

FAQS

Proposed Amendments to Fort Lauderdale's *Unified Land Development Regulations on Community Residences for People With Disabilities*

These FAQs seek to answer questions you might have regarding the extensive, complex amendments proposed for Fort Lauderdale's *Unified Land Development Regulations* to zone for community residences for people with disabilities which include sober homes and recovery communities.

The proposed ordinance comprehensively revamps the city's zoning

You'll learn a whole lot more by reading the 55-page study on which the proposed zoning amendments are based, *Fort Lauderdale, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities*. While it probably explains more than you'd ever want to know about community residences and how to legally zone for them, it will not cure insomnia. **The city's study provides many more details that explain the basis for each of the answers to the questions in these FAQs. Those pages are in brackets.**

treatment of these homes in accordance with sound zoning and planning principles, the nation's Fair Housing Act, and applicable Florida State Statutes.

The proposed zoning amendments for sober living homes and other community residences for people with disabilities seek to protect people with disabilities including people in recovery, from exploitation, scam operators, fraud and the many other abuses documented so well in our local newspapers. By protecting people with disabilities, these amendments will also protect Fort Lauderdale’s neighborhoods from the impacts of unscrupulous operators.

The 55-page study proposes a zoning approach for all community residences for people with disabilities similar to those hundreds of cities and counties across the country have adopted during the past 35 years. The proposed zoning approach evolved in large part from guidelines drafted by the American Planning Association, American Bar Association, and settlements of housing discrimination complaints brought by the U.S. Department of Justice. It should prevent the creation of new concentrations of community residences and the intensification of existing concentrations, concentrations that undermine the ability of community residences to achieve normalization and community integration of their residents. It is important to understand that “normalization and community integration” make up the core purpose of community residences.

What types of residences do the proposed zoning amendments regulate?

They cover community residences for people with disabilities that are not otherwise licensed by the state. These homes provide a family–style residence for people in recovery from alcohol and/or drug addiction, and others with a disability that severely limits their ability to perform some of the everyday life tasks most of us take for granted. [6] The amendments do *not* apply to vacation rentals which constitute an entirely different land use. [49]

What are community residences for people with disabilities?

Community residences provide a family–like living arrangement for people with disabilities to enable them to live as “normal” a life as possible by emulating a biological family. The staff (or in the case of a self–governed recovery community, the officers) function as parents. 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. For more examples of how community residences emulate a biological family (and how much they function differently from rooming houses and institutional uses like nursing homes, continuing care facilities, and many assisted living facilities), see the list of “Primary Functions” in Table 1 of the study. [12]

The end goal of a community residence is to enable residents to achieve as much independence as they are capable, much like the aspirations we have for our own children as they mature into adulthood. [6, 9-12]

Community residences include group homes, sober living homes, recovery communities, those assisted living facilities that emulate a biological family, and *small* halfway houses for people with disabilities. For regulatory purposes, community residences are divided into two types based on their performance characteristics (which is how all zoning is supposed to work).

What are the two types of community residences and how will they be regulated differently?

Community residences that more closely resemble long-term permanent housing are called “family community residences.” Family community residences do not limit how long a resident can live there. People have lived in family community residences for many years, even decades — providing the relative permanence typical of single-family and other lower-density housing. Group homes as well as many sober living homes and recovery communities like Oxford House tend to function as family community residences. [9-12]

Transitional community residences place a time limit on residency in terms of weeks or months. They offer a relatively temporary living arrangement, more akin to multifamily housing. Small halfway houses for people in recovery as well as some sober living homes and recovery communities function as transitional community residences. [12-13]

What about halfway houses for prison pre-parolees or sex offenders?

These are not community residences for people with disabilities — consequently their current zoning treatment won’t be changed. Even if any of the people in these halfway houses had disabilities, the Fair Housing Act *excludes* from its coverage for people who “constitute a direct threat to the health or safety of others.” 42 U.S.C. §3602(f)(9) (1988). The Florida State Statutes also *exclude* people “whose residency would result in substantial physical damage to the property of others.” *Florida Statutes* §419.001 (10)(2016). [13]

How do community residences affect property values and the neighborhood?

The impacts of community residences have been studied more than any other small land use. The research conclusively shows that as long as community residences are licensed or certified and *not* clustered on a block or in a neighborhood, they have no effect on property values, property turnover rates, or neighborhood safety. We also know that they need to be located in residential

neighborhoods to achieve their essential goals of normalization and integration of their residents into the social fabric of a neighborhood. We know that clustering community residences on a block or in a neighborhood can impede normalization and community integration and can create a *de facto* social service district which hampers normalization and community integration. We know that licensing and

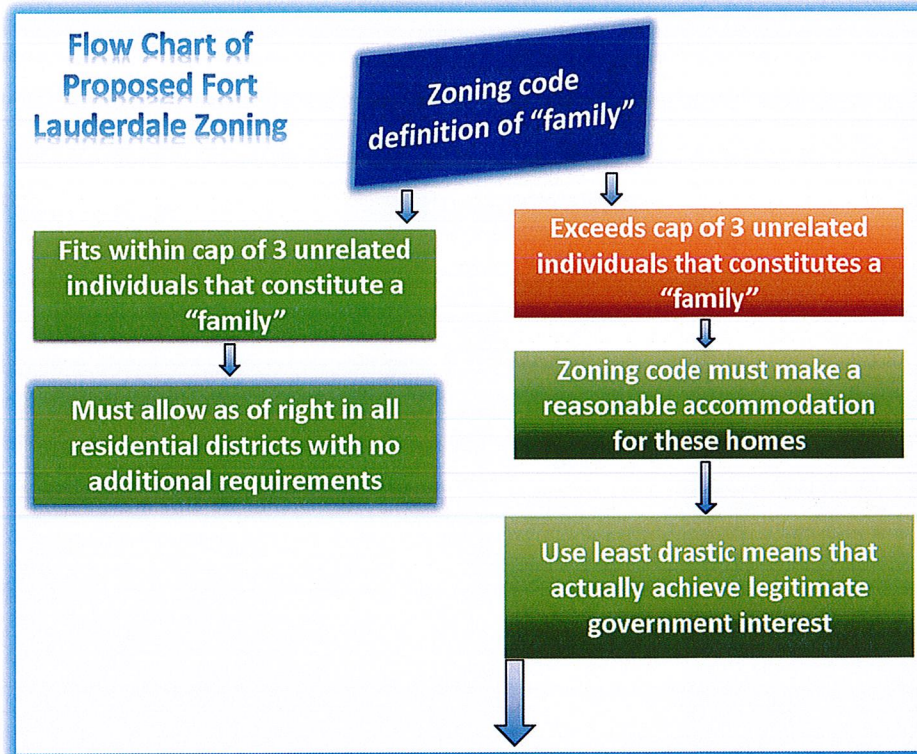
The proposed amendments place sober living homes and recovery communities on an equal footing with the other community residences that house people with other types of disabilities. To establish minimum standards of care and protect vulnerable people with disabilities from abuse, those operators or staff who are incompetent, fraud, theft, and exploitation, the State of Florida requires a license for these other community residences. By requiring a license or certification for all community residences including those not currently licensed by the state, the proposed amendments effectively establish these same protections for people in recovery in existing and future sober homes or recovery communities. There is no basis in law or zoning theory or practice for *local* zoning to treat community residences differently than other community residences based on the nature of their residents' disabilities.

certification of community residences can weed out incompetent and illegitimate operators who can endanger the vulnerable people who live in these homes. [21, 53-55]

All this research leads to the unavoidable conclusion that zoning needs to prevent concentrations of community residences from developing and that the vulnerable population of people who live in community residences need to be protected from illegitimate and incompetent operators.

So, exactly how do the proposed amendments regulate the location of family and transitional community residences for people with disabilities?

Start by looking at the number of people that would live in the proposed community residence.



Up to three residents. As the flow chart above suggests, the threshold question for any proposed community residence is “How many people will live there?” That’s because, in addition to a biological family, the definition of “family” in Fort Lauderdale’s *Unified Land Development Regulations* allow up to three unrelated people living as a single housekeeping unit to be a “family” (there’s nothing unusual about this — nearly every city in America has a very similar definition of “family” or “household”).

Consequently, courts throughout the nation have consistently ruled that a proposed community residence that fits within this cap on unrelated people in a jurisdiction’s zoning definition of “family” must be treated the same as any other family. In Fort Lauderdale’s case, that means all groups of up to three unrelated people must be treated the same as a biological family. To impose any requirements on a community residence for three or fewer individuals that do not apply to *all* families constitutes housing discrimination on its face, also known as “facial discrimination.” Local governments have consistently lost court cases when they impose a spacing distance or licensing requirement on a community residence that

fits within the cap of unrelated individuals under their definitions of “family.” [36-37]

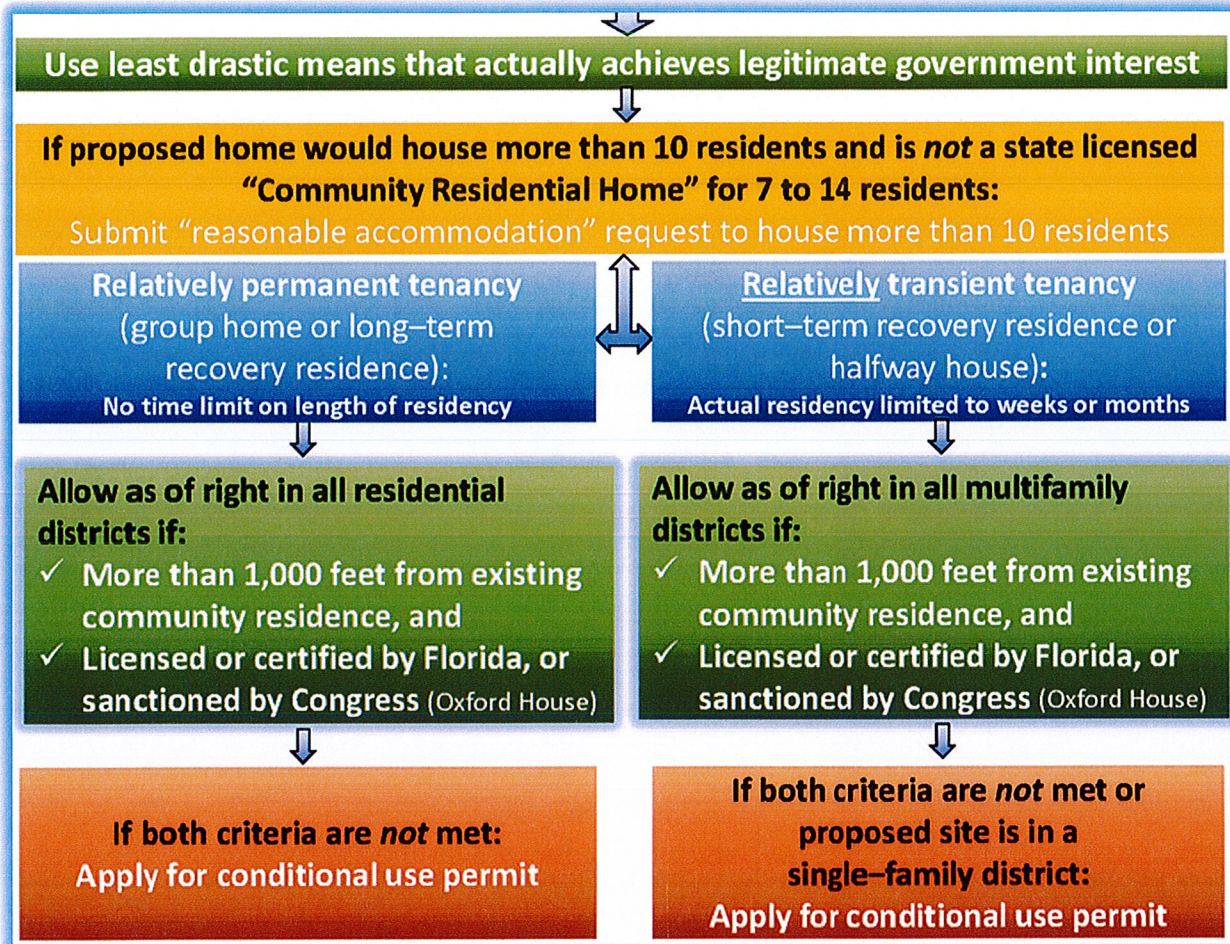
Over three residents. This is where the amendments to the nation’s Fair Housing Act adopted under President Reagan require every city and county to make a “reasonable accommodation” in their land use regulations for the people with disabilities who would live in a proposed community residence. [7-8]

The flow chart below illustrates the decision making process of how a proposed community residence for more than three people with disabilities will be considered under the zoning amendments.

Under the proposed zoning amendments, anybody who wishes to open a new community residence will have to complete and submit a form that gives the city a very clear picture of the nature of the proposed community residence, the nature of the disability residents will have (in general, no information about any specific resident will be required), the status of licensing or certification, the number of residents, and the size of each bedroom (necessary to determine the maximum number of occupants allowed for all residential uses in Fort Lauderdale). The answers to the questions will enable city staff to quickly determine whether the proposed community residence is allowed as a permitted use, requires a conditional use permit, needs to apply for additional accommodations, or is prohibited. [51-52]

If a proposed family community residence would house more than ten people, the operator will also have to seek an accommodation from a special magistrate in which it would have to demonstrate the therapeutic and/or financial need for more than ten people and that the home would be able to emulate a biological family.

A proposed community residence that has been denied state licensing or certification would not be allowed at all.



Single-Family Zoning Districts. Under the proposed zoning amendments, the relatively permanent *family* community residence will be allowed as a permitted use in single-family residential zoning districts as long as the proposed home is at least one thousand feet from any existing community residence and is licensed or certified by the state, or sanctioned by Congress (Oxford House). A conditional use permit will be required for all transitional community residences. A proposed family community residence that does not meet both of those objective standards will also need to obtain a conditional use permit. To receive a conditional use permit, the operator will have to demonstrate that the proposed home would not generate any adverse impacts on the existing community residence and the neighborhood. [44-45] Section 3 of the proposed ordinance states these standards in detail that an applicant must meet to receive a conditional use permit.

Multiple-Family Zoning Districts. Under the proposed zoning amendments, all community residences will be allowed in the zoning districts in which multiple-

family housing is allowed as long as the proposed home is at least one thousand feet from any existing community residence and is licensed, certified, or sanctioned by Congress (Oxford House). [43-45] A conditional use permit will be required for when a proposed community residence does not meet both of those objective standards. To receive a conditional use permit, the operator will have to demonstrate that the proposed home would not generate any adverse impacts on the existing community residence and the neighborhood. [43-45] Section 3 of the proposed ordinance states these standards in detail that a community residence applicant must meet to be awarded a conditional use permit.

What effect will the proposed amendments have on existing community residences that are *not* licensed by the State of Florida?

Five Florida agencies license different types of community residences for people with disabilities. But not all disabilities are covered by the state. The most glaring omission is recovery communities and sober homes for people in recovery from drug or alcohol addiction. The State of Florida has, however, established a voluntary certification program for the operators of such homes.

By requiring licensing or certification, the proposed zoning amendments effectively require operators of unlicensed recovery communities and sober homes for people in recovery from drug or alcohol addiction to obtain certification to locate in Fort Lauderdale.

Existing community residences that are legally nonconforming after the adoption of the ordinance must register with the City and demonstrate or obtain certification within sixty (60) days. Failure to prove licensing or certification will result in a requirement to close down and place occupants in a proper setting.

Will these amendments change the zoning of my property?

No. The proposed amendments do not change the boundaries of any zoning district. The city's zoning correctly recognizes that a community residence for people with disabilities is functionally and legally a residential use, not a commercial use. It does not change the zoning in any way and the community residence that is must comply with all zoning and building code requirements like any other single-family house, duplex, or multifamily building.

What is the absolute maximum number of people that can live in a community residence?

While the proposed amendments allow for up to ten occupants in a community residence, that maximum is tempered by the housing code maximum allowable occupants in all residential dwellings. Fort Lauderdale adheres to the *Standard*

Housing Code 1994 Edition which establishes a very common formula to prevent overcrowding in all houses and apartments. The key provision 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 occupants. [46] ***The U.S. Supreme Court has made it abundantly clear that these minimum floor area requirements apply to all residences in Fort Lauderdale, including community residences for people with disabilities.***

Consequently, even if a community residence is proposed to house ten people and this formula in the *Housing Code* would allow just seven occupants, only seven people can live there. As the U.S. Supreme Court ruled, this is one of the local code requirements that applies to all residential uses equally and the Fair Housing Act does not require a city to waive this limit to prevent overcrowding. [36-38]

Now, for example, when a residence is large enough to be occupied by 14 people and the operator wishes to house as many as 14 people, the operator would have to apply for an accommodation where it would have to demonstrate the therapeutic and/or financial need for 14 occupants and that the residents would be able to emulate a biological family. [38-39]