



FAQS

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

You'll learn a whole lot more by reading the 55–page study on which the proposed zoning amendments are based, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities*. You can download it at <http://www.mydelraybeach.com>. 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.

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 Delray Beach’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. These homes provide a family–style residence for people with developmental disabilities, mental illness, physical disabilities, the frail elderly, 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. [47]

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. [11]

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. [8-12]

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 with mental illness or 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). [12-13]

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

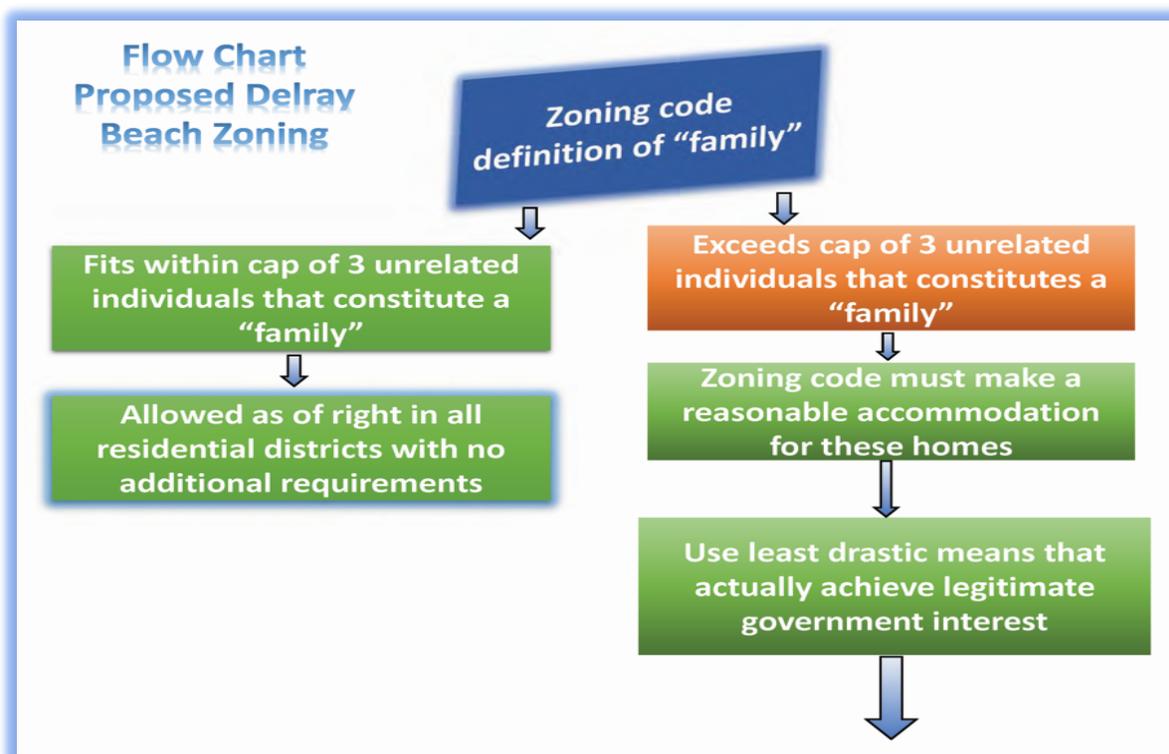
and community integration and can create a *de facto* social service district which hampers normalization and community integration. We know that licensing and certification of community residences can weed out incompetent and illegitimate operators who can endanger the vulnerable people who live in these homes. [13-17, 53-55]

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.

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 Delray Beach’s *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 Delray Beach’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.” Cities and counties 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.” [32-34]

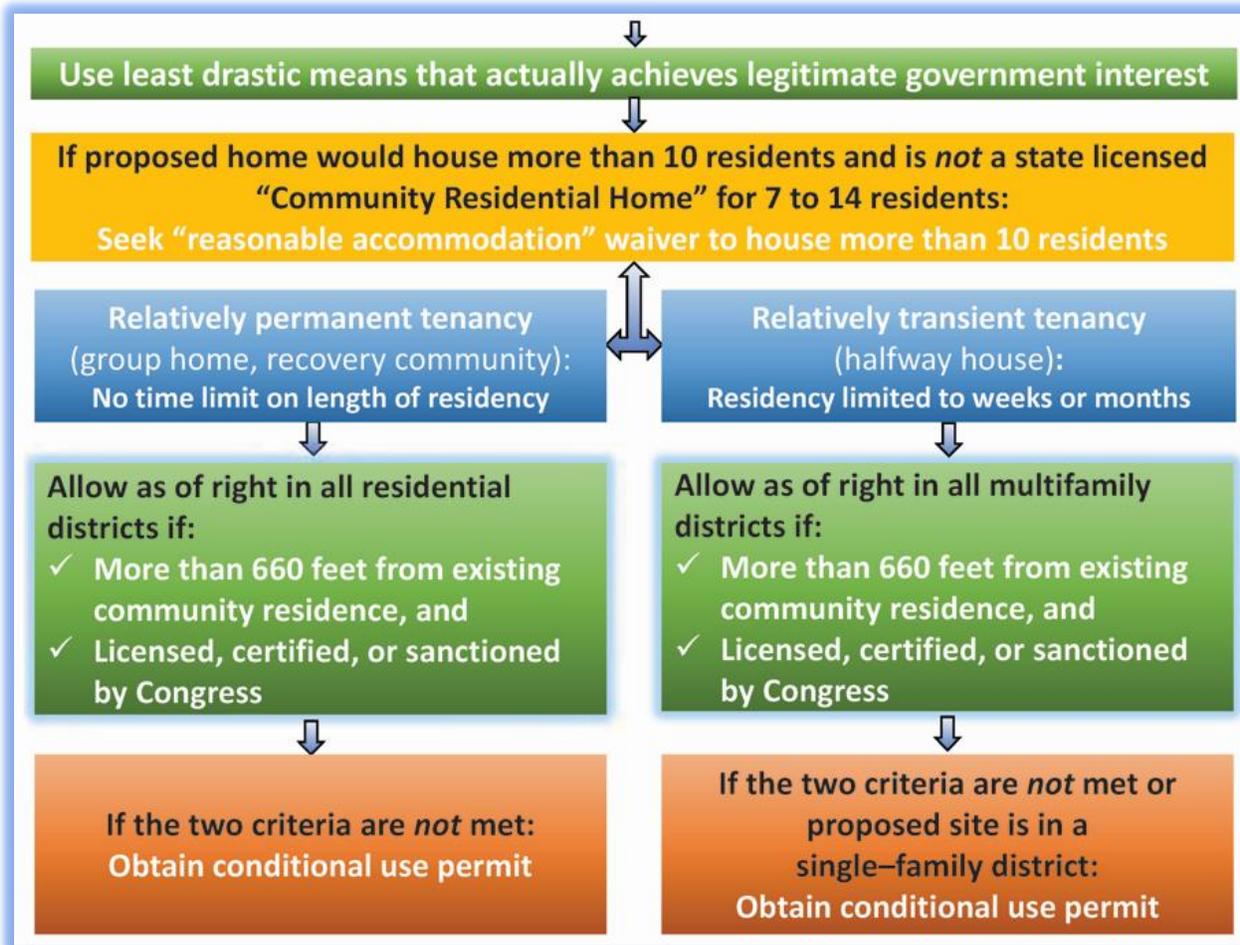
Over three residents. This is where the amendments to the nation’s Fair Housing Act adopted under President Reagan require every city and county to make a “reasonable accommodation” in their land use regulations for the people with disabilities who would live in a proposed community residence. [7-8]

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 Delray Beach). 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. [50-52]

If a proposed family community residence would house more than ten people, the operator will also have to seek an accommodation 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. [38-39]

A proposed community residence that has been denied 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 typical city block (660 feet) from any existing community residence and is licensed or certified by the state, or sanctioned by Congress (Oxford House). [35-36] 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. [37-38] Section 6 of the proposed ordinance states these standards in detail that an applicant must meet to be awarded 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 typical city block (660 feet) from any existing community residence and is licensed, certified, or sanctioned by Congress (Oxford House). [35-36] 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. [37-38] Section 6 of the proposed ordinance states these standards in detail that a community residence applicant must meet to be awarded a conditional use permit.

Mixed Use Zoning Districts. Under the proposed zoning amendments, community residences are permitted uses in mixed use zoning districts subject to the same two objective criteria stated immediately above and require a conditional use permit when both of those criteria are not met. The standards in Section 6 of the proposed ordinance provide, in detail, the standards that a community residence applicant must meet to receive 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 Delray Beach.

Existing community residences that have been allowed under the city's current accommodation process are already required to apply to renew their accommodation by April 1 each year. Under the proposed zoning amendments, the renewal process will require the operators of these existing community residences to show that they are licensed or certified by the State of Florida. Failure to prove licensing or certification will result in revocation of the accommodation permit and trigger a reasonable 60-day period to close down and place occupants in a proper setting.

A lot of the provisions in the proposed amendments say “except as required by state law.” What is this all about?

Thirty–nine states have some form of statewide zoning for *some, but not all*, community residences for people with *some, but not all*, types of disabilities. States can do that because the power to zone resides with the state. States give localities the power to zone through a state zoning enabling act. Like local zoning, statewide zoning for community residences for people with disabilities must comply with the nation’s Fair Housing Act. Not all statewide zoning is in accord with the Fair Housing Act.

In §419.001, “Site selection of community residential homes,” the State of Florida sets statewide zoning standards for the community residences *that five state agencies license*. The state statutes establish different zoning standards for community residences housing six or fewer people than those with seven to 14 residents. The state law — for which no rational basis appears to exist — does impose some limits on local zoning for certain licensed community residences for as many as 14 people. As the study explains in detail [41-47], some of the state provisions appear to be contradictory and others fail to comply with the nation’s Fair Housing Act. Consequently, the language “except as required by state law” is included in the proposed amendments to make it clear that Delray Beach will make any exceptions to its new zoning provisions required by provisions in the state statute that comply with the nation’s Fair Housing Act. So under certain circumstances, state law has long required that all cities and counties allow community residences licensed by these five state agencies to house as many as 14 people. **But those *not licensed* by these five agencies —sober living homes and recovery communities are *not licensed* by any of these five agencies — are limited to ten occupants unless they receive a reasonable accommodation from the city.**

Consequently, sober living homes, recovery communities and any other type of community residence for which these five state agencies does *not* issue a license, must receive a reasonable accommodation from the city to house more than ten people — and that can be approved only when the dwelling is large enough for more than ten people under the city’s adopted housing code as discussed below. The state’s certification of sober homes and recovery communities does not fall within §419.01 of the state statutes.

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 same maximum allowed in all residential dwellings. Delray Beach 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. ***The U.S. Supreme Court has made it abundantly clear that these minimum floor area requirements apply to all residences in Delray Beach, 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. [38-39]

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]

Off–Street Parking Requirements

The off–street parking requirements in Section 35 of the proposed amendments are narrowly tailored to the actual parking demand generated by each specific community residence. So if an operator increases the number of residents, the number of required off–street parking spaces will also increase. [40]

More questions? Need more information?

Please call or write to Delray Beach consulting attorney Terrill Pyburn at FAQs@mydelraybeach.com or by phone at 954-557-6363 weekdays between 9 a.m. and 5 p.m.