

# The Fair Housing Act and Zoning in Beaver County

by

The Fair Housing Law Center

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# Introduction

In order to aid and assist Beaver County in their preparations to produce a new Analysis of Impediments to Fair Housing Choice (“AI”), we have created a checklist designed to highlight and examine areas of a municipality’s local zoning code or ordinance which may conflict with the Fair Housing Act. The checklist is a modified version of the “Review of Public Policies and Practices (Zoning and Planning Codes)” form which was created by the Los Angeles Fair Housing Office of HUD and utilized by numerous consulting groups during the production of a jurisdiction’s AI.

The Fair Housing Act (“FHA”) and land use and zoning laws have always been intrinsically linked together. Although, the Fair Housing Act is not a land use or zoning statute, nor does it pre-empt local land use and zoning laws, it will be the controlling law in instances where the local power and authority is exercised in a way that is inconsistent with the FHA. Additionally, courts have held that the FHA prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

HUD had identified land use and zoning laws as an important factor in affirmatively furthering fair housing, by suggesting in their Fair Housing Planning Guide that “Zoning and Site Selection” be discussed in a jurisdiction’s AI. The relevance of land use and zoning laws and fair housing is further illustrated by HUD’s identification of “Land use and zoning laws” and “Occupancy codes and restrictions” as a “Contributing Factor” in the following components of their Assessment of Fair Housing (“AFH”): Segregation, R/ECAPs (Racially or Ethnically Concentrated Area of Poverty), Disparities in Access to Opportunity, Disproportionate Housing Needs, Public Supported Housing and Occupancy, and Disability and Access Analysis.

The checklist created is not all encompassing, but does direct the jurisdiction reviewing the land use and zoning ordinances to areas where there may be inconsistencies with the FHA. The checklist looks at how certain terms within the ordinance are defined, such as “family,” or whether the ordinance provides definitions for “group” or “care facility” housing which is frequently occupied by persons with a disability. There is also a focus on the siting of residential housing and the various uses permitted by either; right or conditional/special use, and whether or not these uses permit mobile homes and/or residential “group” or “care facilities.” Additionally,

the checklist focuses on fair housing by inquiring into whether an ordinance includes a discussion of fair housing and whether or not an ordinance provides a mechanism for requesting reasonable accommodations. The entire checklist can be found in Appendix A.

On the advice of HUD, we chose to review the land use and zoning ordinances of the five municipalities with the highest percentage of minority populations in Beaver County. Based upon the population estimates provided by the U.S. Census Bureau in the 2010-2014 American Community Survey 5-Year Estimates (“2010-2014 ACS”), Beaver County’s minority population is 15,437. A breakdown of the county’s population is as follows:

***Beaver County Population (2014)***

|                                  | #              | %           |
|----------------------------------|----------------|-------------|
| White                            | 154,687        | 90.9%       |
| African American                 | 10,276         | 6.0%        |
| American Indian/Alaska Native    | 151            | 0.1%        |
| Asian/Pacific Islander           | 952            | 0.6%        |
| Some Other Race                  | 491            | 0.3%        |
| Two or More Races                | 3,567          | 2.1%        |
| Hispanic                         | 2,250          | 1.3%        |
| <b>Total Minority Population</b> | <b>15,437</b>  | <b>9.1%</b> |
| <b>Total Population</b>          | <b>170,124</b> |             |

*Source: U.S. Census Bureau*

The five municipalities which were identified: the city of Aliquippa, borough of Ambridge, city of Beaver Falls, borough of Midland, and the borough of Rochester, all exceeded the county’s percentage of minority population of 9.1% and housed 61.1% of the county’s minorities.

This report will review the land use and zoning ordinance from each of the five municipalities identified above against the checklist and highlight sections of the ordinance that may be in conflict with the FHA. The report will look at the municipalities and their land use and zoning ordinance separately, with supplemental data and information provided where applicable.

# Land Use and Zoning Ordinance Checklist

The importance of a periodic review of a municipality’s Land Use and Zoning Ordinances has been well established by its inclusion in HUD’s suggested format for an AI as provided in their Fair Housing Planning Guide, and their emphasis on Land Use and Zoning Laws and Occupancy Codes and Restrictions in the forthcoming AFH. In their AFFH Rule Guidebook (“Guidebook”), HUD identified “Land use and zoning laws” as a “potential contributing factor” in a majority of the key fair housing issues that jurisdictions must analyze in their AFH. The Guidebook further stated that “Zoning and land use laws affect housing choice by determining where housing is built, who can live in that housing, and the cost and accessibility of the housing.”<sup>1</sup> The Guidebook also provides some examples of laws and policies that affect housing choice such as; “limits on multi-unit developments, minimum lot sizes, requirements for special use permits for all multifamily properties or multifamily properties serving individuals with disabilities, and occupancy restrictions.”<sup>2</sup> The Guidebook also identifies “Occupancy codes and restrictions” as a “potential contributing factor,” where it is stated that “Standards for occupancy of dwellings and the implication of those standards for persons with certain protected characteristics may affect fair housing choice.”<sup>3</sup> The examples provided in the Guidebook include: “occupancy codes with ‘persons per square foot’ standards, occupancy codes with ‘bedrooms per persons’ standards, restrictions on number of unrelated individuals in a definition of ‘family,’ and restrictions on occupancy to one family in a single family housing along with a restricted definition of ‘family’”<sup>4</sup>

With these examples in mind some alterations were made to the “Review of Public Policies and Practices (Zoning and Planning Codes)” form created by the Los Angeles Fair Housing Office of HUD in order to address some of the areas where there is frequently a conflict between the ordinance and the FHA. The first set of questions are focused on definitions provided by the code or ordinance. Specifically, the definition of “family,” any federally

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<sup>1</sup> U.S. Department of Housing and Urban Development AFFH Rule Guidebook (2016), pg. 211.

<sup>2</sup> *Id.*

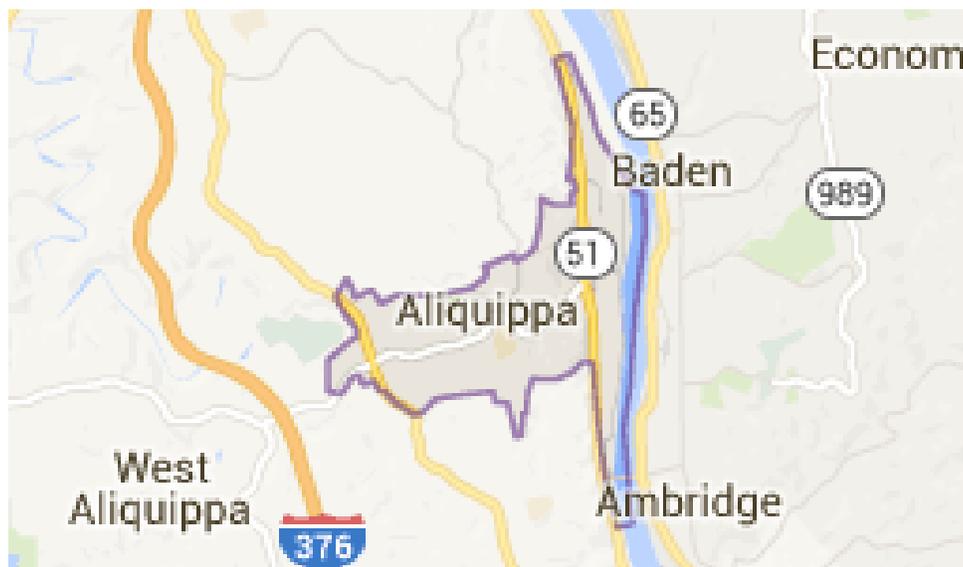
<sup>3</sup> *Id.* at 213.

<sup>4</sup> *Id.* at 213, 214.

protected classes, “mobile home,” and “group” or “care facilities” (these would include group homes, personal care homes, nursing homes, and any other type of non-traditional residential housing). The checklist also focuses on siting matters such as; where residential housing uses are permitted by right or conditional/special use, what standards apply to residential housing uses (minimum lot size, building height, etc.), whether “mobile homes” are permitted by right or conditional/special use in districts that allow single-family dwellings, and whether “group” and/or “care facility” residential housing is permitted by right or conditional/special use in districts that allow single-family dwellings. The checklist also touches on some fair housing issues such as; whether there is a discussion of fair housing, whether there is a mechanism for requesting reasonable accommodations, and whether the code/ordinance makes reference to the accessibility requirements in the 1988 Amendments to the Fair Housing Act.

In this report we will discuss many of these questions across all five municipalities, in other instances only areas of possible conflict with the FHA will be discussed. Additionally, some background and demographic information may be provided in the discussion of the individual municipality.

# City of Aliquippa



*Source: Google Maps*

The city of Aliquippa (“Aliquippa”) situated on the western banks of the Ohio River was once a thriving and prosperous city due to the J&L Steel Works, which employed thousands of individuals from the early 1900’s through the early 1980’s. Aliquippa has seen a dramatic decline in its population since the plant’s closing in 1984. In 1970 the city’s population was reported at 22,277, based on the 2010-2014 ACS, the current population is now 9,356. The 2010-2014 ACS population figures for the city are as follows:

### *City of Aliquippa (2014)*

|                                  | #            | %            |
|----------------------------------|--------------|--------------|
| White                            | 5,279        | 56.4%        |
| African American                 | 3,697        | 39.5%        |
| American Indian/Alaska Native    | 8            | 0.1%         |
| Asian/Pacific Islander           | 58           | 0.6%         |
| Some Other Race                  | 8            | 0.1%         |
| Two or More Races                | 306          | 3.3%         |
| Hispanic                         | 93           | 1.0%         |
| <b>Total Minority Population</b> | <b>4,077</b> | <b>43.6%</b> |
| <b>Total Population</b>          | <b>9,356</b> |              |

*Source: U.S. Census Bureau*

In reviewing the City of Aliquippa Zoning Ordinance it is unclear as to when the original ordinance was enacted, it is also unclear when the ordinance may have been amended.

### Definitions

The ordinance's definition of "family" is as follows:

**Family:** An individual, or two (2) or more persons related by blood, marriage, adoption or foster child care, including domestic servants or gratuitous guest, thereof; or a group of not more than three (3) unrelated persons living together without supervision in a dwelling unit or any number of persons protected by the provisions of the Fair Housing Act (42 U.S.C. 3601 et. seq., as now or hereafter amended) living together in a group living arrangement with supervision, provided those persons do not have a criminal record. Family shall not include persons living together in a Group Care Facility, Personal Care Facility or Licensed Residential Facility, as defined herein, or any other supervised group living arrangement for person other than those protected by the Fair Housing Act or persons who constitute a direct threat to others or their physical property.<sup>5</sup>

It is recommended that an ordinance's definition of "family" should not "distinguish between related and unrelated persons and not impose numerical limitations on the number or persons that may constitute a family."<sup>6</sup> Aliquippa's ordinance clearly distinguishes between related and unrelated persons and imposes numerical limitations, which would appear to be inconsistent with the FHA. It is unclear whether the language "or any number of persons protected by the provisions of the Fair Housing Act living together in a group living arrangement with supervision," brings the definition into compliance with the FHA. There are some other components of the definition that may be problematic, such as; the requirement of supervision for the group living arrangement of protected persons and the exclusion of persons with a criminal record from that group living arrangement. Additionally, the definition is not written in a clear and concise manner, this makes it more difficult for the "layperson" to understand and comprehend. Lastly, when an ordinance uses a term-of-art, the ordinance should provide a definition for that term. Aliquippa's definition of "family" uses the following terms-of-art; "dwelling unit," "Group Care Facility," "Personal Care Facility," and "Licensed Residential Facility." However, the ordinance fails to provide a definition for "dwelling unit," "Group Care Facility," or "Personal Care Facility."

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<sup>5</sup> City of Aliquippa Zoning Ordinance at pg. 8.

<sup>6</sup> Fair Housing Issues In Land Use and Zoning, Mental Health Advocacy Services, 1998 at pg. 2.

The ordinance does provide definitions for the following types of housing: “Intermediate Care Facility,” “Licensed Community Residential Facility,” and “Long Term Care Facility.” These definitions are very specific regarding the services they may provide and the individuals to whom they may provide those services to, such as the exclusion of persons with mental illness or mental retardation from an “Intermediate Care Facility.”

Zoning Districts

Aliquippa is divided into 15 separate zoning districts, three of which are zoned for residential uses. The following chart details the relevant housing uses and their minimum lot sizes in these three zoning districts.

| <b>Permitted Uses</b>                   | <b>Minimum Lot Sizes (square feet)</b> |   |  |
|---|--|---|--|
|   | R-1<br>Low Density                     | R-2<br>Medium Density   | R-3<br>High Density  |
| Single Family Dwelling                  | 8,712                                  | 7,260   | 6,000  |
| Two-Family Dwellings                    | 10,890                                 | 8,712   | 8,712  |
| Townhouse                               | n/a                                    | 10,890  | 10,890   |
| Multi-Family Dwelling                   | n/a                                    | *   | *  |
| Licensed Community Residential Facility | n/a                                    | n/a   | 8,712  |
| <b>Conditional Uses</b>                 |  |   |  |
| Intermediate Care Facility              | n/a                                    | n/a   | 40,000 square feet and not less than 1,200 square feet per resident. |
| Long Term Care Facility                 | n/a                                    | The number of patients or residents permitted shall not exceed one per 5,000 square feet of lot area. | n/a  |

\* Minimum Lot Sizes are calculated on a "per family" basis and vary depending on the dwelling type.

Depending on the availability of land, the relatively large sizes in the R-1 and R-2 districts may create a barrier to the development of affordable housing. The ordinance does not list a “Group Care Facility” as a permitted or conditional use in any of the 15 districts. It is also important to note that “mobile homes” are not permitted by right in any of the districts that allow single

family dwellings. Mobile home parks are permitted as a conditional use in the C (Conservation) district and are subject to the city’s Subdivision and Land Development Ordinance.

The ordinance provides additional restrictions on “Long Term and Intermediate Care Facilities,” some of which are more stringent than what is required for the permitted uses and some of the other conditional uses. These more stringent requirements may serve as barriers to their development, such as; a requirement of connection to public sewer and water services (both types), a larger side yard requirement (Intermediate Care), and the location of parking and a screening requirement (Long Term). Lastly, the ordinance states that an “Intermediate Care Facility” must be minimum of one-quarter mile or 1,320 linear feet from any other facility. This issue is discussed in the Joint Statement of the Department of Justice and the Department of Housing and Urban Development on Group Homes, Local Land Use, and the Fair Housing Act. “Some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act.”<sup>7</sup> In light of this statement, Aliquippa certainly should look to amending the requirements of an “Intermediate Care Facility,” removing the existing density restriction.

### Fair Housing Considerations

Aliquippa’s ordinance has no discussion regarding fair housing, nor does the ordinance provide a mechanism for requesting a reasonable accommodation.

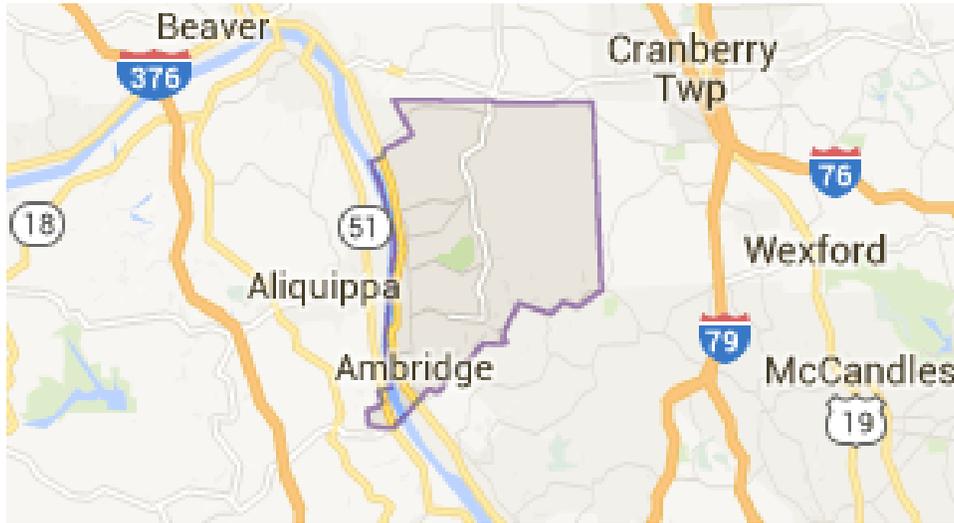
### Potential Conflicts with the Fair Housing Act

- Definition of “family.”
- Missing definitions. (“dwelling unit,” “Group Care Facility,” “Personal Care Facility”)
- Lot sizes for Single Family Dwellings in R-1 and R-2 districts.
- Potentially burdensome requirements for “Long Term and Intermediate Care Facilities.”
- No permitted use in any zoning districts for “mobile homes” or “Intermediate and Long Term Care Facilities.”

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<sup>7</sup> Joint Statement on Group Homes, Local Land Use, and the Fair Housing Act.

# Borough of Ambridge



*Source: Google Maps*

The borough of Ambridge (“Ambridge”) is situated on the eastern banks of the Ohio River and was named after the American Bridge Company, who provided the steel work for a number of bridges and structures across the United States, including the Empire States Building, the San Francisco/Oakland Bay Bridge, and Chicago’s Picasso sculpture. Ambridge like many river towns in Western Pennsylvania has seen a drop in its population with the loss of the steel industry, from a high of 20,227 in 1930, to only 6,973, according to the 2010-2014 ACS. The breakdown of Ambridge’s population is as follows:

### *Borough of Ambridge (2014)*

|                                  | #            | %            |
|----------------------------------|--------------|--------------|
| White                            | 4,886        | 70.1%        |
| African American                 | 1,292        | 18.5%        |
| American Indian/Alaska Native    | 22           | 0.3%         |
| Asian/Pacific Islander           | 70           | 1.0%         |
| Some Other Race                  | 85           | 1.2%         |
| Two or More Races                | 618          | 8.9%         |
| Hispanic                         | 294          | 4.2%         |
| <b>Total Minority Population</b> | <b>2,087</b> | <b>29.9%</b> |
| <b>Total Population</b>          | <b>6,973</b> |              |

*Source: U.S. Census Bureau*

Ambridge's Zoning Ordinance was originally enacted on September 12, 1955. The ordinance has been amended numerous times since its enactment.

### Definitions

The ordinance's definition of "family" is "Any number of individuals living together as a single housekeeping unit."<sup>8</sup> This definition, on its face, complies with the FHA, in that it does not distinguish between related and unrelated persons, nor does it impose any numerical limitations. However, the ordinance does not provide a definition for a "single housekeeping unit," which could lead to the exclusion of group homes in a residential district.

The ordinance does provide definitions for the following type of dwellings: "Assisted-Living Facility," "Housing for the Elderly," "Independent-Living Facility," "Nursing Home," "Personal-Care Boarding Home," and "Transitional Living Facility." The ordinance does not provide a definition for a "mobile home." Additionally, the ordinance's definition for "Housing for the Elderly" differs from HUD's definition for "Housing for Older Persons." The definitions for "Assisted" and "Independent-Living Facility" are very similar and are restricted to the "elderly or physically or mentally disabled persons who are independently mobile." While the definitions of "Nursing" and "Personal-Care Boarding Home" both require state licensing.

### Zoning Districts

Ambridge is divided into seven separate zoning districts; Slope (S), Residential (R), Commercial (C), Highway Commercial (C2), Public/Civic (P), Manufacturing and Industrial (M), and Historic (H). Single-family, multiple-family, and apartments are listed as a permitted use in the Residential districts, there are no conditional or special uses permitted in these districts. The minimum lot size in the Residential districts is 3,000 square feet per family. This relatively small lot size should allow for the development of affordable housing, providing there is available land. The Residential permitted uses are also permitted in the Commercial districts. The ordinance does provide conditional uses in the Commercial districts. However, these uses are limited solely to a "Planned unit development." "Nursing homes," "personal-care boarding homes," "housing for elderly," "independent-living facility," "transitional living facility," "assisted-living facility," and "life-care community" are listed as authorized uses in a "planned

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<sup>8</sup> Borough of Ambridge Zoning Ordinance at pg. 310:7.

unit development.” The requirements and restrictions regarding a “planned unit development” are very specific and exacting, and require a minimum site of 20 acres. Unfortunately, this is the only manner in which the types of properties previously listed are permitted, which imposes a significant barrier to their development in Ambridge. “Nursing homes” are listed as a conditional use in the Public/Civic districts. None of the districts mention “mobile homes” as a permitted or conditional use.

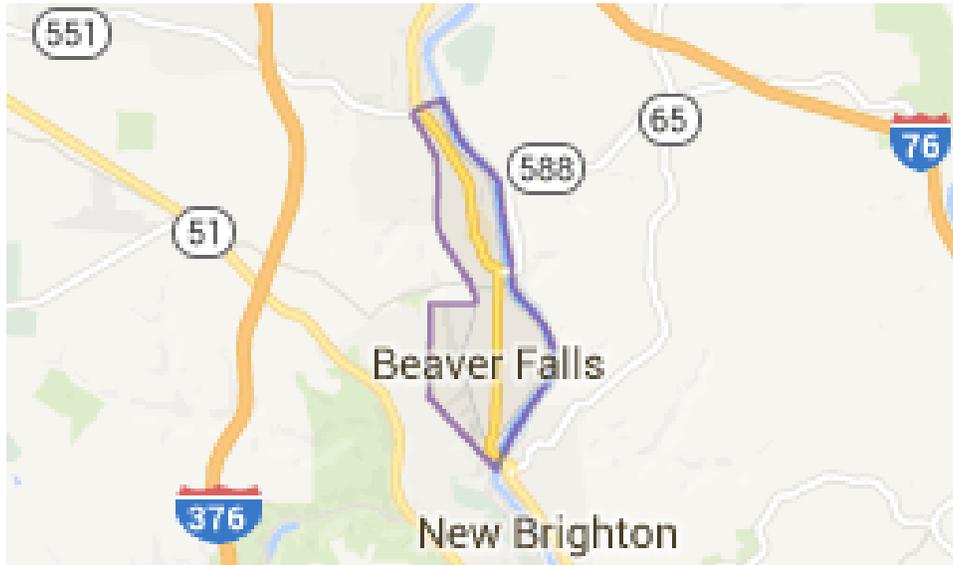
### Fair Housing Considerations

Ambridge’s ordinance has no discussion regarding fair housing, nor does the ordinance provide a mechanism for requesting a reasonable accommodation.

### Potential Conflicts with the Fair Housing Act

- Missing definitions (“single housekeeping unit” and “mobile home”).
- Definition of “Housing for the Elderly.”
- No conditional uses in Residential districts.
- No permitted or conditional uses for “personal-care boarding homes,” “housing for elderly,” “independent-living facility,” “transitional living facility,” or “assisted-living facility.”

# City of Beaver Falls



*Source: Google Maps*

The city of Beaver Falls (“Beaver Falls”) is situated along the Beaver River, a tributary of the Ohio River. Beaver Falls like many of the towns in Beaver County has seen a drop in its population with the loss of manufacturing jobs and the steel industry, from a high of 17,375 in 1950, to only 8,842, according to the 2010-2014 ACS. The breakdown of Beaver Falls’ population is as follows:

### *City of Beaver Falls (2014)*

|                                  | #            | %            |
|----------------------------------|--------------|--------------|
| White                            | 7,056        | 79.8%        |
| African American                 | 1,241        | 14.0%        |
| American Indian/Alaska Native    | 0            | 0.0%         |
| Asian/Pacific Islander           | 60           | 0.7%         |
| Some Other Race                  | 64           | 0.7%         |
| Two or More Races                | 421          | 4.8%         |
| Hispanic                         | 123          | 1.4%         |
| <b>Total Minority Population</b> | <b>1,786</b> | <b>20.2%</b> |
| <b>Total Population</b>          |              | <b>8,842</b> |

*Source: U.S. Census Bureau*

Beaver Falls is in the process of re-drafting their zoning ordinance, so for the purposes of this report both the existing ordinance and the proposed ordinance will be examined, with the similarities and differences in the relevant parts highlighted.

Definitions:

The existing ordinance defines “family” as follows:

**Family:** Either an individual, or two or more persons related by blood or marriage or adoption, or a group of not more than five persons not related (not counting servants) occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging home, club, fraternity, or hotel.<sup>9</sup>

This definition is problematic in that it distinguishes between related and unrelated persons and imposes numerical limitations. The definition also references the term “single housekeeping unit” but fails to provide a definition for that term.

The proposed ordinance defines “family” as follows:

**Family** – an individual, or two (2) or more persons related by blood, marriage, adoption or foster child care, including domestic servants or gratuitous guest, thereof, or a group of not more than three (3) unrelated persons living together without supervision in a dwelling unit; or, any number of persons protected by the provisions of the Fair Housing Act (42 U.S.C. 3601 et. seq., as now or hereafter amended) living together in a Group Residence with supervision, provided those persons do not have a criminal record. Family shall not include persons living together in a Halfway House, Dormitory, Assisted Living Facility, or Nursing Home, as defined herein, or any other supervised group living arrangement for persons other than those protected by the Fair Housing Act, or persons who constitute a direct threat to others or their physical property. (See also Student Dwelling)<sup>10</sup>

This definition of “family” is nearly identical to Aliquippa’s, thus the potential issues identified with their definition also apply to Beaver Falls. One difference between the two definitions is the fact that the Beaver Falls ordinance does provide definitions for all the various types of dwellings referenced in their definition of “family.”

The existing ordinance does provide definitions for the following types of relevant dwellings: “Group Residence” and “Personal Care Facility.” The ordinance defines a “Group

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<sup>9</sup> City of Beaver Falls Zoning Ordinance at pg. 5.

<sup>10</sup> City of Beaver Falls June 2014 Zoning Ordinance at pg. 8.

Residence” as “A dwelling facility operated for not more than eight person plus staff, living together as a single family or as a single housekeeping unit.”<sup>11</sup> This definition maybe problematic in that it imposes numerical restrictions.

The proposed ordinance provides definitions for the following relevant dwellings: “Assisted Living Facility,” “Group Residence,” “Halfway House,” “Nursing Home,” “Personal Care Home,” and “Transitional Housing Facility.”

### Zoning Districts

The existing ordinance provides for eight different zoning districts: Residential (R-1 and R-2), Conservation (R-3), Neighborhood Commercial (C-1), Highway Commercial (C-2), Industrial (I), Industrial & Commercial (I-C), and Higher Education (HE). Single family dwellings are listed as a permitted use in R-1, R-2, and R-3 districts. Multi-family dwellings, apartments, group residences, personal care facilities, and mobile homes; are not listed as permitted uses in any of the eight zoning districts. Multi-family dwellings, group residences, and personal care facilities are only listed as a conditional use in R-2 districts. The minimum lot sizes provided in the R-1 and R-2 districts are 3,000 square feet; which, providing there is available land, would not be a barrier to the development of affordable housing.

The existing ordinance provides for additional criteria and standards for “Group Residences and Personal Care Facilities” the ordinance provides that:

“Group Residences and Personal Care Facilities shall be at least 500 feet apart from each other, shall not be located on lots of less than 6,000 square feet, nor on lots having less than 400 square feet for every sleeping room or for every two beds, whichever is greater. Such uses shall have side yards of not less than 10 feet, and shall not be approved unless plans prepared by an architect or engineer are submitted which clearly indicate that adequate light, ventilation, and fireproofing are provided, and that the dwelling facility and its accommodations shall be functional and convenient with regard to the specific needs of the group to be housed in the facility. Group Residences or Personal Care Facilities shall be approved only after Council has found that plans and programs for management of the group residence or facility are adequate and appropriate to the population to be housed and that adequate provisions have been made to assure the safety and welfare of the residents of the facility and of the adjacent neighborhood.”<sup>12</sup>

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<sup>11</sup> City of Beaver Falls Zoning Ordinance at pg. 5.

<sup>12</sup> *Id.* at pg. 30.

These criteria and conditions placed on “Group Residences” and “Personal Care Facilities” are problematic, in that they impose conditions that differ significantly from what is required of a single family dwelling. The minimum lot requirement is double that of a single family dwelling and the side yard requirement is seven feet larger. Additionally, no other type of dwelling or other structure requires the submission of plans prepared by an architect or engineer. These additional requirements would certainly serve as a significant burden and deterrent for the development of “Group Residences” and/or “Personal Care Facilities.”

The proposed ordinance provides for 10 different zoning districts: Residential (R-1A), Residential (Medium Density single family (R-1B), Residential (High Density) (R-2), Conservation (CON), Transitional (TRAN), Commercial (C-1), Business (C-2), Commercial Light Industrial (CLI), Industrial (I), and Public Educational Institution (PEI). The following chart details the minimum lot sizes, the types of relevant dwellings available, and whether those dwellings are allowed, either by permitted use, conditional use, or special exemption.

***Minimum Lot Sizes (square feet)***

|                            | R-1A        | R-1B<br>Medium<br>Density<br>Single<br>Family | R-2<br>High<br>Density                | CON          | TRAN         | C-1        | C-2      | PEI                                    |
|----------------------------|-------------|---|---------------------------------------|--------------|--------------|------------|----------|--|
| <b>Permitted Uses</b>      | Residential |   |                                       | Conservation | Transitional | Commercial | Business | Public<br>Educational<br>Institutional |
| Single Family Dwelling     | 7,000       | 6,000   | 6,000                                 | 15,000       | 6,000        | n/a        | n/a      | 6,000                                  |
| Duplexes                   | n/a         | 8,500   | 8,500                                 | n/a          | 20,000       | n/a        | n/a      | n/a                                    |
| Multi-Family Dwelling*     | n/a         | n/a   | *                                     | n/a          | n/a          | n/a        | n/a      | n/a                                    |
| Personal Care Homes        | n/a         | n/a   | n/a                                   | n/a          | n/a          | n/a        | 10,000   | n/a                                    |
| Nursing Homes              | n/a         | n/a   | n/a                                   | n/a          | n/a          | n/a        | 10,000   | n/a                                    |
| <b>Conditional Uses</b>    |             |   |                                       |              |              |            |          |  |
| Multi-Family Development** | n/a         | n/a   | n/a                                   | n/a          | n/a          | 5,000 ***  | n/a      | n/a                                    |
| <b>Special Exemptions</b>  |             |   |                                       |              |              |            |          |  |
| Personal Care Homes        | n/a         | listed but<br>no<br>lot size<br>given         | listed but<br>no<br>lot size<br>given | n/a          | n/a          | n/a        |          | n/a                                    |
| Nursing Homes              | n/a         |   |                                       | n/a          | n/a          | n/a        |          | n/a                                    |

\*No structure shall contain more than eight dwelling units. 10,000 square feet for first three units, plus 1,500 square feet per each unit thereafter.

\*\* For persons 55+ and older.

\*\*\* Additional square feet of usable space requirements depending on the number of bedrooms per unit.

It is important to note that the minimum lot size for a single family dwelling has at a minimum doubled across all residential districts. These increases could impose a barrier on the development of affordable housing in Beaver Falls. It is also important to note that the ordinance provides a definition for a “Group Residence” but does not list it as a permitted or conditional use, or a special exemption in any of the 10 different zoning districts. Additionally, the ordinance does not permit, by right, “Personal Care Homes,” “Nursing Homes,” or “mobile homes” in any of the zoning districts where single family housing is permitted. The only mention of “mobile homes” in the ordinance is in a chart addressing the number of parking spaces required for the different types of uses. It should be noted that the number of parking spaces required per dwelling unit in a mobile home park is greater (2.5 per dwelling unit) than what is required for a single family dwelling (2 per dwelling unit). In addressing “Transitional Housing Facilities” and “Halfway Houses,” the ordinance indicates that they are only identified as a conditional use in the CLI and I districts.<sup>13</sup>

### Fair Housing Considerations

Neither the existing nor the proposed ordinance for Beaver Falls has any discussion regarding fair housing, nor do the ordinances provide a mechanism for requesting a reasonable accommodation.

### Potential Conflicts with the Fair Housing Act

#### *Existing Ordinance*

- Definition of “family” and “group residence.”
- Missing definition of “single housekeeping unit.”
- Definition of “mobile home” is not consistent with the MPC’s.
- No permitted use for “Group Residence” or “Personal Care Facility” in any residential districts.
- Criteria for “Group Residences and Personal Care Facilities” is significantly more burdensome than single family dwellings.

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<sup>13</sup> Transitional Housing Facilities are listed as a conditional use in both CLI and I, while Halfway House is only listed in I districts.

*Proposed Ordinance*

- Definition of “family.”
- No permitted use for “Personal Care Home,” “Nursing Home,” or mobile home in any residential districts.
- Parking space requirements for mobile homes.
- Lot sizes for Single Family Dwellings in R-1A, R-1B, R-2, CON, TRAN, and PEI districts.

## Borough of Midland



*Source: Google Maps*

The borough of Midland (“Midland”) is situated along the Ohio River. Midland like many of the towns in Beaver County has seen a drop in its population with the loss of manufacturing jobs and the steel industry, from a high of 6,491 in 1950, to only 2,608, according to the 2010-2014 ACS. The breakdown of Midland’s population is as follows:

### ***Borough of Midland (2014)***

|                                  | #            | %            |
|----------------------------------|--------------|--------------|
| White                            | 1,765        | 67.7%        |
| African American                 | 630          | 24.2%        |
| American Indian/Alaska Native    | 96           | 3.7%         |
| Asian/Pacific Islander           | 0            | 0.0%         |
| Some Other Race                  | 0            | 0.0%         |
| Two or More Races                | 117          | 4.5%         |
| Hispanic                         | 96           | 3.7%         |
| <b>Total Minority Population</b> | <b>843</b>   | <b>32.3%</b> |
| <b>Total Population</b>          | <b>2,608</b> |              |

*Source: U.S. Census Bureau*

Midland’s Zoning Ordinance was adopted on October 2, 1989. The last amendment of the ordinance appears to have occurred on September 7, 1993.

### Definitions

The ordinance provides their definitions in the last section of their ordinance, which is atypical as most ordinances provide their definitions in the first section. The ordinance defines “family” as:

**Family:** Either an individual, or two (2) or more persons related by blood or marriage or adoption, or a group of not more than five (5) persons not so related (not counting servants) occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging home, club, fraternity, or hotel.<sup>14</sup>

This definition of “family” is nearly identical to the one in Beaver Falls’ existing ordinance. It distinguishes between related and unrelated persons and imposes numerical restrictions. The definition also refers to a “single housekeeping unit,” but fails to provide a definition for the term.

The ordinance only provides a definition for a “Group Residence,” which it defines as “a dwelling facility operated for not more than fifteen (15) persons plus staff, living together as a single family or as a single housekeeping unit.”<sup>15</sup> This definition is also nearly identical to the definition in Beaver Falls’ existing ordinance, except for the fact that it allows a greater number of persons. This definition may still be problematic because it imposes a numerical limitation on the person who may occupy a “Group Residence.”

### Zoning Districts

Midland has identified nine different zoning districts: Special (S-1 and S-2), Single Family Residential (R-1), Two Family Residential (R-2), Multi-Family Residential (R-3), Community Business (C-1), General Business (C-2), Limited Industrial (I-1), and General Industrial (I-2). Single family dwellings are identified as a permitted use in S-1, R-1, R-2, and R-3 districts. The minimum lot sizes for single family dwelling in S-1 and R-1 districts may be a barrier to the development of affordable housing. “Personal Care Homes,” “Intermediate Care

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<sup>14</sup> Borough of Midland Zoning Ordinance at pg. 307.

<sup>15</sup> *Id.* at 308.

Homes,” and “Group Dwellings” are listed as a conditional use only in R-3 districts. “Multi-Family Dwellings” are listed as a conditional use in C-1 and C-2 districts only. The following chart details the relevant housing uses and their minimum lot sizes in their zoning districts.

| <b>Permitted Uses</b>   | <b>Minimum Lot Sizes (square feet)</b> |                         |                      |                         |                              |                            |
|-------------------------|--|-------------------------|----------------------|-------------------------|------------------------------|----------------------------|
|                         | S-1<br>Special                         | R-1<br>Single<br>Family | R-2<br>Two<br>Family | R-3<br>Multi-<br>Family | C-1<br>Community<br>Business | C-2<br>General<br>Business |
| Single Family Dwelling  | 40,000                                 | 6,000                   | 5,000                | 4,000                   | n/a                          | n/a                        |
| Two-Family Dwellings    | n/a                                    | n/a                     | 5,000                | 4,000                   | n/a                          | n/a                        |
| Townhouse               | n/a                                    | n/a                     | n/a                  | 4,000                   | n/a                          | n/a                        |
| <b>Conditional Uses</b> |  |                         |                      |                         |                              |                            |
| Personal Care Home      | n/a                                    | n/a                     | n/a                  | not provided            | n/a                          | n/a                        |
| Intermediate Care Home  | n/a                                    | n/a                     | n/a                  | 6,000                   | n/a                          | n/a                        |
| Group Dwelling          | n/a                                    | n/a                     | n/a                  | 6,000                   | n/a                          | n/a                        |
| Multi-Family Dwelling   | n/a                                    | n/a                     | n/a                  | n/a                     | *                            | *                          |

\* Shall have a minimum lot area of not less than 1,500 square feet per dwelling unit.

The ordinance provides for additional criteria and standards for “Group Residences and Intermediate Care Facilities” the ordinance provides that:

“Group residences and intermediate care facilities shall be at least 500 feet apart from each other, shall not be located on lots of less than 6,000 square feet, nor on lots having less than 400 square feet for every sleeping room or for every two beds, whichever is greater. Such uses shall have side yards of not less than 10 feet, and shall not be approved unless plans prepared by an architect or engineer are submitted which clearly indicate that adequate light, ventilation, and fireproofing are provided, and that the dwelling facility and its accommodations shall be functional and convenient with regard to the specific needs of the group to be housed in the facility. Group residences and intermediate care facilities shall be approved only after Council has found that plans and programs for management of the group residence or facility are adequate and appropriate to the population to be housed and that adequate provisions have been made to assure the safety and welfare of the residents of the facility and of the adjacent neighborhood.”<sup>16</sup>

These criteria and conditions placed on “group residences” and “intermediate care facilities” are identical to those in Beaver Falls’ existing ordinance and are equally problematic, in that they

<sup>16</sup> *Id.* at pg. 286.

impose conditions that differ significantly from what is required of a single family dwelling. The minimum lot requirement is double that of a single family dwelling and the side yard requirement is seven feet larger. Additionally, no other type of dwelling or other structure requires the submission of plans prepared by an architect or engineer. These additional requirements would certainly serve as a significant burden and deterrent for the development of “group residences” and/or “intermediate care facilities.” It is also important to note that the ordinance does provide a definition for “Personal Care Home,” “Intermediate Care Home,” or “Group Residence.” They appear to be interchanging the terms “Group Dwelling” and “Group Residence.”

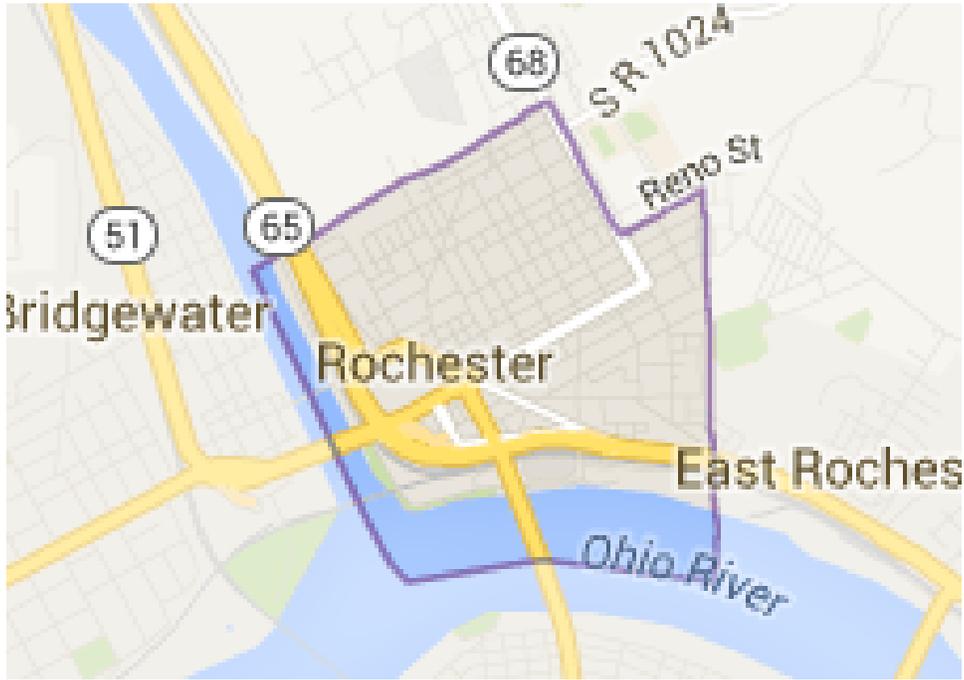
### Fair Housing Considerations

Midland’s ordinance has no discussion regarding fair housing, nor does the ordinance provide a mechanism for requesting a reasonable accommodation.

### Potential Conflicts with the Fair Housing Act

- Definition of “family.”
- Missing definitions. (“Personal Care Home,” “Intermediate Care Home,” “Group Dwelling,” and “single housekeeping unit”)
- Lot sizes for Single Family Dwellings in S-1 and R-1.
- Criteria for “Group Residences and Personal Care Facilities” is significantly more burdensome than single family dwellings.
- No permitted use in any zoning districts for “mobile homes,” “Personal Care Homes,” “Intermediate Care Homes,” “Group Dwellings,” or “Multi-Family Dwellings.”

# Borough of Rochester



*Source: Google Maps*

The borough of Rochester (“Rochester”) is situated along the Ohio River. Rochester like many of the towns in Beaver County has seen a drop in its population with the loss of manufacturing jobs and the steel industry, from a high of 7,726 in 1930, to only 3,628, according to the 2010-2014 ACS. The breakdown of Rochester’s population is as follows:

### *Borough of Rochester (2014)*

|                                  | #          | %            |
|----------------------------------|------------|--------------|
| White                            | 2,984      | 82.2%        |
| African American                 | 572        | 15.8%        |
| American Indian/Alaska Native    | 0          | 0.0%         |
| Asian/Pacific Islander           | 0          | 0.0%         |
| Some Other Race                  | 0          | 0.0%         |
| Two or More Races                | 72         | 2.0%         |
| Hispanic                         | 52         | 1.4%         |
| <b>Total Minority Population</b> | <b>644</b> | <b>17.8%</b> |
| <b>Total Population</b>          |            | <b>3,628</b> |

*Source: U.S. Census Bureau*

It is unclear as to when Rochester's ordinance was enacted. The ordinance does appear to have been amended numerous times since its enactment.

### Definitions

The ordinance defines "family" as:

**Family** – one (1) or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding home, lodging house, group residence, personal care boarding home, club, fraternity, or hotel.”<sup>17</sup>

This definition does not distinguish between related and unrelated person. Additionally, the ordinance does provide a definition of "single housekeeping unit" as well as all of the various types of dwelling referenced in their "family" definition.

The ordinance defines "single housekeeping unit" as:

“the use or occupancy of a building by a family, as distinguished from individuals or groups of individuals occupying a boarding house, lodging house, personal care boarding home, club, fraternity or hotel. Relevant factors in determining the use or occupancy of a single housekeeping unit shall include, but not be limited to:

- A. Whether each resident therein has access to the entire premises.
- B. Whether all residents therein cook and dine together.
- C. Whether all residents therein attend social functions together.
- D. Whether all residents therein celebrate special occasions and/or holidays together.
- E. Whether residents therein share home activities and benefits, such as cleaning, yard work, automobiles and appliances.”<sup>18</sup>

The ordinance also provides definitions for the following types of dwellings: "Group Residence," "Nursing or Convalescent Home," and "Personal Care Boarding Home." Regarding "group residence" the ordinance's definition states, in part, "a facility located in a residential area which provides room, board and specialized services to eight (8) or fewer unrelated persons, such as children (under 18 years of age), handicapped or elderly (over 60 years of age)

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<sup>17</sup> Borough of Rochester Zoning Ordinance at pg. 27-14.

<sup>18</sup> *Id.* at pg. 27-21.

individuals.”<sup>19</sup> This definition may be problematic as it provides a numerical limitation and specifically references a protected class of citizens, persons with disabilities.

Zoning Districts

Rochester has identified six different zoning districts: Single Family Residential (R-1), Medium Density Residential (R-2), High Density Residential (R-3), Mixed Use (M), Commercial (C), and Special Use (S). Single family dwellings are permitted by right in R-1, R-2, R-3, and M districts, and the lot sizes would not be a barrier to the development of affordable housing. The following chart details the relevant housing uses and their minimum lot sizes in their zoning districts.

| Permitted Uses              | <i>Minimum Lot Sizes (square feet)</i> |                      |                        |                |                              |                     |
|-----------------------------|--|----------------------|------------------------|----------------|------------------------------|---------------------|
|                             | R-1<br>Single<br>Family                | R-2<br>Two<br>Family | R-3<br>Multi<br>Family | M<br>Mixed Use | C-1<br>Community<br>Business | S<br>Special<br>Use |
| Single Family Dwelling      | 5,000                                  | 5,000                | 5,000                  | 3,500          | n/a                          | n/a                 |
| Two-Family Dwellings        | n/a                                    | 2,500 *              | 2,500 *                | 3,500          | n/a                          | n/a                 |
| Multi-Family Dwellings      | n/a                                    | n/a                  | 1,500 *                | 1,200 *        | n/a                          | n/a                 |
| <b>Conditional Uses</b>     |  |                      |                        |                |                              |                     |
| Personal Care Boarding Home | n/a                                    | n/a                  | 6,000                  | 6,000          | n/a                          | n/a                 |
| Nursing Home                | n/a                                    | n/a                  | n/a                    | 10,000 ***     | n/a                          | n/a                 |
| Group Residence             | n/a                                    | n/a                  | 6,000                  | 6,000          | n/a                          | n/a                 |
| Mobile Home Parks           | n/a                                    | n/a                  | 8,000 **               | 8,000 **       | *                            | *                   |
| Multi-Family Dwellings      | n/a                                    | n/a                  |                        |                | not given                    | not given           |

\* Per unit.

\*\* Per lot.

\*\*\* Not less than 10,000 square feet, plus 300 square feet for each in-patient room.

The ordinance provides for “special standards and criteria” for conditional use dwellings. As it relates to “group residences and personal care boarding homes” there are a number of conditions that may be problematic. Specifically, the requirement that “no group residence or personal care boarding home may be located within the same block nor within 1,000 feet, whichever is more, of another group residence or personal care boarding home, nursing or

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<sup>19</sup> *Id.* at pg. 27-15.

convalescent home or institutional facility.”<sup>20</sup> As previously discussed the Department of Justice and HUD have not looked favorable upon such density restrictions. The ordinance also provides that “group residences and personal care boarding homes” are subject to an annual inspection of all such facilities with the fee for such inspections assessed to the operators of the facilities. This is bothersome, in that no other type of dwelling is subject to this condition. This type of imposition could have a chilling effect on the future development and maintenance of these types of dwellings.

### Fair Housing Considerations

Rochester’s ordinance has no discussion regarding fair housing, nor does the ordinance provide a mechanism for requesting a reasonable accommodation.

### Potential Conflicts with the Fair Housing Act

- Definition of “group residence.”
- Standards for “Group Residences and Personal Care Boarding Homes” is significantly more burdensome than single family dwellings and contains a density restriction.
- No permitted use in any zoning districts for mobile home parks, “Personal Care Boarding Homes,” “Nursing Homes,” or “Group Residences.”

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<sup>20</sup> *Id.* at 27-73.

# Appendix A

**Jurisdiction:** \_\_\_\_\_

**Date of Ordinance:** \_\_\_\_\_

Has the Ordinance been amended?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, when? \_\_\_\_\_

- Does the Code definition of “family” have the effect of discriminating against unrelated individuals with disabilities who reside together in a congregate or group living arrangement?

Yes \_\_\_\_\_ No \_\_\_\_\_

What is the Code’s definition of “family”?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Does the Code define any of the protected classes?  
(race, sex, religion, national origin, color, disability, and familial status)

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, which protected class(es) was defined?

\_\_\_\_\_  
\_\_\_\_\_

- Are the definitions the same as the Fair Housing Acts?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

- Does the zoning ordinance provide a definition for a “mobile home”?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Is this definition the same as Pennsylvania’s as provided in the MPC?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

- What “group” or “care facilities” are defined in the jurisdiction zoning code?

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- Are personal characteristics of the residents considered?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the zoning ordinance restrict housing opportunities for individuals with disabilities and mischaracterize such housing as a “boarding or rooming house” or “hotel”?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the zoning ordinance deny housing opportunities for disability individuals with on-site housing supportive services?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the jurisdiction policy allow any number of unrelated persons to reside together, but restrict such occupancy, if the residents are disabled?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the jurisdiction policy not allow disabled persons to make reasonable modifications or provide reasonable accommodation for disabled people who live in municipal-supplied or managed residential housing?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the jurisdiction require a public hearing to obtain public input for specific exceptions to zoning and land-use rules for disabled applicants and is the hearing only for disabled applicants rather than for *all* applicants?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the zoning ordinance address mixed uses?

Yes \_\_\_\_\_ No \_\_\_\_\_

- In what districts are residential housing uses permitted by right or by conditional/special use?

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- What standards apply to the residential housing uses?  
(Minimum Lot Size, Maximum Building Height, etc.)

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- Are mobile homes permitted by right in zoning districts that allow single-family dwelling units?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Are mobile home permitted in any district by conditional/special use?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what district(s) and by what type of use?

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- Is “group” or “care facility” residential housing permitted by right in zoning districts that allow single-family dwelling units?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Are “group” or “care facility” residential housing permitted in any district by conditional/special use?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what district(s) and by what type of use?

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- Does the zoning ordinance describe any areas in this jurisdiction as exclusive?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Are there exclusions or discussions of limiting housing to any of the following groups?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

If yes, check all of the following that apply:

\_\_\_\_\_ Race \_\_\_\_\_ Color \_\_\_\_\_ Sex \_\_\_\_\_ Religion

\_\_\_\_\_ National Origin \_\_\_\_\_ Disability \_\_\_\_\_ Familial Status

- Are there any restrictions for Senior Housing in the zoning ordinance?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, do the restrictions comply with Federal Law on housing for older persons (i.e., solely occupied by persons 62 years of age or older or at least one person 55 years of age and has significant facilities or services to meet the physical or social needs of older people)?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, explain:

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- Does the zoning code distinguish senior citizen housing from other single family residential and multifamily residential uses by the application of a conditional or special use permit?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the zoning ordinance contain any special provisions for making housing accessible to persons with disabilities?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Does the zoning ordinance establish occupancy standards or maximum occupancy limits?

Yes \_\_\_\_\_ No \_\_\_\_\_

Do the restrictions exceed those imposed by state laws?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

- Does the zoning ordinance include a discussion of fair housing?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, how does the jurisdiction propose to further fair housing?

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- Does the zoning ordinance provide a mechanism for requesting reasonable accommodations?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, describe the process.

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- Does the jurisdiction's planning and building codes presently make specific reference to the accessibility requirements contained in the 1988 Amendments to the Fair Housing Act?

Yes \_\_\_\_\_ No \_\_\_\_\_

- Are there any provisions for monitoring compliance?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_