can be held so that some additional conversation could be had to achieve the proper balance. He realizes the immediate concern is with Mid-Century but this will affect the entire city and he would like to see this tabled and have the Law Director's office lead a conversation with the neighbors and explore other options.

Ms. Readler agreed to table.

Motion and Vote

Mr. Budde moved, Mr. Hardt seconded, to table this administrative request as agreed by the Law Director's office.

The vote was as follows: Ms. Newell, yes; Ms. Kramb, yes; Mr. Taylor, yes; Mr. Hardt, yes; and Mr. Budde, yes. (Tabled 5 – 0.)

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.