



Legislation Text

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TO: Mayor and Commissioners
FROM: R. Max Lohman, City Attorney
DATE: July 18, 2017

ORDINANCE 25-17 AMENDING THE CITY'S LDRs TO REPEAL SECTION 4.3.3(I), "COMMUNITY RESIDENTIAL HOMES AND GROUP HOMES" IN ITS ENTIRETY AND ENACTING A NEW SECTION 4.3.3(I), "COMMUNITY RESIDENCES FOR WHICH A CONDITIONAL USE PERMIT IS REQUIRED" IN ORDER TO PROVIDE CRITERIA FOR ISSUING A CONDITIONAL USE PERMIT FOR COMMUNITY RESIDENCES (SECOND READING)

Recommended Action:

Motion to Approve Ordinance 25-17, a City initiated amendment to the Land Development Regulations, Article 2.4 "General Procedures", Article 4.3 "District Regulations; General Provisions", Article 4.4 "Base Zoning District", and Article 4.6 "Supplemental District Regulations" to revise and clarify the procedure for requesting a reasonable accommodation, to provide operators of community residences for people with disabilities clarity and certainty on where such homes may locate as of right and via conditional use permit in accordance with applicable case law, the Fair Housing Act and the Americans with Disabilities Act, and to establish appropriate parking regulations for same.

Background:

The item before the Commission is Ordinance 25-17, a City-initiated amendment to multiple Chapters of the Land Development Regulations to amend the regulations regarding Community Residences, for people with disabilities which include residences for people with developmental disabilities, mental illness, physical disabilities, the frail elderly, people in recovery from alcohol and/or drug addiction, and others.

This amendment is based on the study entitled, "Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities("the Study").

The proposed zoning amendments for sober living homes and other community residences for people with disabilities seeks 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 and the Study. By protecting people with disabilities, these amendments will also protect Delray Beach's neighborhoods from the impacts of unscrupulous operators.

For regulatory purposes, community residences are divided into two types based on their performance characteristics: family community residences and transitional community residences.

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.

ANALYSIS

Pursuant to **LDR Section 2.4.5(M)(1)**, *amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual.*

STAFF COMMENT: The proposed amendments will provide clarity and equal treatment of all community residences, regardless of the purpose of the housing. In so doing, the City will be providing some protection to both the residents of this housing as well as the neighborhoods in which these houses are located.

Pursuant to **LDR Section 2.4.5(M)(5), Findings**, *in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.*

A review of the objectives and policies of the adopted Comprehensive Plan was conducted and the following applicable Objective and Policy were noted:

HOUSING

- **Objective A-11** *To assist residents of the City in maintaining and enhancing their neighborhood, the City, through public input and notification, shall take steps to ensure that modifications in and around the neighborhood do not lead to its decline, such as those described in the following policies.*

This ordinance will help to protect the residents of community residences by mandating licensure or certification by the state unless the residence is Congressionally chartered. This ordinance will also help to prevent new concentrations of community residences from developing and existing concentrations from intensifying. As explained in the Study, these concentrations have been known to hinder the ability of community residences to achieve their essential goals of normalization and community integration.

- **Policy A-11.4** *The City will provide planning and technical assistance to implement neighborhood-supported initiatives aimed at preserving the character of existing residential areas. Such assistance may involve the formulation of regulations that would limit the size and scale of new homes to be consistent with existing structures within a defined*

neighborhood, and analysis of the housing inventory to determine if the area qualifies for designation as a historic district, and similar measures.

The City is providing planning assistance through this amendment to help preserve the character of its neighborhoods. As explained in the Study, concentrations of community residences can create *de facto* social service districts that alter the character of a neighborhood.

STAFF ANALYSIS: The proposed amendments to the LDRs will serve to protect the character and nature of our existing and future neighborhoods by providing clear, consistent, and fair regulations for community residences. These regulations will serve to protect both the residents living in the community residences by ensuring that these homes meet the standards of this ordinance and also enable residents to achieve as much independence as they are capable as well as to protect the residents in the neighborhoods by avoiding the creation of *de facto* social service districts.

REVIEW BY PLANNING AND ZONING BOARD

This item was presented to the Planning and Zoning Board on June 19, 2017, which recommended approval 7-0.

City Attorney Review:

Approved as to form and legal sufficiency.