

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 EBBY’S PLACE, LLC, a Texas limited)
 liability company, and BEN PATTERSON,)
)
 Plaintiff-Intervenors,)
)
 v.)
)
 CITY OF FORT WORTH, TEXAS)
)
 Defendant.)
 _____)

Civil Action No. 4:15-CV-00304-O

JOINT MOTION FOR ENTRY OF CONSENT DECREE

The parties to the above-captioned action, through undersigned counsel, respectfully move this Court to sign and enter the attached proposed Consent Decree (Attachment A), which fully resolves the allegations contained in the United States’ and Plaintiff-Intervenors’ respective complaints.

Respectfully Submitted,

This 4th day of March, 2016.

FOR PLAINTIFF UNITED STATES:

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Northern District of Texas

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Principal Deputy Assistant Attorney General
Civil Rights Division

s/ Tamica H. Daniel

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CERTIFICATE OF CONFERENCE

I hereby certify that on March 2-4, 2016, Plaintiff United States conferred with Counsel for Defendant and Plaintiff-Intervenors by telephone and electronic mail about the issues raised and the relief sought by this Motion. All parties consent and join in the request for relief sought herein.

s/ Tamica H. Daniel

Tamica H. Daniel
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section NWB
950 Pennsylvania Avenue, NW Washington,
D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2016, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all counsel of record and additional counsel, as indicated below, electronically or by another manner authorized by FED. R. CIV. P. 5(b)(2):

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s/ Tamica H. Daniel

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D.C. 20530

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,)	
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EBBY’S PLACE, LLC, a Texas limited)	
liability company, and BEN PATTERSON,)	
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Plaintiff-Intervenors,)	
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v.)	
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CITY OF FORT WORTH, TEXAS)	
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Defendant.)	
_____)	

CONSENT DECREE

I. BACKGROUND

1. The United States initiated this action against the City of Fort Worth, Texas (the “Defendant” or the “City”) to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act” or “FHA”), 42 U.S.C. §§ 3601-3619, and Titles II and V of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, et seq., and its implementing regulations, 28 C.F.R. Part 35 (the “Americans with Disabilities Act” or “ADA”). In its First Amended Complaint, the United States alleges that the City violated the FHA and the ADA on the basis of disability when it refused to allow Ben Patterson to operate Ebby’s Place, LLC (“Ebby’s Place”), a sober home for persons recovering from drug or alcohol addiction, in a single-family residential zone in Fort Worth. Specifically, the United States alleges that the City

violated 42 U.S.C. § 3604(f)(1) of the FHA by denying or otherwise making dwellings unavailable because of disability; violated 42 U.S.C. § 3604(f)(2) of the FHA by discriminating in the terms, conditions, or privileges of housing, or in the provision of services or facilities in connection with housing because of disability; violated 42 U.S.C. § 3604(f)(3)(B) of the FHA by failing or refusing to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may have been necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling; and violated 42 U.S.C. § 3617 of the FHA by coercing, intimidating, threatening, or interfering with the rights of persons in the exercise or enjoyment of, or because they exercised or enjoyed or aided persons with disabilities in exercising or enjoying, rights granted or protected by the FHA. The United States alleges that the City's conduct constitutes a denial of rights to a group of persons that raises an issue of general public importance in violation of the FHA, 42 U.S.C. § 3614(a), or a discriminatory housing practice under 42 U.S.C. § 3614(b). The United States also alleges that the Defendant violated 42 U.S.C. § 12132 of the ADA by excluding persons with disabilities from participating in and denying them the benefits of services, programs, or activities of the City and failing to make a reasonable modification in its policies, practices, or procedures, which excluded persons with disabilities from participating in or denied them the benefits of services, programs, or activities of the City; and violated 42 U.S.C. § 12203(b) by coercing, intimidating, threatening or interfering with an individual exercising or enjoying, or aiding others in exercising or enjoying, rights granted and protected by the ADA. The City denies the United States' allegations.

2. On or about April 17, 2012, Ebby's Place filed a timely complaint with the United States Department of Housing and Urban Development ("HUD") pursuant to 42 U.S.C. § 3610(a) against the City alleging discrimination in housing on the basis of disability. After the City allegedly denied a subsequent request for a reasonable accommodation, Ebby's Place amended its HUD complaint on or about April 22, 2013. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD determined that the complaint involved the legality of state or local zoning or other land-use laws or ordinances. Accordingly, pursuant to 42 U.S.C. § 3610(e)(2), on or about June 12, 2013, the Secretary referred this matter to the Attorney General for appropriate action.

3. Ebby's Place and Ben Patterson (jointly referred to as "Plaintiff-Intervenors") intervened into this matter. On January 22, 2016, they filed a Complaint alleging that the City's actions violated the FHA and the ADA. Specifically, Plaintiff-Intervenors allege that the City violated the FHA by: denying or otherwise making housing unavailable to Plaintiff-Intervenors and Residents because of their disability; using the City's zoning code as a pretext to exclude the Plaintiff-Intervenors and the Residents because of their disability; enforcing discriminatory zoning rules and policies on the Plaintiff-Intervenors and the Residents because of their disability; interfering with the right of the Plaintiff-Intervenors and the Residents to live in the dwelling of their choice; failing to make reasonable accommodations in the City's zoning code and its application to afford the Plaintiff-Intervenors and the Residents an equal opportunity to use and enjoy the property; and retaliating against the Plaintiff-Intervenors and the Residents because of their exercise of their legal rights under the FHA. In addition, Plaintiff-Intervenors allege that the City violated their rights under the ADA by: denying Plaintiff-Intervenors and

the Residents the opportunity to participate in or benefit from the supportive housing that Plaintiff-Intervenors offer; using and administering zoning codes, land use, and building codes with the purpose and effect of subjecting Plaintiff-Intervenors and the Residents to discrimination based on their disability; subjecting Plaintiff-Intervenors and the Residents to discrimination on the basis of their disability; denying Residents with disabilities the opportunity to participate in a program in the most integrated setting appropriate to their needs in a discriminatory manner and different from the opportunities presented to individuals without disabilities; and enforcing the Code to deny Plaintiff-Intervenors and the Residents the enjoyment of rights, privileges, advantages, and opportunities enjoyed by individuals without disabilities in a manner that is discriminatory against Ebby's Place and its Residents. The City denies the Plaintiff-Intervenors' allegations.

4. The City of Fort Worth is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131, et seq., and its implementing regulations, 28 C.F.R. Part 35.

5. The United States and Plaintiff-Intervenors allege the following with respect to Ebby's Place. Ebby's Place, LLC is a Texas-based limited liability company with its principal place of business in Fort Worth, Texas. Ebby's Place, LLC provides a residence called "Ebby's Place," a four-bedroom home for persons with disabilities recovering from drug and alcohol addiction. Ebby's Place is located at 6245 Granite Creek Drive in Fort Worth, Texas, and is in an A-5, single-family residential zone. Ebby's Place is home to residents with disabilities recovering from drug and alcohol addiction. As a sober home, Ebby's Place seeks to provide an environment where residents who have successfully completed at least a 30-day drug or alcohol treatment program live together

to reinforce and encourage their mutual commitment to recovery by assisting one another to refrain from alcohol or drug usage. Residents of Ebby's Place pay rent and sign a contract to follow house rules. Residents are prohibited from using drugs or alcohol and must agree to mandatory drug testing. Residents must also work, seek employment, or attend school and must work with sponsors to maintain their sobriety. Ebby's Place residents at 6245 Granite Creek Drive are persons with disabilities within the meaning of 42 U.S.C. § 3602(h) and "qualified individuals with disabilities" within the meaning of 42 U.S.C. §§ 12102 and 12131(2) and 28 C.F.R. § 35.104.

6. The sober home located at 6245 Granite Creek Drive is a "dwelling" within the meaning of the FHA, 42 U.S.C. § 3602(b).

7. The United States Department of Justice is the federal agency responsible for administering and enforcing Titles II and V of the ADA, 42 U.S.C. § 12131, et seq.

8. On March 1, 2016, the City adopted the Reasonable Accommodation Ordinance, 22098-03-2016, as set forth in Attachment A.

9. This Consent Decree (the "Decree") is intended to effect a comprehensive settlement of the United States' and the Plaintiff-Intervenors' claims. The entry into this Decree by the City is not an admission of wrongdoing. However, to avoid costly and protracted litigation, the United States, Plaintiff-Intervenors, and the City have jointly and voluntarily entered into and consent to the entry of this Decree to resolve the claims presented, as indicated by the signatures below.

10. The parties agree that nothing contained in this Decree shall be construed as a finding or determination that the City or any of its agents, employees, or elected or

appointed officials violated the FHA or ADA or engaged in unlawful practices that may have discriminated on the basis of disability. Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

II. DEFINITIONS

11. The following definitions apply to the terms when used in this Decree:

a. The terms “**Defendant**” and “**City**” include: the City of Fort Worth, the City Council, the City’s employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with them;

b. “**Disability**” refers to: the definition of “handicap” included in the Fair Housing Act, see 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201; and the definition of “disability” included in the Americans with Disabilities Act, see 42 U.S.C. § 12102(1); 28 C.F.R. § 35.104;

c. “**Reasonable Accommodation**” refers to: accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, within the meaning of 42 U.S.C. § 3604(f), 24 C.F.R. § 100.204, and any applicable case law; and “reasonable modifications” as used in the implementing regulation for Title II of the ADA at 28 C.F.R. § 35.130(b)(7) and any applicable case law; and

d. The “**effective date of the Decree**” refers to the date the Court enters this Consent Decree.

**III. GENERAL INJUNCTIONS AND NON-DISCRIMINATION
PROVISIONS**

12. The Defendant, its employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with it, shall not:

a. Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, of a person residing in or intending to reside in that dwelling, or of any person associated with that buyer or renter;

b. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of a person residing in or intending to reside in such dwelling, or of any person associated with that person;

c. Refuse to make reasonable accommodations in its rules, policies, practices, or services, when such accommodations may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling;

d. Deny individuals with disabilities the benefits of services, programs, or activities of the City;

e. Refuse to make reasonable modifications to policies, practices, or procedures when the modifications are necessary to afford individuals with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; or

f. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the FHA or the ADA.

13. The preceding injunctions shall specifically, but not exclusively, cover:

a. Administering, enforcing, or amending zoning ordinances of the City of Fort Worth, including, but not limited to, receiving, evaluating, or deciding upon applications for reasonable accommodation, reasonable modification, building permits, special exceptions, variances, or uses not provided for; and

b. Conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or in reviewing any decision made by any zoning, land-use, or building official.

IV. SPECIFIC INJUNCTIVE RELIEF

14. The Defendant shall allow Plaintiff-Intervenors to operate a sober home for up to seven (7) persons total at 6245 Granite Creek Drive in Fort Worth, Texas. This permission shall not be revoked for any reason that violates the FHA or the ADA. The City shall not enforce any code or restriction in a manner that discriminates on the basis of disability against Ebby's Place, or persons currently associated with Ebby's Place. The City shall rescind all citations issued to Ebby's Place or Ben Patterson and expunge any conviction related to its enforcement of the Zoning Ordinance against Ebby's Place or Ben Patterson for operating a business in a residential neighborhood and any related convictions.

15. On March 1, 2016, the City adopted the Reasonable Accommodation Ordinance, included as Attachment A, establishing a process for requesting and responding to requests for reasonable accommodation or reasonable modification relating to its rules, policies, practices, and in the provision of its services regarding the City's Zoning Ordinance. This ordinance:

a. describes where and how the Defendant will accept and process requests for accommodation or modification in its rules, policies, practices, or in the provision of its services;

b. requires the City to maintain records of requests for reasonable accommodation or modification and the Defendant's responses thereto, including final written decisions;

c. requires the City to acknowledge all requests for reasonable accommodation or modification in writing and within ten (10) calendar days of the Defendant's receipt of a request orally, if it is apparent to a City employee or staff that assistance is needed in completing a written request, or in writing;

d. provides for written notification to those requesting a reasonable accommodation or modification of the decision regarding each request for accommodation or modification within thirty (30) days of the receipt of the request, and communicating denials of a request for accommodation or modification and the basis for such denials in writing; and

e. provides that the City will not impose any fee or cost for reasonable accommodation or reasonable modification requests or otherwise retaliate against any person for making such a request.

16. Within ten (10) days after the date of entry of this Decree and throughout the term of this Decree, the Defendant shall post and publicly display the reasonable accommodation ordinance described in paragraph fifteen (15) on the City's website, and at the offices of the Defendant in which legal notices, announcements, or vacancies are posted. For the term of the Decree, the City shall process requests for reasonable accommodations and reasonable modifications in accordance with the ordinance and shall not change its practices and policies with respect to reasonable accommodations and reasonable modifications without prior approval of the United States, which approval shall not be unreasonably withheld.

17. Within sixty (60) days after the date of entry of this Decree, the Defendant shall propose a detailed written plan that provides a process by which City employees or officials responsible for receiving reasonable accommodation or reasonable modification requests or otherwise implementing the ordinance described in paragraph fifteen (15) will be trained in executing the provisions of the ordinance, including annual training on the processes and procedures by which reasonable accommodation and reasonable modification requests will be evaluated and the definition of "disability" within the meaning of the FHA and ADA. The Defendant's trainer shall receive annual training on the Fair Housing Act and the Americans with Disabilities Act with a specific emphasis on discrimination on the basis of disability, pursuant to Part VI of this Order, and must receive the first such training prior to conducting the training referenced in this

paragraph. The trainer shall certify that he/she has received this training in the form of Attachment C. The Defendant's trainer will be a member of the City's Planning and Development Department. The written plan, including training materials referenced in the plan must be approved by the United States, which approvals will not be unreasonably withheld. Within thirty (30) days of receiving approval from the United States, the Defendant shall implement the plan. The initial training provided in accordance with this plan shall be conducted live and video recorded. Subsequent training classes may view the recorded video in lieu of live instruction. The Defendant shall maintain copies of the written materials used and provided for each training. The Defendant shall provide the training required by this paragraph in addition to the training required by Part VI of this Decree. Any expenses associated with this plan shall be borne by the Defendant.

18. For the duration of the accommodation and at least five years, the Defendant shall keep written records of each request for reasonable accommodation or modification it receives. These records shall include: (A) the name, address, and telephone number of the person making the request if available; (B) the date on which the request was received; (C) the nature of the request; (D) whether the request was granted or denied; and (E) if the request was denied, the reason(s) for the denial.

19. The City shall not otherwise modify the Zoning Ordinance text, or any other City ordinance in a manner such that the modification narrows, reduces, or limits the rights of persons with disabilities to reside in a residence of their choosing within the residential zones of the City.

20. Nothing in this Decree shall be interpreted to require persons with disabilities or providers of housing for persons with disabilities acting or operating in accordance with applicable zoning, licensing, and/or land use laws and practices, to seek permission from the Defendant to begin or continue such action or operation. However, nothing in this Decree eliminates responsibilities imposed on all dwellings, including Ebby's Place, by the City's Code and all applicable codes, including, but not limited to the Zoning Ordinance and other applicable health and safety codes. Nothing in this Decree prohibits the City from properly denying a request for a reasonable accommodation or modification under its reasonable accommodation ordinance, included as Attachment A.

V. COMPLIANCE OFFICER

21. No later than thirty (30) days after the effective date of this Decree, the Defendant shall designate an employee or official of the City of Fort Worth as the Compliance Officer. The Compliance Officer shall have the responsibility to receive complaints against the City of alleged housing discrimination involving housing for persons with disabilities, and to coordinate the City's compliance with this Decree. The designated person shall maintain copies of the Decree, the web link to the HUD complaint form (<https://portal.hud.gov/FHEO903/Form903/Form903Start.action>) and the contact information for HUD, and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to the Defendant. The Defendant shall notify the United States in writing of the name, address, telephone number, and title of the designated person no later than thirty (30) days after the effective date of the Decree. Should the designation of the Compliance Officer change during the term of this Decree, the Defendant shall, within ten (10) days

of such change, notify the United States in writing of the name of the new Compliance Officer and his or her contact information.

VI. FAIR HOUSING TRAINING

22. Within ninety (90) days from the effective date of the Decree, and annually for the duration of the Decree, the Defendant shall hold training on the requirements of the Decree, the Fair Housing Act, and the Americans with Disabilities Act with a specific emphasis on discrimination on the basis of disability to the professional staff of the City Council, the Zoning Commission, professional staff of the Planning and Development Department and the City's Code Compliance Department, and anyone else who has direct or supervisory authority in connection with building, zoning, and land use. The training(s) shall be conducted live by a qualified third party once a year and videotaped. Any employee or official who was not trained live shall be trained through viewing the videotape and attending a Question and Answer session on the training. Additionally, the City Manager shall hold a one-time, live Fair Housing training for the Mayor and Council in compliance with the Texas Open Meetings Act. The trainer(s) for the live presentation shall be unconnected to the Defendant or its employees, officials, agents, or counsel. Trainer(s) and training must be approved annually by the United States, which approval will not be unreasonably withheld. The Question and Answer sessions for trainings by videotape shall be facilitated by a staff member of the City's Human Relations Unit, who shall certify in the form of Attachment C that he/she receives annual training on the Fair Housing Act and the Americans with Disabilities Act before facilitating the sessions. Any expenses associated with training shall be borne by the Defendant.

23. As part of the training, each person trained shall be given a copy of the Decree, the FHA, and the ADA.

24. The Defendant shall, no later than ten (10) days after training, provide to the United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of Attachment B.

25. The initial training(s) shall be video-recorded, and the Defendant shall maintain copies of the written materials provided for each training. For each person commencing employment or service in any of the positions listed in this part, the Defendant shall, no later than twenty (20) days after such commencement or service, give each such person a copy of the Decree, the Fair Housing Act, the Americans with Disabilities Act, and any written materials provided in connection with all live trainings required by this Decree; require each such person to review the recordings of trainings; and require each such person to sign a certification acknowledging that he or she has received and read or reviewed the Decree, the FHA, the ADA, recorded trainings, and training materials. This certification shall be in the form of Attachment D.

VII. REPORTING AND RECORD KEEPING¹

26. At least thirty (30) days prior to adopting any amendment or modification to any district that allows for residential use pursuant to the Zoning Ordinance or to other City rules, laws, or ordinances, that affect housing for persons with disabilities in any way related to the FHA or ADA, including the reasonable accommodation ordinance

¹ The Defendant shall send all documents, notices, and other communications required by the Decree to be sent to the United States, to: Chief, Attn: DJ #175-73-367, United States Department of Justice, Housing and Civil Enforcement Section, Civil Rights Division, 1800 G Street, NW, Suite 7002, Washington, DC 20006. The Defendant shall send all documents, notices, and communications required by or relating to this Decree by via overnight delivery service.

described in paragraph fifteen (15), the Defendant shall provide the United States with a copy of any proposed amendment or modification. Nothing herein shall prevent the Fort Worth Zoning Commission or City Council from making modifications to a proposed zoning change on the date of adoption that are: (1) non-substantive² and related to the FHA or ADA; or (2) unrelated to the FHA or ADA.

27. The Defendant shall prepare biannual reports that detail all actions it has taken to fulfill its obligations under the Decree. The Defendant shall submit its first Compliance Report to the United States no later than six (6) months after the effective date of the Decree, and subsequent reports every six (6) months thereafter, for the duration of the Decree, except that the final report shall be delivered to the United States no fewer than sixty (60) days prior to the date upon which the Decree is scheduled to expire.

28. The Defendant shall include the following information in the Compliance Reports:

a. The name, address, telephone number, and title of the employee or official serving as the Compliance Officer, referenced in paragraph twenty-one (21);

b. Any documentation of a complaint received since the last report alleging discrimination with respect to any matter subject to the injunctions in Part III, above, including a description of any action taken in response to the complaint and copies of all pertinent documents, such as a copy of the complaint, any documents filed with the complaint, and any written response to the complaint by the City;

² For the purposes of this paragraph non-substantive modifications include typographical, grammatical, or formatting corrections.

c. Copies of written materials provided in connection with all trainings referenced in this Decree;

d. Copies of video recordings of all trainings referenced in this Decree since the last report;

e. Copies of the training certification and acknowledgment forms referenced in paragraphs seventeen (17), twenty-two (22) and twenty-five (25) since the last report;

f. A summary of each zoning request or zoning application related to housing or services for persons with disabilities requesting a reasonable accommodation or reasonable modification (including those for building permits, site plans, special exceptions, variances) for which the City has made a determination, indicating: (1) the date of the application; (2) the applicant's name; (3) the applicant's current residential street address; (4) the street address of the subject property or proposed housing; (5) the disposition of the application, including any appeals; (6) the reason(s) for each outcome, including a summary of the facts upon which the City relied; (7) complete copies of any minutes or video recordings from all meetings or hearings discussing the zoning request or application; and (8) if a vote was taken, how each participant voted and the date of the vote;

g. All documents presented in support of oral testimony offered by any member of the public at any hearing held with respect to each such application or request that is denied by Defendant; and

h. Copies of any changes to the City's Zoning Ordinance relating to or affecting any housing for persons with disabilities pursuant to paragraph fifteen (15) above enacted after the Defendant's last compliance report was issued.

29. For the duration of this Decree, the Defendant shall maintain all records relating to implementation of and compliance with all provisions of the Decree, including, but not limited to, all records related to zoning, land-use, or building applications related to requests for reasonable accommodation or modification related to housing for persons with disabilities. The United States shall have the opportunity to inspect and copy any such records after giving reasonable notice to the Defendant.

VIII. COMPENSATION OF PLAINTIFF-INTERVENORS

30. Within thirty (30) days of the effective date of this Decree, the Defendant shall pay Plaintiff-Intervenors one-hundred thirty-five thousand dollars (\$135,000.00) for the purpose of compensating it for the harm that it allegedly suffered as a result of the City's alleged discriminatory policies and actions relating to 6245 Granite Creek Drive. The sum shall be paid by sending a check to counsel for Ebby's Place made payable to Smolker, Bartlett, Loeb, Hinds & Sheppard

31. Plaintiff-Intervenors must execute a release-of-claims form, in the form of Attachment E, signifying that the payment constitutes full settlement of any claims the payee may have relating to the subject matter of this action. The United States shall obtain the signed release form and provide it to the Defendant upon receipt of the check.

IX. CIVIL PENALTY

32. Within thirty (30) days of the effective date of this Decree, the Defendant shall pay to the United States a civil penalty of ten thousand dollars (\$10,000.00) to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C). The payment shall be in the form of an electronic fund transfer pursuant to written instructions to be provided by the United States.

33. In the event that the Defendant, its agents, or its employees engage in any future violation(s) of the FHA, against persons with disabilities or perceived disabilities, as defined by the Court, such violation(s) shall constitute a “subsequent violation” under 42 U.S.C. § 3614(d)(1)(C)(ii).

X. JURISDICTION AND SCOPE OF DECREE

34. The parties stipulate that the Court has jurisdiction over this action, and may grant the relief sought herein under 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 3614(a), (b), and 12133; and 28 U.S.C. §§ 2201 and 2202.

35. This Decree shall remain in effect for a period of three (3) years after its effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree’s term, in the interest of justice and for good cause shown, the United States may move the Court to extend the duration of the Decree.

XI. ENFORCEMENT

36. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Decree prior to bringing such

matters to the Court for resolution. However, in the event of a failure by the Defendant to perform in a timely manner any act required by this Decree, or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the violation or failure to perform.

37. The parties will bear their own costs and fees associated with this litigation.

XII. RELEASE OF LITIGATION HOLDS

38. The parties agree that, as of the date of the entry of this Decree, litigation is not "reasonably foreseeable" concerning the matters described in Part I above. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matter described in Part I above, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Decree.

SO ORDERED this __ day of _____, 2016.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES:

JOHN R. PARKER
United States Attorney
Northern District of Texas

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division



SAMEENA SHINA MAJEED

Acting Chief

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Trial Attorneys

Housing and Civil Enforcement Section

Civil Rights Division

United States Department of Justice

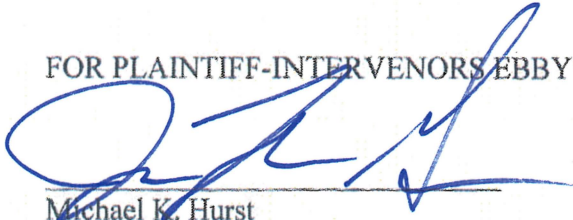
950 Pennsylvania Avenue, NW (NWB)

Washington, D.C. 20530

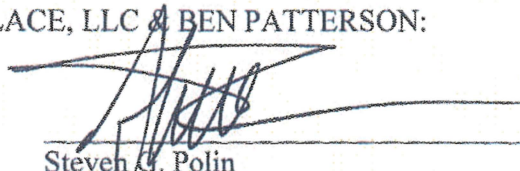
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FOR PLAINTIFF-INTERVENORS EBBY'S PLACE, LLC & BEN PATTERSON:



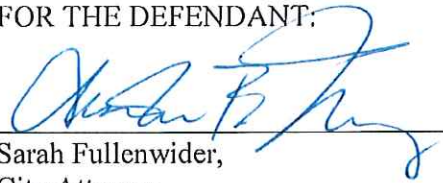
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FOR THE DEFENDANT:

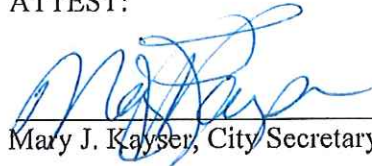


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Fernando Costa,
Assistant City Manager
On Behalf of the City of Fort Worth

ATTEST:



Mary J. Kayser, City Secretary



ORDINANCE NO. 22098-03-2016

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 21653, AS AMENDED, BY AMENDING CHAPTER 17 "HUMAN RELATIONS," ARTICLE III, "DISCRIMINATION" TO ADD DIVISION V "REASONABLE ACCOMMODATION OR MODIFICATION FOR RESIDENTIAL USES" FOR PERSONS WITH DISABILITIES TO PROVIDE A PROCESS TO REQUEST AND APPROVE SUCH ACCOMMODATION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, housing that is accessible to people with disabilities has been identified as a special housing need in the 2013 City of Fort Worth Analysis of Impediments to Fair Housing Choice report; and

WHEREAS, the 2013 City of Fort Worth Analysis of Impediments to Fair Housing Choice report calls for a reasonable accommodation ordinance that streamlines and formalizes City procedures related to accommodations; and

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended by the Federal Fair Housing Amendments Act of 1988 ("FHA"), and the Americans with Disabilities Act ("ADA") impose an affirmative duty on local governments to make reasonable accommodations (modifications or exceptions) in their rules, policies, practices, or services related to zoning and land use regulation when such accommodation may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, the City of Fort Worth has historically provided for accommodations through the use of existing regulatory procedures not specifically designed for people with disabilities; and

WHEREAS, codification of a formal procedure for individuals with disabilities seeking equal access to housing to request reasonable accommodation in the application of the City's land use and zoning standards, regulations, policies, and procedures and establishment of relevant criteria to be used when considering such requests will ensure prompt, fair and efficient handling of such requests in accordance with the statutory mandates, including the reasonable accommodation mandates of the FHA and ADA.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF

THE CITY OF FORT WORTH, TEXAS AS FOLLOWS:

SECTION 1.

Chapter 17 "Human Relations," Article III, "Discrimination" of the Code of the City of Fort Worth is hereby amended to add Division V "Reasonable Accommodation or Modification for Residential Uses" for persons with disabilities to be and read as follows:

17-107 Purpose

It is the policy of the City of Fort Worth, pursuant to the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act and applicable state laws, to provide individuals with disabilities reasonable accommodations (including modifications or exceptions) in the City's zoning, land use and other regulations, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling.

This Division provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of applicable laws, including federal laws, in making a reasonable accommodation.

Nothing in this Division shall require persons with disabilities or operators of homes for persons with disabilities acting or operating in accordance with applicable zoning or land use laws or practices to seek a reasonable accommodation under this Division. Nothing in this Division shall require the City of Fort Worth to agree to requested accommodations that are unreasonable.

17-108 Applicability

- a. The provisions of this Division apply to residential uses that will be used by persons with disabilities.
- b. The accommodation granted shall be considered personal to the individual(s) and shall not run with the land. If the structure is sold, or otherwise changes ownership, an accommodation granted to the previous owner is not transferable to the new owner. Notwithstanding, the accommodation shall be in force and effect as long as the person(s) or group of persons with disabilities for whom the accommodation was sought resides on the property that is the subject of the accommodation. It is the duty of the owner to notify the Director of this event. The city shall allow the new owner an opportunity to renew and/or modify a granted reasonable accommodation in accordance with this Division. In the event that the reasonable accommodation is not renewed or modified within sixty (60) days from the date of change in ownership, the accommodation will lapse and the structure will have to comply with all requirements of this Division.
- c. Nothing in this Division will require the City to expend any funds to achieve a reasonable accommodation except and to the extent required by state or federal law.

- d. Nothing in this Division will alter a person with disabilities' obligation to comply with other applicable federal, state and City regulations.
- e. The City shall prominently display a notice at the counter in the Planning and Development Department advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this Division. A copy of the notice shall be available upon request.

17-109 **Definitions**

- a. *Person with disabilities* for the purposes of this Division, has the meaning set forth in the federal Fair Housing Act and the American with Disabilities Act and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of such impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of controlled substances is not.
- b. *Reasonable accommodation* (inclusive of modification) means the act of making a dwelling unit or housing facility(ies) readily accessible to and usable by a person with disabilities, through the removal of constraints in the City's land use, zoning, permit and processing procedures. All accommodations may be not reasonable, and the reasonableness of a request will be determined by the Director or City Manager's designee upon appeal.
- c. *Director* means the Planning and Development Department head or City official with authority to administer, implement, or enforce a requirement that is the basis of the request for reasonable accommodation.
- d. *Requirement* means a provision of the City Code or an administrative policy, program or procedure.

17-110 **Effect**

A reasonable accommodation controls over a conflicting City regulation or requirement.

17-111 **Requests for Accommodation; Application**

- a. An application for an accommodation may be made by any person(s) with a disability, his or her representative, or a developer or provider of housing for persons with disabilities.
- b. A request for accommodation may be submitted at any time the accommodation may be necessary to afford the person with a disability equal opportunity to use and enjoy the dwelling. A written acknowledgement of the request shall be sent to the applicant within ten (10) days of receipt by the Director.

- c. Requests for an accommodation may include a modification or exception to the rules, standards and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to a dwelling of his or her choice.
- d. An individual requesting an accommodation shall direct the request to the Director of the Planning and Development Department, orally, which shall be transcribed by the City into writing if requested by the applicant or if it is apparent to a City employee or staff that assistance is needed in filling out the application form (e.g., if the individual is unable to write), or in writing. The individual shall submit an application for a reasonable accommodation using the appropriate City form, to be provided by the Director. The City shall assist the applicant with furnishing all information maintained by the City with respect to an accommodation. The applicant shall provide the following:
 - 1. Name and address of the person or entity requesting accommodation. If the applicant is applying on behalf of a person with a disability, the name and address of the person with a disability shall also be provided.
 - 2. Address of the property for which the accommodation is requested.
 - 3. Indication of whether that the applicant is (a) a person with a disability, (b) applying on behalf of a person with a disability, or (c) a developer or provider of housing for one or more person(s) with a disability.
 - 4. Description of the disability at issue, the requested accommodation, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing.
 - 5. Description of whether the specific accommodation requested by the applicant is necessary for the person(s) with the disability to use and enjoy the dwelling, or is necessary to make the provision of housing for persons with disabilities financially or practically feasible.
 - 6. Any other information the Director concludes is necessary in order to make the findings required by Section 17-113 to the extent permissible under applicable local, state and federal laws. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry. (See Joint Statement of The Department of Housing & Urban Development & The Department of Justice: Reasonable Accommodations Under the Fair Housing Act #18.)
- e. Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or person with a disability and shall not be made available for public

inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee. The Applicant need provide only the information necessary for the City to evaluate the reasonable accommodation request.

- f. If the person with the disability needs assistance to make a request for accommodation, the Director will provide assistance, including transcribing a verbal request into a written request.
- g. A fee shall not be required for an application for an accommodation.

17-112 Review Authority

- a. A request for accommodation shall be reviewed, and a determination made, by the Director, using the criteria set forth in Section 17-113.
- b. The Director shall issue a written decision on a request for accommodation within thirty (30) calendar days of the date of the application, and may either grant, grant with alterations or conditions, or deny a request for an accommodation in accordance with the required findings set forth in Section 17-113.
- c. If necessary to reach a determination on the request for accommodation, the Director may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee. If a request for additional information is made, the running of the thirty (30) calendar day period to issue a decision is stayed until the applicant responds to the request.

17-113 Required Findings

- a. The written decision to grant, grant with alterations or conditions, or deny a request for accommodation shall be based on the following factors to the extent they are consistent with applicable laws:
 - 1. Whether the housing that is the subject of the request for accommodation will be used by a person with a disability protected under the applicable laws.
 - 2. Whether the requested accommodation is necessary to make a dwelling available to a person with disabilities protected under the applicable laws.
 - 3. Whether the requested accommodation would pose an undue financial or administrative burden on the City. The determination of undue financial and administrative burden will be done on a case-by-case basis.
 - 4. Whether the requested accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to zoning and land use.

- b. In making findings, the Director may grant with alterations or conditions, reasonable accommodations, if the Director determines that the applicant's initial request would impose an undue financial or administrative burden on the City, or fundamentally alter a City program or law. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to (a) enabling the person(s) with a disability to use and enjoy the dwelling, and (b) making the provision of housing for person(s) with a disability financially or practically feasible.

17-114 **Written Decision**

- a. The written decision of the Director on an application for an accommodation shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth in Section 17-113. All written decisions shall give notice of the applicant's right to appeal and to request assistance in the appeal process as set forth in Section 17-115. The notice of the decision shall be sent to the applicant by certified mail and electronic mail, if the applicant's electronic mail address is known to the City.
- b. The written decision of the Director shall be final unless the applicant files an appeal to the City Manager's designee in accordance with Section 17-115. Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for an accommodation based on additional grounds or changed circumstances. Nor shall this provision be construed to affect in any way the rights of a person to challenge the denial of a request for reasonable accommodation as violating the Fair Housing Act, the ADA or any other applicable state, federal or local law.
- c. If the Director fails to render a written decision on the request for accommodation within the thirty (30) calendar day period established in Section 17-112, the accommodation request shall be deemed granted.
- d. A request for accommodation stays all proceedings in furtherance of the enforcement of any requirement that is the subject of the request. An accommodation request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.
- e. The Director shall retain, for the duration of the accommodation and at least five (5) years thereafter, written records of each request and all related records, including the City's responses and decisions.

17-115 **Appeals**

- a. An applicant, or a person on whose behalf an application was filed, may appeal the written decision to deny or grant an accommodation with alterations or conditions or a denial of the accommodation no later than thirty (30) calendar days from the date the decision is mailed.

- b. An appeal must be in writing (or reduced to writing as provided by subsection c, below) and include grounds for appeal. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten (10) days of the decision of the City Manager's designee.
- c. If an applicant needs assistance appealing a written decision, the City will provide assistance transcribing a verbal request into a written appeal to ensure that the appeals process is accessible.
- d. An applicant shall not be required to pay a fee to appeal a written decision.
- e. An appeal will be decided by the City Manager's designee. In considering an appeal of a decision of the Director, the City Manager's designee shall consider (a) the application requesting the accommodation, (b) the Director's decision, (c) the applicant's written statement of the grounds of the appeal, and (d) the provisions of this Division, in order to determine whether the Director's decision was consistent with applicable fair housing laws and the required findings in section 17-113.
- f. If a written decision on the appeal is not rendered within thirty (30) calendar days from the date the appeal is received, the requested accommodation shall be deemed granted.
- g. The decision of the City Manager's designee is final.

SECTION 2.

This ordinance shall be cumulative of the Code of the City of Fort Worth (2015), as amended, except where provisions of this ordinance are in direct conflict with the provisions of this ordinance and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3

All rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil or criminal, whether pending in court or not under such ordinances,

same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts, unless the City enters into a written agreement to cease prosecution.

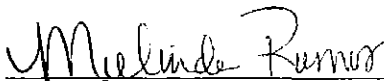
SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such unconstitutional phrase, clause, sentence, paragraph or section.

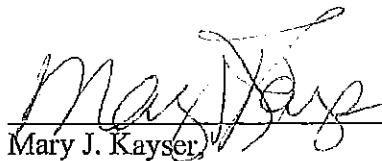
SECTION 5.

That this ordinance shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY:



Melinda Ramos,
Sr. Assistant City Attorney



Mary J. Kayser,
City Secretary

ADOPTED & EFFECTIVE: March 1, 2016

Attachment B

CERTIFICATION OF TRAINING AND RECEIPT OF CONSENT DECREE

On _____, I attended training on the Fair Housing Act and Titles II and V of the Americans with Disabilities Act. I have had all of my questions concerning these topics answered to my satisfaction.

I also have been given and I have read copies of the Fair Housing Act, the Americans with Disabilities Act, and the Consent Decree entered in United States v. City of Fort Worth, Civil No. 4:15-CV-00304-O (N.D. Tex.). I understand my legal responsibilities and will comply with those responsibilities.

Signature

Print Name

Position with City of Fort Worth

Business Address

Business Address Continued

Business Telephone Number

Date

Attachment C

CERTIFICATION OF QUALIFICATION TO TRAIN

I certify that I have received training on the Fair Housing Act and the Americans with Disabilities Act, as described below:

Fair Housing Act

Training date: _____

Training name: _____

Training provider: _____

Americans with Disabilities Act

Training date: _____

Training name: _____

Training provider: _____

Signature

Print Name

Position with City of Fort Worth

Business Address

Business Address Continued

Business Telephone Number

Date

Attachment D

**ACKNOWLEDGMENT OF RECEIPT OF COPIES OF THE FAIR HOUSING ACT,
THE AMERICANS WITH DISABILITIES ACT, AND THE CONSENT DECREE**

On _____, I reviewed pre-recorded training and read training materials on the Fair Housing Act and Titles II and V of the Americans with Disabilities Act.,

I also received copies of the Fair Housing Act, the Americans with Disabilities Act, and the Consent Decree entered in United States v. City of Fort Worth, Civil No. 4:15-CV-00304-O (N.D. Tex.). I have reviewed these documents and have had all of my questions concerning these documents answered to my satisfaction. I understand my legal responsibilities and will comply with those responsibilities.

Signature

Print Name

Position with City of Fort Worth

Business Address

Business Address Continued

Business Telephone Number

Date

Attachment E

FULL AND FINAL RELEASE OF CLAIMS

In consideration of the parties' agreement to the terms of the Consent Decree they entered into in the case of United States v. City of Fort Worth, as approved by the United States District Court for the Northern District of Texas, and in consideration for the payment of one-hundred thirty-five thousand dollars (\$135,000.00), I, Ben Patterson, along with the corporate entities in which I have ownership interest, do hereby release and forever discharge the City of Fort Worth, along with its principals, predecessors, successors, insurers, agents, directors, officers, employees, former employees, administrators, assigns, and any person acting under its direction or control, from any and all claims, costs, and expenses, including attorney's fees. This Release includes, but is not limited to, all fair housing claims set forth or which could have been set forth, in the Complaint in this lawsuit and any other claims that I may have had against the City of Fort Worth for any of its actions through the date of the entry of the Consent Decree. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Executed this _____ day of _____, 2016.

Signature

Print Name

Address

Address Continued