Town of Miami Lakes, Florida

Audio stream of meetings can be listened to after the meetings are held at

http://miamilakesfl.swagit.com/meeting-categories/

AGENDA
Special Meeting
October 16, 2018
6:00 PM
Government Center
6601 Main Street Miami Lakes, Fl 33014

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Moment of Silence**
5. **Public Comments**

   All comments or questions from the attending public to the Council shall be directed to the Mayor, in a courteous tone. No person other than the Council and the person recognized by the Mayor as having the floor, shall be permitted to enter into discussion without the permission of the Mayor. To ensure the orderly conduct and efficiency of the meeting, public comments shall be limited to three (3) minutes maximum per person; however, the Mayor may authorize the extension of the aforesaid time frame, and any extension shall apply to other individuals speaking on the same subject.
   No clapping, applauding, heckling, verbal outburst in support of, or in opposition to a speaker or his/her remarks shall be permitted. Should a member of the audience become unruly, or behave in any manner that disrupts the orderly and efficient conduct of the meeting, the Mayor is given the right and the authority to require such person to leave the Council Chambers.

   As a courtesy to others, all electronic devices must be set to silent mode to avoid disruption of the proceedings.

6. **Ordinances - Second Reading**

   A. **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO COMMUNITY RESIDENCES; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "ZONING DISTRICT REGULATIONS", PROVIDING FOR FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING MINIMUM HOUSING STANDARDS; ALLOWING COMMUNITY HOMES IN ALL RESIDENTIAL DISTRICTS; PROVIDING FOR REGISTRATION OF COMMUNITY HOMES; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR CERTIFICATION OR LICENSING REQUIREMENTS; PROVIDING FOR COMPLIANCE BY**

EXISTING BUT UNREGISTERED COMMUNITY RESIDENCES; PROVIDING FOR APPLICATION REQUIREMENTS; PROVIDING FOR DISTANCE SEPARATION; PROVIDING FOR REASONABLE ACCOMMODATIONS; PROVIDING FOR CONDITIONAL USE PERMITS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

B. **AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO ZONING; AMENDING SECTION 13-799.7, "CANNABIS DISPENSARIES, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES"; AMENDING DEFINITIONS; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE. (Rey)**

C. **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO PERMITTED ROOFING TYPES FOR SINGLE-FAMILY AND TWO-FAMILY BUILDINGS; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "SUPPLEMENTARY REGULATIONS", AT SECTION 13-1608, RENAMING IT "SINGLE-FAMILY AND TWO-FAMILY ROOF REGULATIONS," AND PERMITING STANDING METAL SEAM ROOFING; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (Cid)**

7. Items for Discussion and Action

A. **A RESOLUTION OF THE TOWN COUNCIL, OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") ARTERIAL DYNAMIC MESSAGE SIGN MAINTENANCE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE ADDITIONAL SUPPLEMENTAL AGREEMENTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE. (Rey)**

8. Adjournment

This meeting is open to the public.A copy of this Agenda and the backup therefore, has been posted on the Town of Miami Lakes Website at www.miamilakes-fl.gov and is available at Town Hall, 6601 Main Street, Miami Lakes 33014. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact Town Hall at 305-364-6100 two days prior to the meeting.

Anyone wishing to appeal any decision made by the Miami Lakes Town Council with respect to any matter considered at this meeting or hearing will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.

Any member of the public wishing to speak on a public hearing matter on this Agenda or under public comments

for items not on this Agenda, should fill out a speaker card and provide it to the Town Clerk, prior to commencement of the meeting.Any person presenting documents to the Town Council should provide the Town Clerk with a minimum of 12 copies.

Town of Miami Lakes
Memorandum

To: **Honorable Mayor and Councilmembers**
From: **Alex Rey, Town Manager**
Subject: **Community Homes**
Date: **10/16/2018**

Recommendation:
Staff recommends approval of the ordinance allowing community homes in residential districts.

Background:

On June 5, 2018, the Town Council directed the Town Attorney to explore amendments to the Town Code that would articulate a procedure to adequately provide for community homes in residential districts. Examination of the code yielded insufficient language regarding the protection of disabled individuals residing in community homes, as well as minimum housing standards for all residential properties. While the Fair Housing Act as amended (42 U.S.C. §3601) and American with Disabilities Act (42 U.S.C. ch. 126 § 12101 et seq) provide protections for persons with disabilities and prohibit housing discrimination of disabled individuals, it is important that the Town's Land Use Code reflect these protections and, at the same time, ensure that appropriate provisions exist to ensure that disabled individuals can benefit from residence and rehabilitation in community residences that function as families, in order to achieve normalization and community integration. A close examination of the Code found four deficiencies that needed to be addressed. The first related to a lack of language requiring certification or licensing of community residences by the appropriate agencies. The second related to lack of reasonable minimum housing standards, that can prevent overcrowding of residences. The third deficiency was the provisions did not provide for minimum distance separation between community residences to prevent clustering. And third, the LDC lacked provision for reasonable accommodations as well as conditional use standards for the successful establishment of community homes in residential neighborhoods. Language requiring registration of Community Residences was added as well, in order to ensure that the town can establish whether all previously mentioned requirements are satisfactorily met.

On October 2, 2018 the Town Council moved this item on first reading.

On October 4, 2018 the Planning and Zoning Board, acting in their capacity as the Local Planning Agency, heard the item and recommended approval with suggestions regarding stronger violation provisions and greater distance separation requirements.

ATTACHMENTS:

Description

Ordinance

Staff Report

Back Up Material

ORDINANCE NO. 18-___

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO COMMUNITY RESIDENCES; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "ZONING DISTRICT REGULATIONS", PROVIDING FOR FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING MINIMUM HOUSING STANDARDS; ALLOWING COMMUNITY HOMES IN ALL RESIDENTIAL DISTRICTS; PROVIDING FOR REGISTRATION OF COMMUNITY HOMES; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR CERTIFICATION OR LICENSING REQUIREMENTS; PROVIDING FOR COMPLIANCE BY EXISTING BUT UNREGISTERED COMMUNITY RESIDENCES; PROVIDING FOR APPLICATION REQUIREMENTS; PROVIDING FOR DISTANCE SEPARATION; PROVIDING FOR REASONABLE ACCOMODATIONS; PROVIDING FOR CONDITIONAL USE PERMITS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Community Housing is a necessary and significant component in the recovery of individuals with disabilities; and

WHEREAS, the Fair Housing Act as amended (42 U.S.C § 3601) provides protections for person with disabilities; and

WHEREAS, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment, or enforcement of zoning regulations by the Town of Miami Lakes pursuant to its local police powers as long as the zoning regulations are consistent with state and federal laws, including the Fair Housing Act as amended; and

WHEREAS, On June 5, 2018 the Town Council of the Town of Miami Lakes directed the Town Attorney to explore the options to provide for the regulation of community residences, being those residences not licensed by the state of Florida that provide a residential environment conducive to rehabilitation for persons with disabilities.

WHEREAS, on September 18, 2018 at a publicly advertised workshop, staff presented a recommendation to the Town Council regarding the implementation of standards and definitions that may be adopted into the Code to regulate Community Residences with the purpose of ensuring the

protection of the Community Residence residents from the adverse effects of clustering, overcrowding, and other potentially exploitive circumstances; and

WHEREAS, the amendment at Exhibit "A" is reflective of the Town Council's desire as expressed at the September 18, 2018, workshop; and

WHEREAS, clustering of community residences for people with disabilities on a block or in a neighborhood undermines the ability of community residences to achieve normalization and community integration for their residents, which is one of the essential purposes of a community residence for people with disabilities; and

WHEREAS, reasonable zoning regulations may be enacted to ensure the community residences are sited in residential zoning districts consistent with federal and state law by allowing a community residence for people with disabilities as a permitted or conditional use in residential districts, subject to a rationally based spacing distance requirement and a licensing or certification requirement for the operator of the community residence; and

WHEREAS, by amending its zoning regulations with requirements including rationally based distancing regulations, certification or licensing requirements, rationally based distinctions between transitional and family community residences and the numbers of residents therein, and including a reasonable accommodation process, the Town makes the reasonable accommodations that the Fair Housing Act requires and preserves the ability of community residences for people with disabilities to emulate a family and achieve normalization and community integration of their residents; and

WHEREAS, on October 2, 2018, after conducting a properly noticed public hearing and considering the recommendations of the public, and the Administrative Official; the Town Council moved the proposed amendment on first reading for second reading and consideration of adoption; and

WHEREAS, the Town Council appointed the Planning and Zoning Board as the Local Planning Agency (LPA) for the Town pursuant to Section 163.3174, Florida Statutes; and

WHEREAS, on October 4, 2018, after conducting a properly noticed public hearing, the Planning and Zoning Board, acting in its capacity as the Local Planning Agency, acted in accordance with state law, and in specific compliance with Section 163.3174, Florida Statutes and reviewed and recommended approval to the Miami Lakes Town Council; and

WHEREAS, the Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for evaluation of an amendment to the Land Development Code found in Subsection 13-306(b) of the Town Code; and

WHEREAS, on _____, 2018, after conducting a properly noticed public hearing and considering the recommendations of the public, the Local Planning Agency, and the Administrative Official, the Town Council finds it in the public interest to adopt the proposed ordinance.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, HEREBY ORDAINS AS FOLLOWS.

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Findings. After considering Staff's report, both submitted in writing and presented orally and the public comment, the Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for an amendment to the Land Development Code pursuant to Subsection 13-306(b) of the Town Code, as provided for in the Staff Recommendation and Analysis Report.

Section 3. Approval. The Town Council hereby adopts the amendment as provided at Exhibit "A," and as incorporated herein.

Section 4. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall be included in the Town Code.

Section 7. Effective date. This Ordinance shall become effective immediately upon adoption.

THIS SPACE INTENTIONAL LEFT BLANK

FIRST READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid _____
Vice Mayor Frank Mingo _____
Councilmember Luis Collazo _____
Councilmember Tim Daubert _____
Councilmember Ceasar Mestre _____
Councilmember Nelson Rodriguez _____
Councilmember Marilyn Ruano _____

Passed on first reading this _____ day of October, 2018.

[THIS SPACE INTENTIALLY LEFT BLANK]

SECOND READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on second reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid _____
Vice Mayor Frank Mingo _____
Councilmember Luis Collazo _____
Councilmember Tim Daubert _____
Councilmember Ceasar Mestre _____
Councilmember Nelson Rodriguez _____
Councilmember Marilyn Ruano _____

Passed and adopted on second reading this _____ day of _____, 2018.

_____
Manny Cid
MAYOR

Attest:

_____
Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:

_____
Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT A

CHAPTER 13 LAND DEVELOPMENT CODE

* * *

ARTICLE IV. – ZONING DISTRICT REGULATIONS

* * *

DIVISION 2. - SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL DISTRICTS RU-1, RU-1A, RU-1B, RU-1Z AND RU-2

* * *

13-422. - Main permitted uses.

(a) *RU-1, RU-1A, RU-1B, RU-1Z.* Main permitted uses are as follows:

* * *

~~(2) A group home, which otherwise meets the definition of a community residential home, shall be permitted in a dwelling unit subject to the requirements of F.S. § 419.001 and provided that the total number of resident clients on the premises shall not exceed six in number.~~

* * *

Sec. 13-423. - Conditional uses.

Conditional uses are as follows:

~~None.~~

Community Homes subject to section 13-764.1.

DIVISION 4. - RM-13 LOW DENSITY RESIDENTIAL DISTRICT (RU-3M)

13-462. - Permitted uses.

No land, body of water or structure shall be used or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RM-13 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

(3) Community Homes subject to section 13-764.1.

13-463. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 5. - RM-23 LOW MEDIUM DENSITY RESIDENTIAL DISTRICT (RU-4L)

* * *

13-482. - Permitted uses.

No land, body of water or structure shall be used, or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RM-23 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

(3) Community Homes subject to section 13-764.1

13-483. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

.

* * *

DIVISION 6. - RM-36 MEDIUM DENSITY RESIDENTIAL DISTRICT (RU-4M)

* * *

13-502. - Permitted uses.

No land, body of water or structure shall be used, or permitted to be used and no structures shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RM-36 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

~~(2) A community residential home subject to the requirements of F.S. § 419.001.~~

(2) Community Homes subject to section 13-764.1

13-503. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 7. - RM-50 HIGH DENSITY RESIDENTIAL DISTRICT (RU-4)

* * *

- **13-522. - Permitted uses.**

No land, body of water or structure shall be used, or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RM-50 High Density Residential District, which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

(3) Community Homes subject to section 13-764.1

13-523. - Conditional uses.

~~Conditional uses are as follows:~~

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 10. - AU AGRICULTURAL DISTRICT

* * *

13-584. - Permitted uses.

No land, body of water and/or structure shall be maintained, used or permitted to be used, and no structure shall be hereafter maintained, erected, constructed, moved, reconstructed or structurally altered or be permitted to be erected, constructed, moved, reconstructed or structurally altered for any purpose in an AU District which is designed, arranged, or intended to be used or occupied for any purpose other than the following:

* * *

~~(12) A group home, which otherwise meets the definition of a community residential home, shall be permitted in a dwelling unit subject to the requirements of F.S. § 419.001 and provided that the total number of resident clients on the premises does not exceed six in number.~~

(12) Community Homes subject to section 13-764.1

* * *

DIVISION 20. - BUSINESS, COMMERCIAL AND INDUSTRIAL DISTRICT MASTER LIST

* * *

13-748. - Business, Commercial and Industrial Use Master List.

Use	RO-13	RO-50	BU-1	BU-1A	BU-2	BU-3	IU-1	IU-2	IU-3	IU-C	TC	*Add'l Regs
* * *												
~~Community residential home (subject to the requirements of F.S 419.001~~	~~P~~	~~P~~									~~P/C~~	~~§ 13-799.6*~~
Community Homes	P	P									P/C	§ 13-764.1
* * *												

DIVISION 21. - ADDITIONAL BUSINESS, COMMERCIAL, INDUSTRIAL AND OTHER USE REGULATIONS

* * *

13-799.6. (Reserved) ~~Community Residential Homes in the TC District.~~

~~(a) A community residential home of six or fewer residents shall be a use permitted by right in the TC District, subject to the requirements of F.S. § 419.001.~~

~~(b) A community residential home of between seven and fourteen residents shall be a conditional use in the TC District, subject to the requirements of F.S. § 419.001.~~

* * *

DIVISON 25. – GU INTERIM DISTRICT

* * *

13-764. ~~Group homes.~~ COMMUNITY RESIDENTIAL HOMES (ALFS), RECOVERY RESIDENCES, AND REASONABLE ACCOMMODATIONS,

~~A group home shall be permitted in a dwelling unit provided:~~

~~(a) That the total number of resident clients on the premises not exceed six in number.~~
~~(b) That the operation of the facility be licensed by the State of Florida Department of Health and Rehabilitative Services and that said Department or sponsoring agency promptly notify the Director of said licensure no later than the time of home occupancy.~~
~~(c) That the structure used for a group home shall be located at least 1,000 feet from another existing, unabandoned legally established group home. The 1,000-foot distance requirement shall be measured by following a straight line from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use.~~

13-764.1 - Community Residences

(a) *Applicability.* All community residences of three (3) or more unrelated persons, with or without disabilities, whether Family Community Residences or Transitional Community Residences, as defined in subsection (d) below, prior to occupancy or construction, must register with the Town, using a form provided by the Town, in order to determine whether the proposed community residence is a permitted use or requires a conditional use permit, to determine the maximum number of occupants allowed under minimum housing standards, and to identify whether any further reasonable accommodation is needed in accordance with section 13-764, "Reasonable Accommodation Procedures" of the LDC. Legal nonconforming community residences existing at the date of the adoption of this subsection shall be allowed to continue without regard to distance limitations and without the necessity to obtain a conditional use permit but shall have sixty (60) days to register and obtain certification. Legal nonconforming community residence uses and structures shall be subject thereafter to the nonconformity provisions of these LDCs.

(b) *Generally.* Community residences may locate in residential zoning districts as a permitted use, or with a Conditional Use Permit, or with a reasonable accommodation approval, in accordance with the following and in compliance with these LDCs. All community residences of three (3) or more unrelated persons shall be required to be licensed as a community residence by a state of Florida licensing agency or certified by a state of Florida credentialing agency authorized under Section 397.487, Florida Statutes, unless they are recognized or sanctioned by Congress. If the State of Florida does not offer a license or certification for the proposed kind of community residence and the population it would serve, the applicant must obtain a conditional use approval pursuant to the standards of section 13-764.

(c) *Approvals.*

(1) Community residences of fewer than three (3) residents are considered a family as defined in the subsection (d) below and are allowed as of right wherever a family can be housed.

(2) Community residences with ten (10) or more than ten (10) residents require a conditional use approval pursuant to the standards of section 764.2.

(3) Family Community Residences and Transitional Community Residences are permitted based on distance separation as follows:

a. Family Community Residence.

1. Family community residences with between three (3) and ten (10) residents and located at least one thousand (1,000) feet from a community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, are permitted in any residential zoning district. Family community residences with between three (3) and nine (9) residents that are located less than one thousand (1,000) feet from another community residence may be permitted within all residential zoning districts subject to conditional use requirements.

2. Family community residences with between three (3) and nine (9) residents, are permitted in all multifamily zoned property subject to conditional use requirements.

b. Transitional Community Residence:

1. Transitional community residences with between three (3) and nine (9) residents may be permitted within single family residential zoning districts subject to conditional use requirements.

2. Transitional community residences with between three (3) and ten (10) residents, are permitted in all multifamily zoned property subject to conditional use requirements.

(d) Definitions. For the purpose of this Division, the following terms and phrases shall be defined as provided below.

Community residence. Except as required by state law, a community residence is a residential living arrangement for unrelated individuals with or without disabilities living as a single functional family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services, related to the residents' disabilities. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family–like environment; treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component. A community residence may be either a Family community residence or a Transitional community residence.

A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. The term does not include any other group living arrangement for prison pre–parolees or sex offenders. Community residences include community residential homes that are defined

in section 419.001(1)(a), Florida Statutes and licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, and the Florida Department of Children and Families. They also include functional family sober living arrangements also known as recovery residences certified by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida Statutes.

Disability. A physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include individuals who are currently using alcohol, illegal drugs, or using legal drugs to which they are addicted, or individuals who constitute a direct threat to the health and safety of others.

Family. One (1) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, or a group of persons up to two (2) in number who are not so interrelated, occupying the whole or part of a dwelling as a single housekeeping unit, supplied with a kitchen or facilities for doing their own cooking on the premises, and who share common living facilities. Any person under the age of 18 years whose legal custody has been awarded to the State Department of Health and Rehabilitative Services or to a child-placing agency licensed by the Department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this definition. A family does not include residents of any nursing home; club; boarding or lodging house; dormitory; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house.

Family Community Residence. A family community residence is a type of community residence that is a relatively permanent living arrangement for three (3) or more unrelated people with or without disabilities with no limit on how long a resident may live in the home. The length of tenancy is measured in years. A family community residence may be certified as a recovery residence by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida Statutes, but does not include a community residential home as defined under section 419.001(1)(a), Florida Statutes and licensed by the State of Florida.

Reasonable accommodation request. A request pursuant to the LDC for a case specific modification of the LDC so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit.

Transitional community residence. A transitional community residence is a type of community residence that is a temporary living arrangement for three (3) or more unrelated people with or without disabilities with a limit on length of tenancy that is measured in weeks or months, not years. The residents in a transitional community residence do not typically, but may as conditioned under a reasonable accommodation approval, operate as a single functional family. A transitional community residence may be certified as a recovery residence by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida Statutes, but does not include a community residential home as defined under section 419.001(1)(a), Florida Statutes and licensed by the State of Florida.

~~**Sec. 13-764. - Group homes.**~~
~~A group home shall be permitted in a dwelling unit provided:~~

~~(1) That the total number of resident clients on the premises does not exceed six in number.~~
~~(2) That the operation of the facility be licensed by the State of Florida Department of Health and Rehabilitative Services and that said Department or sponsoring agency promptly notify the Administrative Official of said licensure no later than the time of home occupancy.~~
~~(3) That the structure used for a group home shall be located at least 1,000 feet from another existing, unabandoned legally established group home. The 1,000-foot distance requirement shall be measured by following a straight line from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use.~~

Sec. 13-764. - Community Residences

Sec. 13-764. 1 - Conditional Use Permit Requirements.

(a) *Conditional Use Permit for Community Residences*. In conjunction with section 13-303 of the LDC, the purpose of this section is to provide narrowly-tailored standards for determining whether to grant a conditional use permit as a form of reasonable accommodation to ensure that the community residences required to obtain a conditional use permit will:
  (1) Comply with minimum housing standards as provided in section 13-1600 of this LDC.
  (2) Be located a sufficient distance from any existing community residences so that the proposed community residence does not lessen nor interfere with the normalization and community integration of the residents of existing community residences or combine with any existing community residences to contribute to the creation or intensification of a de facto social service district,
  (3) Operate as a functional family (also known as emulating a biological family) that fosters normalization and community integration of its residents, and
  (4) Operate in a manner consistent with the protections afforded by the State of Florida's licensing or certification standards for community residences serving individuals with disabilities similar to those of the proposed community residence in order to protect the residents of the proposed community residence from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

(b) *Standards for Awarding a Conditional Use Permit for Family Community Residence and Transitional Community Residence of three (3) to ten (9) residents*. A conditional use permit may be issued only if the proposed family community residence or proposed transitional community residence meets the following standards, in addition to the conditional use standards of section 13-303:
  (1) When the proposed family community residence or a transitional community residence is required to obtain a conditional use permit because it would be located within one thousand (1,000) linear feet of an existing community residence,
    a. The applicant demonstrates that the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence

and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and

b. The applicant demonstrates that the proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a de facto social service district by concentrating community residences on a block or in a neighborhood.

(2) When the proposed transitional community residence is a conditional use in a single-family zoning district,

a. The applicant demonstrates that the proposed transitional community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and

b. The applicant demonstrates that the proposed transitional community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a de facto social service district by concentrating community residences on a block or in a neighborhood, and

c. The applicant demonstrates that the proposed transitional community residence will be compatible with the residential uses allowed as of right in the zoning district, and

d. The applicant demonstrates that the proposed transitional community residence will not alter the residential stability of the single-family zoning district.

(c) *Standards for Awarding a conditional use for Community Residence with more than ten (10) residents*. To establish a community residence for more than ten (10) individuals with disabilities, the applicant shall submit a Request for Conditional use in accordance with the procedures of this section. In all cases the Administrative Official shall make findings of fact in support of all determinations and shall render the decision in writing. To grant a conditional use to allow more than ten (10) occupants in a community residence, the Special Magistrate shall affirmatively find compliance with the conditional use standards of section 13-303 of the LDC, the reasonable accommodation standards promulgated in section 13-764 of the LDC, and the following:

(1) The applicant specifies by how many individuals it wishes to exceed the maximum of ten (10) residents and adequately demonstrates the financial or therapeutic need to house the proposed number of residents; and

(2) The applicant demonstrates that the primary function of the proposed community residence is residential where any treatment is merely incidental to the residential use of the property; and

(3) The applicant demonstrates that it will ensure that the proposed community residence emulates a biological family and operates as a functional family rather than as an institution, boarding house, nursing home, short term vacation rental, continuing care facility, motel, hotel, treatment center, rehabilitation center, or a nonresidential use, and

(4) The applicant demonstrates that the requested number of residents in the proposed community residence will not interfere with the normalization and community integration of the occupants of any existing community residence.

(d) *Community Residence for which the State of Florida does not offer a license or certification*. To

establish a community residence of three (3) or more persons for which the State of Florida does not offer a license or certification, the applicant must meet the standards for the similar proposed size and type of community residence in 13-764.1 (b) or (c), as applicable, in addition to the reasonable accommodation standards promulgated in section 13-764.2 of the LDC. The Administrative Official shall make findings of fact in support of all determinations and shall render the decision in writing.

(e). *Fees.* The fee for consideration of a conditional use permit under this section shall be pursuant to Article XI of the LDC.

(f) *Termination of Conditional Use Permit.* A community residence or its operator that loses its license or certification must cease operations and vacate the property within 60 days of the date on which its licensing or certification was discontinued or the date required by state law, whichever is less.

764.2. Reasonable Accommodation Procedure

(a) *Purpose.* The purpose of this subsection is to implement a procedure for processing requests for reasonable accommodation for housing to the Town's LDC, for persons with disabilities as provided by the federal Fair Housing Amendments Act (42 U.S.C. 3601, et. seq.) ("FHA") and Title II of the Americans with Disabilities Amendments Act (42 U.S.C. Section 12131, et. seq.) ("ADA"). For purposes of this section, a "disabled" person is an individual that qualifies as disabled or handicapped under the FHA or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation for housing with respect to the Town's LDC, as provided by the FHA and the ADA, pursuant to the procedures set out in this section.

(b) *Notice to the public of availability of accommodation*. The Town shall display a notice on the Town's public notice bulletin board (and shall maintain copies available for review in the Department of Sustainable Development and the Town Clerk's Office), advising the public that disabled individuals (and qualifying entities) may request a reasonable accommodation as provided herein.

(c) *Application.* A request for reasonable accommodation shall be submitted on a zoning application form maintained by and submitted to the Town and shall include a supplemental application form particular to such requests.

(1) Confidential information**.** Should the information provided by the disabled individual to the Town include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled individual, such individual may, at the time of submitting such medical information, request that the Town, to the extent allowed by law, treat such medical information as confidential information of the disabled individual. The Town shall thereafter endeavor to provide written notice to the disabled individual, or their representative, of any request received by the town for disclosure of the medical information or documentation which the disabled individual has previously requested be treated as confidential by the Town. The Town will cooperate with the disabled individual, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the Town shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled individual.

(2) Fee. There shall be no fee imposed by the Town in connection with an administrative conditional use request for reasonable accommodation under this section. Request requiring Public hearing shall pay the required fees and deposits as provided at Chapter 13, Article XI, of the Land

Development Code. The Town shall have no obligation to pay a requesting party's attorney's fees or costs in connection with the request.

(3) Town assistance**.** The Town shall provide such assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the form, and appearing at a hearing, etc., to ensure the process is accessible.

(4) Supplemental application form. The following information shall be included on the supplemental application form.

a. Name and contact information of the Applicant;

b. Information regarding property at which reasonable accommodation is requested, including the address and legal description of such location as well as ownership of the subject property;

c. Describe the accommodation and the specific regulation(s) or procedure(s) from which accommodation is sought;

d. Reasons the accommodation may be necessary for the requesting party or the individuals with disabilities seeking the specific accommodation, and if relating to housing, why the requested reasonable accommodation is necessary to use and enjoy the housing;

e. Describe qualifying disability or handicap;

f. Other relevant information pertaining to the disability or property that may be needed by the City in order for it to be able to evaluate the request for reasonable accommodation;

g. All certified recovery residences must provide proof of satisfactory, fire, safety, and health inspections as required by Section 397.487, Fla. Stats., as amended from time to time;

h. Signature of requesting party;

i. If there will be an on-site supervisor or manager, provide the name and contact information (phone and email) for each;

j. Date of request;

k. Owner's consent for application.

l. A requesting party who seeks a reasonable accommodation to house more than ten unrelated individuals in a community residence as provided in subsection 13-901(c) shall also complete and submit the form the Town requires of all applications to establish a community residence.

(d) *Findings for reasonable accommodation*. In lieu of the criteria for conditional uses at Section 13-303(b)(3) a reasonable accommodation request shall be granted or denied upon a determination that the requesting party establishes that he/she or the residents of the housing for which this request is made are protected under the FHA or ADA by demonstrating that he/she or the residents of the proposed housing are people with disabilities, at section 13-900(d).

(1) The requesting party shall demonstrate that the proposed reasonable accommodations sought are reasonable and necessary to afford the subject individual(s) with disabilities an equal opportunity to use and enjoy the housing that is the subject of the request. The following factors shall be considered, among other relevant factors including judicial interpretation of disability law:

a. The disabled individuals shall establish that they are handicapped or disabled, as defined in the FHA or ADA, and therefore entitled to protection under the FHA or ADA, such that they have a physical or mental impairment which substantially limits one or more major life

activities; or that they have a record of having such impairment, or that they are regarded as having such impairment.

b. If a request for reasonable accommodation is submitted by an operator of a residence that provides housing to disabled individuals, the operator shall be required to establish that the operator is qualified to provide such housing to disabled individuals.

c. The requesting party shall demonstrate that the requested accommodation is both reasonable and necessary (as interpreted by the courts) to afford the disabled individuals served by the housing an equal opportunity to use and enjoy the housing, including that the proposed accommodation is therapeutically necessary and actually alleviates the effects of a handicap or disability, with a site-specific assessment in regard to the particular property in that regard.

d. The requesting party shall demonstrate that the proposed accommodation does not constitute a fundamental alteration of the Town's zoning scheme or other Town program or policies, and that it does not impose an undue financial or administrative burden on the Town.

(2) A request for reasonable accommodation to permit more than ten (10) unrelated individuals to occupy a community residence shall be granted only when the requesting party also meets the applicable standards for community residences in subsection 13-901(c) of the LDC. In this case, the process will involve a hearing by the Planning and Zoning Board.

(3) A request for reasonable accommodation to permit a community residence for three or more disabled individuals for which there is no license or certification available shall also meet the standards for the similar proposed size and type of community resident in subsection 13-901(b) or (c), as applicable. In this case, the process will involve a hearing by the Planning and Zoning Board. In addition, the applicant must demonstrate that the proposed community residence will be operated in a manner effectively similar to that of a licensed or certified community residence, that the staff will be adequately trained, that the home will emulate a biological family and be operated to achieve normalization and community integration, and that the rules and practices governing how the home is operated will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

(4) The foregoing shall be the basis for a written decision with findings of fact upon a reasonable accommodation request made to the Planning and Zoning Board.

(e) *Planning and Zoning Board review and decision.* When a reasonable accommodation request form has been completed and submitted to the Town, it will be referred to the Planning and Zoning Board for review and consideration. The Planning and Zoning Board shall conduct a noticed public hearing to receive input and information from the public. The Planning and Zoning Board shall thereafter issue a written determination within thirty (30) calendar days of the date of receipt of a completed application and may, in accordance with federal law, (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request, or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. Any such denials shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party (i.e. the disabled individual or his/her representative) by certified mail, return receipt requested or hand delivery, receipt signed by the recipient. If reasonably necessary to reach a determination on the request for reasonable accommodation, the Planning and Zoning Board may, prior to the end of said thirty (30) calendar

day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) calendar days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the forty-five (45) calendar day period to issue a written determination shall no longer be applicable, and the Planning and Zoning Board shall issue a written determination within thirty (30) calendar days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) calendar day period, the Administrative Official shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned or withdrawn and no further action by the Town with regard to said reasonable accommodation request shall be required.

(f) *Appeal.* An appeal from a decision of the Planning and Zoning Board or Administrative Official shall be handled exclusively by petition for writ of certiorari within thirty (30) days from the date of filing the written order of the Special Magistrate with the Town Clerk.

(g) *Stay of enforcement*. While a request for reasonable accommodation for a community residence, or appeal of a determination of same, is pending before the Town, the Town will not enforce the subject zoning ordinance, rules, policies, and procedures against the requesting or appealing party.

(h). *Expiration of approvals*. Approvals of requests for reasonable accommodation shall expire within one hundred and eighty (180) days if not implemented.

(i) *Recertification.* All reasonable accommodation requests approved by the Planning and Zoning Board and implemented by the requesting party pursuant to section 13-902, are valid for no more than one (1) year and shall require annual recertification each year on or before October 1st. Failure to recertify annually shall result in the revocation of the approved reasonable accommodation. Recertification requests shall follow the same requirements and procedures provided in section 13-764, except the recertification notice will be sent annually by regular mail or hand delivered.

* * *

ARTICLE VI. - SUPPLEMENTARY REGULATIONS

DIVISION 1. – GENERALLY

Sec. 13-1600. – Minimum Housing Standards.

No person shall let to another for occupancy, any dwelling or dwelling unit for the purpose of living therein, which does not comply with the following requirements:

(1) Every dwelling unit shall contain a minimum gross floor area of at least 600 square feet for the first occupant, 100 square feet for each of the next two (2) occupants, and at least 75 square feet for each occupant thereafter. Floor space shall be calculated on the basis of total habitable room area excluding bathrooms and closets.

(2) Every dwelling unit shall have at least one room of not less than 120 square feet net floor area, every other habitable room, except the kitchen shall have a minimum net floor area of at least 70 square feet. Every room occupied for sleeping purposes shall be a legal bedroom as defined and modified from time to time by the South Florida Building Code. Every room occupied for sleeping purposes by more than one (1) occupant shall have a minimum gross floor area of 90 square feet per occupant, with a maximum of two (2) adults per legal bedroom. Every room used for sleeping purposes shall

have a minimum width of eight (8) feet. Kitchens shall not be used for sleeping purposes. Porches shall not be used as permanent sleeping quarters. Dining rooms, living rooms and any other common areas within the dwelling unit shall not be used as permanent sleeping quarters.

(3) At least one-half of the floor area of every habitable room having a sloped ceiling shall have a ceiling height of at least seven (7) feet. Any portion of a room having a ceiling height of less than five (5) feet shall not be considered in computing the total floor area of such room.

(4) No dwelling or dwelling unit containing two (2) or more sleeping rooms shall be so arranged that access to a bathroom, shower room, or water closet compartment intended for use by occupants of more than one (1) sleeping room can be had only by going through another sleeping room or outside the structure, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room, bathroom, shower room, or water closet compartment.

(5) No garage, cellar or basement space shall be used as a habitable room or dwelling unit.

MIAMI LAKES
Growing Beautifully

Department of Planning, Zoning and Code Compliance
6601 Main Street • Miami Lakes, Florida 33014
Office: (305) 364-6100 • Fax: (305) 558-8511
Website: www.miamilakes-fl.gov

Staff Analysis and Recommendation

To: **Honorable Mayor and Members of the Town Council**

From: **Alex Rey, Town Manager**

Subject: **Community Homes and Minimum Housing Standards**

Date: **October 2, 20018**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO COMMUNITY RESIDENCES; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "ZONING DISTRICT REGULATIONS", PROVIDING FOR FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING MINIMUM HOUSING STANDARDS; ALLOWING COMMUNITY HOMES IN ALL RESIDENTIAL DISTRICTS; PROVIDING FOR REGISTRATION OF COMMUNITY HOMES; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR CERTIFICATION OR LICENSING REQUIREMENTS; PROVIDING FOR COMPLIANCE BY EXISTING BUT UNREGISTERED COMMUNITY RESIDENCES; PROVIDING FOR APPLICATION REQUIREMENTS; PROVIDING FOR DISTANCE SEPARATION; PROVIDING FOR REASONABLE ACCOMODATIONS; PROVIDING FOR CONDITIONAL USE PERMITS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

A. BACKGROUND

On June 5, 2018, the Town Council directed the Town Attorney to explore amendments to the Town Code that would articulate a procedure to adequately provide for community homes in residential districts. Examination of the code yielded insufficient language regarding the protection of disabled individuals residing in community homes, as well as minimum housing standards for all residential properties. While the Fair Housing Act as amended (42 U.S.C. §3601) and American with Disabilities Act (42 U.S.C. ch. 126 § 12101 et seq) provide protections for persons with

disabilities and prohibit housing discrimination of disabled individuals, it is important that the Town's Land Use Code reflect these protections and, at the same time, ensure that appropriate provisions exist to ensure that disabled individuals can benefit from residence and rehabilitation in community residences that function as families, in order to achieve normalization and community integration. A close examination of the Code found four deficiencies that needed to be addressed. The first related to a lack of language requiring certification or licensing of community residences by the appropriate agencies. The second related to lack of reasonable minimum housing standards, that can prevent overcrowding of residences. The third deficiency was the provisions did not provide for minimum distance separation between community residences to prevent clustering. And third, the LDC lacked provision for reasonable accommodations as well as conditional use standards for the successful establishment of community homes in residential neighborhoods. Language requiring registration of Community Residences was added as well, in order to ensure that the town can establish whether all previously mentioned requirements are satisfactorily met.
On October 2, 2018 the Town Council moved this item on first reading.
On October 4, 2018 the Planning and Zoning Board, acting in their capacity as the Local Planning Agency, heard the item and recommended approval with suggestions regarding stronger violation provisions and greater distance separation requirements.

B. PROPOSED CHANGES

The following described elements are presented in the same order that they appear in the proposed ordinance.

Addition of minimum Housing Standards. The first deficiency of the Town's Code is a lack of housing standards to prevent overcrowding of residential homes and community homes. The proposed amendment adopts standards loosely based on Miami Dade's standards as well as other nearby municipalities, to ensure that all Town of Miami Lakes residents enjoy suitable housing. This amendment properly aligns the LDC with the Housing Element of the Town's Comprehensive Development Master Plan (CDMP).

Adjustment of language throughout Article VI. – Zoning District Regulations. Language in all zoning districts currently allowing residential uses was amended in order to clarify that community residences are an allowed residential use.

Creation of Division 27. The rest of the adjustments are achieved via the introduction of Division 27 detailing particulars regarding the need for registration, licensing and/or certification, distance separation, as well as providing for procedures to allow for reasonable accommodations and conditional uses as warranted by the individual circumstances of each community home. The new language also provides procedures for existing homes to come into compliance within 60 days, as well as for loss of certification or license, as required.

C. STAFF RECOMMENDATION

Based on the analysis provided below and other factors contained in this report, Staff recommends approval of the ordinance allowing community homes in residential districts.

D. ANALYSIS

The Land Development Code provides that all proposed amendments to the LDC shall be evaluated by the Administrative Official, the Local Planning Agency and the Town Council, and that, in evaluating the proposed amendment, the criteria in Subsection 13-306(b) shall be considered. All portions of this report are hereby incorporated into all portions of this analysis. The following is a staff analysis of the criteria as applied to this ordinance.

1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: See Section "A", Background and Section "B", Proposed Changes of this report. As presented in Sections "A" and "B", the proposed ordinance provides regulations consistent with State and Federal Law to permit community homes in all districts that allow residential uses. The ordinance also provides for minimum housing standards in order to prevent overcrowding, as well a minimum distance separation to prevent clustering. The ordinance, as proposed conforms to the following policy of CDMP below:

Policy 3.4.1: Provisions of opportunities for group, assisted living and foster care homes will be provided in residential districts in the Miami Lakes Land Development Code.

Policy 3.5.1: Within one year of plan adoption, incorporate appropriate architectural and site design regulations to improve the structural and aesthetic qualities of single-family and multi-family units in Miami Lakes.

Finding: Complies

2. Whether the proposal is in conformance with all applicable requirements of this Code of Ordinances, including this chapter.

Analysis: See Section "A", Background and Section "B", Proposed Changes of this report. The proposed ordinance conforms with the Town's LDC's. A review of the LDC's found no conflicts. The amendment brings the Town's code into alignment with Fair Housing Act, American with Disabilities Act and the Town's CDMP.

Finding: Complies.

3. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed change in land use policy.

Analysis: See Section "A", Background and Section "B", Proposed Changes of this report. The current LDC is reflective of changes introduced prior to current case law regarding application of the Fair Housing Act and the American with Disabilities Act to community residences housing individuals with addictions. This update properly aligns the LDC to current application and interpretation of those Acts.

Finding: Complies.

4. **Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land use.**

Analysis: See Section "A", Background and Section "B", Proposed Changes of this report, and Criteria 1 and 3. The proposed ordinance properly aligns the LDC code with the Town's CDMP.

Finding: Complies.

5. **Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including schools, transportation, water and wastewater services, solid waste disposal, drainage, water supply, recreation, education, emergency services, and similar necessary facilities and services.**

Analysis: The proposed ordinance does not impact the above systems.

Finding: Complies.

6. **Whether, and the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of any groundwater aquifers, wildlife habitats, and vegetative communities.**

Analysis: The proposed ordinance does not impact the above systems.

Finding: Complies.

7. **Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.**

Analysis: See Section "A", Background and Section "B", Proposed Changes of this report. The proposed ordinance properly aligns the LDC provisions with the Town's CDMP and State and Federal law while also ensuring the Town has at its capacity to ensure the protection of vulnerable populations. The result is increased clarity and appropriate procedures to safeguard the general welfare.

Finding: Complies.

8. **Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.**

Analysis: See Section "A", Background, Section "B", Proposed Changes, and Criterion 7 of this report. Community residences are primarily a residential use and as such are allowed in residential districts.

Finding: Complies.

9. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of this chapter.

Analysis: See Section "A", Background, Section "B", Proposed Changes, and Criteria 1, 3, and 7 of this report. No portion of the proposed amendment is in conflict with the existing regulations of the LDC. The proposed ordinance provides an opportunity for to ensure the Town has the capacity to provide services demanded by its residents.

Finding: Complies.

10. Other matters which the Local Planning Agency or the Town Council, in its legislative discretion, may deem appropriate.

Analysis: See Summary Section and all portions of this analysis. The Local Planning Agency and the Town Council may consider other appropriate factors to determine whether the proposed LDC amendment is appropriate and consistent with the public interest.

Finding: As determined by the Town Council.

Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities

Prepared by
Daniel Lauber, AICP

River Forest, Illinois
May 2017

Law Office Daniel Lauber

Attorney/Planner: Daniel Lauber, AICP

Published by:

PLANNING/COMMUNICATIONS

Copyright © 2017 by Daniel Lauber. All rights reserved. Permission is granted to the City of Delray Beach, Florida to use, reproduce, and distribute this report solely in conjunction with the City of Delray Beach, Florida. Reproduction and use by any other entity or government jurisdiction is strictly prohibited.

Cite this report as:

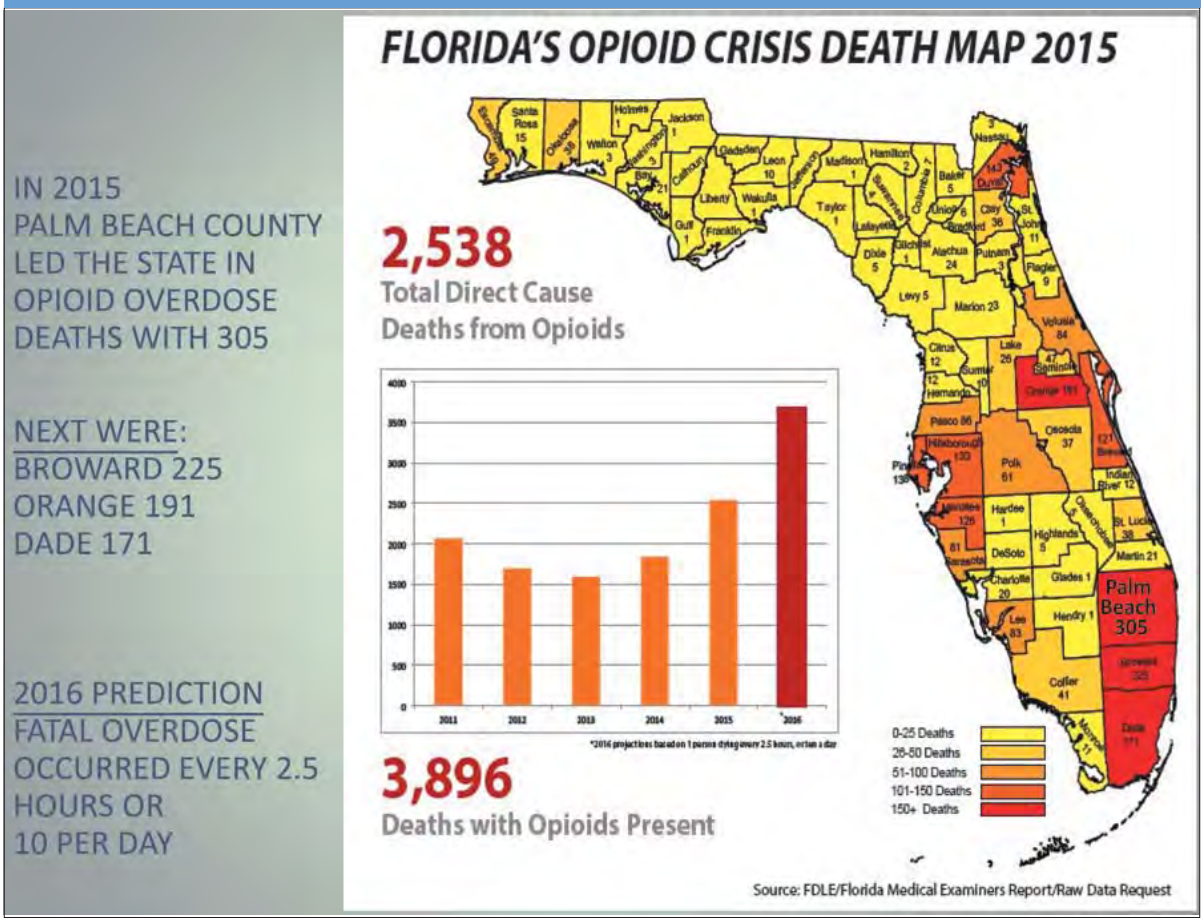
Daniel Lauber, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, May 2017)

Introduction

For more than a decade, the United States has been in the midst of an opioid, drug, and alcohol addiction epidemic of unprecedented proportions as it continues to struggle to win the War on Drugs. One of the most essential weapons in the War on Drugs is the sober home, recovery community, or recovery residence. Properly operated and located, these types of community residences offer a supportive family–like living environment of normalization and community integration that leads to long–term, permanent sobriety for most of their residents.

The State of Florida has been experiencing an "Opioid Crisis" with opioids the direct cause of 2,538 deaths in 2015 and present in 3,896 deaths. As the figure below shows, opioid deaths are concentrated in southeast Florida with the most deaths due to opioid overdoses occurring in Palm Beach County.

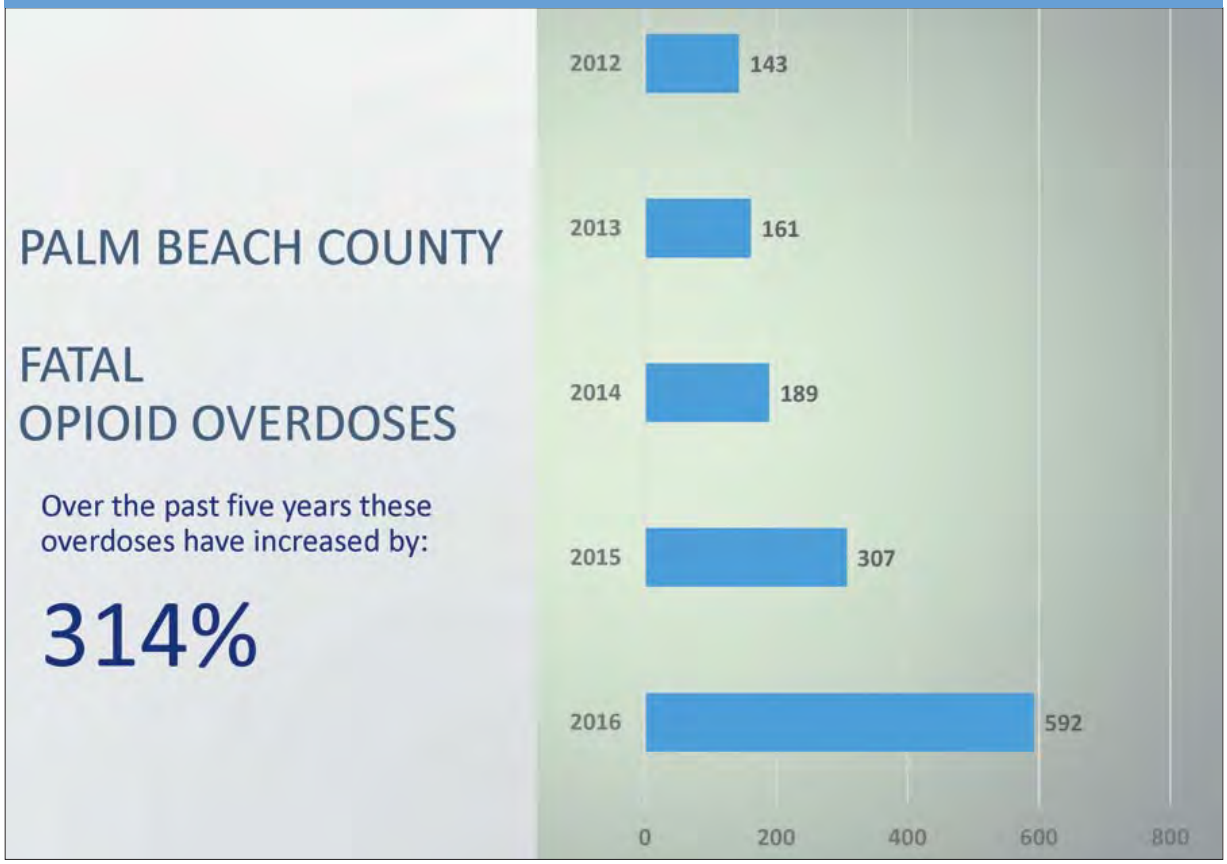
Figure 1: Florida's Opioid Crisis Death Map 2015



Source: Palm Beach County, *Addressing the Opioid Epidemic: County Staff Report to the Board of County Commissioners* (April 4, 2017) 5.

The frequency of fatalities due to opioid overdoes has been accelerating at an alarming rate during the past five years, The number of fatalities in Palm Beach County due to opioid overdoses soared by 314 percent from 2012 through 2016.

Figure 2: Fatal Opioid Overdoses in Palm Beach County: 2012–2016



Source: Palm Beach County, *Addressing the Opioid Epidemic: County Staff Report to the Board of County Commissioners* (April 4, 2017) 2.

Sober living homes or recovery communities are a crucial component to achieve long–term recovery and sobriety. Delray Beach, smack dab in the middle of the opioid epidemic, has been "the recovery capital of America," as the newspaper of record put it a decade ago, The *New York Times* reported that "Delray Beach, a funky outpost of sobriety between Fort Lauderdale and West Palm Beach, is the epicenter of the country's largest and most vibrant recovery community, with scores of halfway houses, more than 5,000 people at 12–step meetings each week, recovery radio shows, a recovery motorcycle club and a coffeehouse that boasts its own therapy group.… Delray Beach is in a class by itself, experts say, because of its compact geography and critical mass of recovering addicts who cross paths daily in the shops and bistros along Atlantic Avenue."[1]

1. Jane Gross, "In Florida, Addicts Find an Oasis of Sobriety," *New York Times,* Nov. 11, 2007. Available online at http://www.nytimes.com/2007/11/16/us/16recovery.html

As noted on page 23 of this report, there are at least 183 verified recovery residences in Delray Beach plus at least another 64 that are thought to be recovery residences but not confirmed as such. In more than 40 years of working on zoning for community residences for people with disabilities, the author of this study has rarely seen such a large number and intense concentration of community residences of any type in a single town of any size.

As this report explains, clustering community residences — especially recovery residences — on a block and neighborhood reduces their efficacy by obstructing their ability to foster normalization and community integration. For the residents of these homes to achieve long–term sobriety, it is critical to establish regulations and procedures that assure a proper family–like living environment, free of drugs and alcohol, that weed out the incompetent and unethical operators, and protect this vulnerable population from abuse, mistreatment, exploitation, enslavement, and theft.

The Palm Beach County media have been reporting[2] on ongoing criminal investigations of sober living operators. These investigations have found so–called sober homes that allow residents to continue to partake of illegal drugs, patient brokering, enslavement of residents into prostitution, kickbacks, bribery, and other abuses.

In the absence of mandatory state licensing or certification of recovery residences, a key expert estimates that 80 percent of the sober homes in Delray Beach do *not* comply with the minimum standards that the National Alliance of Recovery Communities has published.[3]

This failure to comply with even minimal standards of the recovery industry and the clustering of community residences in Delray Beach may help explain the inability of so many sober living homes in Delray Beach and Palm Beach County to achieve sobriety among their residents and for high recidivism rates. These failures are in contrast to the much lower recidivism rates around the country of residents of certified sober living homes and of homes in the Oxford House network which are subject to the demanding requirements of the Oxford House Charter and an inspection regime Oxford House maintains.[4]

---

2. A sampling of articles: "Kenny Chatman pleads guilty to addiction treatment fraud," *mypalmbeachpost.com* (March 16, 2017); Christine Stapleton, "Three more sober home operators arrested in Delray Beach," *Palm Beach Post* (Feb. 27, 2017); Lynda Figueredo, "Two Delray Beach sober home owners arrested for receiving kickback," *cbs12.com* (Nov. 19, 2016); Pat Beall, "Patient–brokering charges against treatment center CEO ramped up to 95," *mypalmbeachpost.com* (Dec. 27, 2016).

3. Telephone interview with John Lehman, CEO and Board Chair, Florida Association of Recovery Residences (March 24, 2017).

4. L. Jason, M. Davis, and J. Ferrari, The Need for Substance Abuse Aftercare: Longitudinal Analysis of Oxford House, 32 *Addictive Behaviors* (4), (2007), at 803-818. For additional studies, *also see*

The failure to comply with minimal standards was a focus of a grand jury that the Palm Beach County State Attorney's Office convened to investigate fraud and abuse in the addiction treatment industry. The grand jury reported:[5]

> The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards. One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.
>
> In contrast, the Grand Jury has seen evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they could go back into detox, some were sexually abused, and others were forced to work in labor pools. There is currently no oversight on these businesses that house this vulnerable class. Even community housing that is a part of a DCF [Department of Children and Families] license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.

The grand jury reported 484 overdose deaths in Delray Beach in 2016, up from 195 in 2015.[6] It recommended certification and licensure for "commercial recovery housing."[7] For full details on the grand jury's findings and recommendations, readers should see the grand jury's report.[8]

****

Office of Substance Abuse and Mental Health, *Recovery Residence Report Fiscal Year 2013–2014 General Appropriations Act,* Florida Department of Children and Families (Oct. 1, 2013), 21–25.

5. Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Plam Beach County, Florida, *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment industry*, (Dec. 8, 2016) 16–17.

6. Ibid. 99–101.

7. Ibid. 18. In contrast to the self–run Oxford Houses that adhere to the Oxford House Charter and are subject to inspections by Oxford House, "commercial recovery housing" is operated by a profit–making third party entity, sometimes affiliated with a specific treatment program, complete with supervisory staff like most community residences for people with disabilities. In Florida, as elsewhere, such homes are almost always requried to obtain a license from the state.

8. At http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf.

This report explains the basis for text amendments that will be proposed to revise the sections of Delray Beach's Land Development Regulations that govern community residences for people with disabilities. The proposed amendments based on this study will seek to make the reasonable accommodations for community residences for people with disabilities that are necessary to bring the city's zoning into full compliance with national law and sound zoning practices. The recommended zoning approach is based upon a careful review of:

- The functions and needs of community residences and the people with disabilities who live in them
- Sound city planning and zoning principles and policies
- The Fair Housing Amendments Act of 1988 (FHAA) and amended Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–3619 (1982)
- Report No. 100–711 of the House Judiciary Committee interpreting the FHAA amendments (the legislative history)
- The HUD regulations implementing the amendments, 24 C.F.R. Sections 100–121 (January 23, 1989)
- Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016)[9]
- Florida state statutes governing local zoning for different types of community residences: Title XXIX Public Health, chapters 393 (Developmental Disabilities), 394 (Mental Health), 397 (Substance Abuse Services), 419 (Community Residential Homes); Title XXX, chapters 429 (Assisted Care Communities — Part 1: Assisted Living Facilities, Part II: Adult Family–Care Homes); and Title XLIV, Chapter 760 (Discrimination in the Treatment of Persons; Minority Representation) (2016)
- Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2016)
- The actual Florida certification standards for recovery residences as promulgated and administered by the certifying entity, the Florida Association of Recovery Residences based on standards established by the National Alliance of Recovery Residences
- The existing provisions of Delray Beach's Land Development Regulations

9. At http://www.justice.gov/crt/page/file/909956/download.

Community Residences

Community residences are crucial to achieving the adopted goals of the State of Florida and the United States of America to enable people with disabilities to live as normal a life as possible in the least restrictive living environment. We have made great strides from the days when people with disabilities were warehoused in inappropriate and excessively restrictive institutions, out of sight and out of mind.

People with substantial disabilities often need a living arrangement where they receive staff support to engage in the everyday life activities most of us take for granted. These sorts of living arrangements fall under the broad rubric "community residence" — a term that reflects their *residential nature and family–like living environment* rather than the institutional nature of a nursing home or hospital or the non–family nature of a boarding or lodging house. Their primary use is as a residence or a home like yours and mine, not a treatment center, an institution, nor a boarding house.

One of the core elements of community residences is that they seek to emulate a family in how they function. The staff (or in the case of a recovery community, the officers) function as parents, doing the same things our parents did for us and we do for our children. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children.

Community residences seek to achieve "normalization" of their residents and incorporate them into the social fabric of the surrounding community, often called "community integration." They are operated under the auspices of a legal entity such as a non–profit association, for–profit private care provider, or a government entity.

The number of people who live in a specific community residence tends to depend on its residents' types of disabilities as well as therapeutic and financial needs.[10] Like other cities across the nation, Delray Beach needs to adjust its zoning to enable community residences for people with disabilities to locate in all residential zoning districts as of right, subject to objective conditions via the least drastic means needed to actually achieve a legitimate government interest.

Since 1989, the nation's Fair Housing Act has required all cities,

10. While the trend for people with developmental disabilities is toward smaller group home households, valid therapeutic and financial reasons lead to community residences for people with mental illness or people in recovery from drug and/or alcohol addiction to typically house eight to 12 residents. However, all community residences must comply with minimum floor area requirements like any other residence. If the local building code or property maintenance code would allow only six people in a house, then six is the maximum number of people who can live in that house whether it's a community residence for people with disabilities or a biological family. *City of Edmonds v. Oxford House* 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).

counties, and states to make a "reasonable accommodation" in their zoning when the number of residents exceeds the local zoning code's cap on the number of unrelated people who can live together in a dwelling so that community residences for people with disabilities can locate in all residential zoning districts.

When President Reagan signed the Fair Housing Amendments Act of 1988 (FHAA), he added people with disabilities to the classes protected by the nation's Fair Housing Act (FHA). The 1988 amendments recognized that many people with disabilities need a community residence (group home, recovery community, sober living home, halfway house) in order to live in the community in a family–like environment rather than being forced into an inappropriate institution.

Consequently, the act requires all cities, counties, and states to allow for community residences for people with disabilities by making some exceptions in their zoning ordinance provisions that, for example, may limit how many unrelated people can live together in a dwelling unit.

*People without disabilities and people with disabilities who pose "a direct threat to the health or safety of others" such as prison pre–parolees and sex offenders are **not** covered by the 1988 amendments to the Fair Housing Act. Therefore, cities do not have to make the same reasonable accommodation for them as cities must for people with disabilities who do not pose "a direct threat to the health or safety of others." The zoning amendments to be based on this study will not allow as a permitted use halfway houses for people who fall into these categories of dangerous people.*

The Fair Housing Amendments Act's (FHAA) legislative history states that:

> "The Act is intended to prohibit the application of special requirements through land–use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice within the community."[11]

While many advocates for people with disabilities suggest that the Fair Housing Amendments Act prohibits all zoning regulation of community residences, the Fair Housing Amendments Act's legislative history suggests otherwise:

> "Another method of making housing unavailable has been the application or enforcement of otherwise neutral rules and regulations on health, safety, and land–use in a manner which dis-

11. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.

> criminates against people with disabilities. Such discrimination often results from false or overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited."[12]

Many states, counties, and cities across the nation continue to base their zoning regulations for community residences on these "unfounded fears." The 1988 amendments require all levels of government to make a *reasonable accommodation* in their zoning rules and regulations to enable community residences for people with disabilities to locate in the same residential districts as other residential uses.[13]

It is well settled that for zoning purposes, a community residence is a residential use, not a business use. The Fair Housing Amendments Act of 1988 specifically invalidates restrictive covenants that would exclude community residences from a residential district. The Fair Housing Act renders these restrictive covenants unenforceable against community residences for people with disabilities.[14]

Types of community residences

Within the broad category of community residences are two types of living arrangements that warrant slightly different zoning treatments tailored to their specific characteristics:

- **Family community residences** which include uses commonly known as group homes and those recovery communities and sober living homes that offer a relatively permanent living environment that emulates a biological family
- **Transitional community residences** which include such uses commonly known as halfway houses as well as those recovery communities and sober living homes that offer a relatively temporary living environment like a halfway house does

The label an operator places on a community residence does *not* determine whether it is a family or a transitional community residence. That is ascertained by the relevant performance characteristics of each community residence.

12. Ibid.

13. 42 U.S.C. §3604(f)(B) (1988).

14. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2184. The overwhelming majority of federal and state courts that have addressesd the question have concluded that the restrictive covenants of a subdivision and the by–laws of a homeowner or condominium association that exclude businesses or "non–residential uses" do *not* apply to community residences for people with disabilities — even before passage of the Fair Housing Amendments Act of 1988.

Family Community Residences

A ***family community residence*** offers a relatively permanent living arrangement for people with disabilities that emulates a family. They are usually operated under the auspices of an association, corporation, or other legal entity, or the parents or legal guardians of the residents with disabilities. Some, like recovery communities for people in recovery from alcohol and/or drug addiction, are self–governing.

Residence, not treatment, is the home's primary function. *There is no limit to how long an individual can live in a family community residence. Depending on the nature of a specific family community residence, there is an expectation that each resident will live there for as long as each resident needs to live there. Tenancy is measured in years, not months.* Family community residences are most often used to house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities including the frail elderly, and individuals in recovery from addiction to alcohol or drugs (legal or illegal) who are *not* currently "using."

Family community residences are often called *group homes* and, in the case of people with alcohol or drug addictions, *recovery communities, recovery residences,* or *sober living homes.*[15] *Their key distinction from transitional community residences* is that people with disabilities can reside, and are expected to reside in a family community residence for a year or longer, not just months or weeks. In a nation where the typical household lives in its home five to seven years, these are long–term, relatively permanent tenancies. There is no limit on how long someone can dwell in a family community residence as long as they obey the rules or do not constitute a danger to others or themselves, or in the case of recovering alcoholics or drug addicts, do not use alcohol or illegal drugs or abuse prescription drugs.

To be successful, a community residence needs to be located in a conventional residential neighborhood so that normalization can take place. The underlying rationale for a community residence is that by placing people with disabilities in as "normal" a living environment as possible, they will be able to develop to their full capacities as individuals and citizens. The atmosphere and aim of a community residence is very much the *opposite* of an institution.

The family community residence emulates a family in most every way. The activities in a family community residence are essentially the same as those in a dwelling occupied by a biologically–related family. Essential life skills are taught, just like we teach our children. Most family community residences provide "habilitative" services for their residents to enable them to develop their

15. While there may be exceptions, "sober living homes" are best characterized as transitional community residences since they tend to limit how long occupants may live there. It is crucial that any jurisdiction evaluate each proposed community residence on how it operates and *not* on how its operator labels it.

life skills to their full capacity. *Habilitation* involves learning life skills for the first time as opposed to *rehabilitation* which involves relearning life skills.

While recovery communities are like group homes in most respects, they tend to engage more in rehabilitation where residents relearn the essential life skills we tend to take for granted, although for some very long–term alcoholics or drug addicts in recovery, they may be learning some of these life skills for the first time. Recovery communities have been referred to as *three–quarter houses* because they are more family–like and permanent than the better known *halfway house* which falls under the *transitional community residence* category.

The original recovery community concept popularized by Oxford House does not limit how long somebody can live in one. In an Oxford House, the residents periodically elect officers who act in a supervisory role much like parents in a biological family while the other residents are like the siblings in a biological family. In a group home and in structured sober living homes, the staff functions in the supervisory parental role.

Recovery communities are essential for people in recovery for whom a supportive living environment is needed to learn how to maintain sobriety — *before* they can return to their family. Tenancy in a recovery community can last for years in contrast to tenancy in a sober living environment or small halfway house where there is a limit on length of tenancy measured in weeks or months.

Interaction between the people who live in a family community residence is essential to achieving normalization. The relationship of a community residence's inhabitants is much closer than the sort of casual acquaintances that occur between the residents of a boarding or lodging house where interaction between residents is merely incidental. In both family and transitional community residences, the residents share household chores and duties, learn from each other, and provide one another with emotional support — family–like relationships not essential for, nor present in lodging houses, boarding houses, fraternities, sororities, nursing homes, or other institutional uses. Table 1 illustrates the many functional differences between community residences for people with disabilities, institutional uses like nursing homes, and lodging or boarding houses.

Table 1: Differences Between Community Residences, Institutions & Nursing Homes and Rooming or Boarding Houses

Differences Between Community Residences, Institutions & Nursing Homes, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses Including Nursing Homes**	**Rooming or Boarding House**
Proper Environment	Residential Home–like	Institutional Hospital–like	Residential Hotel–like
Appropriate Zoning Districts	Single–family residential Multiple–family in limited instances	Commercial, medical, institutional	Multiple–family residential
Relationship of Residents	Sibling–like relationships essential Single housekeeping unit emulating a biological family	Relationships not planned nor essential Incidental friendships may develop	No dependency on other residents Incidental friendships may develop Relationships not planned nor essential
Supervision	Staff in the role of the parents	Total staff supervision	Landlord–tenant relationship
Values Fostered	Family values	None	None
Purpose	Achieve normalization and community integration Habilitation or rehabilitation	No effort to achieve normalization or community integration	No effort to achieve normalization, community integration, habilitation or rehabilitation
Primary Functions	Emulate a biological family Provides support in a family–like residential setting; residents dependent on each other like in a biological family Share family and household tasks Educate residents in areas in which parents normally educate their children: Personal health and hygiene Eating habits Dressing/clothing care Household duties and chores House maintenance House safety Developing social and interpersonal skills Developing shopping skills Developing public behavior skills Developing recreational skills Using public transportation Use and value of money Using public facilities (stores, restaurants, theaters, recreational facilities, banks)	Provide medical treatment and institutional care No family–like living; not a residential nature No family tasks; patients are cared for No educational role	Lodging for unrelated individuals Residents are completely independent of each other Residents do not share household tasks; each boarder functions as an individual; no attempt to emulate a biological family No educational role

Prepared by Daniel Lauber, AICP. Copyright 2013, 2017. All rights reserved. Used by permission.

As the courts have consistently concluded, community residences foster the same family values that even the most restrictive residential zoning districts promote. Family community residences comply with the purpose statements for each of Delray Beach zoning districts that allow residential uses.

Even before passage of the 1988 amendments to the Fair Housing Act, most courts concluded that family community residences for people with disabilities must be allowed as of right in all residential zones.[16]

Transitional Community Residences

In contrast to the group homes and recovery communities that fit in the category of family community residences, *transitional community residences* are a comparatively temporary living arrangement that is not quite as family–like as a group home or recovery community. Residency is measured in weeks or months, not years. A recovery community or sober living residence that imposes a limit on how long someone can live there exhibits the performance characteristics of a transitional community residence, much like the better known small halfway house.[17]

Typical of the people with disabilities who need a temporary living arrangement like a halfway house are people with mental illness who leave an institution and need only a relatively short stay in a halfway house before moving to a less restrictive living environment. Similarly, people recovering from addictions to alcohol or drugs move to a halfway house, short–term recovery community, or sober living home following detoxification in an institution until they are capable of living in a relatively permanent long–term recovery community or other less restrictive environment.

Federal "Direct threat" exclusion

Individuals with disabilities who "constitute a direct threat to the health or safety of others" are not covered by the Fair Housing Amendments Act of 1988. 42 U.S.C. § 3602(f)(9) (1988). Consequently, licensing rules that prohibit such individuals from living in community residences are legal.

Halfway houses are also used for prison pre–parolees. *However, such individuals are not, as a class, people with disabilities.* Zoning can be more restrictive for halfway houses for people *not* covered by the Fair Housing Act. Consequently zoning codes can and should treat halfway houses for prison pre–parolees or other populations not covered by the Fair Housing Act differently than classes that the Fair Housing Act protects.

16. However, a city can establish a rationally–based spacing distance between community residences and require a license or its equivalent.

17. As used in this study, the term "halfway house" refers to the original halfway house concept that is small enough to emulate a biological family; not to the large halfway houses occupied by 20, 50, or 100+ people. The latter are mini–institutions and *not* residential uses. Consequently, sound zoning principles call for them to be located in commerical or institutional zoning districts. A residential neighborhood is not essential for them to function successfully.

The community residences for people with disabilities that limit the length of tenancy are residential uses that need to locate in residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a more permanent group home or recovery community does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a conditional use permit for them in single–family districts while allowing them as a permitted use in multiple family districts subject to the two requisite conditions explained later in this report. *However, it is important to remember that a conditional use permit cannot be denied on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed transitional community residence.*[18]

Florida "Direct threat" exclusion

"Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others." *Florida Statutes* §419.001 (10) (2016). This prohibition which applies to homes the state licenses is equivalent to the Fair Housing Act's exclusion for people who constitute a direct threat.

Rational Foundations for Regulating Community Residences

Community residences have probably been studied more than any other small land use. To understand the rationale for the guidelines to regulate community residences that are suggested in this report, it is vital to review what is known about community residences, including their appropriate location, number of residents needed to succeed both therapeutically and financially, means of protecting their vulnerable populations from mistreatment or neglect as well as excluding dangerous individuals from living in them, and their impacts, if any, on the surrounding community.

Relative location of community residences. For at least 40 years, researchers have found that some community residence operators will locate

18. Note that the proposed definitions of "community residence," "family community residence," and "transitional commmnity residence" all speak of a family–like living environment. These definitions *exclude* the large institutional facilities for many more occupants that are often called "halfway houses."
The city's current zoning treatment of those large facilities will remain unchanged. The proposed zoning, however, will provide for an administrative "reasonable accommodation" process under which the operator of a proposed "community residence" for more than 12 individuals with disabilities can seek zoning approval if it can prove therapuetic and/or financial need for more than 12 residents and demonstrate that the home will emulate a biological family. Spacing and licensing/certification requirements would still apply.

their community residences close to other community residences, especially when zoning does not allow community residences for people with disabilities as of right in all residential districts. They tend to be clustered in a community's lower cost or older neighborhoods and in areas around colleges.[19] When conducting analyses of impediments to fair housing choice, we have found that community residences tend to cluster together in jurisdictions that do *not* require a rationally–based spacing distance between community residences allowed as of right. As discussed below, counterproductive clustering of community residences has developed in quite a few blocks and neighborhoods in Delray Beach.

Why clustering is counterproductive. Placing community residences too close to each other can create a *de facto* social service district and can seriously hinder their ability to achieve normalization for their residents — one of the core foundations on which the concept of community residences is based. In today's society, people tend to get to know nearby neighbors on their block within a few doors of their home (unless they have children together in school or engage in walking, jogging, or other neighborhood activities). The underlying precepts of community residences expect neighbors who live close to a community residence to serve as role models to the occupants of a community residence — which requires interacting with them.

For normalization to occur, it is essential that community residence residents have such so–called "able–bodied" neighbors as role models. But if another community residence is opened very close to an existing group home — such as next door or within a few doors of it — the residents of the new home may replace the "able–bodied" role models with other people with disabilities and quite possibly hamper the normalization efforts of the existing community residence. Clustering three or more community residences on the same block not only undermines normalization but could inadvertently lead to a *de facto* social service district that alters the residential character of the neighborhood. All the evidence recorded to date shows that one or two nonadjacent community residences for people with disabilities on a block do *not* alter the residential character of a neighborhood.[20]

The research strongly suggests that as long as several community residences are not clustered on the same block face they will not generate these adverse im-

19. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) 19 which found that 36.2 percent of the group homes for people with developmental disabilities surveyed were located within two blocks of another community residence or an institutional use. *Also see* Daniel Lauber and Frank Bangs, Jr., *Zoning for Family and Group Care Facilities,* American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) at 14; and *Family Style of St. Paul, Inc., v. City of St. Paul,* 923 F.2d 91 (8th Cir. 1991) where 21 group homes that housed 130 people with mental illness were established on just two blocks.

20. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 27 (August 17, 1983).

pacts. Consequently, *when community residences are allowed as a permitted use,* it is most reasonable to impose a spacing distance between community residences that keeps them about a block apart in terms of actual walking distance, generally about 660 feet.[21] It is also reasonable to not allow another community residence to locate adjacent to an existing community residence *as a permitted use.* But there are times when locating another community residence within the spacing distance of an existing community residence will not interfere with normalization or community integration. Proposals to locate another community residence so close to an existing one warrant case–by–case consideration.

If the operator of a proposed community residence wishes to locate it within the spacing distance, then the heightened scrutiny of a conditional use permit is warranted. The conditional use permit process allows a jurisdiction to evaluate the cumulative effect of locating so close to an existing community residence and whether the proposed community residence would interfere with normalization at the existing community residence or alter the character of the neighborhood. For example, if there is a geographic feature such as a freeway, drainage channel, or hill between the proposed and existing community residences that acts as a barrier between the two, it is unlikely that allowing the proposed community residence would interfere with normalization or alter the community's character — and the conditional use permit should be granted.

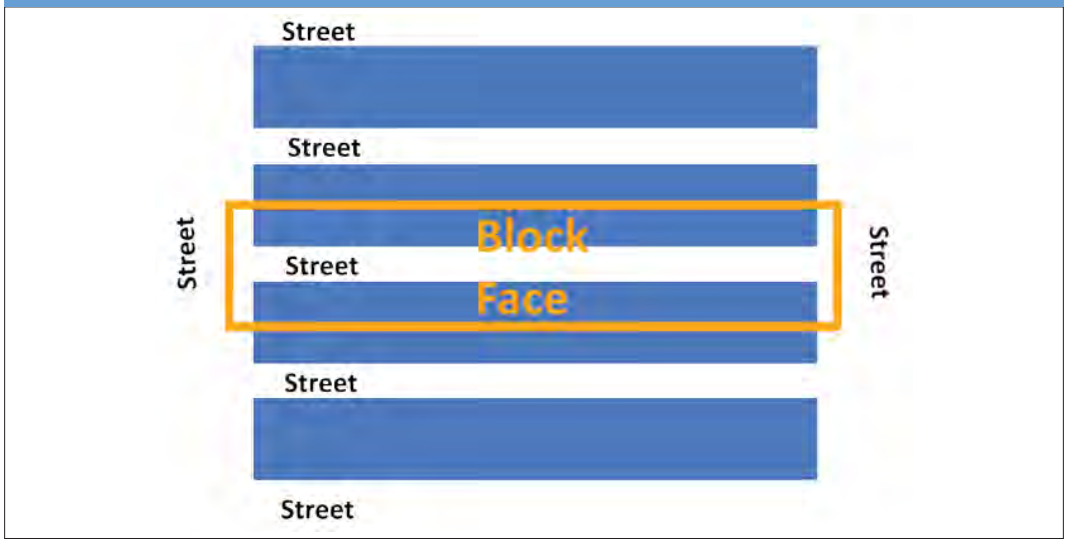
To avoid any ambiguity, when a community residence is proposed, this spacing distance is measured from the lot line nearest the closest community residence along the public or private pedestrian right of way. The idea is to measure the actual distance people would have to walk to go from one community residence to another, as opposed to measuring as the crow flies. Therefore, it is necessary for the operator of every proposed community residence to complete the Zoning Compliance Application form that is recommended for Delray Beach's use so the city can measure spacing distances from existing community residences. The city should also continue to maintain a database and map of the

21. Some cities and counties establish a different spacing distance between community residences allowed as of right based on the density of the zoning district. The denser the district, the shorter the spacing distance. See Peter Natarelli, *Zoning for a New Kind of Family* 17 (Westchester County Department of Planning, Occasional Paper 5, 1976) where spacing distances vary by the number of persons per square mile. The spacing distance in Clark County, Nevada reduces the 660–foot spacing distance to 100 feet when there is a street, freeway, or drainage channel wider than 99 feet between community residences. See Table 30.44-1, *Clark County Code*, Section 4. Title 30, Chapter 30.44. Also see *An Ordinance Amending Title 6 of the Village of Lincolnshire Village Code (Community Residential Homes),* Ordinance No. 90–1182–66, adopted December 10, 1990, Lincolnshire, Illinois, which established spacing distances ranging from 500 to 1,500 feet between community residences depending on the zoning district. Lincolnshire has some zoning districts with extremely large minimum lot sizes greater than an acre. Probably due to the complexity involved, very few jurisdictions establish different spacing distances in different zoning districts. Most use the same spacing distance throughout the city or county.

locations of all existing community residences so it can apply the spacing distance to any proposed community residence.[22]

The technical explanation. Normalization and community integration require that persons with disabilities substantial enough to need a supportive living arrangement like a community residence be absorbed into the neighborhood's social structure. Generally speaking, the existing social structure of a neighborhood can accommodate no more than one or two community residences on a single block face. Neighborhoods seem to have a limited absorption capacity for service–dependent people that should not be exceeded.[23]

Figure 3: Block Face Illustrated



The area within the orange rectangle is a "block face."

Social scientists note that this capacity level exists, but an absolute, precise level cannot be identified. Writing about service–dependent populations in general, Jennifer Wolch notes, "At some level of concentration, a community may become saturated by services and populations and evolve into a service–de-

22. It is critical to note that when the number of occupants of a community residence falls within the zoning code's cap on unrelated individuals permitted in the city's definition of "family," "household," or "single housekeeping unit," the community residence must always be treated as a "family" or "household" — to do otherwise would constitute discrimination on its face in violation of the Fair Housing Act. Such homes *cannot* be used to calculate spacing distances. Spacing distances are applicable only to community residences for people with disabilities that exceed the cap on unrelated people in the definition of "family," "household," or "single housekeeping unit." This principle is most clearly explained in *United States v. City of Chicago Heights,* 161 F. Supp. 2nd 819 (N.D. Ill. 2001). *Also see* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) 10–12.

23. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

pendent ghetto."[24]

According to one leading planning study, "While it is difficult to precisely identify or explain, 'saturation' is the point at which a community's existing social structure is unable to properly support additional residential care facilities [community residences]. Overconcentration is not a constant but varies according to a community's population density, socio–economic level, quantity and quality of municipal services and other characteristics." There are no universally accepted criteria for determining how many community residences are appropriate for a given area.[25]

This research strongly suggests that there is a legitimate government interest to assure that community residences do not cluster. While the research on the impact of community residences makes it abundantly clear that two community residences separated by at least several other houses on a block produce no negative impacts, there is very credible concern that community residences located more closely together on the same block — or more than two on a block — can generate adverse impacts on both the surrounding neighborhood and on the ability of the community residences to facilitate the normalization of their residents, which is, after all, their raison d'être.

Maximum number of residents. The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is that community residences constitute a functional family and that zoning should treat the occupants of a community residence as a "family." However, in 1974 the U.S. Supreme Court ruled that a jurisdiction can establish a cap on the number of unrelated persons who can occupy a dwelling unit.[26] *The Fair Housing Act requires jurisdictions to make a reasonable accommodation for community residences for people with disabilities by making narrow exceptions to these caps.*

In *Belle Terre*, the U.S. Supreme Court upheld the resort community's zoning definition of "family" that permitted no more than two unrelated persons to live together. It's hard to quarrel with the Court's concern that the specter of "boarding housing, fraternity houses, and the like" would pose a threat to establishing a "quiet place where yards are wide, people few, and motor vehicles restricted.… These are legitimate guidelines in a land–use project addressed to family needs.…"[27] Unlike the six sociology students who rented a house during summer vacation in Belle Terre, Long Island, a community residence emulates

24. Jennifer Wolch, "Residential Location of the Service–Dependent Poor," 70 *Annals of the Association of American Geographers,* at 330, 332 (Sept. 1982).

25. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* at 25.

26. *Belle Terre v. Borass*, 416 U.S. 1 (1974).

27. Ibid. at 7–9.

a family, is not a home for transients, and is very much the antithesis of an institution. In fact, community residences for people with disabilities foster the same goals that zoning districts and the U.S. Supreme Court attribute to single–family zoning.

One of the first community residence court decisions to distinguish *Belle Terre* clearly explained the difference between community residences and other group living arrangements like boarding houses. In *City of White Plains v. Ferraioli,*[28] New York's highest court refused to enforce the city's definition of "family" against a community residence for abandoned and neglected children. The city's definition limited occupancy of single–family dwellings to related individuals. The court found that it "is significant that the group home is structured as a single housekeeping unit and is, to all outward appearances, a relatively normal, stable, and permanent family unit…." [29]

Moreover, the court found that:

> "The group home is not, for purposes of a zoning ordinance, a temporary living arrangement as would be a group of college students sharing a house and commuting to a nearby school. (c.f., *Village of Belle Terre v. Boraas,* [citation omitted]). Every year or so, different college students would come to take the place of those before them. There would be none of the permanency of community that characterizes a residential neighborhood of private homes. Nor is it like the so–called 'commune' style of living. *The group home is a permanent arrangement and akin to the traditional family, which also may be sundered by death, divorce, or emancipation of the young…. The purpose is to emulate the traditional family and not to introduce a different 'life style.'"*[30]

The New York Court of Appeals explained that the group home does not conflict with the character of the single–family neighborhood that *Belle Terre* sought to protect, "and, indeed, is deliberately designed to conform with it."[31]

In *Moore v. City of East Cleveland,*[32] Justice Stevens favorably cited *White Plains* in his concurring opinion. He specifically referred to the New York Court of Appeals' language:

> "Zoning is intended to control types of housing and living and not the genetic or intimate internal family relations of human

28. 313 N.E.2d 756 (N.Y. 1974).

29. Ibid. at 758–759.

30. Ibid. at 758 [citation omitted]. *Emphasis added.*

31. Ibid.

32. 431 U.S. 494 (1977) at 517 n. 9.

> beings. So long as the group home bears the generic character of a family unit as a r*elatively permanent household*, and is not a framework for transients or transient living, it conforms to the purpose of the ordinance."[33]

Justice Stevens' focus on *White Plains* echoes the sentiments of New York Chief Justice Breitel who concluded that "the purpose of the group home is to be quite the contrary of an institution and to be a home like other homes."[34]

Since 1974, the vast majority of state and federal courts have followed the lead of *City of White Plains v. Ferraioli* and treated community residences as "functional families" that should be allowed in single–family zoning districts despite zoning ordinance definitions of "family" that place a cap on the number of unrelated residents in a dwelling unit. In a very real sense, the Fair Housing Amendments Act of 1988 essentially codifies the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

Delray Beach's definition of "family" allows a single housekeeping unit of up to three unrelated people to live together. The full definition reads:[35]

> "Family" shall mean two (2) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, and/or a group of persons not more than three (3) in number who are not so interrelated, occupying the whole or part of a dwelling as a separate housekeeping unit with a single set of culinary facilities. Any person under the age of 18 years whose legal custody has been awarded to the State Department of Health and Rehabilitative Services or to a child–placing agency licensed by the Department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this definition. Occupancies in excess of the number allowed herein shall have twelve (12) months from the date of the enactment of this definition or the termination of the current lease agreement to come into compliance, whichever occurs first. Anyone who has applied for or received a reasonable accommodation from this definition prior to June 16, 2009 shall be allowed to proceed under the definition in existence on June 16, 2009 with the total number granted under the reasonable accommodation without having to re–file an application for a reasonable accommodation.

Any community residence for people with disabilities that would house more than the three unrelated individuals allowed under the city's definition of "fam-

33. Ibid. *Emphasis added.*

34. *City of White Plains v. Ferraioli,* 313 N.E. 2d at 758.

35. *City of Delray Beach Land Development Regulations,* Appendix A, 19.

ily" is entitled to a "reasonable accommodation" which is the regulatory landscape this study proposes for Delray Beach's Land Development Regulations within the precepts of the nation's Fair Housing Act. As explained below, *no matter what cap a city's zoning code places on the number of unrelated individuals who constitute a "family," the building code applicable to all residential uses determines the maximum number of people who can occupy any type of residence.*[36]

The U.S. Supreme Court brought this point home in its 1995 decision in *City of Edmonds v. Oxford House.*[37] The Court ruled that housing codes that "ordinarily apply uniformly to all residents of all dwelling units … to protect health and safety by preventing dwelling overcrowding" are legal.[38] Zoning ordinance restrictions that focus on the "composition of households rather than on the total number of occupants living quarters can contain" are subject to the Fair Housing Act.[39]

As the discussion above implies, classifying community residences on the basis of the number of residents is inappropriate. A more appropriate and rational approach is proposed beginning on page 34 of this report.

Protecting the residents. People with disabilities who live in community residences constitute a vulnerable population that needs protection from possible abuse and exploitation. Community residences for these vulnerable individuals need to be regulated to assure that their residents receive adequate care and supervision. Licensing and certification are the regulatory vehicles used to assure adequate care and supervision.[40] Florida, like many other states, has not established licensing or certification for some populations with disabilities that community residences serve. In these situations, certification by an appropriate national certifying organization or agency that is more than simply a trade group can be used in lieu of formal licensing. Licensing or certification also tends to exclude from community residences people who pose a danger to others, themselves, or property. As noted earlier, such people are *not* covered by the Fair Housing Act.

Therefore, there is a legitimate government interest in requiring that a community residence or its operator be licensed in order to be allowed as of right as a permitted use. If state licensing does not exist for a particular type of commu-

36. Delray Beach has adopted the Southern Building Code Congress, International, Inc., *Standard Housing Code* (1994).

37. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).

38. Id. at 1781*[emphasis added]*. See the discussion of minimum floor area requirements beginning on page 18.

39. Id. at 1782.

40. Any local or state licensing must be consistent with the Fair Housing Act. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) 13.

nity residence, the residence can meet the certification of an appropriate national certifying agency, if one exists, or is otherwise sanctioned by the federal or state government.[41] Florida law appears to allow a city or county to establish its own licensing requirements for community residences not covered by state licensing. If there is no governmental or quasi–governmental body that requires licensing or certification for a particular type of community residence and no level of government has sanctioned it, then the heightened scrutiny of a conditional use permit is warranted so the city can make sure that the residents of a proposed community residence are protected.

The State of Florida does not *require* licensing or certification of recovery residences. Instead, in 2015, the state established *voluntary certification* for recovery residences.[42] The state statute required the state's Department of Children and Family Services to approve at least one credentialing entity by December 1, 2015.[43] The department named the Florida Association of Recovery Residences as a credentialing entity. As §397.487 mandates, the association promulgated and administers requirements for certifying recovery residences and established procedures for the application, certification, recertification, and disciplinary processes. It has established a monitoring and inspection compliance process, developed a code of ethics, and provided for training for owners, managers, and staff.[44]

As the state statute requires, the operator of a proposed recovery residence must submit with its application and fee a policy and procedures manual that includes job descriptions for all staff positions; drug–testing requirements and procedures; a prohibition of alcohol, illegal drugs, and using somebody else's prescription medications; policies that support recovery efforts; and a good neighbor policy.[45] Each certified recovery residence must be inspected at least once a year for compliance.

The state's voluntary certification process and standards are comparable to the licensing processes and standards adopted elsewhere.

---

41. For example, the U.S. Congress has recognized and sanctioned the recovery communities that operate under the auspices of Oxford House. Oxford House maintains its own procedures and staff to inspect and monitor individual Oxford Houses to enforce the organization's strict charter and standards designed to protect the residents of each Oxford House and foster community integration and positive relations with its neighbors. An Oxford House can lose its authorization if found in violation of the Oxford House Charter.

42. *Florida State Statutes,* §397.487 (2016).

43. Ibid. at §397.487(2).

44. Ibid. The standards that the Florida Association of Recovery Residences adopted are based on the nationally–accepted standards of the National Alliance of Recovery Residences.

45. Ibid. at §397.487(3).

Impacts of community residences. The impacts of community residences have been studied more than those of any other small land use. Over 50 statistically–valid studies have found that licensed community residences *not clustered* on a block face do not generate adverse impacts on the surrounding neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to them. They do not affect neighborhood safety nor neighborhood character — *as long as they are licensed and not clustered on a block face.* They do not create excessive demand on public utilities, sewer systems, water supply, street capacity, or parking. They do not produce any more noise than a conventional family of the same size. All told, *licensed, unclustered* group homes, recovery communities, and small halfway houses have consistently been found to be as good a neighbor as biological families.

Clustering community residences only undermines their ability to achieve their core goals of normalization and community integration. A community residence needs to be surrounded by so–called "normal" or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one another or within a few doors of each other increases the chances that their residents will interact with other service–dependent people living in a nearby community residence rather than conventional households with non–service dependent people who, under the theory and practice that provide the foundation for the community residence concept, are to serve as role models.

Appendix B is an annotated bibliography of representative studies. The evidence is so overwhelming that few studies have been conducted in recent years since the issue is well settled: *Community residences that are licensed and not clustered on a block face do not generate adverse impacts on the surrounding community*.

Clustering and *De Facto* Social Service Districts in Delray Beach

Planning Department staff at the City Delray Beach have compiled the following maps that show three categories of community residences for people with disabilities:

1. "Community Residences" which are community residences for people with disabilities that have been established under the city's *Land Development Regulations*. The vast majority of these are sober living homes.
2. "Reasonable Accommodations" which are sober living homes that have been granted a reasonable accommodation to exempt them from the cap of three unrelated people that can constitute a "family" under the city's *Land Development Regulations*.
3. "Unconfirmed Community Residences" which are locations at which the city's police department believes, but has not confirmed, that a sober home is operating. These would be among the numerous sober living homes with more than three residents that have been opened

illegally without going through the zoning or reasonable accommodation processes.

To facilitate analysis, the maps divide the city into five sectors as shown in the map below. The maps that follow show the relative locations of community residences for people with disabilities in each of the five sectors based on whether they were established as "community residences" under the city's zoning or through the city's reasonable accommodation process, or are an unconfirmed location.

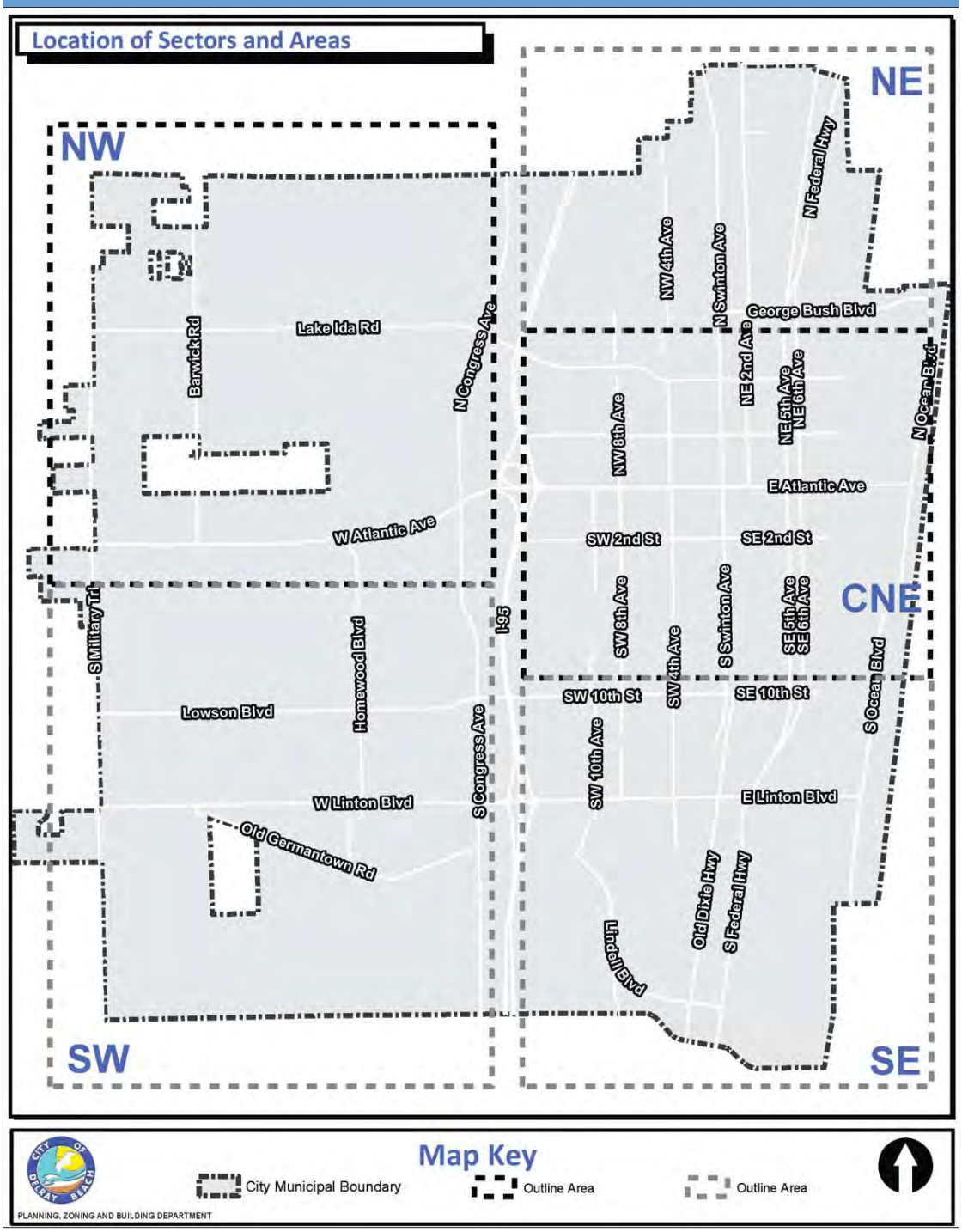
Overall, there appear to be at least 183 community residences for people with disabilities in Delray Beach, which is an unusually large number for a community of around 100,000 residents, much less Delray Beach with about 66,000 year–round residents. In addition, the city has identified 64 other dwelling units (category 3 listed above) that appear to be operating as recovery communities that have not yet been confirmed that appear to be community residences that did not go through the zoning process including seeking a "reasonable accommodation."

Delray Beach officials are aware of instances where operators have deviated from the sober home model to create segregated mini–institutions under the guise of recovery residences. In the absence of any required spacing distances between recovery residences, at least one operator has filled an entire multifamily complex in Delray Beach with people in recovery, creating what amounts to a segregated mini–institution that does not fit within the fundamental precepts of community residences for people with disabilities.

Similarly, at least one operator has filled a string of adjacent houses on a block with people in recovery. This, too, creates a segregated living environment and departs from the core principles underlying community residences.

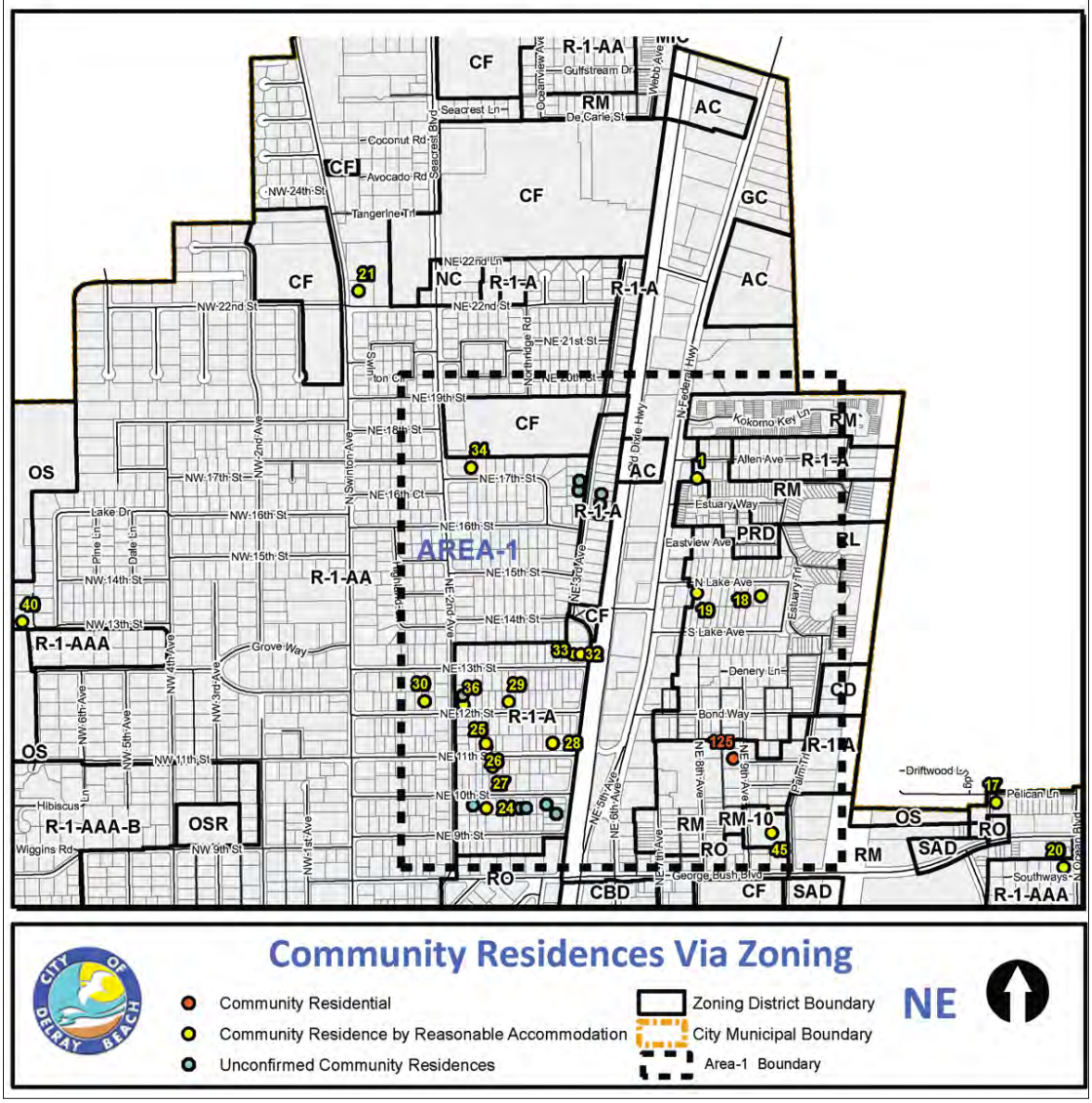
These kinds of *de facto* social service districts fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses including emulating a biological family and utilizing nearby neighbors without disabilities as role models to help achieve normalization as well as participation in the nondisabled community to achieve community integration.

Figure 4: Five Sectors of Delray Beach



Source: City of Delray Beach, Florida, March 2017.

Figure 5: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Northeast Delray Beach as of March 2017



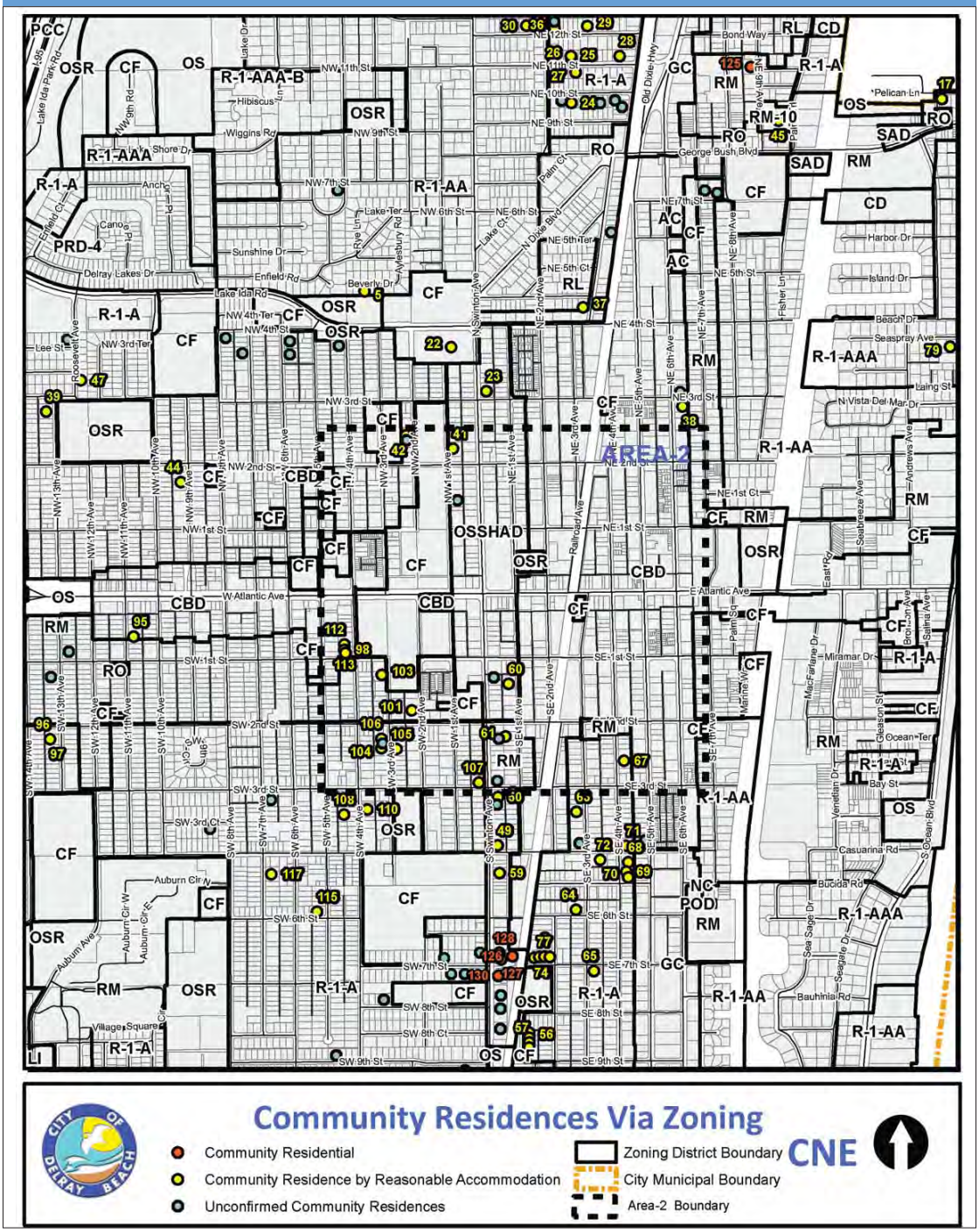
Source: City of Delray Beach, Florida, March 2017.

In Delray Beach's Northeast Sector, there are just four confirmed community residences for people with disabilities outside of Area–1. Within Area–1, there are 15 confirmed community residences. However, Figure 5 above reveals more than a half dozen instances of mild clustering within Area–1. Nearly all are west of Dixie Highway. The most intense concentration is between NE 2nd Avenue on the west and Dixie Highway on the east, NE 9th Street on the south and S Lake Avenue on the north. This concentration suggests that a *de facto* social service district is developing here.

The city has identified nine sites within Area–1 that may be community residences (i.e., the "Unconfirmed Community Residences"), further contributing to development of a *de facto* social service district.

This fledgling *de facto* social service district at the south end of the Northeast Sector extends further south into the north end of the Central Northeast Sector as shown in the map below.

Figure 6: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Central Northeast Delray Beach as of March 2017



Source: City of Delray Beach, Florida, March 2017.

The Central Northeast Sector hosts the most community residences in Delray Beach. Thirty are concentrated within Area–2 with another 29 in the rest of the sector. While most of those in the rest of the sector are scattered, there are numerous instances of clustering, especially at the north and south ends of the sector. There appear to be 31 sites of unconfirmed community residences outside Area–2 with six unconfirmed sites in Area–2 — all of which contribute to these concentrations and development of a *de facto* social service district.

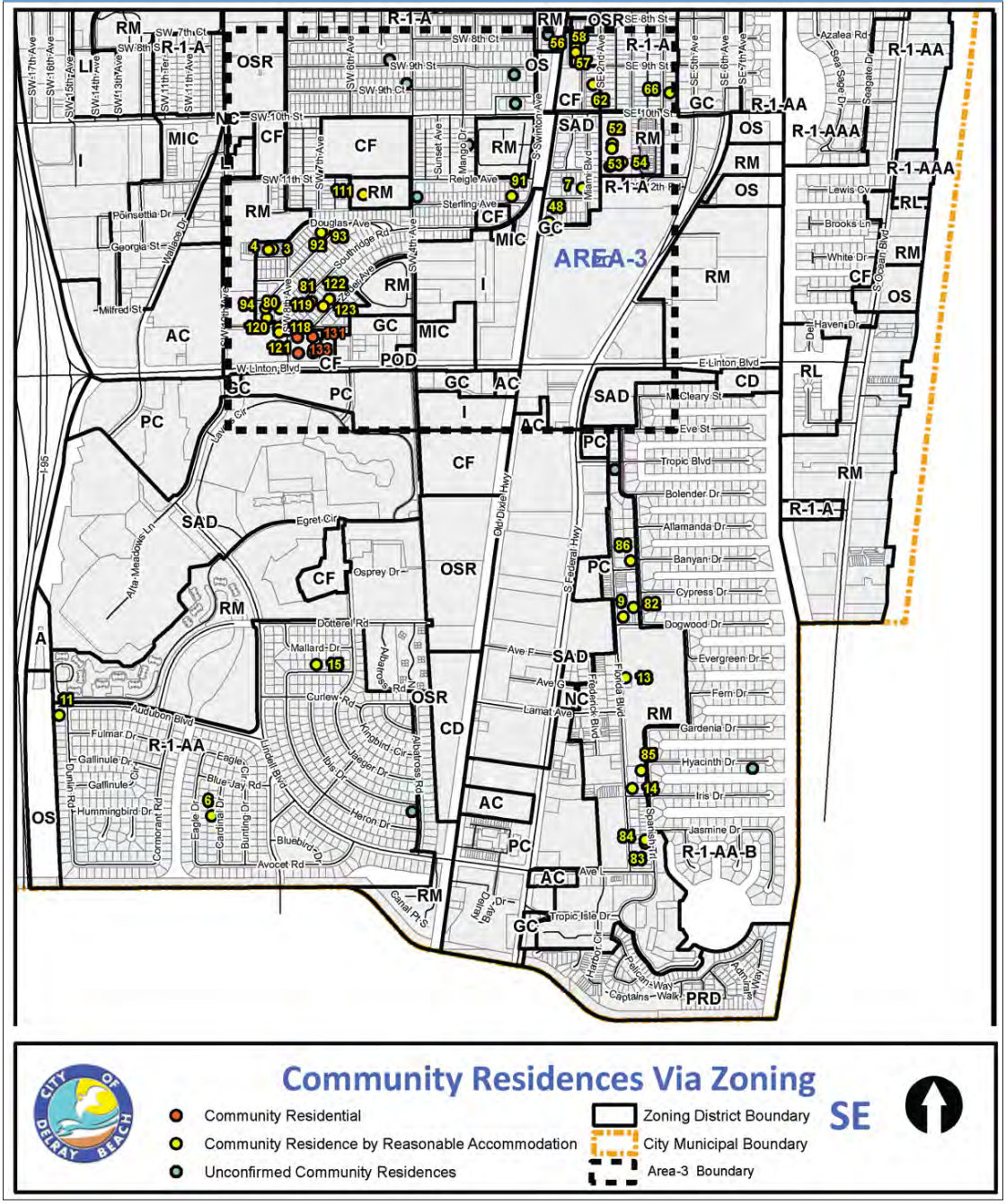
The clustering of community residences at the north end of the Central Northeast Sector is more intense than the clustering at the south end of the adjacent Northeast Sector. While there is scattered clustering throughout the Central Northeast Sector, the clustering gets increasingly intense in the middle of Area–2 and moving south to very intense clustering south of SE 6th Street down to SE 10th Street, between SW 2nd Avenue on the west and SE 5th Avenue to the east. This area exhibits the characteristics of a *de facto* social service district that obstructs the core normalization and community integration goals of community residences for people with disabilities, very possibly altering the character of the neighborhood.

Delray Beach's Current Zoning Treatment of Recovery Residences

In the absence of *required* state licensing or certification and city zoning provisions that specifically govern recovery residences, Delray Beach offers operators of proposed recovery homes a "reasonable accommodation" under §2.4.7(G) of the city's *Land Development Regulations.* Requests may be written or oral. There is no fee to apply. The city manager or designee handles these requests administratively and issues a written determination. A negative determination can be appealed to the City Commission which holds a public hearing and renders a decision within 60 days. A granted reasonable accommodation is valid for one year and must be "recertified" by April 1 of each subsequent year.

The zoning revisions proffered in this report establish a less burdensome zoning process with much greater certainty, clear objective standards, and protections to foster the safety of sober home residents, prevent abuse, and facilitate the normalization and community integration that are integral to the successful functioning of recovery residences and to achieving long–term recovery and sobriety.

Figure 7: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Southeast Delray Beach as of March 2017



Source: City of Delray Beach, Florida, March 2017.

The *de facto* social service district extends further south into the Southeast Sector as shown in Figure 7 above. Just a few blocks west and southwest of this *de facto* social service district is an even more intense concentration of community residences in the west end of Area–3, south of Douglas Avenue, north of West Linton Boulevard and east of SW 10th Avenue and west of SW 4th Avenue. The city has identified seven sites in Area–3 that it thinks, but has not con-

firmed, are community residences.

Other community residences are scattered throughout most of the Southeast Sector with some mild clustering along Florida Boulevard between Banyan and Dogwood drives and between Hyacinth and Avenue L. The city believes, but has not confirmed, that three locations outside Area–3 are operating as community residences.

As Figure 8 below shows, the city has identified just three community residences for people with disabilities in its Southwest Sector. All are located in the sector's northeast corner on SW 20th Avenue and on Zomo Way. Two sites south of SW 11th Court are believed, but not confirmed, to be community residences.

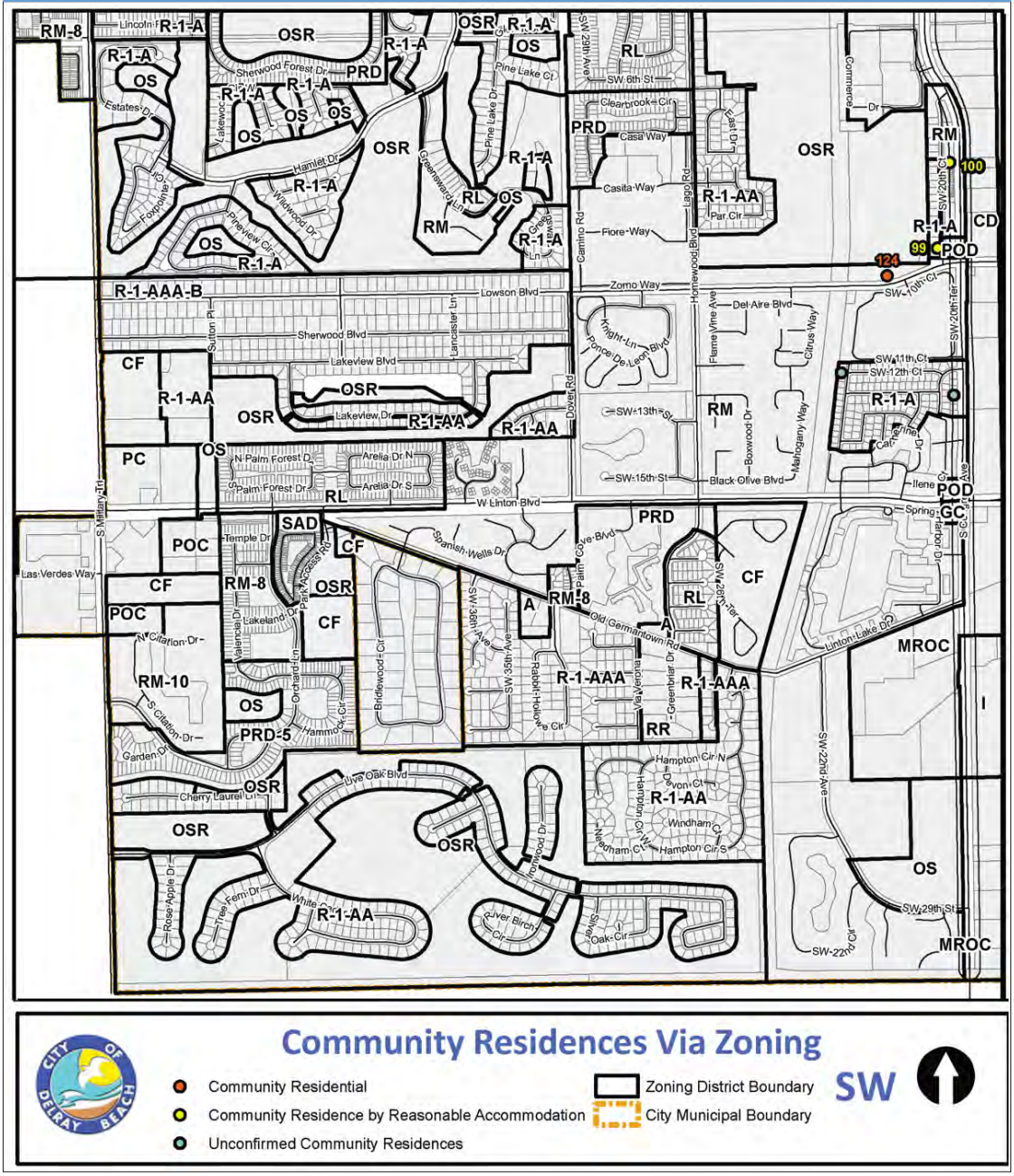
Voluntary Certification of Sober Homes in Delray Beach

Since the state's voluntary certification law described beginning on page 21 went into effect, 11 different providers have received certification for 78 recovery residence dwelling units at 27 locations in Delray Beach. Currently, 323 individuals live in the certified recovery residences.[46]

Since April 1, 2016, 45 programs have applied for certification. Two have been denied and ten have withdrawn their applications. As of this writing, there are applications for certification pending from 24 providers with 89 dwelling units and 445 beds in 38 locations.

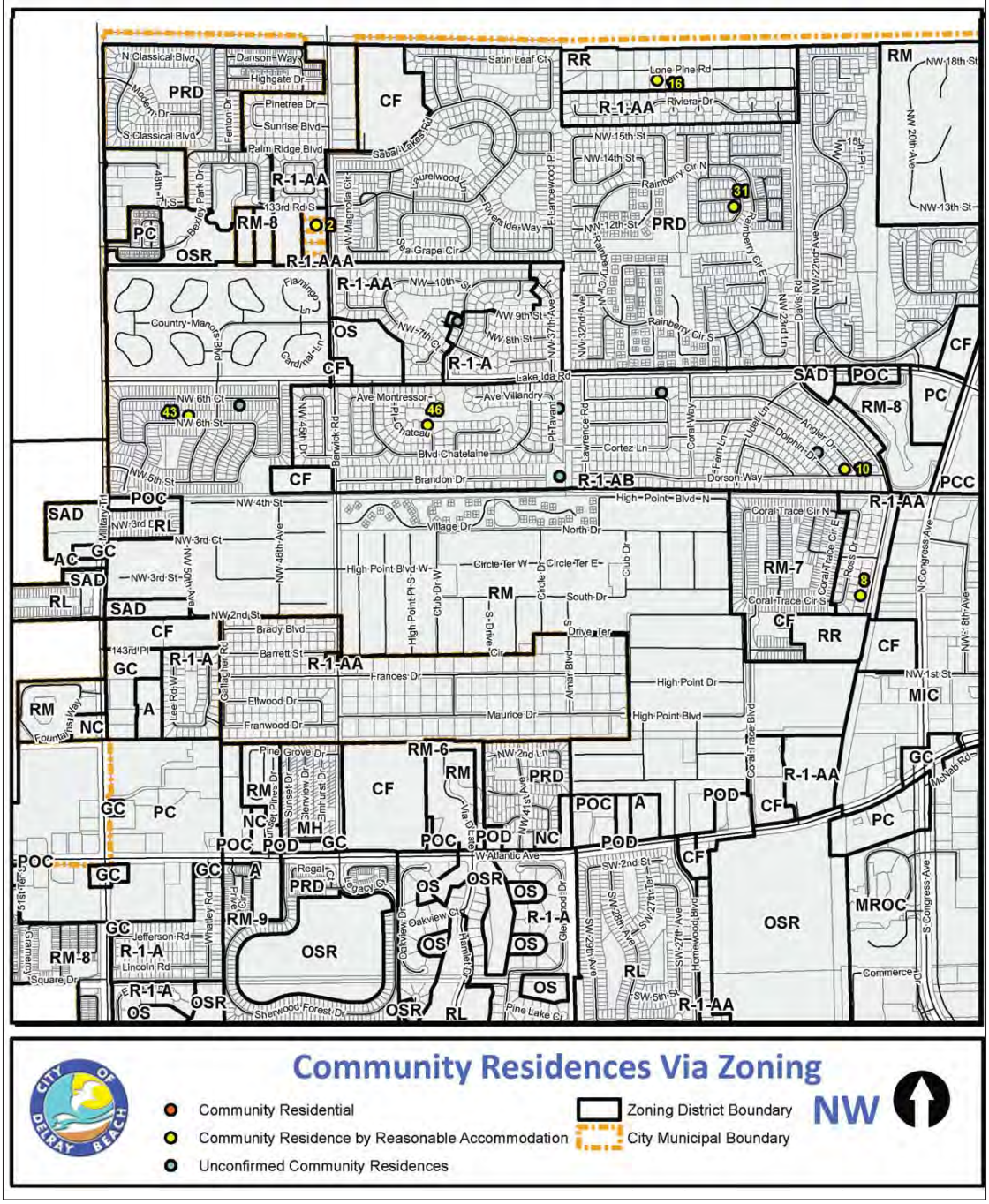
46. Email from the Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (March 28, 2017, 11:15 am.m CST) (on file with the Law Office of Daniel Lauber).

Figure 8: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Southwest Delray Beach as of March 2017



Source: City of Delray Beach, Florida, March 2017.

Figure 9: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Northwest Delray Beach as of March 2017



Source: City of Delray Beach, Florida, March 2017.

Seven community residences are scattered in the northern two–thirds of the Northwest Sector of Delray Beach. Another six properties are believed, but not confirmed, to be operating as community residences. These two are scattered.

As explained beginning on page 14, the clustering of community residences for people with disabilities in the Northeast, Central Northeast, and Southeast sectors of Delray Beach runs counter to the underlying principles of community residences and interferes with achieving their core goals of normalization and community integration. In addition, clustering can effectively create a *de facto* social service district with characteristics quite different than those of residential zoning districts.

In the western portions of Delray Beach, there is some mild clustering of community residences for people with disabilities. However, the clusters consist of just two or three community residences within a block or so of each other — far less intense than in the three eastern sectors of the city.

Recommended regulatory approach

The 1988 amendments to the nation's Fair Housing Act require all government jurisdictions to make a "reasonable accommodation" in their zoning codes and other rules and regulations to enable group homes and other community residences for people with disabilities to locate in the residential districts essential to them succeeding. The zoning ordinance amendments that will be proposed for Delray Beach make this reasonable accommodation that the Fair Housing Amendments Act of 1988 requires for those people with disabilities who wish to live in a community residence. The legislative history of the Fair Housing Amendments Act of 1988 makes it clear that jurisdictions *cannot* require a conditional or special use permit in residential districts for family community residences for people with disabilities. It does *not,* however, prohibit requiring a conditional or special use permit in single–family districts for transitional community residences. Nor does the Fair Housing Amendments Act of 1988 require that a city allow community residences for persons who do *not* have disabilities in residential districts.

General principles from the case law. Like any other dwelling, when a community residence — whether it be "family" or "transitional" — fits within the cap on the number of unrelated persons the zoning definition of "family" or "single housekeeping unit" sets, it must be allowed as of right in *all* residential districts the same as any other family or single housekeeping unit. No additional zoning restrictions can be imposed on the community residence for people with disabilities. Licensing cannot be required; a spacing distance between community residences or any other use cannot be imposed.

As explained beginning on page 19, Delray Beach's *Land Development Regulations* allow up to three unrelated people living in a single housekeeping unit to be a family. A explained earlier, any community residence for people with disabilities that fits within this cap of three must be treated as a "family" and it cannot be used for calculating spacing distances as explained in a footnote beginning on page 16.

But when a proposed community residence would house more than the maximum of three unrelated individuals that Delray Beach's zoning code allows to

live together as a single housekeeping unit, the zoning must make a "reasonable accommodation" to enable these homes to locate in the residential districts in which they need to locate to attain their purpose.

Taken as a whole, the case law suggests that any reasonable accommodation must meet these three tests:

- The proposed zoning restriction must be *intended* to achieve a legitimate government purpose.
- The proposed zoning restriction must *actually achieve* that legitimate government purpose.
- The proposed zoning restriction must be the *least drastic means necessary to achieve* that legitimate government purpose.

In *Bangerter v. Orem City Corporation,* the federal Court of Appeals said the same thing a bit differently, "Restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefits to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them."[47]

But the nation's Fair Housing Act is not the only law that affects how cities and counties in Florida can regulate community residences for people with disabilities. The State of Florida has adopted several statutes that restrict local zoning of community residences for specific populations with disabilities that the state licenses.

The proposed zoning amendments take into account both federal fair housing law and the Florida statutes that restrict local zoning.[48]

The proposed zoning amendments seek to enable community residences to locate in all residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering (which undermines the ability of community residences to accomplish their purposes and function properly, and to maintain the residential character of a neighborhood) and of protecting the residents of the community residences from improper or incompetent care and from abuse. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon them. And they constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.

---

47. 46 F.3d 1491 (10th Cir. 1995) 1504.

48. Our review suggests that there is a need to coordinate the state statutes and revise them to eliminate their weaknesses and facilitate more rational zoning treatment of community residences for people with disabilities throughout the State of Florida. The state statutes contain provisions that likely do not fully comply with the nation's Fair Housing Act.

Key to establishing a zoning approach in compliance with the Fair Housing Act is classifying community residences on the basis of functionality rather than on the number of people living in the community residence — at least as much as the legal provisions of Florida statutes allow.

As they are now, community residences for people with disabilities (both family and transitional) that house no more than Delray Beach's cap of three unrelated residents in a single housekeeping unit would be treated the same as any other family and would not be included when calculating spacing distances between community residences for people with disabilities.

Community residences in general

As emphasized throughout this report, emulating a biological family is an essential core characteristic of every community residence. It is difficult to imagine how more than ten to 12 individuals can successfully emulate a biological family. Once the number of occupants exceeds a dozen, the home tends to take on the characteristics of a mini–institution rather than a family or a residential use. Delray Beach should consider defining community residences as housing no more than a dozen people, while allowing for a reasonable accommodation process for proposed community residences that demonstrate they can emulate a family and need more than 12 residents for therapeutic and/or financial reasons.[49]

The precise language of the zoning amendments will need to make allowances for the legal provisions in the Florida state statutes on zoning for certain types of community residences for people with specific disabilities.

Note that the state statute governing local zoning for most types of community residences for people with disabilities (called "community residential homes") allows local governments to adopt zoning that is less restrictive than the state statute.[50] While the zoning proposed here is broader in scope than the state statute — covering all types of community residences for all types of disabilities — some of the suggested zoning regulations fall within this statutory provision.

The state statutes, however, do not establish any zoning standards for recovery residences — sober homes, recovery communities, and small halfway

49. As explained beginning on page 38, community residences for people with disabilities are subject to the building code provisions to prevent overcrowding that apply to all residential uses. So if the building code would allow just seven people in a dwelling unit, then that is the maximum number of people who can live in that dwelling unit whether it is occupied by a biological family, children in foster care, or the functional family of a community residence for people with disabilities.

50. *Florida Statutes*, §419.001(12). "State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes."

houses for people in recovery. As discussed earlier, the state statutes do establish a voluntary credential for recovery residences. The credentialing standards and processes are as substantial or even more substantial than some existing licensing laws in other states.

While there are no Oxford Houses in Florida as of this writing, local zoning provisions for community residences must provide for these unstructured, self–operated recovery communities. Oxford House has been recognized by Congress and has its own internal monitoring system in place to inspect and maintain compliance with the Oxford House Charter.[51] The standards and procedures that both Oxford House and the State of Florida's voluntary certification of recovery residences employ are functionally comparable to licensing requirements and procedures for recovery communities in other states.

Family community residences

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. There is no limit on how long people can live in them. In terms of stability, tenancy, and functionality, family community residences for people with disabilities are more akin to the traditional owner–occupied single–family home than are transitional community residences for people with disabilities.

To make this reasonable accommodation for more than three people with disabilities who wish to live in a community residence, the proposed zoning ordinance amendments will make family community residences for four to 12 people with disabilities a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed family community residence by receiving the license or certification that the State of Florida requires, certification from an appropriate national accrediting agency, recognition or sanctioning by Congress, or Delray Beach's own local licensing ordinance (if the city chooses to adopt one);[52] and

51. Oxford House does not allow its recovery communities to be established in a state until Oxford House has established its monitoring and inspection processes to assure Oxford Houses will operate within the standards established by the Oxford House Charter.

52. There appears to be no legal reason why any local Florida jurisdiction could not require recovery residences to obtain certification from the State of Florida to satisfy this criterion. As noted above, Oxford House, which is recognized by Congress, maintains its own standards and procedures that are comparable to the standards and procedures of licensing laws in jurisdictions outside Florida. Consequently, Oxford Houses, as well as recovery residences certified by the State of Florida, would meet this first criterion.

- The proposed family community residence is not located within a rationally–based distance (660 feet, the length of a typical block) of an existing community residence as measured from the nearest lot lines along the public and private pedestrian right of way.

Transitional community residences

Residency in transitional community residences is more transitory than in family community residences because transitional community residences impose a maximum time limit on how long people can live in them.[53] Tenancy is measured in months or weeks, not years. This key characteristic makes a transitional community residence more akin to multiple–family residential uses with a higher turnover rate typical of rentals and condominiums than single–family dwellings with a lower turnover rate typical of single–family ownership housing. Even though multiple–family uses are not allowed in single–family districts, the Fair Housing Act requires every city and county to make a "reasonable accommodation" for transitional community residences for people with disabilities. This reasonable accommodation can be accomplished via the heightened scrutiny of a conditional use permit when an operator wishes to locate a transitional community residence in a single–family district.

However, in multiple–family districts, a transitional community residence for four or more people with disabilities should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed transitional community residence from a license or certification the State of Florida requires, certification from an appropriate national accrediting agency, recognition or sanctioning by Congress, or Delray Beach's own local licensing ordinance (if the city chooses to adopt one);[54] and
- The proposed transitional community residence is not located within a rationally–based distance (660 feet, the length of a typical block) of an existing community residence as measured from the nearest lot lines along the public and private pedestrian right of way.

---

53. Time limits typically range from 30 days to 90 days, and as long as six, nine, or 12 months, depending on the nature of the specific transitional community residence and the population it serves. With no time limit, residents of family community residences can live in them for many years, even decades.

54. There appears to be no legal reason why any local Florida jurisdiction could not require recovery residences to obtain certification from the State of Florida to satisfy this criterion. As noted above, Oxford House, which is recognized by Congress, maintains its own standards and procedures that are comparable to the standards and procedures of licensing laws in jurisdictions outside Florida. Consequently, Oxford Houses, as well as recovery residences certified by the State of Florida, would meet this first criterion.

Conditional use permit backup

Sometimes an operator will seek to establish a new community residence within the spacing distance of an existing community residence. For some types of community residences, the local jurisdiction, the State of Florida, and the federal government may not require a license, certification, or accreditation, nor recognize or sanction the congregate living arrangement. In these situations, the heightened scrutiny of a conditional use permit review is warranted to protect the occupants of the prospective community residence from the same mistreatment, exploitation, incompetence, and abuses from which licensing, certification, accreditation, or recognition from Congress protects them. There are two circumstances under which a conditional use permit could be sought:

(1) **Locating within the spacing distance.** To determine whether a community residence should be allowed within the 660–foot spacing distance from an existing community residence, Delray Beach needs to consider whether allowing the proposed community residence will hinder the normalization for residents and community integration in the existing community residence and/or whether the proposed community residence would alter the character of the neighborhood.

(2) **When no local, state, or federal licensing, certification, or accreditation program or recognition applies.** If the operator of a proposed community residence seeks to establish a community residence in Delray Beach for which the city, State of Florida, or the federal government does not require or offer a license or certification (nor shows its approval through sanctioning the use), the operator must show that the proposed community residence will be operated in a manner that protects the health, safety, and welfare of its residents that is comparable to typical licensing standards.[55]

Under the proposed zoning amendments if the required license, certification, or accreditation has been denied to a proposed community residence or its operator, it is ineligible for a conditional use permit and cannot be located in Delray Beach.

In evaluating an application for a conditional use permit, a city *can* consider the cumulative effect of the proposed community residence because altering the character of the neighborhood or creating a *de facto* social service district interferes with the normalization and community integration at the core of a com-

55. When evaluating a proposed recovery residence's application for a conditional use permits under these circumstances, a local jurisdiction would be perfectly within its rights to apply the standards for the state's voluntary credentialing program in the interest of protecting the health, safety, and welfare of the residents of the proposed recovery home.

munity residence. A city can consider whether the proposed community residence in combination with any existing community residences will alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences on a block.

It is vital to stress that the decision on a conditional use permit must be based on a record of factual evidence and not on neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities. As explained earlier in this report, restrictive covenants cannot exclude a community residence for people with disabilities — and such restrictions are, of course, irrelevant when evaluating an application for the conditional use permit.

Maximum number of occupants

State licensing regulations for community residences often establish the maximum number of individuals who can live in a community residence. Even with these state–imposed caps, the number of residents *cannot* exceed the number permissible under the occupancy provisions of Delray Beach's building code that apply to *all* residences. For example, if the formula in the city's housing or building code limits the number of residents in a dwelling unit to five, no more than five people can live there whether the residence is occupied by a biological family or a functional family of a community residence.

Delray Beach adheres to the *Standard Housing Code 1994 Edition* which establishes minimum dwelling space requirements to prevent overcrowding.[56] The code requires a minimum of 150 square feet of floor space for the first occupant of a dwelling unit and at least 100 additional square feet for each additional occupant, based on the total area of all habitable rooms.[57]

The code also requires a minimum of 70 square feet of floor area for the first occupant of every room occupied for sleeping purposes plus at least 50 square feet for each additional bedroom occupant.[58] ***These minimum floor area requirements apply to all residences in Delray Beach, including community residences for people with disabilities.***

Under this formula, a bedroom in which only one person sleeps could be no smaller than seven feet by ten feet or other dimensions that add up to 70 square feet. A bedroom in which two people sleep could be no smaller than 120 square

56. *Standard Housing Code 1994 Edition* (Birmingham, AL: Southern Building Code Congress International, 1994) §306.2. In 1996, Delray Beach adopted this housing code by reference in Section 7.4.1 of the city's *Land Development Regulations.*

57. Ibid. at §306.1.

58. Ibid. at §306.2.

feet, or ten feet by 12 feet, for example.[59] Keep in mind that these are minimum criteria to prevent overcrowding based on health and safety standards. Bedrooms, of course, are often larger than these minimums. This sort of provision is the type that the U.S. Supreme Court has ruled applies to all residences including community residences.[60]

Under fair housing case law, it is quite clear that *for determining the maximum number of occupants,* community residences established in single–family structures are to be treated the same as all other single–family residences. Those located in a multiple–family structure are to be treated the same as all other multiple–family residences. The number of occupants is typically regulated for health and safety reasons. Delray Beach's current occupancy provisions meet these criteria.

Under the Fair Housing Act, it is clearly improper to apply building or housing code standards for institutions, lodging houses, boarding houses, rooming houses, or fraternities and sororities to community residences for people with disabilities.

However, given that emulation of a biological family is a core component to community residences for people with disabilities, it is reasonable for a jurisdiction to establish the maximum number of individuals in a community residence that certainly can emulate a biological family. It is likely that as many as ten to 12 unrelated individuals in a community residence can emulate a biological family. It is very doubtful if larger aggregations can. Consequently the proposed zoning amendments will cap community residences at 12 occupants and establish a structured administrative "reasonable accommodation" procedure to lift the cap for a specific community residence on a case–by–case basis. The burden will be on the applicant to show the therapeutic or financial need for more than 12 residents and to demonstrate how the residents will emulate a biological family. The proposed community residence will be subject to the spacing and licensing/certification requirements applicable to all community residences for people with disabilities.

---

59. Obviously these dimensions are examples. A 120 square foot room could also be 8 feet by 15 feet as well as other dimensions that total 120 square feet.

60. *City of Edmonds v. Oxford House, Inc.,* 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995). "Maximum occupancy restrictions… cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. See, e. g., International Conference of Building Officials, *Uniform Housing Code* § 503(b) (1988); Building Officials and Code Administrators International, Inc., BOCA National Property Maintenance Code §§ PM-405.3, PM-405.5 (1993) (hereinafter BOCA Code); Southern Building Code Congress, International, Inc., *Standard Housing Code* §§ 306.1, 306.2 (1991); E. Mood, APHA—CDC Recommended Minimum Housing Standards § 9.02, p. 37 (1986) (hereinafter APHA— CDC Standards).[6] *These restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding.* See, e. g., *BOCA Code* §§ PM-101.3, PM-405.3, PM-405.5 and commentary; Abbott, Housing Policy, Housing Codes and Tenant Remedies: An Integration, 56 B. U. L. Rev. 1, 41-45 (1976)." At 733. *[Emphasis added]*

Other zoning regulations for community residences

All regulations of the zoning district apply to a community residence including height, lot size, yards, building coverage, habitable floor area, off–street parking, and signage. There is no need for the land development code to repeat these requirements in its sections dealing with community residences.

The state's statute reinforces this basic concept:

> A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.[61]

Off–Street Parking. Even within the context of the state statute quoted immediately above, localities can establish off–street parking requirements for community residences for people with disabilities. Some community residences generate parking needs that exceed what a biological family might generate. However, there has to be a rational, factual basis for imposing other zoning requirements on community residences for people with disabilities that exceed the cap of three in Delray Beach's definition of "family." For example, different types of community residences may generate very different off–street parking needs. Generally the residents of community residences do not drive. People with developmental disabilities and the frail elderly do not drive and will not generate a need for off–street parking for their occupants. They will get around town in a vehicle the operator provides. A very small percentage, if any, of people with mental illness may drive.

But unlike the other categories of disabilities, people in recovery often drive and have a motor vehicle. A vehicle is critical for the recovery of many, especially if public transportation is not easily accessible. An essential component of their rehabilitation is relearning how to live on their own in a sober manner. So one of the most common conditions of living in a legitimate recovery community or sober living home is that each resident agrees to spend the day at work, looking for a job, or attending classes. They cannot just sit around the house during the day. Visitor parking can be accommodated on the street as it is for all residential uses.

It is, however, rational to require off–street parking for staff, whether it be live–in staff or staff that works on shifts. The city needs to carefully craft off–street parking requirements for community residences for people with disabilities that allow for the varying needs of community residences for people with different disabilities.

---

61. *Florida Statutes,* §419.001(8) (2016).

Factoring in the Florida state statute on locating community residences

The State of Florida has adopted statewide zoning standards for a mixed bag of what it calls "community residential homes" licensed by the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration.[62] *Some of these homes house people with disabilities while others do not*.[63] This review focuses on community residences occupied by people with disabilities, the class protected under the nation's Fair Housing Act.

Before reviewing the impact of the State of Florida's statute on zoning for community residences, it is important to note that the statute gives localities some leeway to craft local zoning provisions:

> Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the criteria of this section. State law on community residential homes controls over local ordinances, but *nothing in this section prohibits a local government from adopting more liberal standards for siting such homes*.[64]

State Statute's Limited Scope

It is vital to remember that limitations on local zoning that the state statute on the location of "community residential homes" establishes apply only to the community residences licensed by the five state agencies. Local jurisdictions are perfectly free to establish different zoning regulations for community residences not licensed by these five state agencies. None of these five state agencies licenses recovery residences.

62. The zoning standards appear in Title XXX, Social Welfare, Chapter 419, "Community Residential Homes," §419.001, "Site selection of community residential homes," *Florida State Statutes,* §419.001 (2016).

63. The nature of the residents of these homes are defined in *Florida State Statutes*. Among those with disabilities are "frail elder"as defined in §429.65, "person with handicap" as defined in §760.22(7)9(a), and "nondangerous person with a mental illness" as defined in §394.455. Two other categories that may or may not include people with disabilities are "child found to be dependent" as defined in §39.01 or §984.03 and "child in need of services" as defined in §984.03 or §985.03. As of this writing, the State of Florida does not require licensing of community residences that serve people in recovery, althought it offers voluntary credentialing.

64. *Florida State Statutes,* §419.001(10) (2016). *Emphasis added.*

Consequently, any local jurisdiction is free to adopt its own zoning regulations for community residences for people with disabilities that are "more liberal" or less restrictive than the state's.[65]

As will become apparent in the analysis that follows, the state statute is a bit confusing, seems to contradict itself, and contains a provision that, if challenged in court, would very likely be found to be not in compliance with the nation's Fair Housing Act.

No state law, including Florida's, provides a "safe harbor" for local zoning. A state statute that regulates local zoning for community residences for people with disabilities *can* run afoul of the nation's Fair Housing Act. For example, the State of Nevada had a state statute that required municipalities and counties to treat certain types of community residences for people with disabilities as residential uses, much like Florida's statute does. In 2008, a federal district court found that several other provisions in the Nevada's statute on community residences for people with disabilities violated the Fair Housing Act.[66]

When sued in 2015 over its zoning treatment of community residences for people with disabilities, Beaumont, Texas claimed that it was merely complying with a 1987 state law that established a half–mile spacing distance between community residences for people with disabilities. Beaumont was applying that spacing distance to group homes that fit within its zoning code's definition of "family" which limits to three the number of unrelated people that can constitute a "family." Beaumont settled the case for $475,000 in damages while agreeing to discontinue imposing its unsupportable half–mile foot spacing distance as well as its excessive building code requirements.[67]

In Florida, the state statute defines "community residential home" as a dwelling unit licensed by one of the five state agencies listed above that "provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents."[68] This gives the impression that "community residential homes" house seven to 14 residents.

That's not the case. Later the statute speaks of "[h]omes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single–family unit and a noncommercial, residential use for

---

65. While the author has never before seen statutory language using the phrase "more liberal," the most rational interpretation of the phrase is that it means the same as "less restrictive."

66. *Nevada Fair Housing Center, Inc. v. Clark County,* 565 F.Supp.2d 1178 (D. Nevada, 2008).

67. *United States of America v. City of Beaumont, Texas*, Consent Decree Civil Action No. 1:15–cv–00201–RC (E.D. Texas, May 4, 2016).

68. *Florida State Statutes,* §419.001(1)(a) (2016)

the purpose of local laws and ordinances."[69]

Without any stated rational basis, the statute treats homes for up to six residents differently than those for seven to 14 residents. Community residential homes for up to six residents must "be allowed in single–family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home."[70] "Another existing community residential home" appears to mean a home for seven to 14 residents.

The smaller homes are not required to comply with the statute's notification provisions as long as, before it receives its license, the "sponsoring agency" supplies to the local jurisdiction the "most recently published data complied from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located" to show that the proposed homes would not be located within the 1,000 foot spacing distance from an existing community residential home for six or fewer residents or the 1,200 foot spacing distance of an existing community residential home for seven to 14 individuals. When the home is actually occupied, the sponsoring agency is required to notify the local government that the requisite license has been issued.[71]

This statute does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating by July 1, 2016.[72] In addition, the statute states that nothing in the statute "shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate."[73]

The state statute departs from the rationality of sound planning and zoning practices when it flips basic concepts on their head and requires a more intensive review of "community residential homes" in multiple family zoning districts than in single–family districts.[74] Unlike in single–family districts, the

69. Ibid. at §419.001(2) (2016).

70. Ibid.

71. Ibid. A sponsoring agency is "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home." At §419.001(1)(f) (2016).

72. Ibid.

73. Idid. At §419.001(9) (2016).

74. Florida's statute is the first time in more than 40 years of monitoring zoning regulations for community residences that the author has seen more heightened scrutiny for locating community residences in multiplefamily zones than in single –family zones. Normally the greater

state statute gives local governments the ability to approve or disapprove of a proposed "community residential home."

> When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.[75]

If a local government fails to render a decision to approve or disapprove the proposed home under its zoning ordinance within 60 days, the sponsoring agency may establish the home at the proposed site.[76]

This provision appears to conflict with the earlier paragraph in the state statute establishing that "community residential homes" for six or fewer individuals "shall be allowed in single–family or multifamily zoning ***without*** *approval by the local government" when the spacing distances are met.*[77]

The state statute specifies three bases on which a local government can deny the siting of a "community residence home" if the proposed home:

- Doesn't conform to "existing zoning regulations applicable to other multifamily uses in the area"[78]
- Doesn't meet the licensing agency's applicable licensing criteria, "including requirements that the home be located to assure the safe

---

scrutiny is applied in single–family zones. The basis on which the legislature wrote this provision is an unknown.

75. Ibid. at §419.001(3)(a) (2016).

76. Ibid. at $419.001(3)(b) (2016).

77. Ibid. at §419.001(2) (2016.

78. Ibid. at $419.001(3)(c)1. (2016).

care and supervision of all clients in the home"[79]

- Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area. ***A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.***"[80]

While the first criterion is most reasonable, it is also unnecessary because all residential uses are naturally required to conform to zoning regulations. It is unclear why the state statute needed to single out community residences for people with disabilities.

The second standard is unnecessary because a proposed home that doesn't meet the licensing agency's criteria, it would not receive the license required to operate. It is unclear what circumstances might exist where a community residence would receive a state license and then fail to "be located to assure the safe care and supervision of all clients in the home."

The third criterion almost certainly runs afoul of the nation's Fair Housing Act in several ways. The statute declares that locating a new community residence within the spacing distance constitutes "an overconcentration" of community residences "that substantially alters the nature and character of the area."[81]

In more than 40 years working with zoning for community residences for people with disabilities, we have never come upon any factual basis for that conclusion. The rationale behind this report's recommendation to require a conditional use permit for a community residence proposed to locate within the spacing distance is to enable a case–by–case examination of the facts to determine whether the proposed home would, indeed, interfere with the ability of any existing community residence to achieve its core functions of normalization and community integration of its residents. We are unaware of any factual information to suggest that the mere presence of another community residence within the spacing distances of an existing community residence always cre-

79. Ibid. at $419.001(3)(c)2. (2016).

80. Ibid. at $419.001(3)(c)3. (2016). *Emphasis added.*

81. Ibid. at §419.001(3)(c)3 (2016).

ates a overconcentration or that it always substantially alters the nature and character of any area.[82]

Finally, the statute's declaration that locating a community residential home within 500 feet of single–family zoning "substantially alters the nature and character of the area" simply lacks any factual foundation. It is difficult to imagine a scenario in which a legal challenge to this statutory provision would fail.

The state statute simply does not allow for the proper review of an application to establish a community residence within the spacing distance required to be allowed as of right. It is critical that zoning allow for the case–by–case review of proposals for such homes to evaluate on the facts presented whether allowing the proposed community residence would actually result in an overconcentration or actually alter the character of the surrounding neighborhood. The Florida statute effectively prevents the proper review.

These state statute provisions regarding overconcentrations and alteration of the nature and character of an area constitute unsubstantiated conclusions that obstruct the ability of a local jurisdiction to make the "reasonable accommodation" that the nation's Fair Housing Act requires for community residences for people with disabilities. The state needs to remove these provisions from the state law if it wishes to comply with the Fair Housing Act.

However, as explained beginning on page 41, the state statute allows local jurisdictions to adopt zoning provisions less restrictive than the state's — which authorizes cities and counties to ignore these unjustifiable and almost certainly illegal state provisions and avoid exposing themselves to legal liability for housing discrimination.

The statute's provision for measuring the spacing distances may also run afoul of the Fair Housing Act. The statute requires that they "be measured from the nearest point of the existing home or area of single–family zoning to the nearest point of the proposed home."[83] When the author of this report first proposed spacing distances in 1974, he suggested using a radius around an existing community residence. As the understanding of community residences grew during the subsequent decades and the case law developed, he recognized that using this "as the crow flies" radius made no sense. To achieve the purpose of the spacing distance, it should be measured from the nearest lot lines along the legal public or private pedestrian right of way as explained beginning on page 15.

The actual zoning amendments for community residences for people with

82. For a thorough discussion of these points, *see* American Planning Association, *Policy Guide on Community Residences* (Chicago: American Planning Association, Sept. 22, 1997) 8, and for more detailed analysis, Daniel Lauber, "A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988" *John Marshall Law Review,* Vol. 29, No 2, Winter 1996, 369–407.

83. *Florida State Statutes,* §419.001(5) (2016).

disabilities will be crafted to comply with the provisions of the state statutes that do not run afoul of the nation's Fair Housing Act.[84]

Impact of Florida Statute on Vacation Rentals

The Florida legislature adopted a state statute that pre–empted home rule and now allows vacation rentals in residential zoning districts throughout the state. Local laws regulating vacation rentals, like Delray Beach's that were in place on June 1, 2011, were allowed to stand.[85]

The state law regarding vacation rentals and local zoning allowed to continue, however, have no impact on how a jurisdiction can zone for community residences for people with disabilities. Vacation rentals are nothing like community residences for people with disabilities. The former are commercial uses while the latter are residential uses. The former do not make any attempt to emulate a biological family; the host is a landlord and there is no effort for the guests to merge into a single housekeeping unit with the host household.

In contrast, a community residence, by definition, is a single housekeeping unit that seeks to emulate a biological family. Family community residences offer a relatively permanent living arrangement that can last for years — far different than a vacation rental. Transitional community residences establish a cap on length of residency that can be as much as six months or a year — very different than vacation rentals. Unlike the guests in a vacation rental unit, the occupants of a community residence for people with disabilities constitute a vulnerable service–dependent population for which each neighborhood has a limited carrying capacity to absorb into its social structure. The occupants of a community residence are seeking to attain normalization and community integration — two core goals absent from vacation rentals. The occupants of a community residence rely on their so–called "able bodied" neighbors to serve as role models to help foster habilitation or rehabilitation. It is well–documented that the vulnerable occupants of a community residence need protection from unscrupulous operators and care givers. In terms of type of use, functionality, purpose, operations, nature of their occupants, and regulatory framework, there is nothing comparable between vacation rentals and community residences for people with disabilities.

---

84. Local governments have learned that state statutes that violate the Fair Housing Act do *not* offer a "safe harbor." The statutes of the State of Texas had required a plainly illegal 2,500 spacing distance between group homes for people with disabilities. Attempts by cities to justify their 2,500 foot spacing distances based on the state statute failed to shield them from being in violation of the Fair Housing Act.

85. *Florida State Statutes,* §509.032(7)(b) (2016).

Summary

The proposed regulatory approach offers the least restrictive means needed to achieve the legitimate government interests of protecting people with disabilities from unscrupulous operators, assuring that their health and safety needs are met, enabling normalization to occur by preventing clustering of community residences, and preventing the creation of *de facto* social service districts. Protecting the residents of community residences for people with disabilities also protects the neighborhoods in which the homes are located. These provisions help assure that adverse impacts will not be generated. As with all zoning issues, city staff will enforce zoning code compliance.

The proposed amendments will not change the cap of three unrelated individuals functioning as a single housekeeping unit in the zoning code's definition of "family." The amendments will treat community residences that comply with the cap of three unrelated individuals in the city's definition of "family" the same as any other family. They will impose no additional zoning requirements upon them.

However, when the number of unrelated occupants in a proposed community residence exceeds three unrelated individuals, the proposed amendments will make "family community residences" for people with disabilities a permitted use in all residential districts subject to objective, rationally–based licensing and spacing standards. Transitional community residences will be permitted as of right in all multifamily districts subject to these same two criteria and allowed in single–family districts via a conditional use permit based on standards that are as objective as possible.

When a proposed community residence for four or more people does not satisfy the spacing and licensing criteria to be permitted as of right, the heightened scrutiny achieved by requiring a conditional use permit is warranted. Consequently, the operator would have to obtain a conditional use permit if her proposed community residence would be located within the 660 feet spacing distance from an existing community residence for four or more people or if the proposed home does not fit within any licensing, certification, or accreditation program of the State of Florida, the federal government, or that Delray Beach may adopt. The burden rests on the operator to show that the proposed home would meet the standards Delray Beach requires for issuing a conditional use permit. A community residence that has not been issued a *required* license, certification, or accreditation would *not* be allowed in Delray Beach at all. But when no certification, licensing, or accreditation is required or available, then the community residence operator can seek a conditional use permit under the conditional use permit backup provision.

Since the zoning amendments that will be proposed are strictly for community residences *for people with disabilities,* there will be no change in how Delray Beach regulates halfway houses for prison pre–parolees or sex offenders.

To implement and administer these amendments, the city will need to main-

tain a map and its own internal database of all community residences for people with disabilities within and around Delray Beach[86] — otherwise it would be impossible to implement the spacing distances required by the proposed zoning and by existing state licensing of some types of community residences. To balance the privacy interests of the residents of community residences for people with disabilities with implementing the zoning amendments, availability of the map should be limited to city staff and verified potential applicants seeking to establish a community residence for people with disabilities — as much as is permitted under federal and Florida law.

86. Since it is possible that community residences for people with disabilities may be located within whatever spacing distance the city chooses to adopt, it is critical that the city be fully aware of any community residences outside its borders, but within the chosen spacing distance. The adverse effects of clustering community residences do not respect municipal boundaries.

Appendix A: Sample Form for Zoning Compliance Application

The next two pages offer a sample form that Delray Beach could use in addition to any current zoning compliance application forms. The information that the form requests makes it easy for planning officials to objectively determine if the proposed community residence complies with the city's *Land Development Regulations* and whether it should be allowed as of right or must obtain a conditional use permit.

It is crucial that the operators of all proposed community residences be required to complete this form so the city can identify spacing distances between community residences and determine appropriate zoning treatment. Completing this form places no burden on people with disabilities while offering them substantial benefits by helping to prevent clustering so that essential normalization and community integration can occur.

If the city wishes to use this form, it can quickly be converted into a PDF file with fields for the applicant to complete.

Zoning Determination Application — Delray Beach, Florida

Applicants: Please complete this form

To establish a community residence for people with disabilities, the owner and/or operator must file this application for a zoning determination. If the application meets the criteria for a community residence for people with disabilities allowed by right in the Delray Beach *Land Development Regulations,* the city will issue a statement of approval within 15 calendar days. No public hearing is required. If staff determines that a conditional use permit is required, a public hearing is necessary and staff will provide instructions on how to apply for this permit. Be sure to keep a copy of this completed application for your records.

The applicant must provide all information requested. Please type or print clearly.

Date application submitted to the City of Delray Beach: _____, 20____

Full address of proposed community residence:

_____

Zoning district in which the proposed community residence would be located: _____

Applicant information:

Print name of group or individual that will operate the proposed community residence:

_____

Address: _____

City–State–Zip Code: _____

Telephone: _____ Cell phone: _____

Print applicant's name and title: _____

Applicant's signature: _____

Evidence of licensing or certification for proposed community residence or its operator:

❑ Check here if the State of Florida requires a license or certification to operate the proposed community residence

❑ Check here if there is *no* applicable national accreditation agency or body for the proposed use.

State or local licensing program under which the proposed community residence will be operated:

_____

Please submit a copy of any state or federal license or certification you have received to operate the proposed community residence.

Identify the licensing or certification agency (include address, telephone phone number, and, if possible, the contact person) that licenses or certifies the proposed community residence. If the applicant has not received a required license or certification, please explain why not. Use additional paper if needed.

_____

_____

Check and fill in the maximum length of time residents can live in the proposed community residence:

❑ ____ days ❑ ____ months ❑ ____ years ❑ ____ No limitation

How long will a resident typically live in the home? _____ year(s) _____ month(s) _____ weeks

Standard Housing Code Compliance: Please provide the information requested in the following table:

	Width and length in feet of each bedroom excluding closets	**Total square feet in bedroom excluding closets**	**Number of residents** (including staff, if any) **to sleep in the bedroom**	**Total gross floor area of all habitable rooms of the dwelling unit**
1				If you are unsure how to measure this, please ask the City Inspector for instructions. **Print the total square footage in the cell below.**
2				
3				
4				
5				
6				
Total number of people to live in this dwelling unit:			_____ people	_____ square feet

Describe the general nature of the residents' disabilities (do not discuss specific individuals)**:**

_____

_____

Maximum number of support staff who will live in the home (excludes shift staff): _____

The findings below indicate whether the applicant can establish the proposed community residence as a permitted use or whether a conditional use permit is required. Like all other residences, the proposed community residence must also comply with all other applicable Delray Beach codes.

FOR CITY STAFF USE ONLY:

Findings: [City staff person shall fill in or check the appropriate boxes.]

____ Zoning district in which proposed use would be located
____ Number of residents including live–in staff
_____ Number of residents who are people with disabilities

Proposed residence is:

❑ Family community residence
❑ Transitional community residence
❑ Not a community residence

❑ Proposed use or operator is or will be properly licensed, certified, accredited, or recognized by the State of Florida or the federal government (includes uses sanctioned by Congress such as Oxford House)

❑ The State of Florida does *not* require a license, certification, accreditation, or recognition for this type of community residence

❑ Closest existing community residence is located _____ linear feet from the proposed community residence, as measured from the nearest lot lines along the legal public or private pedestrian right of way. List the addresses (and the distance) of all existing community residences within 660 feet:

_____

_____

Determination

❑ Proposed use is allowed as of right
❑ Proposed use requires a conditional use permit
❑ Proposed use is not allowed as of right nor is it eligible for a conditional use permit. Application denied.

Staff review conducted by: _____
Signed: _____
Date: _____, 20_____

Appendix B: Representative Studies of the Impacts of Community Residences

More than 50 scientific studies have been conducted to identify whether the presence of a community residence for people with disabilities has any effect on property values, neighborhood turnover, or neighborhood safety. No matter which scientifically–sound methodology has been used, the studies have concluded that community residences that meet the health and safety standards imposed by licensing and that are not clustered together on a block have no effect on property values — even for the house next door— nor on the marketability of nearby homes, neighborhood safety, neighborhood character, parking, traffic, public utilities, nor municipal services.

The studies that cover community residences for more than one population provide data on the impacts of the community residences for each population in addition to any aggregate data.

The following studies constitute a representative sample. Few studies have been conducted recently simply because this issue has been studied so exhaustively and their findings of no adverse impacts have been so consistent. Consequently, funding just isn't available to conduct more studies on a topic that has been studied so exhaustively.

Christopher Wagner and Christine Mitchell, *Non–Effect of Group Homes on Neighboring Residential Property Values in Franklin County* (Metropolitan Human Services Commission, Columbus, Ohio, Aug. 1979) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Eric Knowles and Ronald Baba, *The Social Impact of Group Homes: a study of small residential service programs in first residential areas* (Green Bay, Wisconsin Plan Commission June 1973) (disadvantaged children from urban areas, teenage boys and girls under court commitment, infants and children with severe medical problems requiring nursing care, convicts in work release or study release programs).

Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, (Governor's Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986) (found no effect on property values or turnover due to any of 14 group homes for up to eight residents; also found crime rate among group home residents to be, at most, 16 percent of that for the general population).

Minnesota Developmental Disabilities Program, Analysis of Minnesota Property Values of Community Intermediate Care Facilities for Mentally Retarded (ICF–MRs) (Dept. of Energy, Planning and Development 1982) (no difference in property values and turnover rates in 14 neighborhoods with group homes during the two years before and after homes opened, as compared to 14 comparable control neighborhoods without group homes).

Dirk Wiener, Ronald Anderson, and John Nietupski, Impact of Community–Based Residential Facilities for Mentally Retarded Adults on Surrounding Property Values Using Realtor Analysis Methods, 17 Education and Training of the Mentally Retarded 278 (Dec. 1982) (used real estate agents' "comparable market analysis" method to examine neighborhoods surrounding eight group homes in two medium–sized Iowa communities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).

Montgomery County Board of Mental Retardation and Developmental Disabilities, Property Sales Study of the Impact of Group Homes in Montgomery *County* (1981) (property appraiser from Magin Realty Company examined neighborhoods surrounding seven group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, *Effect of Community Residences for the Mentally Retarded on Real–Estate Values in the Neighborhoods in Which They are Located* (State University College at Brockport, N.Y. 1980) (examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

L. Dolan and J. Wolpert, *Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People*, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982) (examined long–term effects on neighborhoods surrounding 32 group homes for five years after the homes were opened and found same results as in Wolpert, *infra*).

Julian Wolpert, *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts* (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978) (most thorough study of all; covered 1570 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, *The Neighbors and the Small Group Homes for the Handicapped: A Survey* (Illinois Association for Retarded Citizens Sept. 1979) (real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, *Impact of Residential Care Facilities in Decatur* (Macon County Community Mental Health Board Dec. 9, 1976) (examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

Suffolk Community Council, Inc., *Impact of Community Residences Upon Neighborhood Property Values* (July 1984) (compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, *Group Homes and Property Values: A Second Look* (Aug. 1980) (Columbus, Ohio) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Tom Goodale and Sherry Wickware, *Group Homes and Property Values in Residential Areas*, 19 Plan Canada 154–163 (June 1979) (group homes for children, prison pre–parolees).

City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (Lansing, Mich. Oct. 1976) (No adverse impacts on property values due to halfway houses and group homes for adult ex–offenders, youth offenders, alcoholics).

Michael Dear and S. Martin Taylor, *Not on Our Street,* 133–144 (1982) (group homes for persons with mental illness have no effect on property values or turnover).

John Boeckh, Michael Dear, and S. Martin Taylor, *Property Values and Mental Health Facilities in Metropolitan Toronto*, 24 The Canadian Geographer 270 (Fall 1980) (residential mental health facilities have no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).

Michael Dear, *Impact of Mental Health Facilities on Property Values*, 13 Community Mental Health Journal 150 (1977) (persons with mental illness; found indeterminate impact on property values).

Stuart Breslow, *The Effect of Siting Group Homes on the Surrounding Environs* (1976) (unpublished) (although data limitations render his results inconclusive, the author suggests that communities can absorb a "limited" number of group homes without measurable effects on property values).

P. Magin, *Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio* (May 1975) (available from County Prosecutors Office, Dayton, Ohio). (found no adverse effects on property values.)

Town of Miami Lakes
Memorandum

To: **Honorable Mayor and Councilmembers**
From: **Alex Rey, Town Manager**
Subject: **Hemp Amendment**
Date: **10/16/2018**

Recommendation:

Staff recommends approval of the ordinance amending the definitions in section 13-799.7 to exclude hemp derived products and commercial and industrial activities related to hemp derived products from the objective of the ban.

Background:

On Tuesday, September 5, 2017, the Town Council of the Town of Miami Lakes considered and adopted Ordinance No. 17-210 creating section 13-799.7 in the Land Development Code, banning cannabis dispensaries, medical marijuana treatment facilities, and independent testing laboratories related thereto as provided for by Florida Statute 381.986(11)(b).

As a result of the new ordinance, all commercial and industrial activities related to the sale or manufacture of products within genus cannabis were banned within the boundaries of the Town. Staff has been made aware that the definition adopted via the ordinance, may have been unduly broad, and may have excluded otherwise legal commercial and industrial activities, that although they are related to products extracted from a plant within the genus cannabis they do not constitute a medical marijuana product, nor do they contain any of the psychoactive ingredients such as tetrahydrocannabinol (THC) in amounts large enough to have psychoactive effects.
On October 2, 2018 the Town Council moved this item on first reading.

On October 4, 2018 the Planning and Zoning Board, acting in their capacity as the Local Planning Agency, heard the item and recommended approval with no changes.

ATTACHMENTS:

Description
Ordinance
Staff Report

ORDINANCE NO. 18-___

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO ZONING; AMENDING SECTION 13-799.7, "CANNABIS DISPENSARIES, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES"; AMENDING DEFINITIONS; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE. (Rey)

WHEREAS, the Florida Legislature in 2014 enacted a Low-TCH (less then .8% THC) and High CBD (10% or more) Statute, also known as the "Compassionate Medical Cannabis Act of 2014" (codified as Section 381.986, Florida Statutes) ("Act").

WHEREAS, the Act authorized a limited number of large nurseries to cultivate, process, transport and dispense non-euphoric, Low-THC/High-CBD cannabis and operate as "Dispensing Organizations" for individuals with certain specified serious ailments; and

WHEREAS, THC is the byproduct of Cannabis associated with the psychotropic effect derived from the intake of Cannabis, also known as Marijuana.

WHEREAS, CBD is the byproduct of Cannabis associated with medicinal properties; and

WHEREAS, Low-THC/High-CBD products are commonly known as Hemp, and commonly sold as cannabidiols ("Hemp")

WHEREAS, in 2014, the U.S. Congress passed the "Farm Bill" which legalized the cultivation, production and use of Hemp; and

WHEREAS, on November 8, 2016, Florida's voters voted in favor of an amendment to the Florida Constitution, titled "Use of Marijuana for Debilitating Medical Conditions ("Amendment 2"); and

WHEREAS, Amendment 2 fully legalizes the medical use of high THC (more than .8%) marijuana ("Medical Marijuana") throughout the State of Florida for those individuals with specified debilitating conditions, and authorized the cultivation processing, distribution and sale of marijuana and related activities by licensed Medical Marijuana Treatment Centers; and

WHEREAS, as the result of the passing of Amendment 2, in 2016 the Florida Legislature amended the Compassionate Medical Cannabis Act (Section 381.986, Florida Statutes) to include the use of Medical Marijuana for eligible patients with terminal conditions; and

WHEREAS, Section 381.986(11)(b), Florida Statutes, permits municipalities to determine by ordinance a ban on dispensing and medical marijuana treatment facilities; and

WHEREAS, On Tuesday, September 5, 2017, the Town Council of the Town of Miami Lakes considered and adopted Ordinance No. 17-210 creating section 13-799.7 in the Land Development Code, banning Cannabis Dispensaries, Medical Marijuana Treatment Facilities, and Independent Testing Laboratories related thereto as provided for by Florida Statute 381.986(11)(b).

WHEREAS, On April 12, 2018, Florida Department of Agriculture passed rule 5B-57.013 providing for Hemp planting pilot projects at University of Florida, Florida

Agricultural and Mechanical University, and any other land grant university in the state that has a college of agriculture; and

WHEREAS, Cannabidiol or CBD oil is being studied for medicinal and nutritive purposes and is currently sold as a food additive or a nutraceutical; and

WHEREAS, Hemp has much lower THC content (less than 0.3%) than medical marijuana (between 5 and 20%), and is therefore not a psychoactive agent; and

WHEREAS, the Administrative Official reviewed the proposed amendment to the and recommends approval, as set forth in the Staff Analysis and Recommendation dated October 2, 2018 and incorporated into this Ordinance by reference; and

WHEREAS, the Town Council appointed the Planning and Zoning Board as the Local Planning Agency (LPA) for the Town pursuant to Section 163.3174, Florida Statutes; and

WHEREAS, on October 4, 2018, after conducting a properly noticed public hearing, the Planning and Zoning Board, acting in its capacity as the Local Planning Agency, acted in accordance with state law, and in specific compliance with Section 163.3174, Florida Statutes and reviewed and recommended approval to the Miami Lakes Town Council; and

WHEREAS, on October _____, 2018, after conducting a properly noticed public hearing and considering the recommendations of the public, the Local Planning Agency, and the Administrative Official, the Town Council moved the proposed amendment on first reading for second reading and consideration of adoption; and

WHEREAS, The Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for evaluation of an amendment

to the Land Development Code found in Subsection 13-306(b) of the Town Code; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, HEREBY ORDAINS AS FOLLOWS.

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Findings. After considering Staff's report, both submitted in writing and presented orally and the public, the Town Council finds, pursuant to Subsection 13-306(b) of the Town Code, that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for evaluation of an amendment to the Land Development Code found at Subsection 13-306(b) of the Town Code as provided for in the Staff Recommendation and Analysis Report.

Section 3. Approval. The Town Council hereby adopts the amendment as provided at Exhibit **"A"** .

Section 4. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall be included in the Town Code.

Section 7. Effective date. This Ordinance shall become effective immediately upon adoption.

THIS SPACE INTNETIONAL LEFT BLANK

FIRST READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Frank Mingo	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Nelson Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed on first reading this _____ day of September, 2018.

[THIS SPACE INTENTIALLY LEFT BLANK]

SECOND READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on second reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Frank Mingo	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Nelson Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed and adopted on second reading this _____ day of _____, 2018.

_____
Manny Cid
MAYOR

Attest:

_____
Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:

_____
Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT A

Chapter 13 - LAND DEVELOPMENT CODE

* * *

ARTICLE IV. - ZONING DISTRICT REGULATIONS

* * *

DIVISION 21. - ADDITIONAL BUSINESS, COMMERCIAL, INDUSTRIAL AND OTHER USE REGULATIONS

* * *

13-799.7 Low THC Facilities, Cannabis Dispensaries, Medical Marijuana Treatment Facilities, and Independent Testing Laboratories.

With the exception of Low THC Cannabis, as defined in this Section, Cannabis Dispensaries, Medical Marijuana Treatment Facilities, and Independent Testing Laboratories are prohibited within the territorial jurisdiction of the Town of Miami Lakes as provided at Florida Statue 381.986.

13-799.7(1) Definitions. For purposes of this section, the following words terms and phrases, including their respective derivatives have the following meanings:

a. *Cannabis* means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant and every compound, manufacture, salt derivative, mixture or preparation of the plant or its seeds or resin. Also known as marijuana.

b. *Cannabis dispensary* means an establishment where the cultivation of the cannabis plant, sale of the cannabis plant, sale of any part of the cannabis plant, including its flowers and any derivative product of the cannabis plant, not including low-THC cannabis, is dispensed at retail.

c. *Derivative product* means any form of cannabis suitable for routes of administration.

d. *Independent testing laboratory* means a laboratory, including the managers, employees, or contractors of the laboratory, which has no direct or indirect interest in a dispensing organization.

e. *Low-THC cannabis* means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin that is dispensed only from a dispensing organization approved by the Florida Department of Health pursuant to Section 381.986, Florida Statutes.

f. *Low-THC cannabis dispensary* means an establishment where low-THC cannabis is dispensed at retail.

g. *Medical cannabis* means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295**,** Florida Statutes.

h. *Medical Marijuana Treatment Facility* means business entities that cultivate, process, and dispense cannabis for medicinal purposes to qualified patients.

MIAMI LAKES
Growing Beautifully

Department of Planning, Zoning and Code Compliance
6601 Main Street • Miami Lakes, Florida 33014
Office: (305) 364-6100 • Fax: (305) 558-8511
Website: www.miamilakes-fl.gov

Staff Analysis and Recommendation

To: **Honorable Mayor and Town Council**

From: **Alex Rey, Town Manager**

Subject: **Cannabidiol and Industrial Hemp products**

Date: **October 2, 2018**

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO ZONING; AMENDING SECTION 13-799.7, "CANNABIS DISPENSARIES, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES"; AMENDING DEFINITIONS; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

A. BACKGROUND

On Tuesday, September 5, 2017, the Town Council of the Town of Miami Lakes considered and adopted Ordinance No. 17-210 creating section 13-799.7 in the Land Development Code, banning cannabis dispensaries, medical marijuana treatment facilities, and independent testing laboratories related thereto as provided for by Florida Statute 381.986(11)(b).
As a result of the new ordinance, all commercial and industrial activities related to the sale or manufacture of products within genus *cannabis* were banned within the boundaries of the Town. Staff has been made aware that the definition adopted via the ordinance, may have been unduly broad, and may have excluded otherwise legal commercial and industrial activities, that although they are related to products extracted from a plant within the genus *cannabis* they do not constitute a medical marijuana product, nor do they contain any of the psychoactive ingredients such as tetrahydrocannabinol (THC) in amounts large enough to have psychoactive effects.

B. STAFF RECOMMENDATION

Based on the analysis provided below and other factors contained in this report, Staff recommends approval of the ordinance amending the definitions in section 13-799.7 to exclude hemp derived

products and commercial and industrial activities related to hemp derived products from the objective of the ban.

C. ANALYSIS

The Land Development Code (LDC) provides that all proposed amendments to the LDC shall be evaluated by the Administrative Official, the Local Planning Agency and the Town Council, and that, in evaluating the proposed amendment, the criteria in Subsection 13-306(b) shall be considered. All portions of this report are hereby incorporated into all portions of this analysis. The following is a staff analysis of the criteria as applied to this proposed ordinance.

1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: Although the Comprehensive Plan does not specifically address uses presented in the proposed ordinance, Objective 1.2 provides underlying intent to ensure the LDC's appropriately regulate the use of land reflective of the community's desires. Notwithstanding the Federal Government's laws pertaining to marijuana and/or its derivative products, supporting such uses within the Town's LDC may result in impacts that are not entirely foreseeable at this time.

> Objective 1.2: LAND DEVELOPMENT CODE
>
> Maintain an effective and efficient Land Development Code (LDC), which implements the community vision underlying the goals, objectives and policies of adopted Comprehensive Plan, regulates the quality, scope and impacts of new development and redevelopment, coordinates future land uses with topography and soil conditions, and incorporates innovative land development techniques.

Finding: Complies

2. Whether the proposal is in conformance with all applicable requirements of this Code of Ordinances, including this chapter.

Analysis: The proposed ordinance conforms with the Town's LDC's. A review of the LDC's found no conflicts. Further, as proposed, the ordinance is consistent with adopted Florida Senate Bill SB 8-A as provided at Section 381.986, Florida Statutes.

Finding: Complies.

3. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed change in land use policy.

Analysis: See Section "A", Background, of this report. The Background section of this report provides a fuller accounting of the evolution of legalized low THC cannabis and medical marijuana within the State of Florida.

Finding: Complies.

4. **Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land use.**

   Analysis: See Section "A", Background, of this report.

   Finding: Complies.

5. **Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including schools, transportation, water and wastewater services, solid waste disposal, drainage, water supply, recreation, education, emergency services, and similar necessary facilities and services.**

   Analysis: The proposed ordinance does not impact the above systems.

   Finding: Complies.

6. **Whether, and the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of any groundwater aquifers, wildlife habitats, and vegetative communities.**

   Analysis: The proposed ordinance does not impact the above systems.

   Finding: Complies.

7. **Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.**

   Analysis: See Section "A", Background, of this report.

   Finding: Complies.

8. **Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.**

   Analysis: See Section "A", Background, of this report.

   Finding: Complies.

9. **Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of this chapter.**

   Analysis: See Section "A", Background, of this report. No portion of the proposed amendment is in conflict with the existing regulations of the LDC.

Finding: Complies.

10. Other matters which the Local Planning Agency or the Town Council, in its legislative discretion, may deem appropriate.

Analysis: See Summary Section and all portions of this analysis. The Local Planning Agency and the Town Council may consider other appropriate factors to determine whether the proposed FLUM amendment is appropriate and consistent with the public interest. The Analysis Section addressed the conditions suggested by the Planning and Zoning Board.

Finding: As determined by the Town Council.

Town of Miami Lakes
Memorandum

To: **Honorable Mayor and Councilmembers**
From: **Alex Rey, Town Manager**
Subject: **Metal Roofs**
Date: **10/16/2018**

Recommendation:

Staff recommends approval of the ordinance amending Section 13-1608 as it relates to permitting standing metal seam roofing for single-family and two-family buildings.

Background:

On July 17, 2018, Town Council of the Town of Miami Lakes directed the Town Manager to amend the Land Development Code to permit standing metal seam roofs for single-family and two-family buildings. The request was made in light of the many roofs within the Town that are still tarped and awaiting repair from last year's Hurricane Irma. It is generally agreed that standing metal seam roofing is more resilient than flat or barrel tile roof materials. The ordinance amends Section 13-1608 which relates exclusively to roofing materials within single-family and two-family buildings. Section 13-1608 currently limits the roofing material to flat or barrel tile. Similar material limitations are not imposed upon the industrial and commercial districts.

The following is a brief description of the proposed changes.

13-1608(a) – New residential development. This subsection permits standing metal seam roofing for new single-family and two-family construction.

13-1608(b) – Existing single-family and two-family buildings. The provision permits existing homes to replace its roofing with standing metal seam roofing.

On September 19, 2018, the Planning and Zoning Board, acting in their capacity as the Local Planning Agency, heard the item and recommended approval, but expressed concerns regarding the possible lack of aesthetic appeal of standing metal seam roofs.

On October 2, 2018 the Town Council moved the item on First Reading.

ATTACHMENTS:

Description

Ordinance

Staff Report

ORDINANCE NO. 18- _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO PERMITTED ROOFING TYPES FOR SINGLE-FAMILY AND TWO-FAMILY BUILDINGS; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "SUPPLEMENTARY REGULATIONS", AT SECTION 13-1608, RENAMING IT "SINGLE-FAMILY AND TWO-FAMILY ROOF REGULATIONS," AND PERMITING STANDING METAL SEAM ROOFING; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (Manny Cid)

WHEREAS, section 13-1608 of the Town's Land Development Code provides for permitted roofing types in residential single-family and two-family districts; and

WHEREAS, the region in which Miami Lakes is located is prone to storm events that have the potential to cause roof damage to the single-family and two-family buildings, as it particularly evidenced by the continued presence of blue (tarped) roofs throughout the Town a year after Hurricane Irma; and

WHEREAS, metal standing seamed roofing is considered by the construction industry to be a more resilient roofing material more capable of withstanding damage from hurricane force winds when compared to other roofing options; and

WHEREAS, in light of its recognized resiliency, on July 17, 2018, the Town Council of the Town of Miami Lakes directed the Town Manager to amend the Land Development Code to permit metal seam roofs for single-family and two-family buildings; and

WHEREAS, on September 19, 2018, the Planning and Zoning Board, acting in its capacity as the Local Planning Agency, heard the item at a duly noticed public hearing and forwarded a recommendation of approval to the Miami Lakes Town Council; and

WHEREAS, on October 2, 2018, the Town Council at a duly noticed public hearing, moved the item on First Reading; and

WHEREAS, on October _____, 2018, the Town Council considered the ordinance at a duly advertised public hearing; and

WHEREAS, to that end, the Town Council of the Town of Miami Lakes hereby finds and declares that adoption of this Ordinance is appropriate and advances the public interest.

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES AS FOLLOWS:

Section 1. Recitals. Each of the above stated recitals is true and correct and is incorporated herein by this reference.

Section 2. Amendment. Section 13-1608, of the Town's Land Development Code is hereby amended as provided at Exhibit A:

Section 3. **Repeal of Conflicting Provisions**. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 4. **Severability**. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in the Town Code**. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Article", "Division" or other appropriate word.

Section 6. **Effective Date**. That this Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Councilmember _____, who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

FIRST READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid _____
Vice Mayor Frank Mingo _____
Councilmember Tim Daubert _____
Councilmember Luis Collazo _____
Councilmember Ceasar Mestre _____
Councilmember Nelson Rodriguez _____
Councilmember Marilyn Ruano _____

Passed on first reading this _____ day of October, 2018.

[THIS SPACE INTENTIALLY LEFT BLANK]

SECOND READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on second reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid _____
Vice Mayor Frank Mingo _____
Councilmember Tim Daubert _____
Councilmember Luis Collazo _____
Councilmember Ceasar Mestre _____
Councilmember Nelson Rodriguez _____
Councilmember Marilyn Ruano _____

Passed and adopted on second reading this _____ day of _____, 2018.

_____
Manny Cid
MAYOR

Attest:

_____
Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:

_____
Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT A

ORDINANCE

Chapter 13 - LAND DEVELOPMENT CODE

* * *

ARTICLE VI. - SUPPLEMENTARY REGULATIONS

* * *

DIVISION 1. - GENERALLY

* * *

Sec. 13-1608. - ~~Development~~ Single-family and two-family roof regulations.

(a) All new single-family or two-family roofs with a pitch equal to or greater than two and one-half inches rise per one (1) foot run shall be constructed of standing metal seam, or of barrel tile or flat tile, or shall be constructed of another material which simulates barrel tile or flat tile. Other roofing materials may only be approved through the variance process.

(b) All single-family or two-family roof materials may be replaced or repaired with similar types of roofing material as those materials being replaced or repaired or may be constructed of standing metal seam roof, ~~or be constructed of~~ barrel tile, flat tile or another material which simulates barrel tile or flat tile.

(c) Roofing Material colors shall be neutral, aesthetically pleasing, and consistent with surrounding homes. Any variation may only be approved through the variance process.

MIAMI LAKES
Growing Beautifully

Department of Planning, Zoning and Code Compliance
6601 Main Street • Miami Lakes, Florida 33014
Office: (305) 364-6100 • Fax: (305) 558-8511
Website: www.miamilakes-fl.gov

Staff Analysis and Recommendation

To: **Honorable Mayor and Members of the Town Council**

From: **Alex Rey, Town Manager**

Subject: **Standing Metal Seam Roofing**

Date: **October 16, 2018**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO PERMITTED ROOFING TYPES FOR SINGLE-FAMILY AND TWO-FAMILY BUILDINGS; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "SUPPLEMENTARY REGULATIONS", AT SECTION 13-1608, RENAMING IT "SINGLE-FAMILY AND TWO-FAMILY ROOF REGULATIONS," AND PERMITTING STANDING METAL SEAM ROOFING; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (Manny Cid)

A. BACKGROUND

On July 17, 2018, Town Council of the Town of Miami Lakes directed the Town Manager to amend the Land Development Code to permit standing metal seam roofs for single-family and two-family buildings. The request was made in light of the many roofs within the Town that are still tarped and awaiting repair from last year's Hurricane Irma. It is generally agreed that standing metal seam roofing is more resilient than flat or barrel tile roof materials. The ordinance amends Section 13-1608 which relates exclusively to roofing materials within single-family and two-family buildings. Section 13-1608 currently limits the roofing material to flat or barrel tile. Similar material limitations are not imposed upon the industrial and commercial districts.

On September 19, 2018, the Planning and Zoning Board, acting in their capacity as the Local Planning Agency, heard the item and recommended approval, but expressed concerns regarding the possible lack of aesthetic appeal of standing metal seam roofs.

On October 2, 2018 the Town Council moved the item on First Reading.

B. PROPOSED CHANGES

The following described elements are presented in the same order that they appear in the proposed ordinance.

13-1608(a) – New residential development. This subsection permits standing metal seam roofing for new single-family and two-family construction.

13-1608(b) – Existing single-family and two-family buildings. The provision permits existing homes to replace its roofing with standing metal seam roofing.

C. STAFF RECOMMENDATION

Based on the analysis provided below and other factors contained in this report, Staff recommends approval of the ordinance amending Section 13-1608 as it relates to permitting standing metal seam roofing for single-family and two-family buildings.

D. ANALYSIS

The Land Development Code provides that all proposed amendments to the LDC shall be evaluated by the Administrative Official, the Local Planning Agency and the Town Council, and that, in evaluating the proposed amendment, the criteria in Subsection 13-306(b) shall be considered. All portions of this report are hereby incorporated into all portions of this analysis. The following is a staff analysis of the criteria as applied to this ordinance.

1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: The Comprehensive Development Master plan does not address roofing. The proposed ordinance has no impact on concurrency management.

Finding: Complies

2. Whether the proposal is in conformance with all applicable requirements of this Code of Ordinances, including this chapter.

Analysis: See Sections "A", Background; and "B", Proposed Changes, of this report. The amendment offers a roofing system to single-family and two-family homes that is more resilient than barrel or flat tile construction. The ordinance does not conflict with any other portions of the Code.

Finding: Complies.

3. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed change in land use policy.

Analysis See Sections "A", Background; and "B", Proposed Changes, and Criteria "2", of this report. Generally, when a variance approval for the same subject becomes reoccurring, it becomes incumbent upon the policy makers to redress the Code and consider whether a change is appropriate. In addition to its resiliency qualities, the Planning and Zoning Board has granted three (3) variances in the last ten (10) years permitting a standing metal seam roof.

Finding: Complies.

4. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land use.

Analysis: See Sections "A", Background; and "B", Proposed Changes, and criteria "2" and "3" of this report. The proposed amendment does not change the list of permitted uses within any zoning district.

Finding: Complies.

5. Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including schools, transportation, water and wastewater services, solid waste disposal, drainage, water supply, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: See Sections "A", Background; and "B", Proposed Changes, of this report. The proposed ordinance does not impact the above systems.

Finding: Complies.

6. Whether, and the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of any groundwater aquifers, wildlife habitats, and vegetative communities.

Analysis: See Sections "A", Background; and "B", Proposed Changes, of this report. The proposed ordinance does not impact the above systems.

Finding: Complies.

7. Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: See Sections "A", Background; and "B", Proposed Changes, and criteria "2" and "3" of this report. Metal standing seam roofing is generally more expensive than traditional barrel or flat tile. It is also more resilient to storm events that may be experienced in South Florida. These factors contribute to the roofing style's value. That in turn lends value to the rest of the community.

Finding: Complies.

8. Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.

Analysis: See Sections "A", Background; and "B", Proposed Changes; and Criteria 2, 3, and 7, of this report.

Finding: Complies.

9. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of this chapter.

Analysis: See Sections "A", Background; and "B", Proposed Changes; and Criteria 2, 3, and 7 of this report.

Finding: Complies.

10. Other matters which the Local Planning Agency or the Town Council, in its legislative discretion, may deem appropriate.

Analysis: See all portions of this analysis. The Local Planning Agency and the Town Council may consider other appropriate factors to determine whether the proposed amendment is appropriate and consistent with the public interest.

Finding: As determined by the Town Council.

Town of Miami Lakes
Memorandum

To:	**Honorable Mayor and Councilmembers**
From:	**Gina M. Inguanzo, Town Clerk**
Subject:	**Arterial Dynamic Message Sign Maintenance Memorandum of Agreement between Town of Miami Lakes & Florida Department of Transportation**
Date:	**10/16/2018**

Recommendation:

It is recommended that the Town Council approve the Maintenance Memorandum of Agreement with the Florida Department of Transportation (FDOT) for the Arterial Dynamic Message Signs (ADMS).

Background:

The Florida Department of Transportation, pursuant to the Town of Miami Lakes Permit # WKC2017-3058, installed two Arterial Dynamic Message Signs (ADMS) on NW 154th Street/Miami Lakes Drive near the vicinity of the SR 826/Palmetto Expressway. The purpose of the ADMS system is to provide motorists with real-time traffic condition information on the Palmetto and I-75 Expressways.

At the request of the Town, the Department agreed to modify and paint of the ADMS signs, so that they are more aesthetically pleasing and align with the Town's beautification efforts. Under the Maintenance Memorandum of Agreement, the Town will be responsible for the maintenance of the painting system on the ADMS structure and the Department will be responsible for inspecting and maintaining the ADMS structural elements and their associated communication components.

Per the Department's Maintenance standards, the painting system on the ADMS structure will be inspected every two years. The FDOT advised, typically the painting system on the ADMS structure lasts about 6 years before it requires maintenance. At the sixth year (the third inspection), the Department would then recommend the Town to perform spot treatments as needed, which averages about $500 for spot treatments. Lastly, they advised the structures require full re-painting about every 12-15 years, which cost about $15,000 for both structures.

ATTACHMENTS:

Description

Resolution

ADMS Agreement between FDOT & TOML

RESOLUTION NO. 18- _

A RESOLUTION OF THE TOWN COUNCIL, OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") ARTERIAL DYNAMIC MESSAGE SIGN MAINTENANCE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE ADDITIONAL SUPPLEMENTAL AGREEMENTS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE. (Rey)

-

WHEREAS, the Town of Miami Lakes (the "Town") has jurisdiction over N.W. 154th Street, a municipal road ("Miami Lakes Drive"); and

WHEREAS, FDOT, for the purpose of providing real-time information to motorists, has installed two Arterial Dynamic Message Signs ("ADMS") on Miami Lakes Drive; and

WHEREAS, at the Town's behest, FDOT agreed to modify the paint of the ADMS in order to make them aesthetically pleasing to the Town and conform to the Town's beautification efforts ; and

WHEREAS, in order to ensure upkeep, FDOT requires bi-annual inspections of the ADMS units, spot treatment every six -years or as needed, and re-painting every 12-15 years; and

WHEREAS, the cost for spot treatment will be an estimated five hundred dollars ($500.00), and the re-painting will be an estimated fifteen thousand dollars ($15,000.00), for both ADMS units; and

WHEREAS, the Town Manager believes it is in the best interest of the Town to execute an agreement with FDOT for the painting and maintenance of the ADMS units.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section1. Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

Section2. Accept Agreement. The Town Council hereby approves the Florida Department of Transportation Arterial Dynamic Message Sign Maintenance Memorandum of Agreement With the Town of Miami Lakes, attached hereto as Exhibit "**A**".

Section 3. Execution of the Agreement. The Town Manager is authorized to execute Florida Department of Transportation Arterial Dynamic Message Sign Maintenance Memorandum of Agreement, and any amendments or supplements regarding this project on behalf of the Town.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds, not to exceed $500.00 for spot treatment every six years, and $15,000.00 for re-painting every 12 to 15 years, or as needed.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

**********THIS PORTION HAS BEEN LEFT INTENTIONALLY BLANK*********

Passed and adopted this _____ day of October, 2018

The foregoing resolution was offered by _____ who moved its adoption. The motion was seconded by _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Frank Mingo	_____
Councilmember Luis Collazo	_____
Councilmember Timothy Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Nelson Rodriguez	_____
Councilmember Marilyn Ruano	_____

_____
Manny Cid
MAYOR

Attest:

_____
Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:

_____
Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

FLORIDA DEPARTMENT OF TRANSPORTATION
ARTERIAL DYNAMIC MESSAGE SIGN
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
TOWN OF MIAMI LAKES

This **AGREEMENT**, entered into on _____, 20__, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT,** and the **TOWN OF MIAMI LAKES**, a municipal corporation of the State of Florida, hereinafter called the **TOWN**, and collectively referred to as the **PARTIES**.

RECITALS:

A. The **TOWN** has jurisdiction over **NW 154th Street (Miami Lakes Drive)**; and

B. The **DEPARTMENT**, as part of the continual updating of the State of Florida Highway System and for the purpose of providing information to the motorist, has installed two Arterial Dynamic Message Signs within the corporate limits of the **TOWN**; and

C. The **DEPARTMENT**, pursuant to **TOWN** Permit # WKC2017-3058, has drafted design plans and has installed two Arterial Dynamic Message Signs, and associated components (the **IMPROVEMENTS**), on NW 154th Street (Miami Lakes Drive), the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS)**, which by reference shall become a part of this **AGREEMENT**; and

D. At the request of the TOWN, the DEPARTMENT agreed to modify the paint of the Arterial Dynamic Message Signs, and the **TOWN** has agreed that the painting system of the Arterial Dynamic Message Signs (the **PAINTING SYSTEM**) within the **PROJECT LIMITS** shall be maintained by the **TOWN** in accordance with Section 3 of this **AGREEMENT**; and

E. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the painting system for the Arterial Dynamic Message Sign structures installed pursuant to the Project; and

F. The **TOWN,** by Resolution No._____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. DEPARTMENT RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the **PAINTING SYSTEM** for the Arterial Dynamic Message Sign structures within the **PROJECT LIMITS** to the **TOWN** in perpetuity upon the **DEPARTMENT's** release of its contractor from further warranty work and responsibility. The **DEPARTMENT** will continue to inspect and maintain the Arterial Dynamic Message Sign structural elements and their associated communication components.

3. TOWN'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **TOWN** shall be responsible for the maintenance of the same. The **TOWN** shall maintain the **PAINTING SYSTEM** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. The **TOWN** shall further maintain the **PAINTING SYSTEM** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **TOWN's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

a. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.

b. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.2 Painted Arterial Dynamic Message Sign Structures:

a. Maintaining the surface paint of the painted overhead Arterial Dynamic Message Sign structures and all other painted hardware components in an aesthetically pleasing condition.

b. Addressing all painted surface deficiencies identified in the **DEPARTMENT's** Inspection Reports within the time recommended on each report.

c. Following the manufacturer's recommendation to properly restore the steel surfaces and paint system when addressing all identified deficiencies, including removal of graffiti and matching existing signal color per manufacturer's recommendations.

d. Maintaining a log of all work performed on each painted overhead Arterial Dynamic Message Sign structures in a manner that is easy to understand and monitor.

The **TOWN** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the painted overhead Arterial Dynamic Message Sign structures to ensure that the **TOWN** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **TOWN** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **TOWN** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **TOWN's** responsibilities as established herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **TOWN MANAGER**, to notify the **TOWN** of the maintenance deficiencies. From the date of receipt of the notice, the **TOWN** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

a. Maintain the Arterial Dynamic Message Signs **PAINTING SYSTEM**, or a part thereof and invoice the **TOWN** for expenses incurred; or

b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the Arterial Dynamic Message Sign **PAINTING SYSTEM** within the **PROJECT LIMITS**, and charge the **TOWN** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the TOWN: Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014
Attention: Town Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE ARTERIAL DYNAMIC MESSAGE SIGNS

a. The **PARTIES** agree that the Arterial Dynamic Message Signs addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the Arterial Dynamic Message Signs, the **TOWN's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the TOWN limits.

7. TERMINATION

This **AGREEMENT** is subject to termination under any one of the following conditions:

a. By the **DEPARTMENT**, if the **TOWN** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.

b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **TOWN** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **TOWN** pertinent to this **AGREEMENT** which are subject to provisions of Chapter 119, of the Florida Statutes.

c. If mutually agreed to by both parties, upon thirty (30) days advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

d. If the **DEPARTMENT** removes the Arterial Dynamic Message Sign Structures

8. ADDITIONAL TERMS

a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES**. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 7.

b. E-Verify

The **TOWN** shall:

i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and

ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. (Executive Order Number 2011-02)

The **TOWN** shall insert the above clause into any contract entered into by the **TOWN** with vendors or contractors hired by the **TOWN** for purposes of performing its duties under this **AGREEMENT**.

c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.

e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.

f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.

g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.

i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.

j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.

k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **TOWN** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **TOWN's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **TOWN**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **TOWN** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence of the **DEPARTMENT.**

The **TOWN's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense

and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **TOWN's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **TOWN** of a claim shall not release the **TOWN** of the above duty to defend and indemnify the **DEPARTMENT**.

The **TOWN** shall pay all costs and fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT.**

The **TOWN's** evaluation of liability or its inability to evaluate liability shall not excuse the **TOWN's** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **TOWN.**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

TOWN OF MIAMI LAKES:

BY:_____
TOWN Manager / Mayor

ATTEST:_____**(SEAL)**
TOWN Clerk

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY:_____
District Director of Transportation Operations

ATTEST:_____
Executive Secretary

LEGAL REVIEW:

BY:_____
TOWN Attorney

BY:_____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the Arterial Dynamic Message Signs to be maintained under this **AGREEMENT.**

State Road Number: **NW 154th Street (Miami Lakes Drive)**

Agreement Limits: **Station 103+58 (east of SR-826) and Station 161+00 (west of SR-826)**

County: **Miami-Dade**

EXHIBIT 'B'

TOWN OF MIAMI LAKES RESOLUTION

To be herein incorporated once ratified by the **TOWN** Council.