

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 02-52**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC 16.04.070 DEFINITIONS, AND 16.20.020 DISTRICT USE CHART, TO PROVIDE FOR ASSISTED LIVING HOMES AS A PERMITTED USE IN RESIDENTIAL ZONING DISTRICTS AND BY USE PERMIT IN THE COMMERCIAL ZONING DISTRICT.**

\* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

\* **Section 2. Amendment of Section.** WMC 16.04.070, Definitions, is amended to read as follows:

**"Assisted living home" means a single family dwelling designed, used or intended for use in whole or in part as an assisted living home for adults aged 60 or over, that is licensed and regulated under AS Chapter 47.33.**

"Group home" means a structure designed, used or intended for use in whole or in part as a long term residence providing supervised or assisted living for not more than eight people who are not handicapped as defined in 42 U.S.C. Section 3602. The term group home does not include **an assisted living home or** a correctional facility.

\* **Section 4. Amendment of section.** WMC 16.20.020, District use chart, is amended as follows:

Districts	RR Rural	R1 Single Family	R2 Residential	RM Multi- Family	C Commercial	I Industrial	P Public
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**Bold and underline added.** [CAPS AND BRACKETS, DELETED.]

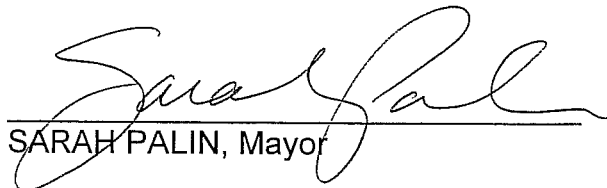
Uses							
Accessory Uses	AA	AA	AA	AA	AA	UP	AA
Adult Business	EX	EX	EX	EX	CU	EX	EX
Agriculture	UP	EX	EX	EX	EX	EX	EX
Animal Husbandry	UP	EX	UP	EX	EX	EX	EX
Animal Shelter	EX	EX	EX	EX	CU	UP	UP
<b><u>Assisted Living Home</u></b>	<b><u>AA</u></b>	<b><u>AA</u></b>	<b><u>AA</u></b>	<b><u>AA</u></b>	<b><u>UP</u></b>	<b><u>EX</u></b>	<b><u>EX</u></b>
Automotive Sales	UP	EX	EX	EX	AA	AA	EX
Bed and Breakfast		UP	AA	AA		EX	EX
Campground	UP	EX	EX	EX	UP	EX	AA
Cemetery	UP	EX	EX	EX	UP	UP	UP
Church	UP	EX	UP	UP	UP	EX	EX
Commercial 10,000 GFA or less	AA	EX	EX	CU	AA	UP	UP
Commercial more than 10,000 GFA	EX	EX	EX	EX	CU	UP	EX
Communication Equipment	AA	UP	AA	AA	AA	AA	AA
Convenience store	AA	EX	UP	EX	UP	EX	EX
Correctional Facility	EX	EX	EX	EX	EX	CU	CU
Day Care	AA	UP	UP	UP	UP	EX	EX
Duplex	AA	EX	AA	AA	UP	EX	EX
Farm Animals	AA	UP	UP	EX	EX	AA	EX
Group Home	EX	EX	EX	UP	UP	EX	UP
Heavy Equipment	AA	EX	EX	EX	UP	AA	AA
Helipad	EX	EX	EX	EX	UP	AA	UP
Heliport	EX	EX	EX	EX	CU	AA	CU
Home Occupation		AA	AA	AA		EX	EX
Hotel	EX	EX	EX	EX	UP	EX	EX
Institutional Home	EX	EX	EX	CU	CU	EX	CU
Junkyard	EX	EX	EX	EX	EX	UP	EX
Kennel	UP	EX	CU	EX	UP	EX	EX

**Bold and underline added.** [CAPS AND BRACKETS, DELETED.]

Mobile Home	EX	EX	CU	EX	EX	EX	EX
Motel	EX	EX	EX	EX	UP	EX	EX
Multi-Family	EX	EX	UP	AA	UP	EX	EX
Planned Unit Development	CU	CU	CU	CU	CU	CU	CU
Play Field	UP	UP	UP	UP	UP	EX	UP
Public Facility	UP	CU	UP	UP	UP	AA	AA
Resource Extraction	CU	EX	EX	EX	CU	UP	UP
Single-Family Dwelling	AA	AA	AA	AA	UP	EX	EX
Subdivision	AA	AA	AA	AA]	AA	AA	AA
Utility Facility	AA	UP	UP	UP	AA	AA	AA
Waterfront Use	AA	AA	AA	AA	UP	UP	UP
Zoo	UP	EX	EX	EX	CU	EX	CU

\* **Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on August 26, 2002.

  
 SARAH PALIN, Mayor

ATTEST:

  
 KRISTIE SMITHERS, CMC  
 City Clerk

[SEAL]

**Bold and underline added.** [CAPS AND BRACKETS, DELETED.]



**CITY OF WASILLA**

**290 E. HERNING AVE.  
WASILLA, AK 99654-7091  
PHONE: (907) 373-9090  
FAX: (907) 373-9092**

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**TO:** Wasilla City Council  
**THRU** Mayor Sarah Palin *SP*  
**FROM:** Tim Krug, City Planner *TK*  
Jill Carricaburu, Planning Clerk *JC*

**DATE:** August 6, 2002

**SUBJECT: Include "Assisted Living Facilities" Under the City Zoning Ordinance**

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**SUMMARY:**

On July 9, 2002 the Wasilla Planning Commission voted to forward an Ordinance to Council supporting "Assisted Living Facilities" in Wasilla. Attached is correspondence from the city attorney regarding assisted living quarters.

**FISCAL IMPACT:** N/A  
**Account No.:** N/A

**RECOMMENDED ACTION:**

Approval of Ordinance Serial Number 02-52.

**ATTACHMENTS:**

Ordinance 02-52  
Request for attorney action  
Attorney correspondence, June 26, 2002



**CITY OF WASILLA**  
 290 E. HERNING AVE.  
 WASILLA, ALASKA 99654-7091  
 PHONE: (907) 373-9055  
 FAX: (907) 373-9096

SARAH PALIN  
 MAYOR

**REQUEST FOR ATTORNEY ACTION**  
No. 2002- 08

Please route all Requests for Attorney Action through Administration.

<b>TO:</b> Tom Klinkner, City Attorney Birch, Horton, Bittner & Cherot 1127 W Seventh Ave Anchorage, AK 99501 Phone: 907-276-1550 Fax: 907-276-3680 E-mail: tklinkner@bhb.com	<b>DATE:</b> June 24, 2002
	<b>FROM:</b> Tim Krug, City Planner <i>[Signature]</i>
	<b>DEPARTMENT:</b> Planning
	<b>MAYOR APPROVAL:</b> <i>[Signature]</i>
	<b>REQUESTED DUE DATE:</b> 7/24/02
<b>EXPENSE ACCOUNT #:</b>	

**Action:** Review & Comment  Urgent  Ordinance  Opinion   
 Other

**Request Made Via:** Telephone  In Person  Fax  Mail  Courier  E-Mail

**Attachment:** Yes  No  Explain: 2 sheets info from Division of Sr Services

**Notes/Comments:**

We've had several inquiries recently regarding providing assisted living quarters for Senior Citizens in a home setting for 4 or 5 seniors at a time. They would live in but not require special care. Our understanding is that it would be a facility for seniors prior to a skilled nursing environment.

The inquiries we've gotten are usually a couple who want to turn their single family dwelling into this type of senior living unit.

The City of Wasilla does not have a definition for Assisted Living situations. Our question is should these be classified under group homes, institutional homes, single family dwelling or some other designation?

Article 01. SCOPE; SERVICES; OPERATIONS

Sec. 47.33.005. PURPOSE.

The purpose of this chapter is to

- (1) contribute to the development of a system of care by encouraging the establishment of assisted living homes that provide a homelike environment for elderly persons and persons with a mental or physical disability who need assistance with the activities of daily living;
- (2) promote the establishment of homes that help
  - (A) the elderly to age in place; and
  - (B) adults with a physical or mental disability to become integrated into the community and to reach their highest level of functioning;
- (3) establish standards that will protect residents of assisted living homes, while at the same time promoting an environment that will encourage resident growth and independence, without discouraging the establishment and continued operation of those homes;
- (4) require that a resident of an assisted living home have an assisted living plan that identifies the services that will be used to meet the resident's reasonable wants and needs; and
- (5) provide a resident of an assisted living home, or the resident's representative, with the opportunity to participate to the fullest extent possible in the design and implementation of the resident's assisted living plan and in any decisions involving the resident's care.

Sec. 47.33.010. APPLICABILITY.

(a) Except as provided in (b) of this section, this chapter applies to residential facilities operated in the state that serve three or more adults who are not related to the owner of the facility by blood or marriage by

- (1) providing housing and food service to its residents; and
- (2) providing or obtaining, or offering to provide or obtain for its residents
  - (A) assistance with the activities of daily living;
  - (B) personal assistance; or
  - (C) a combination of services under (A) and (B) of this paragraph.

(b) Notwithstanding (a) of this section, this chapter does not apply to

- (1) a correctional facility;
- (2) a facility for treatment of alcoholism that is regulated under AS 47.37;
- (3) an emergency shelter;
- (4) a medical facility, including a nursing home, licensed under AS 18.20;
- (5) a program for runaway minors licensed under AS 47.10.310; or
- (6) a maternity home licensed under AS 47.35.

Sec. 47.35.020. HEALTH-RELATED SERVICES ALLOWED IN ASSISTED LIVING HOMES.

(a) This chapter does not prohibit the resident of an assisted living home from self-administering the resident's own medications, unless the resident's assisted living plan specifically provides otherwise.

(b) An assisted living home may provide, obtain, or offer to provide or obtain the health-related services described in (c) - (i) of this section. A service under (c) - (i) of this section may only be provided or obtained in addition to, and as a supplemental service to, the

**TABLE OF REQUIREMENTS BY SIZE OF HOME**

**NOTE:** If there is any discrepancy between this table and the regulations or statutes referred to, that portion of this table must be disregarded. This table is intended for use only as a handy checklist, but does not in any way affect a person's responsibility to be thoroughly familiar with the regulations and statutes involved.

<b>Requirement</b>	<b>Fewer than 6 (3-5) Residents</b>	<b>6 or more Residents</b>	<b>11 or more Residents</b>
<b>ALL STATUTORY REQUIREMENTS SET OUT IN AS 47.33.005 – 47.33.990, ASSISTED LIVING HOMES</b> [Including provisions dealing with purpose, applicability, services allowed, advance payments, residents' money, temporary absences, house rules, resident files, closure or relocation, rate increases, criminal background checks, residential service contracts, assisted living plans, residents' rights, restrictions regarding use of physical restraint, prohibitions, access to home, licensing, enforcement, sanctions, and other matters related to licensing and operating an assisted living home.]	X	X	X
	Unless one or more provisions is waived or modified under AS 47.33.920 & 7 AAC 75.410 (except the provisions for which waiver or modification are prohibited)	No provision may be waived or modified	No provision may be waived or modified
<b>7 AAC 75.010. APPLICABILITY</b>	X	X	X
<b>7 AAC 75.020. TYPES OF LICENSE; DURATION; LICENSING RESPONSIBILITY</b>	X	X	X
<b>7 AAC 75.030. POWERS AND DUTIES OF LICENSING AGENCY</b>	X	X	X
<b>7 AAC 75.050. VOLUNTARY LICENSURE</b>			
<b>7 AAC 75.060. PROBATIONARY LICENSE</b>	X	X	X
<b>7 AAC 75.070. STANDARD LICENSE.</b>	X	X	X
<b>7 AAC 75.080. APPLICATION FOR LICENSE; MODIFICATION.</b>	X	X	X
(a) Applying for license or modification	X	X	X
(b)(1)-(4) – contents of application	X	X	X
(b)(5)-(6) – contents of application regarding maximum occupancy established by fire safety inspection		X	X
(b)(7)-(11) – application requirements, including staff plan and disaster preparedness plan	X	X	X
(b)(13) – contents of application re business plan			X
(b)(14) – contents of application re information about previous denials, termination of license, termination of administrator or care provider for cause	X	X	X
(c) – Application to modify a license	X	X	X
<b>7 AAC 75.085. INSPECTION OF FINANCIAL RECORDS</b>	X	X	X
<b>7 AAC 75.090. RENEWAL; STAGGERED RENEWAL; EXTENSION.</b>	X	X	X
<b>7 AAC 75.100. FEES (a)-(c) License fees</b>	X	X	X
(d) – Fee for third and subsequent onsite visits	X	X	X
<b>7 AAC 75.110. CONTENT OF LICENSE; POSTING.</b>	X	X	X
<b>7 AAC 75.120. DENIAL OF LICENSE</b>	X	X	X
<b>7 AAC 75.130. LICENSE NOT TRANSFERABLE.</b>	X	X	X

RECEIVED

LAW OFFICES

**BIRCH, HORTON, BITTNER AND CHEROT**

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3399 • TELEPHONE (907) 276-1550 • (800) 478-1550 • FACSIMILE (907) 276-3680

JUN 28 2002

PLANNING OFFICE  
CITY OF WASILLA

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RONALD G. BIRCH\*\*  
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KATHRYN A. BLACK  
SUZANNE CHEROT  
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June 26, 2002

**VIA FAX and MAIL**

Mr. Tim Krug  
City Planner  
City of Wasilla  
290 East Herning Avenue  
Wasilla, Alaska 99654

RE: Regulation of Assisted Living Facilities for Seniors in Single Family Dwellings  
under the City Zoning Ordinance  
Our file 505,780.40

Dear Tim:

You have asked whether assisted living facilities for up to five residents in a single family dwelling would be permitted uses in a residential zoning district. I conclude that such facilities would be permitted, subject to administrative approval, in the RR, R1, R2, and RM zones, so long as the residents were handicapped, as that term is defined in the 1988 amendments to the federal Fair Housing Act. Otherwise, the facilities would be group homes, which are not permitted in the RR, R1, or R2 zoning districts, and which are permitted only as conditional uses in the RM zoning district. If the City desires to permit the proposed assisted living facilities in any residential zone, regardless of the handicapped status of their residents, an amendment to the zoning ordinance will be required.

I understand that you have received inquiries from persons who desire to establish assisted living quarters for up to five seniors in a single family dwelling. The proposed facilities would be assisted living homes subject to regulation under AS Chapter 47.33. The proposed facilities would not provide skilled nursing care.

At present, there is no provision in the City's zoning ordinance that specifically identifies assisted living facilities as a type of land use. WMC 16.04.070 defines the term "adult retirement housing," but only for the purpose of making housing that conforms to the definition



Mr. Tim Krug  
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subject to special reduced parking requirements under WMC 16.24.040.E. In any event, that definition does not address the characteristics that are specific to the proposed assisted living facilities.

WMC 16.20.020 provides that a single family dwelling is permitted, subject to administrative approval, in the RR, R1, R2, and RM zoning districts. WMC 16.04.070 determines what constitutes a single family dwelling under the following definitions:

"Dwelling, single-family" means a use or detached building on a foundation dug into the ground that has a frost resistant footing and foundation wall, designed for or occupied by and providing housekeeping facilities *for one family*, including factory-built, prefabricated, and modular homes. (Emphasis added.)

"Family" means not more than eight persons whether or not related by blood, marriage or adoption, all of whom are living together as a single, independent housekeeping unit. The term "family" does not include persons living in a group home, an institutional home or a correctional facility.

Although not linked directly to the definitions of either "dwelling, single family" or "family," the definition of "dwelling unit" in WMC 16.04.070 appears intended to prescribe further the attributes of a single family dwelling:

"Dwelling unit" means a use or residential unit consisting of a building or portion thereof providing independent and complete cooking, living, sleeping and toilet facilities *for one family*, and accessory uses. (Emphasis added.)

Thus, in addition to housing only one "family," a single family dwelling should provide "independent and complete cooking, living, sleeping and toilet facilities for one family." In summary, a single family dwelling, as defined in WMC 16.04.070, includes a conventional single family home that is occupied by not more than eight persons (whether or not related), provided that the use does not constitute a group home, an institutional home, or a correctional facility.

The definitions of "institutional home" and "correctional facility" in WMC 16.04.070 do not apply to the assisted living facilities at issue here. An institutional home is

Mr. Tim Krug  
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defined as a residence for more than eight people. A correctional facility houses persons who are subject to state or federal government supervision as a result of a criminal proceeding. WMC 16.04.070 defines "group home" as follows:

"Group home" means a structure designed, used or intended for use in whole or in part as a long term residence providing supervised or assisted living for not more than eight people who are not handicapped as defined in 42 U.S.C. Section 3602. The term group home does not include a correctional facility.

The term "group home" excludes residences for persons who are handicapped as defined in 42 U.S.C. Section 3602, in order to comply with the prohibition in the 1988 amendments to the federal Fair Housing Act against discrimination because of a handicap in the sale or rental of housing. As a result, a single family dwelling used as an institutional residence housing no more than eight handicapped persons is treated in the same manner as any other single family residence, while an institutional residence for no more than eight persons who are not handicapped is treated as a group home.

Based on the discussion above, an assisted living facility in a single family dwelling for up to five seniors who are handicapped would be classified as a single family dwelling use, and permitted with administrative approval in the RR, R1, R2, and RM zoning districts. An assisted living facility in a single family dwelling for up to five seniors who are *not* handicapped would be classified as a group home, which is not permitted in the RR, R1, or R2 zoning districts, and which is permitted only as a conditional use in the RM zoning district.

Under the 1988 amendments to the federal Fair Housing Act, the term "handicap" is defined to mean a physical or mental impairment which substantially limits one or more of a person's major life activities.<sup>1</sup> Some prospective residents of an assisted living facility might be "handicapped" under this definition, while others might not. Thus, under the current provisions of the City's zoning ordinance one of the proposed assisted living facilities might be either a permitted single family residence or a prohibited group home at any particular time, depending on the health and capabilities of its current residents. Moreover, even with no change in a facility's residents, the facility's classification under the zoning ordinance could change over time with the progress of a particular resident's health condition.

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<sup>1</sup> 42 U.S.C. §3602(h)(1).

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Because of the anti-discrimination requirements of federal law, the City may not exclude from residential zoning districts proposed assisted living facilities that house persons who are handicapped under federal law. I assume that in administering its zoning ordinance, the City does not want to undertake a case-by-case determination of the handicapped status of assisted living facility residents. Therefore, it appears preferable to amend the zoning ordinance to include all of the proposed assisted living facilities as permitted single family dwelling uses, subject to administrative approval in the City's residential zoning districts. This may be accomplished by amending the definition of "group home" in WMC 16.04.070 to exclude the proposed assisted living facilities from that definition:

"Group home" means a structure designed, used or intended for use in whole or in part as a long term residence providing supervised or assisted living for not more than eight people who are under the age of [60] and not handicapped as defined in 42 U.S.C. Section 3602. The term group home does not include a correctional facility.

Alternatively, WMC 16.04.070 could be amended as follows:

"Assisted living home" means a structure designed, used or intended for use in whole or in part as an assisted living home for adults aged 60 or over, that is licensed and regulated under AS Chapter 47.33.

"Group home" means a structure designed, used or intended for use in whole or in part as a long term residence providing supervised or assisted living for not more than eight people who are not handicapped as defined in 42 U.S.C. Section 3602. The term group home does not include an assisted living home or a correctional facility.

WMC 16.20.020 then would be amended to include assisted living home as a permitted use subject to administrative approval in the RR, R1, R2, and RM zoning districts.

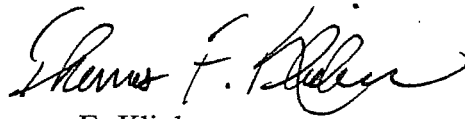
I have selected tentatively the age of 60 years for the above amendments, because that is the age used in the current "adult retirement housing" definition in WMC 16.04.070. The final selection of a particular age would be a matter of policy for the Planning Commission and Council to determine.

Mr. Tim Krug  
June 26, 2002  
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Please let me know if I may be of further assistance in this matter.

Yours truly,

BIRCH, HORTON, BITTNER and CHEROT

A handwritten signature in black ink, appearing to read "Thomas F. Klinkner". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas F. Klinkner