Reforming State and Local Zoning for Community Residences for People With Disabilities and for Recovery Communities

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This report uses the most recent data available at the time it was written. Consequently, some tables and figures do not include data beyond 2022 because data for 2023 were not available as of this writing.

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Acknowledgments

A project this extensive could be completed only with substantial contributions from a variety of entities and individuals. In June 2023, the Florida legislature budgeted funds to the Department of Children and Families to conduct this statewide study on zoning regulations for community residences for people with disabilities and recovery communities for people in recovery from substance use disorder. Sponsoring legislators were Representative Mike Caruso (HF1901) and Senator Gayle Harrell (SF2852).

Palm Beach County's State Attorney Addiction Recovery Task Force (SAART) made the appropriation request which was submitted to the legislature through the Palm Beach County Board of County Commissioners. The Task Force is run by Palm Beach County State Attorney Dave Aronberg and Chief Assistant State Attorney Alan Johnson. After funds were budgeted, Palm Beach County entered into a contract with Florida State University's Institute of Government to administer the study and retain the qualified expert to conduct the study.

The project description states:

> Funding would be used for a statewide study on zoning regulations for community residences for people with disabilities and recovery communities for people in recovery from substance use disorders. The study will enable the Legislature to enact a standard zoning template for local governments to follow for community residences and recovery communities. A statewide study, supporting subsequent legislation, would encourage and provide a uniform approach for all local governments, saving time and resources.

It is impossible to adequately express my appreciation to Terrill Pyburn, Coconut Creek City Attorney, and Alan Johnson of the State Attorney Sober Home Task Force, for their sage counsel, eagle eyes, and keen insights without which this report could not have been produced,

The contributions of Florida State University's Institute of Government were also invaluable. In addition to the administrative contributions of Director Jeffrey Hendry and his staff, Director Hendry offered fresh insights and thorough review of each draft of this report which had a major impact on the final product. Dr, Dena Hurst and Jenny Anderson also offered a very valuable review of the first draft of this report.

Dave Sheridan, Executive Director of the National Alliance for Recovery Residences offered valuable and insightful advice and documents that influenced this report's content

And a special "thank you" to my chief collaborator, copy editor, Director of Research since 2007, and wife, Diana Lauber, who keeps me and my work grounded and has implanted her brilliance on everything I write and publish.

I cannot thank each of these contributors enough.

The research and analysis of zoning for community residences for people with disabilities and for recovery communities continues to evolve over time as more is learned about how these two land uses function and perform, and how local regulation has worked out in practice. The information, analysis, conclusions, and recommendations in this report have evolved and essentially update the information, analysis, conclusions, and recommendations the author has presented in previous studies of these issues conducted for individual cities and counties.

While zoning provisions for community residences for people with disabilities and for recovery communities based on the author's previous studies are simply not as evolved nor as precise as presented in this report, they still comply with the nation's Fair Housing Act.

With gratitude to all who have contributed to this report and to those who have educated me during my 50 years of working on zoning for community residences and other forms of congregate housing,
— *author Daniel Lauber, AICP, attorney/planner*

About the Author: Daniel Lauber, AICP

City planner and zoning/fair housing attorney Daniel Lauber, AICP, pioneered the use of spacing distances between community residences for people with disabilities (group homes, sober living homes which in Florida are statutorily known as "recovery residences"), small assisted living homes) in 1974 with Frank S. Bangs in their Planning Advisory Service Report *Zoning for Family and Group Care Facilities*. Since then, Mr. Lauber has conducted the necessary studies needed to adopt the state–of–the–art zoning provisions for community residences for people with disabilities that he has drafted for dozens of cities and counties throughout the nation. These include the jurisdictions listed on page 152 of this report. He has worked with well over 100 jurisdictions across the nation to remove unjustifiable zoning barriers for community residences to bring their zoning for community residences into compliance with the Fair Housing Act. These zoning amendments balance the need for community residences (and recovery communities) with the need to preserve the residential character of the neighborhoods in which they locate which is necessary for these homes to achieve their core, essential goals.

Mr. Lauber wrote the model zoning guidelines for community residences issued by the American Planning Association and the American Bar Association. As an expert witness for the U.S. Department of Justice, he crafted the successful legal argument that prevailed in *United States v. City of Chicago Heights* 161 F.Supp. 2nd 819 (N.D. Ill. 2001). He has been retained as an expert witness in court from Connecticut to Oklahoma. He has served as an expert witness on zoning applications for community residences before more than 30 jurisdictions and has successfully guided more than 40 operators of community residences including sober living homes through the zoning process. In 2019, by explaining the legal basis to require certification or licensing of recovery residences and recovery communities and how mandatory certification or licensing does not run afoul of the nation's Fair Housing Act, Mr. Lauber's expert testimony contributed to the Florida State Senate's Committee on Children, Family, and Elderly Affairs passing SB 102 which would have required certification.

Mr. Lauber was principal author of the American Planning Association's influential *amicus* brief before the U.S. Supreme Court on behalf of Oxford House in *City of Edmonds v. Washington State Building Code Council,* 514 U.S. 725 (1995).

Mr. Lauber consulted for Dallas, Texas and Prescott, Arizona to assure that their licensing of community residences for people with disabilities complied with the Fair Housing Act.

Retained by the State of Illinois to implement the "Illinois Community Residence Location Planning Act" in 1990, Mr. Lauber worked to bring the state's 110 home rule communities into compliance with the Fair Housing Amendments Act of 1988, evaluating 99 local zoning codes, writing a model zoning ordinance, producing a report for the General Assembly, and recommending state legislative action. This project garnered the 1991 award from the Illinois Chapter of the American Planning Association (APA) for a "Planning Program of Unusually High Merit Performed Under Serious Budgetary, Manpower, or Political constraints."

The Illinois Chapter of APA also recognized Mr. Lauber and his work with an Award of Merit in 1983 and Best Practices Award in 2009. In 1998, the national

American Planning Association honored Mr. Lauber with its prestigious Paul Davidoff Award.

Mr. Lauber has written extensively on this subject in professional publications and has conducted countless seminars and webinars on zoning for community residences and recovery communities at state and national conferences, law schools, the Association of State Mental Health Attorneys, the American Bar Association, American Planning Association, the Indiana Fair Housing Task Force, Michigan Department of Civil Rights, and the Fair Housing Legal Support Center of the John Marshall Law School.

His 1996 article, "A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988," in *The John Marshall Law Review*, has been cited countless times.

In 1983, Mr. Lauber provided technical assistance to housing providers and municipalities for the Illinois Department of Mental Health and Developmental Disabilities which included writing model zoning ordinances for group homes, conducting workshops for local government officials, and writing a guide to zoning for housing providers. In 1986, on behalf of the Illinois Governor's Planning Council on Developmental Disabilities, Mr. Lauber conducted a scientific study of the impacts of group homes on property values, neighborhood stability, and safety in the surrounding neighborhoods.

Mr. Lauber has served as President of the American Planning Association and been President of the American Institute of Certified Planners twice. He was Legal Advocacy Vice–Chair of the Region VI Executive Committee of the American Association on Mental Retardation and chaired the Group Home and Congregate Living Subcommittee of the American Bar Association's Committee on Regulation of Land Use.

Mr. Lauber has received a B.A. from the University of Chicago, a Masters of Urban Planning from the University of Illinois–Urbana, and a J.D. from Northwestern University School of Law.

Chapter 1

Executive Summary

Key Takeaways: Findings

- **The State of Florida remains in the grip of an intensifying substance abuse epidemic that has engulfed nearly the entire nation — an epidemic that has cost the lives of over one million Americans and affected nearly 20 percent of U.S. families. Opioids have been the accelerant that doubled the number of deaths due to drug overdoses between 2015 and 2021, accounting for 75 percent of overdose deaths. The costs to taxpayers and families are incalculable.**
- **As discussed throughout this report, recovery residences and recovery communities are essential components to mitigate this substance use disorder epidemic. Without them, recovery is simply beyond the reach of most people with substance use disorder. These two forms of housing provide the support, guidance, safe, and healthy living environment necessary to achieve a long–lasting clean and sober life.**
- **Nearly two–thirds of the state's counties lack any certified recovery residences and recovery communities.[1] With approximately 73 percent of these uses located in Broward and Palm Beach counties, Florida faces an intense mismatch between where these recovery residences and recovery communities are located and where the highest rates of opioid poisoning and substance use disorder are.**
- **Unjustifiable local zoning restrictions on recovery communities and on community residences for people with disabilities, of which recovery residences constitute a subset, appear to contribute to this mismatch.**
- **President Reagan's Fair Housing Amendments Act of 1988 requires governments, be they local or state, to make a "reasonable accommodation" in their zoning using the least drastic means needed to actually achieve legitimate government interests to enable community residences and recovery communities to locate in the residential districts that facilitate achieving their core purposes.**

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1 See Chapter 3 for a detailed explanation of both uses and model definitions.

- **All too often state and local zoning place roadblocks to these key elements for achieving recovery by impeding the establishment of recovery residences and recovery communities by not allowing them as a permitted use under any circumstances in the residential districts in which they need to locate. These zoning provisions often arise out of myths and fears about people with disabilities, especially people in recovery and often co–occurring mental illness. They frequently arise from factually unfounded fear of crime and loss of property values.**
- **Many of these zoning provisions were illegal even before President Reagan signed the Fair Housing Amendments Act of 1988. With President Reagan's signature which added people with disabilities as a protected class, there is no doubt that those state and local zoning provisions still in zoning codes throughout the state constitute illegal housing discrimination.**
- **This report identifies the zoning treatment of community residences for people with disabilities and of recovery communities by the State of Florida and local jurisdictions that have become problematic under the nation's Fair Housing Act and provides a path to reforming these zoning approaches with a principled, fact–based, judicially–upheld, comprehensive, and time–tested approach.**
- **And this approach necessarily extends to include all community residences for people with disabilities, a subset of which are recovery residences since there is no basis for zoning to treat community residences for people with various disabilities differently.**

Key Takeaways: Recommended Actions

Largely written *before* the applicable case law matured and much was known about the nature of the housing it regulates, the state statute §419.001 that establishes maximum restrictions on zoning for *some* community residences for *some* people with *some* disabilities understandably warrants substantial revisions to bring it into compliance with President Reagan's Fair Housing Amendments Act of 1988.

- **Given when many of the provisions in §419.001 were written, it is understandable that §419.001 contains a number of problematic provisions that lack factual or legal justification, likely exposing the State of Florida and localities to substantial legal liability.**
- **At a minimum, the legislature should update §419.001 by repealing those provisions that chapters 7 and 8 of this report identify as not complying with the nation's Fair Housing Act and, replacing them with**

provisions that conform to the act.

- **The legislature should seriously consider replacing §419.001 in its entirety with the comprehensive up–to–date balanced zoning approach Chapter 6 of this report recommends to bring state law into full compliance with the Fair Housing Amendments Act of 1988.**
- **Both the state statute and most local zoning ordinances need to be amended to comply with well–settled case law that a community residence for people with disabilities that fits within the local zoning code's cap on the number of unrelated individuals that constitutes a "family" or "household" is a "family" or "household" and shall be treated exactly the same as all families or households and be allowed as a permitted use in all zoning district where dwellings are a permitted use.**
- **All existing licensed or certified community residences and recovery communities would be grand fathered in under any of the refinements to local and state zoning this report recommends. Those lacking an available license or certification would be given a reasonable amount of time to obtain their license or certification and will be grand fathered in if they do so.**

Florida was a pioneer with its approach to statewide zoning for community residential homes adopted before the case law under the Fair Housing Amendments Act of 1988 matured. It pioneered certification of recovery residences (nationally known as "sober living homes"). And it has led the nation in developing new tools and practices to mitigate the substance use disorder epidemic that has swept the nation.

Now is the time for Florida to lead the country once again by bringing its zoning and licensing/certification for community residences for people with disabilities and for recovery communities into the 21st century based on the case law that has substantially matured since the state legislature first addressed these land uses decades ago.

At a minimum and at its first opportunity, the State of Florida would be prudent to implement the corrective measures to its statewide zoning for community residences Chapter 8 of this report recommends. This includes addressing zoning and certification of recovery communities, the concept of which didn't even exist when §419.001 was first adopted.

In the not–to–distant future, the State of Florida might wish to adopt the full comprehensive approach this report recommends to bring its current statewide zoning regulations into compliance with President Reagan's Fair Housing Amendments Act of 1988. Over the years, we have seen that piecemeal adoption simply does not work and can lead to costly litigation.

The balanced approach presented here has been time–tested in the laboratory of local government in Florida and across the nation as explained on page 151. This zon-

ing approach provides the protections that people with disabilities need to safely live in their least restrictive living environment and for their community residences and recovery communities to achieve their core goals for their residents — all while maintaining the residential nature of surrounding neighborhoods so essential for these homes to succeed.

Nobody pretends adopting this principled approach will be simple or easy. It will take time and care to craft the comprehensive, principled, and justifiable approach this report proffers.

But it's an effort well worth undertaking for the benefit of Floridians with disabilities and for all Florida taxpayers.

Nobody pretends this will be an easy path to follow. When it comes to zoning for community residences for people with disabilities including recovery residences for people recovering from substance use disorder and for recovery communities, there is a wide spectrum of interests.

At one end of the spectrum are those housing providers who want to eliminate all zoning regulation of these community residences and recovery communities at the state and local level. Some want no zoning restrictions on where they place their community residences, largely recovery residences, and recovery communities even if it means clustering them on a block or concentrating them in a neighborhood.

At the other end of the spectrum are local governments so many of which wish to require case–by–case review of every proposed recovery community and every proposed community residence, especially recovery residences or require unjustifiably great spacing distances of 1,200 feet and more between these uses to be a permitted use. Very often these restrictions reflect the not–in–my–backyard (aka NIMBYISM) mentality among their populace who want to keep recovery residences (including those certified as "recovery residences" and those licensed as "community residential homes") and recovery communities out of their jurisdictions. These cities and counties either rely solely on the existing statewide zoning in §419.001 for their zoning or have adopted zoning provisions that require every proposed recovery residence and recovery community go through a case–by–case zoning review — a practice that runs afoul of President Reagan's Fair Housing Amendments Act of 1988 which added people with disabilities as a protected class.

In between is the middle and legal ground of a zoning approach responsive to the need to maintain safe, residential neighborhoods to benefit both the current residents and meet the needs of people with disabilities. This is the approach this report recommends: a principled, comprehensive, legally–sound, and fact–based zoning system that, when enacted into law at the state or local level, provides the reasonable accommodation the Fair Housing Amendments Act of 1988 requires for all community residences for people with disabilities and for recovery communities.

With the refinements to state law recommended here, the State of Florida can bring its statewide zoning for all community residences for people with disabilities and for recovery communities into compliance with the nation's Fair Housing Act as well as with sound planning and zoning principles while preventing the sort of clustering and concentrations that has occurred in some Florida cities and counties.

Each chapter of this report begins with a list of "Key Takeaways" which should

help guide readers through the report.

Chapter 2 examines the substance use epidemic in Florida and the response to it. It reports on the state and local experience with recovery residences and recovery communities and the concentration of certified recovery housing in just two counties despite the desperate need for this crucial element for recovery throughout the state.

Before drafting zoning provisions for community residences and recovery communities, it's essential to fully understand what they are, how they function, and what their impacts are. **Chapter 3** examines community residences and recovery communities in detail and explains the important ways they differ from rooming houses and purely institutional uses like nursing homes. It explains the ways in which family and transitional community residences differ. It reports on a different type of recovery residence, the self–governed Oxford House, which has become a vital part of the solution in Florida and nationwide. The chapter ends with examples of recommended functional model definitions.

The court decisions under the Fair Housing Act have collectively established this underlying principle for zoning for community residences for people with disabilities and for recovery communities: The zoning must constitute the least drastic means necessary to actually achieve legitimate government interests. **Chapter 4** identifies these government interests and features a detailed analysis that provides the foundation for legally establishing spacing distances and licensing/certification requirements between community residences and recovery communities *to be permitted uses*. It explains the two levels of examining spacing distances and the flexibility in applying spacing distances that allows locating these uses within them via case–by–case review.

Chapter 4 also takes a deep dive into the technical and legal basis for these zoning restrictions that help enable community residences and recovery communities to achieve their core purposes and maintain the residential character of the surrounding neighborhood. It also explains the impact of the local zoning code's definition of "family" on how a jurisdiction can zone for these two uses. The chapter reports on the findings of 50+ studies of the impacts of community residences, including recovery residences, on the surrounding neighborhoods. These studies have consistently found that licensed/certified community residences, including recovery residences, not clustered together, do not generate any adverse impacts. In fact a recent study reported that recovery residences have made neighborhoods safer while having no effect on property values.

Some things that zoning regulates cannot be measured by numbers. Informed judgment is required. That's the case with determining whether a cluster or concentration of these uses exists. **Chapter 5** provides real world examples from Florida jurisdictions that illustrate clustering and concentrations.

All of this is brought together in **Chapter 6** which presents the rationally – and fact–based comprehensive approach to zoning for community residences and recovery communities the State of Florida and/or local communities might wish to adopt to comply with President Reagan's Fair Housing Amendments Act of 1988. It provides more details on the threshold impact of a locality's zoning code definition of "family" on whether or not the locality can impose any zoning demands on community residences and recovery communities. It explains the general principles to follow to make

the reasonable accommodation the Fair Housing Act requires for these two uses. It puts forth the zoning approach for these uses and provides a detailed examination of the nature of recovery communities and its consequences for zoning.

Chapter 6 explains in detail where and when a community residence and recovery community should be treated as a permitted use and how to legally conduct the case–by–case review that must be offered to those that do not qualify to be a permitted use. The chapter offers additional real world examples of clustering and concentrations to help decision makers determine whether a proposed community residence or recovery community would have any adverse effect on the surrounding neighborhood. Any zoning approach more restrictive than the one presented here would likely run afoul of the Fair Housing Act. The chapter also identifies the bottom line for determining the maximum number of occupants and other concerns zoning should address.

All of the preceding chapters provide the factual and analytical foundation necessary to understand why provisions in the State of Florida's current statewide zoning treatment of community residences and recovery communities in §419.001, is flawed. **Chapter 7** walks readers through the reasons why some statewide zoning provisions should not be maintained. The chapter also explains how the differences between vacation rentals and community residences and recovery communities warrant different zoning treatments of these three uses.

To avoid legal liability to the taxpayers of Florida, the state would be quite prudent to undertake specified actions as soon as practical. **Chapter 8** spells out which reforms to §419.001 are the most urgent and require immediate action. The chapter explains other more comprehensive reforms that remedy the deficiencies of §419.001 and other applicable statutes so that the State of Florida and local jurisdictions can bring their zoning for community residences and recovery communities into compliance with the nation's Fair Housing Act.

Appendix A consists of an annotated bibliography of studies on the impacts of community residences on property values, turnover rates, and neighborhood safety.

Appendix B offers a good example of the initial application form local jurisdictions should use for all housing providers seeking to open a community residence or recovery community.

As you have likely realized, this subject is rather complex and nuanced. It is highly recommended to read this entire report to understand the foundation of the recommendations in Chapter 8. Their basis rests upon the current body of factual knowledge of the nature and impacts of recovery communities and community residences including recovery residences, the full body of court decisions on this topic, the legislative history of the Fair Housing Amendments Act of 1989 as well as the act itself, sound zoning and planning practices and theory, and a thorough analysis that takes into account all these factors.

Chapter 2

Florida's Substance Use Epidemic

Key Takeaways

- **Contrary to popular perception, the substance use epidemic touches every corner of the State of Florida.**
- **Certified or licensed recovery residences (generally known elsewhere as "sober living homes") and recovery communities as well as Oxford Houses constitute an essential component to counter this epidemic.**
- **Nearly two–thirds of Florida's counties lack any certified recovery residences or recovery communities while 73 percent of state–certified recovery residences and recovery communities are concentrated in Broward and Palm Beach counties — resulting in a serious mismatch between where these essential recovery resources are and where the need for them is the greatest.**
- **To protect the occupants of recovery residences and recovery communities, it is critical to require them to be certified or licensed by the state to prevent the rampant fraud, exploitation, theft of funds, neglect, and patient brokering documented to exist among uncertified recovery residences and recovery communities, often in conjunction with treatment providers.**
- **The number of certified and licensed recovery residences and recovery communities continues to fall far short of the number needed to successfully battle this disease in Florida, in part due to so many cities and counties illegally requiring case–by–case review of *all* proposals to open these uses, even those that comply with the local jurisdiction's zoning code definition of "family."**
- **While opioid use has soared, alcohol abuse remains a key component of this epidemic throughout the state.**

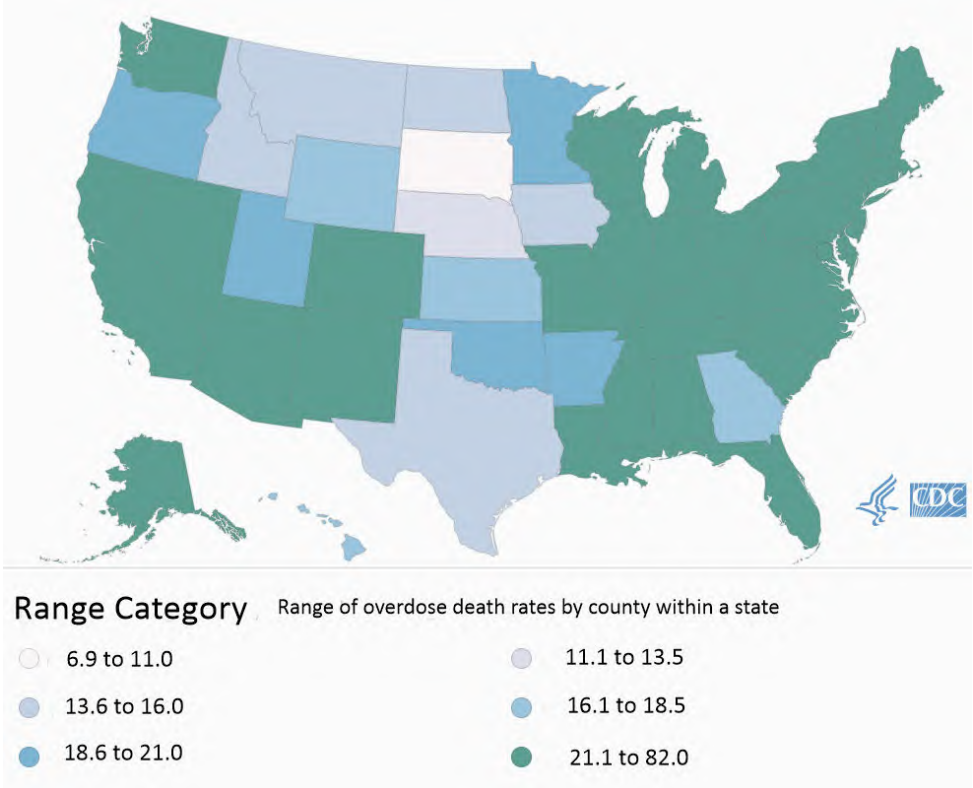
The terms "community residence," "recovery community," and more are defined in detail in Chapter 3 with model definitions starting on page 54.

Since 1999, more than 1 million people have died of a drug overdose in the United States. As of 2023, nearly a third of American adults, 87.2 million, know somebody

who died of an overdose. Nearly 49 million, 18.9 percent of American adults, have lost a family member or close friend to a drug overdose. Experiencing a drug overdose death is nonpartisan with one–third of Republicans, 29 percent of Democrats, and 34.2 percent of independents reporting an overdose loss.[1]

While the substance use epidemic is nationwide, the State of Florida continues to be among the states with the highest rates of overdose deaths from this heartbreaking epidemic as shown in Figure 1 below.

Figure 1: Range of Drug Overdose Deaths for Counties Within Each State: 2020



Source: Center for Disease Control and Prevention, "2020 Drug Overdose Death Rates," https://www.cdc.gov/drugoverdose/deaths/2020.html. No longer available online.

Nearly every state continues to experience a deadly rise in this on–going health crisis generated by the misuse and abuse of alcohol and drugs — all of which is technically known as "substance use disorder." Data from the National Center for Health Statistics reported an estimated 106,699 drug overdose deaths across the nation in 2021 — 75.4 percent of them involving opioids. Following a 30 percent increase from 2019 in the age–adjusted rate of overdose deaths nationally, there was a 14.5 percent increase in the rate of age–adjusted overdose deaths in 2020, 28.3 per 100,000 popu-

1. A. Kennedy–Hendricks, C.K. Ettman, S.E. Gollust, et al. "Experience of Personal Loss Due to Drug Overdose Among US Adults." *JAMA Health Forum.* 2024;5(5):e241262. Doi:10.1001/jamahealthforum.2024.1262. Available at https://jamanetwork.com/journals/jama-health-forum/fullarticle/2819328.

lation, to 32.4 in 2021.[2]

The "range categories" in Figure 1 on the previous page represent the range of overdose death rates by county within a state. In 2020 (the most recent year for which this figure is available), only California had more overdose deaths than Florida, albeit with a significantly lower age–adjusted death *rate* of 21.8 deaths per 100,000 population compared to Florida's 35.0.

With apologies to crooner Rod Stewart, every picture really does tell a story. Instead of bombarding readers with data, we'll use maps and tables to illustrate the history and extent of this substance use epidemic that has engulfed nearly all of Florida and the nation.

The two maps of the nation on page 10 show drug overdose deaths per 100,000 population by county — Figure 2 showing 2003 and Figure 3 reporting on 2021, the most recent year for which these maps are available. In 2003, few counties in the nation and none in Florida experienced a rate of 30 or more drug overdose deaths per 100,000 population and few Florida counties had a rate of 20 or more deaths.

But 18 years later, like most of the rest of the nation, nearly every Florida county experienced an explosion in drug overdose deaths per 100,000 population. This acceleration in the growth of the drug overdose deaths throughout the nation and within Florida is more than alarming; it's a serious health crisis that has enveloped the entire nation and nearly all of Florida.

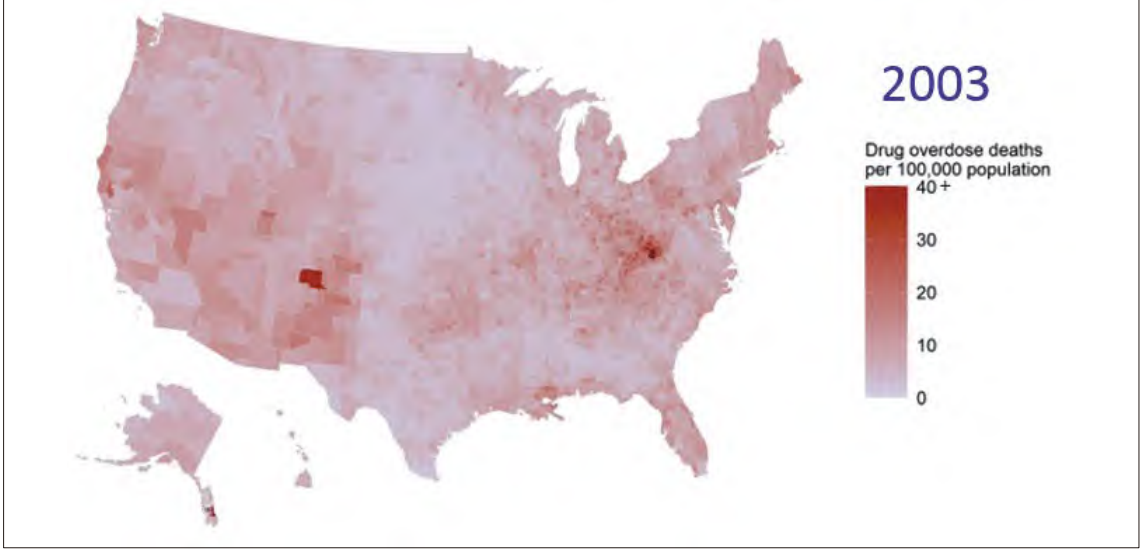
On page 11, Figure 4 shows a close up of Florida counties in 2022. Just 17 of the state's 67 counties — 12 in the Panhandle — were in the green "zone" with fewer than 27 deaths due to drug poisoning per 100,000 population. Beginning on page 12, Figure 5 shows the age–adjusted death rate per 100,000 population from drug poisoning for each Florida county in 2022.

Nearly all of the counties with the highest rate of 45.7 to 74.97 deaths per 100,000 population were in counties with the fewest number of recovery residence and recovery communities certified by the Florida Association of Recovery Residences, the state's certifying entity — reflecting a **mismatch between where these essential recovery resources are located and where the need for them is the greatest.**

Where to find data by county. Data on drug and alcohol abuse for individual counties are readily available online at the "Substance Use Dashboard" provided by FLHealthCharts.[3] Readers can look up a veritable wealth of data for individual counties as well as for the entire state. Data are presented in downloadable Excel spreadsheets and as graphs downloadable as PDF files. See these links in particular: "Overdoses," "Consequences," "Report," and "Risk Behaviors."

2. Centers for Disease Control and Prevention, "Drug Overdose Deaths Remained High in 2021," https://www.cdc.gov/drugoverdose/deaths/index.html..
3. https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Overview&islCounty=69.

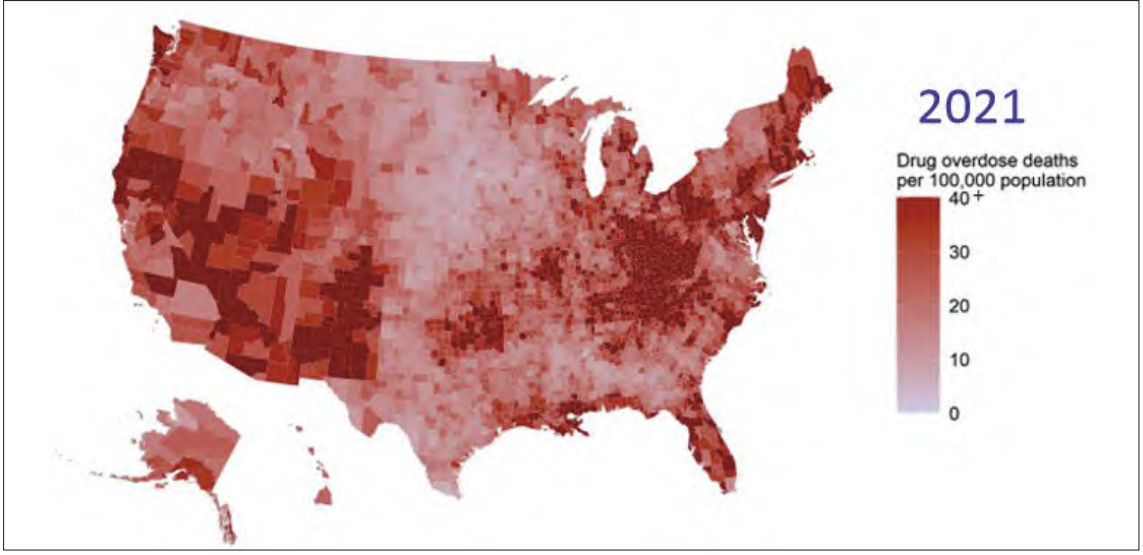
Figure 2: Drug Overdose Deaths Per 100,000 Population by County: 2003



Source: L.M. Rossen, B. Bastian, et al., "Drug overdose mortality: United States, 2003–2021." National Center for Health Statistics. 2022. (Available at: https://www.cdc.gov/nchs/data-visualization/drug-poisoning-mortality/).

The increase in drug overdose deaths in the past 18 years, both nationally and in Florida, reflects a deadly epidemic that requires a systematic and comprehensive response that includes many more certified or licensed recovery residences, recovery communities, and Oxford Houses throughout the state.

Figure 3: Drug Overdose Deaths Per 100,000 Population by County: 2021

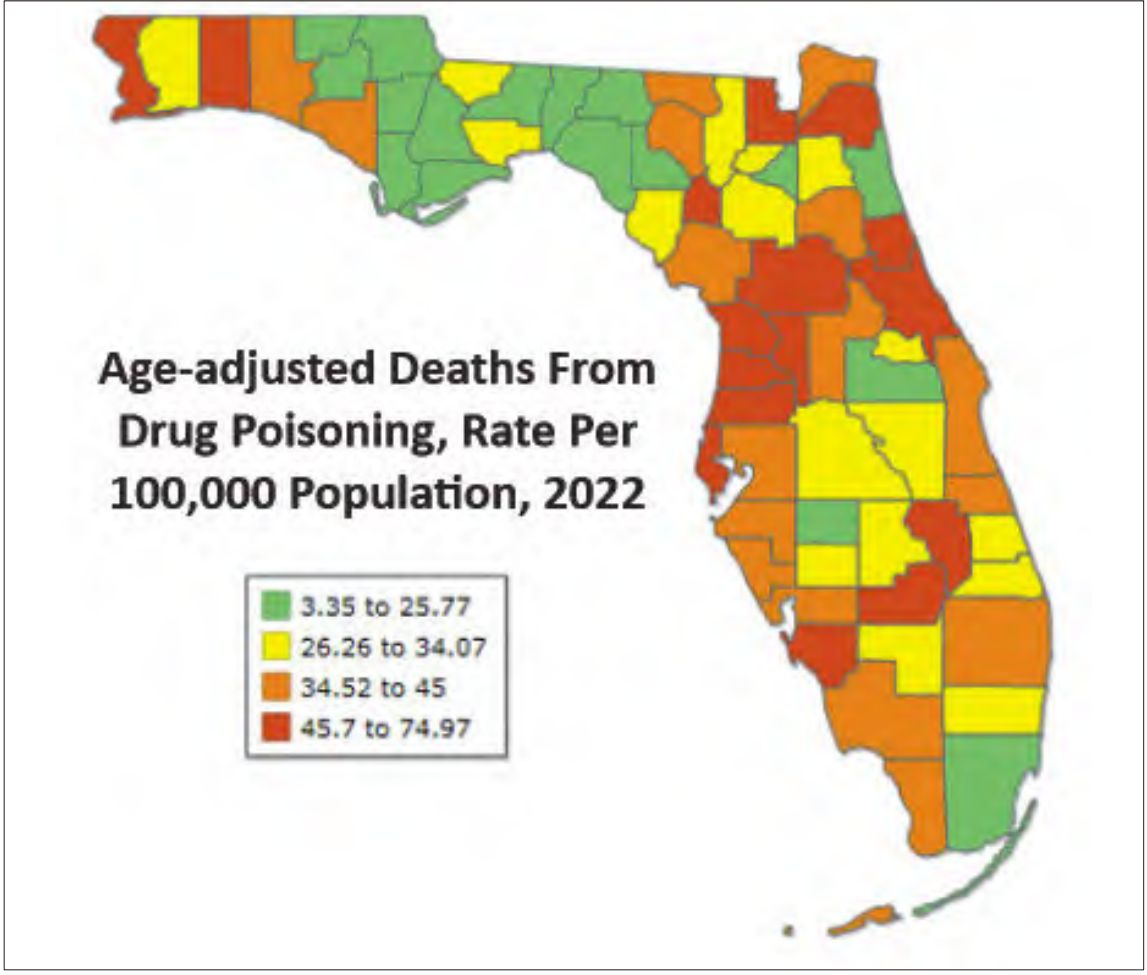


Source: L.M. Rossen, B. Bastian, et al., "Drug overdose mortality: United States, 2003–2021." National Center for Health Statistics. 2022. (Available at: https://www.cdc.gov/nchs/data-visualization/

Figure 4 below offers a closer look at Florida counties in 2022. It clearly shows that

the substance use epidemic encompasses all areas within the state, not just southeast Florida where recovery residences and recovery communities are concentrated.

Figure 4: Age–Adjusted Death Rates From Drug Poisoning, Per 100,000 Population By Florida County, 2022



Source: https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalInd.Dataviewer&cid=9869.

Florida responds to the epidemic

Florida is one of the states that has started to fight back against substance use disorder with a mature and pioneering recovery industry that continues to serve as a model to much of the nation.

But no matter how much medical treatment is offered to people in recovery, they need a safe, secure, supportive, and substance–free place to live. That's where these recovery residences (known in the Florida statutes as "recovery residences") come in. As an essential tool for recovery, they have long been one of the most effective weapons to combat substance use disorder and help their residents attain a long–term clean and sober lifestyle.

Figure 5: Age–Adjusted Death Rate From Drug Poisoning Per 100,000 Population in 2022 by Florida County

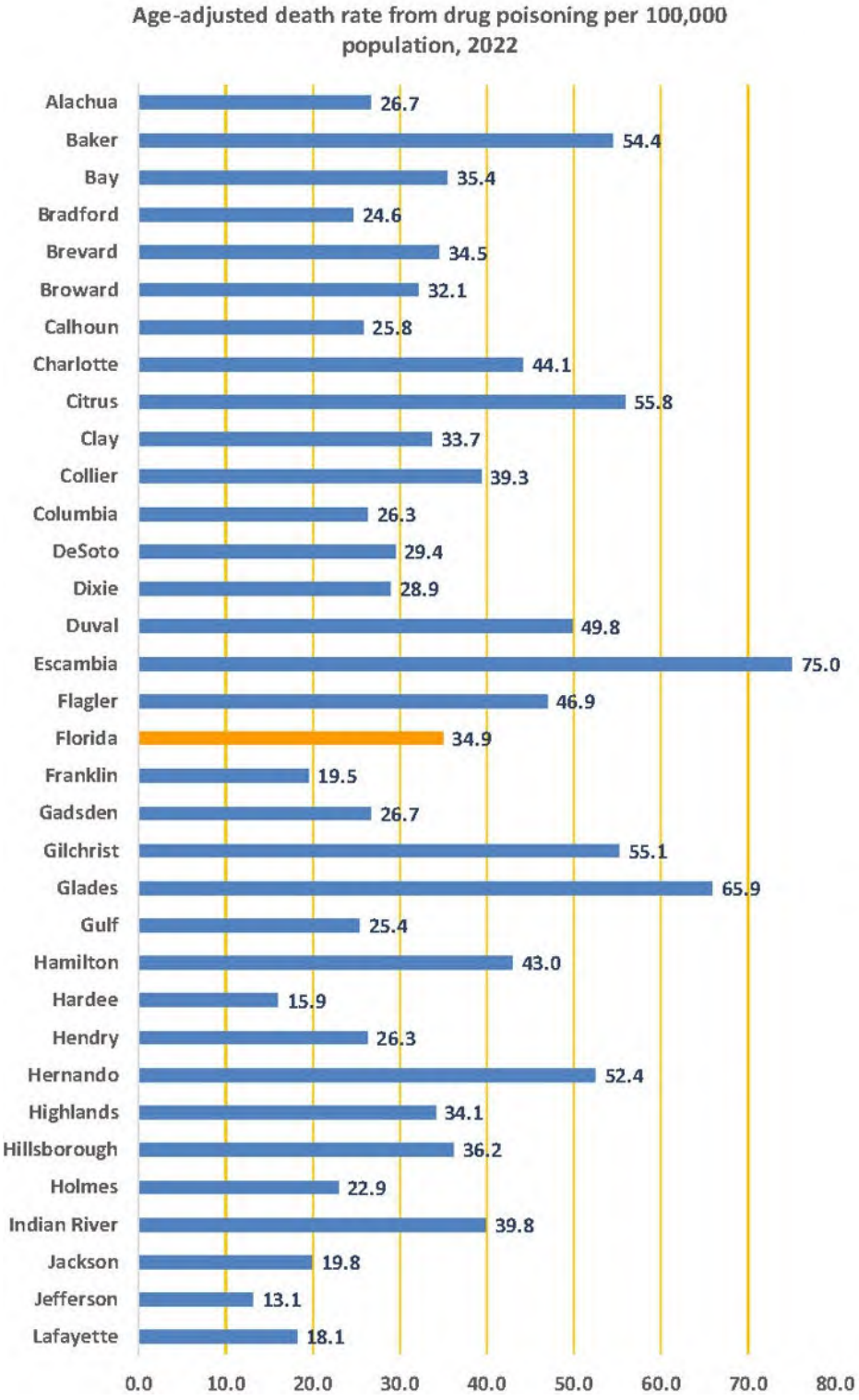


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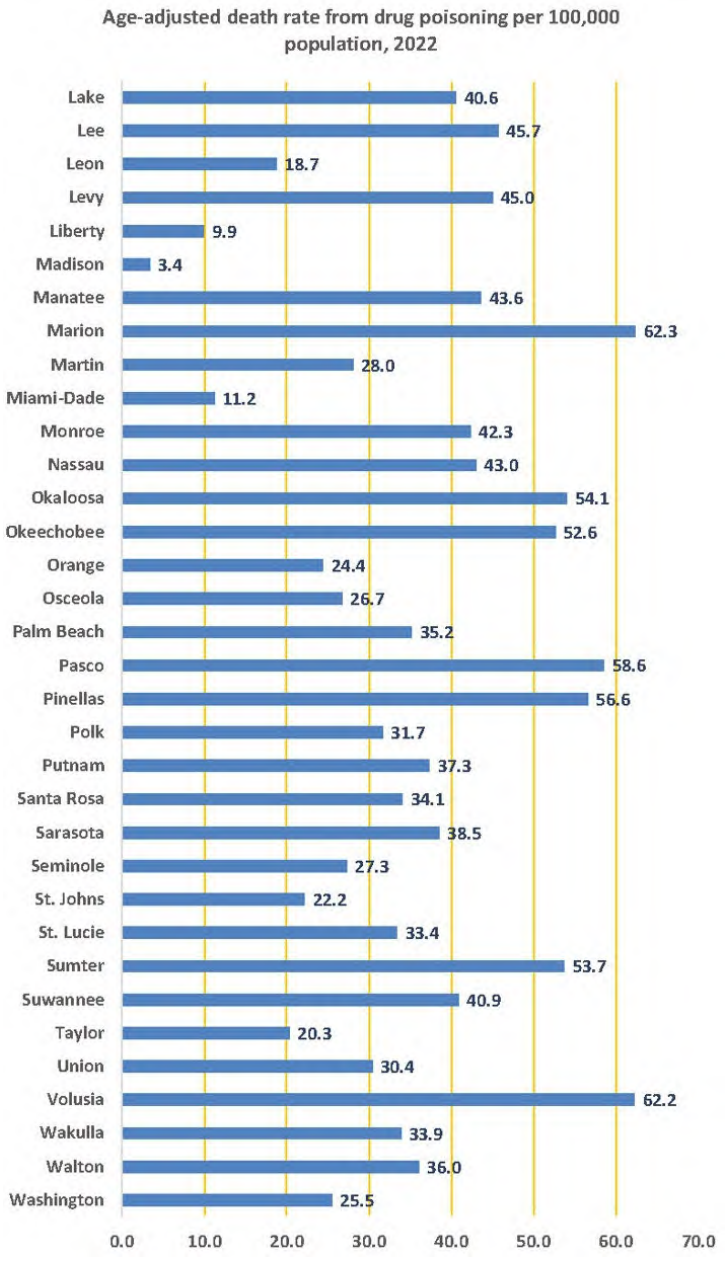
Figure 5 continued



Source: https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalInd.Dataviewer&cid=9869.

Recovery residences are a natural evolution from the group homes for people with mental illness that originated centuries ago in Gheel, Belgium and the small "halfway houses" that started to appear in the United States in the first half of the 19th century. Group homes became more widespread in the 1910s for people with intellectual disabilities like autism and Down Syndrome and began to be offered as an alternative to institutionalization in the early 1910s. The growing movement from institutionalization

in the 1960s led to the opening of many more group homes which, like recovery residences, are one type of community residence for people with disabilities.[4]

The first recovery homes reportedly originated in the 1830s via the Temperance Movement. They were generally operated by religious groups that believed in sobriety, like the Salvation Army, YMCA, and YWCA. A century later, Alcoholics Anonymous and its homes based on its 12–step program were born.[5]

Properly operated and located, recovery residences provide a substance–free supportive living environment that emulates a biological family as much as possible while fostering the normalization and community integration essential to achieve long–term, hopefully permanent sobriety.

More recently, especially in Florida, housing providers have begun to establish recovery communities where a duplex or triplex (or several of them), an entire multifamily building or complex, or a series of town homes or single–family houses are offered solely to people in recovery from substance use disorder. Like recovery residences, recovery communities seek to provide a supportive, substance–free, living environment to advance sobriety, but by establishing a supportive "community" of people in recovery living in multiple dwelling units rather than emulating a family in a single dwelling like recovery residences and other community residences do. Recovery communities are examined in depth beginning on page 44 and formally defined on page 56.

Despite the vital role recovery residences and recovery communities play to mitigate this epidemic, all too many cities and counties in Florida and throughout the nation continue to exclude these essential tools from their jurisdictions using illegal exclusionary zoning practices that require a case–by–case review of *every* recovery community and *all* recovery residences even when those recovery residences are legally "families" under a local land–use or zoning code. A full list of these practices begins on page 145 in Chapter 7.

Throughout the state, there is tension between the desire of operators of recovery residences and recovery communities to be exempted from zoning regulation and the cities and counties that, reflecting the views of residents, don't want to allow these essential residential uses in their jurisdictions.

This study reports on the factual and legal basis for the state and/or local jurisdictions to adopt zoning provisions that constitutes the legal, middle ground between these two extremes.

Purpose of this report

This report to the Florida legislature recommends a framework for land–use regulation of "community residences for people with disabilities" including recovery residences, as well as their cousins the significantly larger and less family–like "recovery communities" for people recovering from substance use disorder.

4. *See* Daniel Lauber with Frank S. Bangs, Jr., *Zoning for Family and Group Care Facilities,* American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) 2–5.
5. Kirti Vaidya Reddy, "The Winding Road to a Recovery Home," *PG Bulletin* (American Public Health Association: May 23, 2024) 1.

This study examines the basis for each of these two land uses, how they function and perform, the research on their impacts on the surrounding neighborhood, applicable sound zoning and planning principles and practices, and the legal framework for regulating them within the mandates of the nation's Fair Housing Act and those Florida statutes that comply with the Fair Housing Act.

This study recommends a zoning approach that constitutes the reasonable accommodation that the Fair Housing Act requires state and local land–use codes to make for people with disabilities. It also recommends zoning provisions that simultaneously protect the often vulnerable and fragile occupants of recovery communities and community residences for people with disabilities (defined in Chapter 3) from fraud, mistreatment, abuse, exploitation, theft of funds, patient brokering, and incompetence while advancing their normalization and community integration which are core principles of community residences for people with disabilities and preserving the residential character of the surrounding neighborhood.

The approach recommended here serves as the basis for reforms to the state's current statewide zoning for community residences in §419.001 of the state statutes as well as for cities and counties to adopt reforms to their own land–use controls to bring them into compliance with President Reagan's Fair Housing Amendments Act of 1988. This approach meets the legal requirement of using the least drastic means to actually achieve legitimate government interests.

These legal requirements and concepts ere examined in depth in Chapters 4 and 5.

The nature of community residences for people with disabilities, including recovery residences, and of recovery communities, is discussed in detail in Chapter 3.

The zoning approach that serves as the legal middle ground between the two extremes is presented in Chapter 6.

Flaws in the current state statutes and local zoning are revealed in Chapter 7.

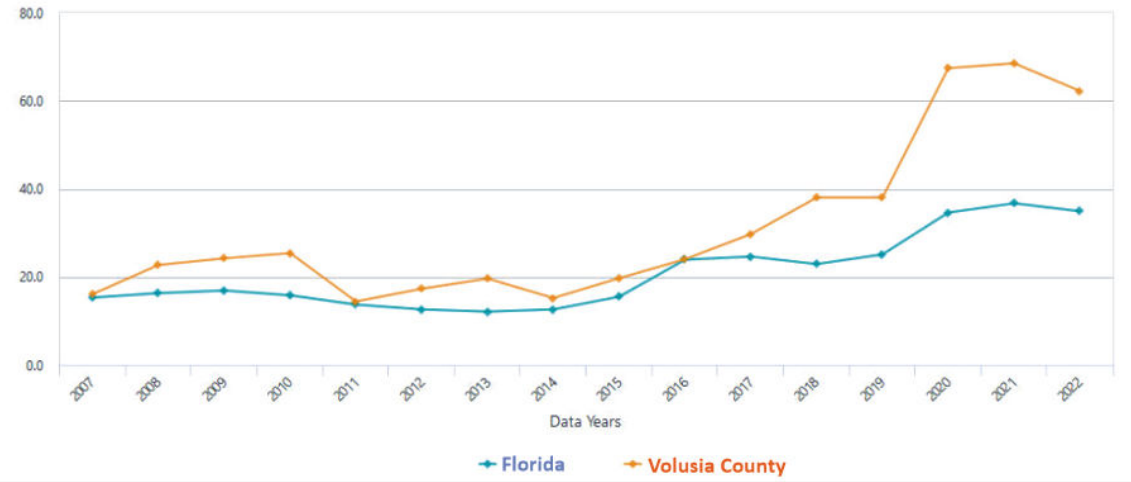
Chapter 8 offers recommendations for the state and local jurisdictions to reform their zoning treatment of these uses to bring both statewide and local zoning for them into compliance with the nation's Fair Housing Act as amended by President Reagan and Congress in 1988.

It's a statewide issue

As Figure 6 below shows, the annual rate of deaths in Florida due to drug poisoning rose 228 percent since 2007, from 15.3 to 34.9 deaths per 100,000 population in 2022, a slight dip after the rate peaked in 2021. The growth has been even greater outside southeast Florida as Volusia County illustrates in Figure 6.

While so many assume that the epidemic is solely centered in Broward and Palm Beach counties where 73 percent of the state's certified recovery residences and recovery communities are concentrated,[6] the substance use epidemic has continued largely unabated in communities throughout the state.

Figure 6: Drug Poisoning Death Rates for Florida and Volusia County, 2007–2022



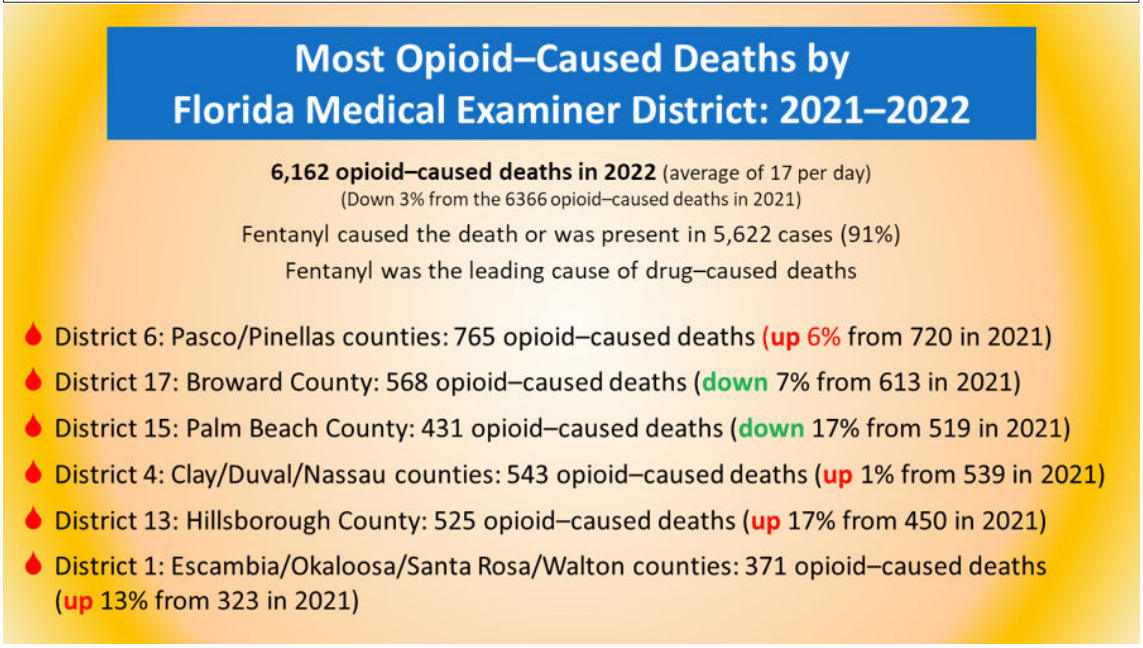
Source: FLHealthCharts at https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?RdReport=

The most recent data on opioid–caused deaths by medical examiner district as shown in Figure 7 below reveals that four of the six districts with the highest numbers of deaths from opioids are outside southeast Florida where nearly three–quarters of the state's certified recovery residences and recovery communities are located.

Wider adoption of the zoning approach this report recommends by local jurisdictions or statewide can lead to a substantial reduction in this mismatch between need and housing resources for people with substance use disorder by removing unjustifiable zoning barriers to recovery residences and recovery communities in the parts of the state where this essential housing is in such short supply.

6. Florida Association of Recovery Residences, "Statewide Programs Certified" presented to the State Attorney Addiction Recovery Task Force, March 2024. On file at the Law Office of Daniel Lauber.

Figure 7: Florida Medical Examiner Districts With the Most Deaths Caused by Opioids: 2021–2022



Source: Compiled by staff supervised by Alan Johnson, Chief Assistant State Attorney, Palm Beach County State Attorney, from Florida Department of Law Enforcement, Drugs Identified in Deceased Persons by Florida Medical Examiners Annual Reports, 2021 and 2022.

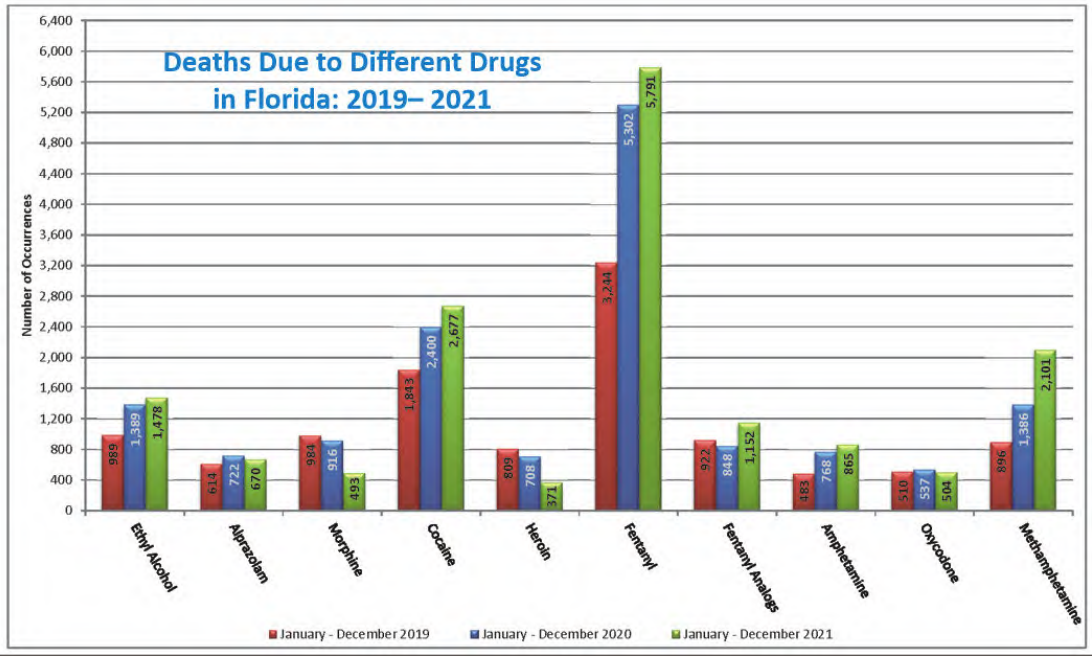
The big change in substance use disorder has been the exponential growth in the use of fentanyl and fentanyl analogs.[7]

A decade ago, Manatee was the only Florida county to experience ten or more deaths from fentanyl per 100,000 population. Since then, fentanyl use has exploded throughout the state. By 2016, fentanyl and fentanyl analogs had become, and remains, the leading cause of drug deaths in Florida.[8] And as seen in the figure immediately below, fentanyl has accounted for most of the increases in opioid–induced death rates. Fentanyl has clearly displaced cocaine and even ethanol (aka "alcohol") as the leading fatal drug in Florida. By the first half of 2022, the three most frequently reported drug occurrences in the state were fentanyl (17.8 percent), ethanol (17.7 percent), and cocaine (11.1 per-

7. Fentanyl analogs are synthetic derivatives of the opioid fentanyl that are structurally and chemically similar, but with slight differneces from fentanyl that can made the analogs 100 times more potent than fentanyl, which itself is 50 to 100 times more potent than heroin. National Institute on Drug Abuse, "Fentanyl DrugFacts," Feb. 2019. *See* https://nida.nih.gov/publications/drugfacts/fentanyl.
8. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2016 Report,* (Nov. 2017) ii. and *Drugs Identified in Deceased Persons by Florida Medical Examiners 2022 Interim Report,* (July 2023) 4.

cent).[9] Of all opioids reported, the most frequently reported was fentanyl (52.2 percent) with Oxycodone (9.1 percent) a very distant second.[10]

Figure 8: Deaths Due to Different Drugs in Florida: 2019–2021



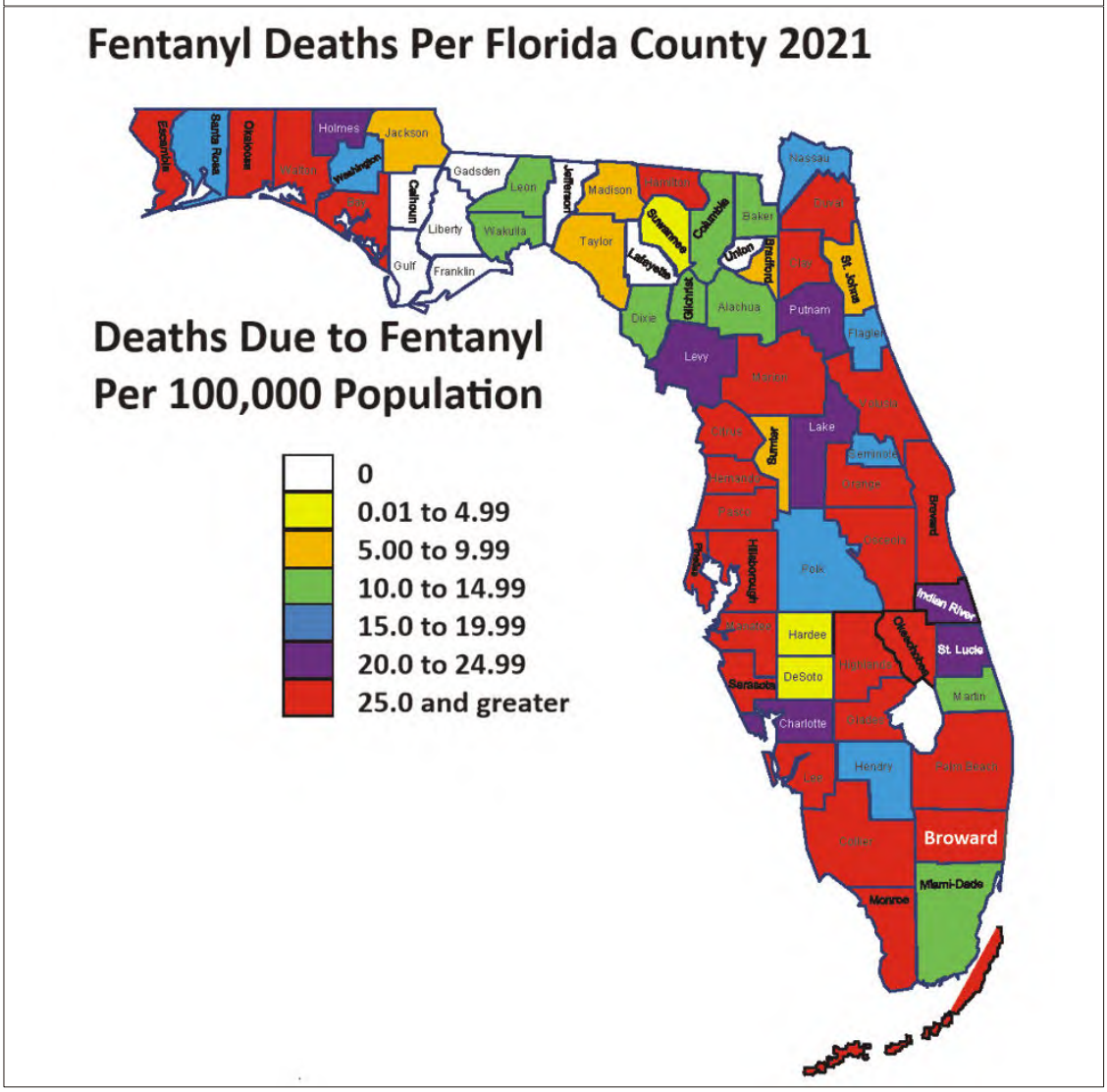
Source: Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2021 Annual Report* (Dec. 2022) 7.

In 2013, fentanyl use barely registered, occurring in just 1.8 percent of decedents due to drug use.[11] By 2021, fentanyl was the leading cause of death of all drugs including alcohol with more than twice as many victims as the second leading cause, cocaine.[12]

As shown below in Figure 9, the plague of fentanyl continues to spread throughout the state. In 2014, only Manatee County fell into the three highest rate categories at 10 to 14.99 fentanyl deaths per 100,000 population. By 2020, 27 of Florida's 67 counties were experiencing 20 or more fentanyl deaths per 100,000 population, the highest rates in the state. By 2021, 33 counties fell into the highest death rate categories.

9. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2022 Interim Report* (July 2023) 7.
10. Ibid. 4.
11. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2013 Report* (Oct. 2014) 4.
12. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2021 Annual Report* (Oct. 2014) ii.

Figure 9: Fentanyl Death Rates By Florida County: 2021



Source: Florida Department of Law Enforcement, *Florida Medical Examiners 2021 Annual Report* (Dec. 2022) 32.

It's not just drug abuse

But the damage done by substance use disorder reaches far beyond the people addicted to drugs. Alcohol abuse continues to constitute a major factor in the substance use epidemic. While the proportion of Florida adults who engage in excessive drinking declined in 2020 to 15.5 percent from a steady percentage of 17 to 19 percent from 2011 through 2019, the proportion shifted upward during the Covid–19 pandemic to

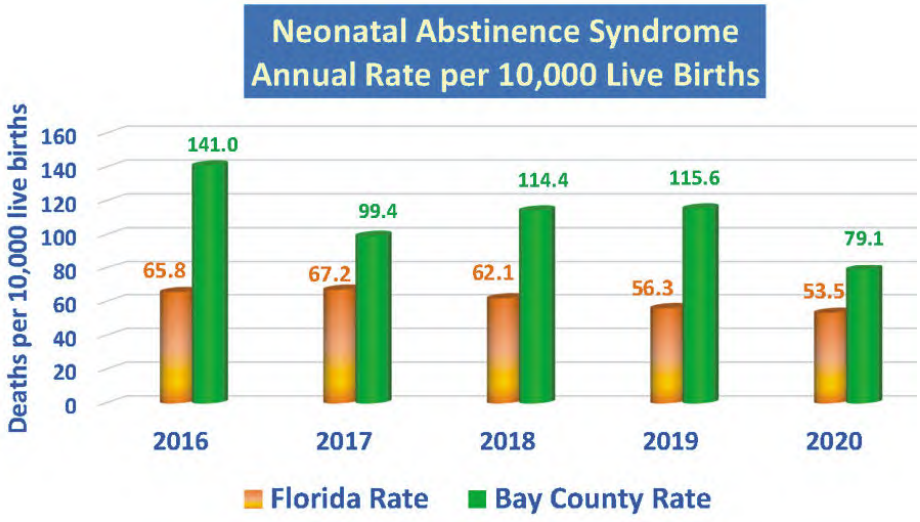
16.7 percent in 2022, the most recent year for which data are available. Florida has the twelfth highest rate among the 50 states.[13]

Excessive consumption of alcoholic beverages continues to result in deadly impacts. Steven Farnsworth, former Executive Director of the Florida Association of Recovery Residences, explains that while the opioid epidemic has been getting all the attention, alcohol–related deaths have remained fairly consistent. He notes that there are no reports of improvements in treatment of alcohol addiction and that alcoholism merits a discussion separate from that of opioid and drug abuse.

Recovery residences and recovery communities are essential tools to reduce these consequences of substance use disorder.

Readers can obtain data on all aspects of the damage done by Florida's substance use epidemic from the state's Substance Use Dashboard as explained on page 9.

Figure 10: Neonatal Abstinence Syndrome Annual Rates in Bay County and Florida: 2015–2020



Source: "Substance Use Dashboard," Florida Department of Health, Bureau of Community Health Assessment, Division of Public Health Statistics and Performance Management at https://www. Flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Report.

But the damage from substance use disorder extends further, even to newborns, *throughout* the state with Bay County serving as a prime example.

For example, in 2016 and 2019, the rate of neonatal abstinence syndrome among live births in the Panhandle County of Bay was more than twice that of the state as a whole. Throughout the 2015 through 2020 period, the rate in Bay County has been substantially higher than for the entire state.

13. These figures represent the percentage of adults who reported binge drinking (drinks on one occastion in the past 30 days: women: four or more, men: five or more) or heavy drinking (drinks per week: women: eight or more, men 15 or more). *See* https://www.americashealthrankings.org/explore/measures/ExcessDrink/FL?population=ExcessDrink_Hispanic#.

And in Pinellas County and Volusia County — neither of which sits in southeast Florida — the death rates of the consequences of substance use disorder have consistently exceeded statewide rates.[14]

According to the National Center on Substance Abuse and Child Welfare:

> Neonatal abstinence syndrome (NAS) is a treatable condition that newborns may experience as a result of prenatal exposure to certain substances, most often opioids. Neonatal opioid withdrawal syndrome (NOWS) is a related term that refers to the symptoms that infants may experience as a result of exposure to opioids specifically. Symptoms of NAS and NOWS may include severe irritability, difficulty feeding, respiratory problems, and seizures. Infants with NAS and NOWS are treated through non–pharmacological methods … as well as pharmacologic methods (medication) when warranted. Prior to birth, engaging pregnant women with opioid and other substance use disorders in substance use treatment and other services as a component of prenatal care can also mitigate or prevent negative birth outcomes associated with NAS and NOWS.[15]

It is clear there is a substantial need, as the National Center on Substance Abuse and Child Welfare put it, to engage pregnant "women with opioid and other substance use disorders in substance use treatment and other services as a component of prenatal care can also mitigate or prevent negative birth outcomes associated with NAS and NOWS."[16]

Recovery residences and recovery communities are essential components in efforts to prevent the "negative birth outcomes" of substance use disorder.

The essential components to mitigate this epidemic

Among the most essential instruments to mitigate this substance use epidemic are certified or licensed recovery residences and recovery communities — without them all other efforts to attain long–term recovery and sobriety are crippled.

Sober living homes, dubbed "recovery residences" in Florida statutes,[17] are a type of community residence for people with disabilities. As explained in depth in Chapter 3, these provide a family–like living arrangement intended to furnish the support needed to foster normalization and community integration where people in recovery

14. Source: Substance Use Dashboard, Florida Department of Health, Bureau of Community Health Assessment, Division of Public Health Statistics and Performance Management at https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Report.
15. *See* https://ncsacw.samhsa.gov/topics/neonatal-abstinence-syndrome.aspx.
16. Ibid.
17. *Florida State Statutes,* Sect. 397.311(38) (2024). When speaking of Florida, this study uses the statutory term"recovery residence." When addressing the larger national context, the more common term "sober living home" is used.

relearn the skills needed to live a substance–free lifestyle. As in all community residences, staff function in a parental role while residents are in the role of supportive siblings. Closely related are Oxford Houses, self–governed recovery residences where the elected officers function in the parental role. These are described in detail beginning on page 40.

Legitimate recovery residences and recovery communities are an essential component of the effort to enable lasting recovery from substance use disorder.

The Florida Association of Recovery Residences (FARR) certifies "recovery residences"[18] as explained in depth in Chapter 3. These include the separate community housing component of "Day or Night Treatment with Community Housing."[19] Oxford Houses operate under the Oxford House Charter which is functionally equivalent to certification or licensing.

Although certification is not required by law, it is required in order to receive referrals from treatment centers and to refer residents to a treatment center — both practices being essential for legitimate recovery residences to function successfully.

The close cousin to recovery residences, the recovery community, seeks to establish a residential community of people in recovery that can exceed more than a 100 people. While a recovery *residence* seeks to emulate a family and is located in a single dwelling unit or a duplex or triplex, a recovery *community* seeks to create a supportive assemblage consisting of multiple dwelling units, sometimes dozens. It is introduced in Chapter 3 and examined in detail beginning on page 44.

All three provide the residential setting needed at different stages of recovery. Without them, all the treatment in the world won't make much of a dent in the substance use epidemic.

18. The state statutes define "recovery residence" as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer–supported, alcohol–free, and drug–free living environment." *Florida State Statutes,* §397.311(38) (2024).
19. The state statutes define "day or night treatment with community housing" as "a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day for a minimum of 25 hours per week." *Florida State Statutes* §397.311(26)(3) (2024).

FARR–certified sites by county

Table 1: Counties Where Recovery Residences and Recovery Communities Certified by the Florida Association of Recovery Residences are Located as of May 2024

County	Number of Dwelling Units	Number of Beds
Alachua	2	10
Brevard	11	136
Broward	567	2,716
Clay	1	8
Collier	9	65
Duval	43	282
Escambia	13	57
Flagler	6	39
Hillsborough	81	439
Indian River	13	80
Lee	50	325
Manatee	22	111
Marion	8	40
Martin	24	139
Miami-Dade	22	111
Orange	21	1178
Osceola	1	12
Palm Beach	793	3,596
Pasco	35	163
Pinellas	88	295
Polk	1	6
Sarasota	33	184
Seminole	2	20
St. Lucie	12	91
Volusia	12	46

Source: Florida Association of Recovery Residences data provided to the State Attorney Addiction Recovery Task Force, May 15, 2024, 1–2.

In Florida, recovery residences and recovery communities are highly concentrated in the southeast corner of the state, in Broward and Palm Beach counties where a disproportionately high 73 percent of Florida's state–certified sober living dwellings and 67.6 percent of beds are located. Both figures are down two percentage points since January 2022. Palm Beach County is home to more state–certified sober living dwelling units (793 with 3,596 beds, 42 and 38.6 percent of the entire state) than any other county in the state, Broward County ranks second with 567 state–certified sober living dwelling units and 2,716 beds (31 and 29 percent of the whole state). It's a steep drop off to the county with the third greatest number of certified recovery residences and recovery communities: Hillsborough County with 81 state–certified sober living dwell-

ings and 439 beds. Pinellas County continues to be home to the fourth highest numbers with 88 state–certified sober living dwelling units and 295 beds.[20]

Statewide, the number of beds in certified recovery residences and recovery communities has grown from 3,280 in July 2017 to 5,786 in January 2019, to 6,872 in January 2022, to 8,122 in January 2023, and to 9,306 in 1,872 dwellings as of May 2024 — a 184 percent increase in FARR–certified beds in just seven years.[21]

The above table shows the 25 counties with FARR–certified sites. It includes the number of dwelling units and beds in each county.

Nearly two–thirds of Florida's 67 counties lack any FARR–certified recovery residences or recovery communities creating a serious mismatch between where these essential recovery resources are and where the need for them is the greatest.

Oxford House sites in Florida

Oxford Houses, explained in detail beginning on page 40, also offer the supportive family–like environment of a recovery residence, but without any staff. They tend to house people who are more advanced in their recovery.

The number of self–governed recovery homes chartered by Oxford House and their number of residents has grown exponentially since January 2020 when there were just 248 Oxford House residents in Florida. A year later there were 405 residents which grew to 681 in January 2022 and to 1,211 in March 2023. By May 2024, there were 1,656 people in recovery living in 184 Oxford Houses.[22] That represents a 568 percent increase in Oxford House beds in four years.

Oxford Houses are located in 54 different Florida municipalities.[23]

Lessons from the epicenter: Southeast Florida

But not all residences for people in recovery adhere to the descriptions of these residential alternatives for people in recovery. As southeast Florida has experienced, unscrupulous scam and incompetent operators have wrecked havoc and caused many deaths under the guise of recovery residences when they are nothing more than uncertified and unlicensed flop houses where residents are kept on drugs and alcohol, abused, exploited, patient brokered, and victims of theft by the operators. Arizona is currently experiencing this fraud which infected Florida earlier this century and continues to poison the recovery industry while operating under the radar. Adopting and

20. Florida Association of Recovery Residences data provided to the State Attorney Addiction Recovery Task Force, May 15, 2024, 1–2.
21. Ibid. 1, 2.
22. Data collected each year from https://oxfordhouse.org/directory_listing.php. Data for May 2024 provided by Oxford House, Inc. to the State Attorney Addiction Recovery Task Force, May 15, 2024.
23. Ibid.

implementing this report's recommendations will help to curb these abuses and eliminate these uncertified and unlicensed flop houses from the State of Florida.

The experience of southeast Florida illustrates how wrong things can go in the absence of adequate government safeguards to protect the occupants of recovery residences and recovery communities from scam and incompetent operators. It offers significant lessons for the entire State of Florida.

As noted above, two of the most successful residential settings for people in recovery are the recovery residences and recovery communities certified by the state's designated certification entity, the Florida Association of Recovery Residences, and the network of self–governed Oxford Houses.

Delray Beach, dubbed "the recovery capital of America" in 2007 by the newspaper of record is in Palm Beach County. The *New York Times* reported that "Delray Beach, a funky outpost of sobriety between Fort Lauderdale and West Palm Beach, was then 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.…"[24] But as we've seen throughout Florida, this epidemic does not respect municipal nor county boundaries.

Since the early 2000s, operators of recovery residences have expanded north, south, and west of Delray Beach into the rest of Palm Beach County and beyond, largely into Broward County but also into Pinellas and Hillsborough counties along the Gulf Coast. Locating so many recovery residences and recovery communities in these four counties has led, in many cities, to community residences, especially recovery residences, clustering on a block. It has led to concentrations of them in many neighborhoods which reduces their efficacy by interfering with their ability to achieve their essential goals of fostering normalization and community integration

For the residents of these homes to attain 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, incompetence, and theft. The type of zoning that this report recommends for adoption at the state and/or local level requires licensing or certification to be a permitted use — an essential tool requirement to weed out the incompetent and the fraudulent housing providers.

The southeast Florida media have been reporting on ongoing criminal investigations of sober living operators in the metropolitan area. These investigations have found so–called recovery residences that kept residents on illegal drugs, patient brokering, kickbacks, bribery, and other abuses, and in one case, enslavement of female residents into prostitution.[25]

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24. 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

25. A sampling of articles: "Kenny Chatman pleads guilty to addiction treatment fraud," *mypalmbeachpost.com* (March 16, 2017); Christine Stapleton, "Three more sober home

These illegitimate "recovery residences" almost certainly do not comply with the minimum "Quality Standards" that the National Alliance for Recovery Residences has promulgated or the certification standards the Florida Association of Recovery Residences administers. The greatest *known* concentrations of these illegitimate "recovery residences" have been in Broward and Palm Beach counties, although they exist throughout the state and nation.

This failure to comply with even minimal standards of the recovery industry and the concentration of community residences in much of southeast Florida may help explain the inability of so many recovery residences in the region to achieve sobriety among their residents and for their relatively high recidivism rates. These failures are in contrast to the much lower recidivism rates around the state of residents of certified or licensed recovery residences and of homes in the Oxford House network which are subject to the requirements of the Oxford House Charter (the functional equivalent of Florida's certification) and the oversight of Oxford House International.[26]

Grand jury conducts thorough investigation

The failure of so many uncertified and unlicensed recovery residences and recovery communities to comply with minimal standards was a focus of a grand jury convened in 2016 by Dave Aronberg, Palm Beach County State Attorney, to investigate fraud and abuse in the addiction treatment industry. While the grand jury naturally focused on Palm Beach County, the practices it identified are not limited to that one county. They occur in other Florida counties throughout the state as well as in Palm Beach County.

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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).

26. 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* 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. Since the report focused on Palm Beach County, it did not provide similar data for cities outside that county. It is possible, however, that the residents of Oxford Houses tend to be more advanced in their recovery which could help account for the relatively low recidivism rate of Oxford House "graduates."

    Oxford House is discussed throughout this study. The discussion of Oxford House beginning on page 41 explains that, unlike the recovery residences so prevelent in througout Florida and the rest of the country, each Oxford House is a self–run and self–governed recovery residence completely independent from any treatment center.

The grand jury reported:[27]

> 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 overdoses in nearby Delray Beach in 2016, up from 195 in 2015.[28] It recommended certification and licensure for "commercial recovery housing."[29] For full details on the grand jury's findings and recommendations, readers should see the grand jury's report.[30]

Recovery residences and the patient brokering that has accompanied so many of those that are not certified or licensed have migrated to other counties throughout Florida in large part to the crackdown by Palm Beach County on patient brokering and other illegal practices characteristic of illegitimate predator recovery residences. It is believed that illicit operators are leaving jurisdictions like Delray Beach, Pompano Beach, unincorporated Palm Beach County, Oakland Park, West Palm Beach, and Fort Lauderdale in part due to the zoning requiring existing and proposed recovery residences and recovery communities to obtain certification from the Florida As-

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27. 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.
28. Ibid. 99–101.
29. Ibid. 18. In contrast to the self–governed 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.
30. The grand jury's report is available online at: http://sa15.wpenginepowered.com/wp-content/uploads/2016-Grand-Jury-Presentment.pdf.

sociation of Recovery Residences (FARR), the appropriate license from the State of Florida, or an Oxford House charter.

According to the former head of the Florida Association of Recovery Residences, requiring certification or licensing of recovery residences appears to deter "those who are driven to enter the recovery housing arena by opportunities to profit off this vulnerable population. When seeking where to site their programs, this predator group evaluates potential barriers to operation. For them, achieving and maintaining FARR Certification is a significant barrier."[31]

This could be purely coincidental, but as more Florida cities and counties adopt the sort of zoning framework suggested by this study, many illicit sober industry operators who engage in patient brokering and warehousing people in recovery are moving or expanding their operations to California. There are reports of patients in recovery from substance use disorder being brokered from Florida to Orange County, California[32] which the U.S. Department of Justice recently dubbed the new center of addiction fraud.[33] Massive fraud and patient brokering has been uncovered in the Phoenix, Arizona metropolitan region.[34]

Amending the Florida state statutes as proposed in this study will extend the zoning protections statewide to the people in recovery who live in community residences and recovery communities, and accelerate the exodus of illicit recovery residences and recovery communities from the *entire* State of Florida. It will give state and local governments the regulatory tools needed to identify and eliminate the scam operators preying on this vulnerable population.

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31. Email from John Lehman, former CEO and former board member, Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 16, 2017, 9:34 a.m. CST) (on file with the Law Office of Daniel Lauber).
32. Email from Alan S. Johnson, Chief Assistant State Attorney, 15th Judicial Circuit to Daniel Lauber, Law Office of Daniel Lauber (Dec. 21, 2021, 9:46 a.m. CST) (on file with the Law Office of Daniel Lauber).
33. "Dept. of Justice: Orange County is now nation's center for addiction fraud," *Orange County Register*, Dec. 16, 2021, available at https://www.ocregister.com/2021/12/16/dept-of-justice-orange-county-is-now-nations-center-for-addiction-fraud.
34. *See* "The Sober Truth: Inside Arizona's Medicaid Scan" (Dec. 8, 2023) which includes downloads of legal documents filed against alleged scam sober home operators available at https://www.fox10 phoenix.com/news/the-sober-truth-inside-arizonas-medicaid-scandal, "Arizona recovery residence operators charged in patient referral kickback scheme," *Arizona Republic* (Dec. 2023) available at https://www.azcentral.com/story/news/local/arizona/2023 /12/06/arizona-sober-living-home-operators-charged-with-organized-crime-kickback-scheme/71830387007, "Sober homes promised help and shelter. Some delivered fraud, officials say," *The Washington Post* (Sept. 18, 2023) available at https://www.washingtonpost.com/health/2023/ 09/18/sober-homes-arizona-medicaid-fraud.

Chapter 3

Community residences, recovery residences, and recovery communities explained

Key Takeaways

- **Community residences emulate a family as part of their core purposes of achieving normalization and community integration of their occupants and employing nondisabled neighbors as role models.**
- **They are residential land uses with a primarily residential function with any medical support merely incidental, much like an ill or disabled elderly person receives with home health care.**
- **Community residences need to locate in residential neighborhoods in order to achieve their core purposes.**
- **Functionally, community residences are much more akin to a family than are rooming houses, nursing homes, and vacation rentals.**
- **Community residences are properly categorized based on their performance, not the number of residents.**
- **Family community residences offer a more permanent tenancy than transitional ones.**
- **Recovery communities locate in multiple dwelling units for larger aggregations of people with substance use disorder and warrant a somewhat different zoning treatment than community residences.**
- **President Reagan's Fair Housing Amendments Act of 1988 requires zoning, be it local or state, to make a "reasonable accommodation" to locate community residences and recovery communities in the residential areas that facilitate achieving their purposes.**

Community residences

Like other people with disabilities, individuals in recovery from substance use disorder often need to live in a community residence for people with disabilities, in this case what is commonly called a "recovery residence" in Florida and often a "sober home" or "sober living home" elsewhere.

The nation has made great strides from the days when people with disabilities were warehoused out of sight and out of mind in inappropriate and excessively restrictive institutions. For decades it has been known that community residences are an essential component for achieving the adopted goals of the State of Florida and the United States to enable people with disabilities to live as normative a life as possible in the least restrictive living environment feasible.

People with substantial disabilities often need a living arrangement where they receive support from staff and each other 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* in contrast to the institutional nature of a nursing home or hospital, to the non–family nature of a boarding or rooming house, and to the hotel–like characteristics of a short–term rental. Their primary use is as a residence or a home like yours and mine, not a treatment center, an institution, nor a lodging house.

The most essential core element of community residences is that they seek to function as much as possible as a family whether they have staff or are self–governed like Oxford House (which is discussed in depth beginning on page 40). The staff (or officers elected from among the residents in the case of a self–governed Oxford House) function in the role of 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 "community integration" of ambulatory residents capable of going into the community by incorporating them into the social fabric of the surrounding community. They are operated under the auspices of a legal entity such as a non–profit care provider, 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.[1] Like all too many other jurisdictions across the nation, the State of Florida needs to refine its state

1. While the trend for people with developmental or intellectual disabilities is toward smaller group home households, valid therapeutic and financial reasons lead to community residences for people with mental illness and/or people in recovery from substance use disorder (popularly known as "drug and/or alcohol addiction") to typically house eight to 12 residents. However, like every dwelling unit, all community residences must comply with a locality's minimum floor area requirements that prevent overcrowding like every residence must conform. 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 that can live in the house whether it's a community residence for

statutes to enable community residences of different types for *all* people with disabilities to locate in the appropriate residential zoning districts, subject to objective standards via the least drastic means needed to *actually* achieve a legitimate government interest.

When President Reagan signed the Fair Housing Amendments Act of 1988 (FHAA), he and Congress added people with disabilities to the classes the nation's Fair Housing Act (FHA) protects. The 1988 amendments recognized that many people with disabilities need a community residence (group home, recovery residence or recovery residence, assisted living home small enough to emulate a family) in order to live in the community in a family–like environment rather than being placed away into an inappropriate and unnecessarily restrictive institutional setting. Consequently, the nation's Fair Housing Act requires all jurisdictions to provide for community residences for people with disabilities by making some exceptions in their land–use regulation that places a cap or limit on how many unrelated people can live together in a dwelling unit, namely its definition of "family."

Recovery communities

As explained beginning on page 44, a "recovery community" houses people in recovery from substance use disorder, more generally known as drugs and/or alcohol addiction. It is a different land use than a community residence with dissimilar characteristics that warrant a somewhat different principled zoning approach.

To enable community residences for people with disabilities to locate in the residential zoning districts where they purposely belong, the nation's Fair Housing Act has, since 1989, required all states, cities, and counties to make a "reasonable accommodation" in their zoning when the number of residents exceeds the applicable zoning code's cap on the number of unrelated people that can constitute a "family."[2] The zoning approach this report recommends comprises this reasonable accommodation by creating a zoning process that uses the least drastic means needed to actually achieve legitimate government interests — all of which is spelled out in this report.

The legislative history of the Fair Housing Amendments Act (FHAA) states:

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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). This well–settled legal principle is discussed at length later in this report.

2. As explained in this study, a proposed "family community residence" should be allowed as a permitted use in all zoning districts where dwellings are allowed if it is located outside a rational spacing distance from the nearest existing community residence or recovery community and licensed or certified. A proposed "transitional community residence" should be allowed as a permited use in districts where multiple family dwellings are permitted uses (subject to spacing and licensing) and via a case–by–case review (special use, conditional use, special exception, flexible use, etc.) in other residential districts. This case–by–case review back–up is needed for proposed community residences that (1) would be located within the spacing distance, (2) for which a license or certification is not available, and (3) would exceed 12 residents (including live–in staff, but not shift staff).

> "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."[3]

Direct threat exclusion. *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, the State of Florida and its cities and counties do not have to make a reasonable accommodation for them like they must for people with disabilities who do not pose "a direct threat to the health or safety of others." Also see page 43.*

While many advocates for people with disabilities contend that the Fair Housing Amendments Act of 1988 prohibits all zoning regulation of community residences, the act's legislative history — and the majority opinion of the courts — suggest otherwise. The legislative history states:

> "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 discriminates 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."[4]

Many states, counties, and cities across the nation continue to base their zoning regulations for community residences on these "unfounded fears." But the 1988 amendments to the Fair Housing Act 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, albeit *not exactly the same as* single–family residences.[5]

It is well settled that for zoning purposes, a community residence is a residential use, *not* a business, commercial, or institutional land use. The Fair Housing Amendments Act of 1988 specifically invalidates restrictive covenants that would exclude community residences from a residential area. The act renders these restrictive covenants invalid as applied to community residences people with disabilities.[6]

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3. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.
4. Ibid.
5. 42 U.S.C. §3604(f)(B) (1988).
6. 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 addressed the question

Types of community residences

Based on their performance characteristics, there are two functional categories of community residences that warrant slightly different zoning treatments tailored to these dissimilarities:[7]

- **Family community residences** include uses commonly known as group homes, recovery residences, and small assisted living homes. These all seek to emulate a biological family and offer a relatively permanent living environment of at least six months.[8]
- **Transitional community residences** include uses commonly known as recovery residences or short–term group homes for people with disabilities, often mental illness. These offer a relatively temporary living environment that ranges from weeks to less than six months. Like all community residences, transitional community residences seek to function like a biological family.

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

The definitions of these uses are necessarily *functional* definitions rather than static ones. They are based on the performance characteristics of the uses — like all zoning is supposed to do — rather than just listing examples.

In addition, interaction with neighbors without disabilities is an essential component of community residences with ambulatory residents able to go into the community and interact with neighbors — one of the reasons city planners and the courts long ago recognized the need for them to be located in residential neighborhoods. Neighbors without disabilities serve as role models to those occupants of community residences capable of going into the community, helping to foster normalization and community integration, two core elements of community residences. If a congregate living arrangement seeks to isolate its residents capable of entering the community

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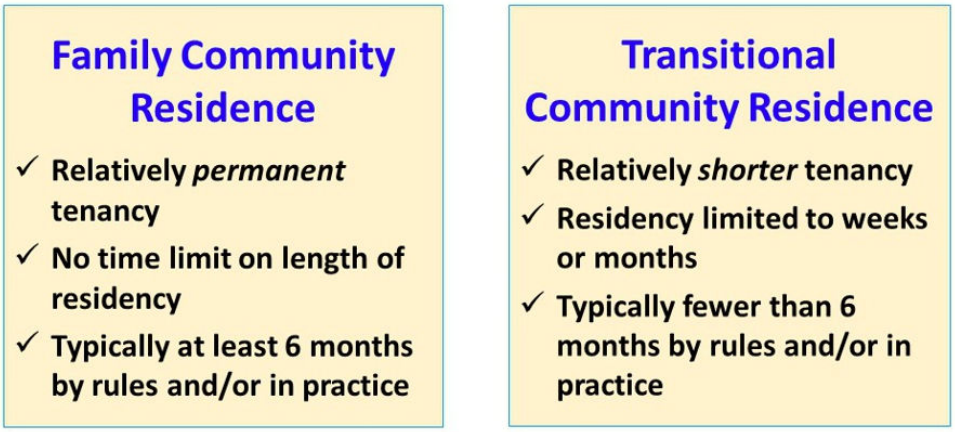
have long concluded that the restrictive covenants of a subdivision and the by–laws of a homeowner or condominium association that exclude businesses or "non–residential uses" do *not* apply to community residences for people with disabilities — even before passage of the Fair Housing Amendments Act of 1988. The author of this study has assembled a five–page list of these court decisions which is available upon request.

7. Recovery communities are significantly different in nature than community residences and are examined in detail beginning on page 44.

8. Your author's thinking on these matters has evolved over the past 50 years as he has learned more about the uses regulated. In 1974, he originally categorized group homes based on the number of residents before realizing that community residences should be categorized based on performance and compability with the land uses typically found in single–family and multifamily zoning districts. Similarly, he has come to see that community residences with at least six months residency are compatible with the current degree of residential transition in single–family zoning districts and no longer recommends using one year as the dividing point. Jurisdictions that are using one year as the dividing point might be prudent to change it to six months.

from its neighbors without disabilities, it is questionable that it would be accurate to characterize it as a community residence or *possibly* even as a residential use.

Figure 11: Differences in Key Characteristics Between Family and Transitional Community Residences



Community residences are nothing like vacation (aka short–term) rentals as explained in detail in Chapter 6 starting on page 148. Nor are community residences anything like boarding houses. Beginning on the next page, Table 2, "Differences Between Community Residences, Institutional Uses, and Rooming Houses," illustrates the many functional differences between community residences for people with disabilities, institutional uses (including nursing homes), and rooming or boarding houses. These functional differences help explain the rational basis for zoning codes and state statutes to treat community residences for people with disabilities differently than rooming houses, nursing homes, and other institutional land uses, in addition to the Fair Housing Act's mandate for land–use regulations to make a reasonable accommodation for community residences housing people with disabilities.[9]

Community integration is "an active ingredient in the treatment of substance abuse and many other disorders."

— L. Jason, D. Groh, M. Durocher, J. Alvarez, D. Aase, and J Ferrari, "Counteracting 'Not in My Backyard': The Positive Effects of Greater Occupancy within Mutual–Help Recovery Homes" in *Journal of Community Psychology,* 2008 Sept. 1, 36(7), pp. 947–958, at 948.

9. Vacation or short–term rentals are a whole different use than community residences and recovery communities. The distinctions and their consequences for zoning are discussed at length beginning on page 147.

Table 2: Differences Between Community Residences, Institutional Uses, and Rooming Houses

Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses** (Includes Nursing Homes)	**Rooming or Boarding House**
Proper Environment	Residential Home–like	Institutional Hospital–like	Residential Hotel–like
Appropriate Zoning Districts	Single–family residential preferred Multiple–family in some instances	Institutional, commercial, mixed use, medical	Multiple–family residential
Relationship of Residents	Single housekeeping unit emulating a biological family Sibling–like relationships essential Bonding between residents highly desirable	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; officers in self–governed homes in role of 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
Relationship to Neighbors On the Block	Interaction with nondisabled neighbors is an essential component of normalization and community integration; neighbors without disabilities serve as role models to foster normalization and community integration	Interaction with neighbors not facilitated; use is largely self–contained. Neighbors have no role related to the occupants of the institutional use	Interaction with neighbors is hit or miss
Residential Integration	Integration with the surrounding community is essential in contrast to the segregation of living in an institution surrounded by people with the same disability	Essentially segregated from the surrounding community such that immediate neighbors are people with the same disability	Not applicable

— Table continued on next page

Table 2: ***Continued from previous page***

Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses** (Includes Nursing Homes)	**Rooming or Boarding House**
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 many of the 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 Patients not expected to perform household 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

Family community residences *that comport with the model functional definition* on page 55 *can* include, but are not limited to:

- Community residential homes defined under *Florida State Statutes* §419,001(1)(a)
- Assisted living facilities for the elderly or other people with disabilities licensed under *Florida State Statutes* §429.02(5)
- Adult family–care homes licensed under *Florida State Statutes* §429.60
- Intermediate care facility for people with developmental disabilities licensed *under Florida State Statutes* §400.96
- Housing licensed under *Florida State Statutes* §394
- Recovery residences certified under *Florida State Statutes* §397, currently administered by the Florida Association of Recovery Residences, typically Levels 1 and 2 certified homes, where residency is in practice or by rules is at least six months
- Oxford Houses or other similar self–governed long–term housing for people in recovery from substance use disorder, and with no limit on tenancy in practice or in its charter or rules

Transitional community residences *that comport with the model functional definition* on page 57 *can* include, but are not limited to:

- Short–term group homes for people with disabilities that emulate a family, including, but not limited to, people with mental illness, substance use disorder, or physical disabilities
- Community residential homes defined under *Florida State Statutes* §419,001(1)(a)
- Housing with only outpatient treatment licensed under *Florida State Statutes* §394
- Recovery residences certified under *Florida State Statutes* §397, currently administered by the Florida Association of Recovery Residences, where residency in practice or by rules is typically less than six months
- The separate community housing component for people with substance use disorder who may be undergoing detoxification or treatment at another location such as day or night residential treatment centers licensed under *Florida State Statutes* §397.311

As was realized a more than a century ago, being segregated away in an institution only teaches people how to live in an institution. It does nothing to facilitate learning the skills needed to be all you can be, to live as independently as possible, and to integrate into community life.

For example, filling an apartment building with people in recovery — a "recovery community" (discussed at length beginning on page 44) — tends to segregate them away with other people in recovery as their neighbors, minimizing any interaction they might have with clean and sober neighbors. While recovery communities seek to create a supportive "community" of people in recovery, interactions with clean and sober neighbors help foster normalization and community integration as well as provide role models. Functionally, placing people in recovery in a series of adjacent single–family homes, duplexes, triplexes, or townhouses is the same as filling an

apartment building and, functionally also constitutes a recovery community. While recovery communities possess *some* of the characteristics of community residences — and zoning should properly treat them as residential uses — they also possess some institutional characteristics and the larger recovery communities can be as isolating as mini–institutions rather than fostering integration into the broader community like the biological family that community residences, including recovery residences, are intended to, by definition, emulate. Many recovery communities are Level 4 therapeutic communities under the National Association for Recovery Residences' standards detailed on page 45.

Family community residences

A ***family community residence*** gives people with disabilities a relatively permanent living arrangement that emulates a family. They are usually operated under the auspices of a nonprofit, a for–profit business, other legal entities, or the parents or legal guardians of the residents with disabilities. The form of ownership is irrelevant for zoning purposes since zoning regulates the use of land, *not* the form of ownership. Some recovery residences like Oxford House, are self–governing.[10]

Residency, 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, residents are expected to live there for as long as they need. Residency can last for years, although some family community residences house people for as few as six months.* Family community residences are most often used to house people with intellectual disabilities (formerly called mental retardation, autism, etc., and collectively referred to as "developmental disabilities" in the past), mental illness, physical disabilities including the frail elderly, and individuals in recovery from substance use disorder (addiction to alcohol or drugs whether legal or illegal) who are *not* currently "using."[11]

Family community residences are often called *group homes* and, in the case of people with substance use disorder, "recovery residences" in Florida and outside Florida

10. When the issue of transiency arises, the majority judicial view has been that Oxford House residents are "not transient." The courts recognize that Oxford Houses offer a relatively permanent living arrangement with no limitation on how long people can live in them. Consequently this research concludes that Oxford Houses are "family community residences" and it is necessary for the forthcoming zoning to treat them as such. *See Oxford House, Inc. v. Babylon,* 819 F.Supp. 1179, 1183 (E.D.N.Y. 1993) and *Tsombanidis v. West Haven Fire Department,* 352 F.3d 565, 580 (2nd Cir. 2003). The following cases have also rejected *uniformly* charactertizing sober home residents as transient: *Sharpvisions, Inc. V. Borough of Plum,* 475 F.Supp. 2d 514 (W.D. Pa 2007); *Lakeside Resort Enters., LP v. Board of Supervisors of Palmyra Township,* 455 F.3d 154, 157-158 (3d Cir. 2006); and *Community Services v. Heidelberg Township,* 439 F.Supp. 2d 380, 397 (M.D. Pa. 2006).

11. Consequently, residents of the scam *uncertified* recovery residences (aka "flop houses") who continue to use alcohol and illegal drugs where abstinence is not required are not covered by the Fair Housing Act. However, those in Medication Assisted Treatment (MAT) are still protected under the Fair Housing Act.

"sober living homes" or "sober homes."[12] *Their key distinction from transitional community residences* is that people with disabilities can reside, are expected to reside, and actually do live in a family community residence for six months to years, not just a few 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 people with disabilities 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.[13]

To achieve normalization and community integration of its occupants, a community residence needs to be located in a single–family home, duplex, or triplex in a safe, conventional residential neighborhood. 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 which essentially teaches its occupants how to live in an institution.

The family community residence functionally 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 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 residences are like other 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. Some very long–term alcoholics or drug addicts in recovery, however, may be learning some of these life skills for the first time. Some recovery residences, like Oxford House, have been referred to as *three–quarter houses* because they are even more family–like and permanent than the better known *halfway house* which falls under the *transitional community residence* category.[14]

Recovery residences provide the supportive living environment that is essential for people in recovery to learn how to maintain sobriety — *before* they can return to their family or live on their own. Many recovery residences are homes to their occupants for at least six months or even years, while others limit tenancy to just a few weeks or months (these are transitional community residences).

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12. For example, those "recovery residences" that limit occupants to a few weeks or months are most accurately characterized as "transitional community residences." *It is crucial that a jurisdiction evaluate each proposed community residence on how it operates and not on how its operator labels the proposed home.*
13. Medication Assisted Treatment (MAT), however, is permissible in these homes to facilitate the recovery process for some residents..
14. As noted earlier, today the term "hallfway house" usually refers to larger congregate living arrangements that do not emulate a family, usually for prison pre–parolees who are not part of any protected class under the nation's Fair Housing Act.

Oxford House

The recovery residence concept is an outgrowth of the supportive living arrangement that Oxford House pioneered back in 1975. In most community residences, including the typical "structured" recovery residence, the live–in or shift staff function in the supervisory parental role. On the other hand, Oxford Houses have no staff and are self–run and self–governing. The residents of each Oxford House periodically elect officers from among themselves who act in a supervisory role much like parents in a biological family. The other residents are like the siblings in a biological family. The courts have found that Oxford Houses "exhibit a social structure that mirrors a hierarchy" and emulates a family.[15] Oxford Houses provide what the National Alliance for Recovery Residences calls "Level 1" support as reported on page 45.

Each Oxford House is subject to the demanding requirements of the Oxford House Charter which requires submitting a monthly financial accounting to Oxford House International for review, establishing monitoring and inspection procedures, and promulgating rules and standards to protect the residents and to foster normalization and community integration. For all practical purposes, the Oxford House Charter constitutes the functional equivalent of licensing and for the purposes of land–use controls, can serve as a proxy for formal licensing or certification.

The Oxford House organization recognizes the importance of keeping families together. By the end of 2023, 34 of the 164 Oxford Houses (1,492 residents) in 49 of Florida's cities, housed women with their children (321 beds). Men with their children occupied three Oxford Houses (29 beds).[16]

The most recent annual survey of the Florida Oxford Houses found that their residents had been clean and sober for an average of 333 days. It reported that residents had attempted to get clean or sober average of 7.2 times — reflecting how challenging achieving sobriety is and further emphasizing the critical need for recovery residences like Oxford House and those certified by the Florida Association of Recovery Residences to address the substance use epidemic. On average, residents went to detox without continuing to treatment almost three times — illustrating how important recovery residences are to achieving a clean and sober life. Each week, Oxford House residents attend an average of 4.5 Twelve–Step meetings. More than 40 percent of Oxford House residents also receive counseling.

Overdoses are very rare among Oxford House residents. Among the more than 1,400 Oxford House residents in Florida, there was just one non–fatal overdose in October 2023, a pretty typical figure for Oxford Houses in any state.[17]

In each Oxford House and in each community residence for people with disabilities, building supportive relationships between the people who live in the community residence is essential to achieving normalization. The relationship of a community resi-

15. *Oxford House, Inc. V. H. "Butch"Browning,* 266 F.Supp.3d 896 (M.D. Louisiana 2017) provides a particularly clear explanation of how the courts have arrived at this conclusion.
16. Oxford House, Inc., "Florida State Oxford Houses (Dec. 2023), 1. (on file at the Law Office of Daniel Lauber).
17. Ibid. 3.

dence's inhabitants is much closer than the sort of casual acquaintance that occurs in 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 to the extent of which they are capable, learn from each other, and provide one another with emotional support. In contrast, this sort of family–like relationship is not essential, nor present in lodging or rooming houses, boarding houses, fraternities, sororities, nursing homes, other institutional uses, or assisted living homes too large to emulate a family.

Table 3: Oxford Houses in Florida By Number of Residents at the End of October 2023

Oxford Houses in Florida		
Number of Residents	Number of Oxford Houses	Total Number Living in This Size Oxford House
6	4	24
7	11	77
8	43	344
9	31	279
10	42	420
11	15	165
12	7	84
13	0	0
14	1	14
Totals	154	1,407

Source: https://oxfordhouse.org/directory_listing.php, October 30, 2023.

Interaction with the neighbors continues to be a key to acceptance of Oxford Houses. Closer proximity and increased contact between neighbors and Oxford House residents positively affects the relationship with neighbors. Researchers have found that compared to neighbors living a block from an Oxford House, neighbors living adjacent to an Oxford House "had significantly more positive attitudes towards the need to provide a supportive community environment for those in recovery, allow substance abusers in a residential community, and the willingness to have a self–run home on their block." Researchers have long known that there is a greater likelihood residents of a community residence will integrate into the community the more a community residence resembles its neighborhood and the more autonomous its residents are.[18]

18. L. Jason, D. Groh, M. Durocher, J. Alvarez, D. Aase, and J Ferrari, "Counteracting 'Not in My Backyard': The Positive Effects of Greater Occupancy within Mutual–Help Recovery Homes" in *Journal of Community Psychology,* 2008 Sept. 1, 36(7), pp. 947–958, at 949.

As shown in Table 3 above, the number of occupants of each Oxford House ranges from six to 14. Five percent house six or seven residents while 80 percent are home to eight to ten people. Just 15 percent of Florida's Oxford House residents live in an Oxford House for more than ten people in recovery from substance use disorder.

Research on the efficacy of differently–sized recovery residences focusing on Oxford House (a Level 1 use on the National Alliance for Recovery Residences continuum as seen on page 45 and a family community residence as defined in this report) has found that Oxford Houses with eight or more residents "leads to greater cumulative abstinence, which in turn leads to less criminal activity and aggression.…It is clear that having more residents in a House is beneficial to residents' recovery from alcohol and drug abuse" — compared to Oxford Houses with fewer than eight occupants.[19]

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 consistently comply with the purposes of local zoning districts that allow residential uses, be they single–family or multifamily.

Even before passage of the 1988 amendments to the Fair Housing Act, the majority judicial view was that family community residences for people with disabilities should be allowed as of right in *all* zoning districts where residential uses are allowed, at least when certain factually–based conditions are met. Under the Fair Housing Act, when the number of residents in a proposed community residences *exceeds* the cap on unrelated occupants in the jurisdiction's zoning code definition of "family," zoning can require (1) a rationally–based spacing distance between community residences and (2) a license or certification for community residences to be allowed as a permitted use.

Transitional community residences

In contrast to the group homes and recovery residences that fit in the category of family community residences, a *transitional community residence* is a comparatively temporary living arrangement, more transitory than a group home or long–term recovery residence and a bit less family–like. There is almost always a limit on the length of residency, which is measured in weeks or a few months, not years. A recovery residence that imposes a limit of no more than six months on how long someone can live there exhibits the performance characteristics of a transitional community residence.

Typical of the people with disabilities who need a temporary living arrangement are people with mental illness who leave an institution and need only a relatively short stay in a community residence before moving to a less structured and less restrictive living environment. Similarly, people recovering from substance use disorder move to a short–term recovery residence after detoxification in an institution — for as few as 21 days — until they are capable of living in a longer term recovery residence or other even less restrictive and less structured environment.

19. Ibid. 953.

"Direct threat exclusions"

United States: 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, municipal ordinances that prohibit such individuals from living in community residences do not run afoul of the Fair Housing Act.

State of Florida: "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) (2019). 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.

In today's parlance, halfway houses provide prison pre–parolees with transitional housing before going out on their own. *However, this class of individuals does not constitute people with disabilities.* Zoning can be more restrictive for halfway houses for people the Fair Housing Act does *not* cover. Consequently zoning codes can and should treat halfway houses for prison pre–parolees or other populations *not* covered by the Fair Housing Act more restrictively than the protected classes under the Fair Housing Act.

The community residences for people with disabilities that limit the length of tenancy are also residential uses that need to locate in residential neighborhoods to succeed. But since the length of tenancy is more temporary and so much shorter than would be expected in a typical single–family neighborhood, it is rational for a jurisdiction to apply to them the heightened scrutiny of case–by–case review to locate in single–family districts while allowing them as a permitted use in all zoning districts where multifamily housing is allowed (subject to the objective standards explained later in this report).

However, it is important to remember that when a case–by–case review is conducted, a jurisdiction cannot deny approval on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed transitional or family community residence.[20]

20. Note that the proposed definitions of "community residence," "family community residence," and "transitional community residence" all speak of a family–like living environment. These definitions *exclude* the large institutional facilities for many more occupants that, today, are often called "halfway houses." As used in this report, the term "halfway house" refers to the original halfway house concept that was small enough to emulate a biological family. The term does *not* refer to large halfway houses occupied by 20, 50, or 100+ people. These larger congregate living facilities exhibit the performance characteristics of a mini–institution and *not* the characteristics of a residential use that emulates a biological family. Consequently, sound zoning principles call for them to usually be located in commerical, medical, or institutional

Recovery communities

The recovery community is a close cousin of the recovery residence, a subset of community residences for people with disabilities. The differences between recovery communities and recovery residences are significant enough to warrant a slightly different zoning treatment. A model definition of "recovery community" is offered on page 57.

While community residences including recovery *residences* emulate a family and are usually located in a single dwelling unit, "recovery *communities*" tend to consist of multiple dwelling units, seek to establish a supportive assemblage of people in recovery from substance use disorder larger than could emulate a family. They tend to offer a more intensive living arrangement with some institutional–like characteristics not present in a community residence. Recovery communities provide housing and are *not* inpatient facilities. *Due to their fundamental differences, recovery communities warrant somewhat different zoning treatment than community residences.*

A recovery community can consist of multiple dwelling units *not* available to the general public for rent or occupancy in a single multifamily structure including a duplex or triplex, a series of townhouses, or a series of single–family detached houses. A recovery community provides a drug–free and alcohol–free living arrangement for people in recovery from drug and/or alcohol addiction. But, unlike a community residence, a recovery community does *not* emulate a biological family. As explained below, a recovery community is a different land use than a community residence and consequently warrants a different, albeit similar, zoning treatment.

Recovery communities can vary in size from a dozen to hundreds of people. Consequently, any zoning approach needs to be tailored to take this range into account. The proffered approach this report suggests in Chapter 7 provides flexibility to reasonably accommodate this wide range of sizes.

Experts regard recovery communities to be an appropriate congregate living arrangement to furnish what the National Alliance for Recovery Residences calls a "Level 4" therapeutic community with clinical oversight or monitoring, as described below in Table 4 which shows the National Alliance for Recovery Residences' four levels of supportive housing. Residency tends to be short–term.

Table 4: National Alliance for Recovery Residences' Levels of Support

NARR Level	Typical Residency	On-site Staffing	Governance	On-site Supports
Level 1 (e.g., Oxford Houses)	Self-identifies as in recovery, some long-term, with peer-community accountability	No on-site paid staff, peer to peer support	Democratically run	On-site peer support and off-site mutual support groups and, as needed, outside clinical services
Level 2 (e.g, sober living homes)	Stable recovery but wish to have a more structured, peer-accountable and supportive living environment	Resident house manager(s) often compensated by free or reduced fees	Residents participate in governance in concert with staff/recovery residence operator	Community/ house meetings, peer recovery supports including "buddy systems," outside mutual support groups and clinical services are available and encouraged
Level 3	Those who wish to have a moderately structured daily schedule and life skills supports	Paid house manager, administrative support, certified peer recovery support service provider	Resident participation varies; senior residents participate in residence management decisions; depending on the state, may be licensed; peer recovery support staff are supervised	Community/ house meetings, peer recovery supports including "buddy systems." Linked with mutual support groups and clinical services in the community, peer or professional life skills training on-site, peer recovery support services
Level 4 (e.g., therapeutic community)	Require clinical oversight or monitoring, stays in these settings are typically briefer than in other levels	Paid, licensed/ credentialed staff and administrative support	Resident participation varies, organization authority hierarchy, clinical supervision	On-site clinical services, on-site mutual support group meetings, life skills training, peer recovery support services

Source: Substance Abuse and Mental Health Services Association, *Best Practices for Recovery Housing*, Publication No. PEP23-10-00-002 (Rockville, MD: 2023) 2.

Again, there is a nuanced distinction that should be made. While the typical recovery community has tended to house dozens, scores, or even hundreds of people in recovery, some small recovery communities consist of dwelling units in a single duplex or triplex with the total number of residents the same as, or close to, that of a community residence. It's very likely that the impacts of such significantly smaller recovery communities are no different than those of a typical community residence and that they will perform more like a community residence than the typical large recovery

community. This report's zoning approach makes allowances for these smaller recovery communities.

Except where noted, the remaining discussion on recovery communities focuses on the larger ones housing dozens to hundreds of people.

Unlike a community residence with a maximum of roughly 12 occupants whose essential characteristics include emulating a biological family, a recovery community can consist of dozens and even scores of people in recovery making it more akin to a mini–institution in nature and number of occupants. The U.S. Department of Justice and Department of Housing and Urban Development have jointly noted that the U.S. Supreme Court's decision in *Olmstead v. L.C.*:[21]

> …ruled that the Americans With Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community–based settings. *An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible.* By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although Olmstead did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in Olmstead, are consistent.[22] *[Emphasis added]*

As will be explained on the following pages, larger recovery communities constitute a fairly segregated setting that does not facilitate interaction with nondisabled people in the surrounding neighborhood — quite contrary to the core nature of community residences where interaction with neighbors without disabilities is an essential component.

Generally speaking, a recovery community is located in multifamily buildings where the operator places several individuals in each dwelling unit with shared bedrooms. Other recovery communities may consist of a very large single–family house, or a series of detached or town homes, attached single–family residences. Some can occupy all units in a duplex, triplex, or quadraplex.

They have been known to be clustered together. One of the most extreme situations was a recovery community in Palm Beach County occupied by 152 individuals in recovery with another 100–person recovery community next door. Both were under the same ownership and are shown in Figure 12 below.

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21. 527 U.S. 581 (1999).
22. 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,* 11 (Nov. 10, 2016). The negative impacts of institutional living arrangements for people with disabilities are examined in excrutiating detail in 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, at 380–381 (available at http://www.grouphomes.law).

Figure 12: Example of Two Adjacent Former Recovery Communities in Palm Beach County

A total of 252 people in recovery used to occupy these two adjacent recovery communities, 100 in one and 152 in the other. Both were operated by the same housing provider.

The reality, however, is that these — particularly those occupied by, say, 25 or more people in recovery — function as segregated mini–institutions that do *not* emulate a family, facilitate the use of non–disabled neighbors as role models, or foster integration into the surrounding community to the extent that a community residence does.[23]

The situation is akin to, albeit not precisely identical to the situation the Appellate Division of the Supreme Court of New York addressed in 2023 applying *Olmstead*, the integration mandate of the Americans With Disabilities Act, and the Fair Housing Act. The case involved so–called "transitional adult homes" housing 80 or more people with mental illness. The court concluded that these facilities are "akin to institutionalized settings and not beneficial to recovery for people with serious mental illness because, among other things, they … restrict the ability of persons with serious mental illness to interact with people who do not have serious mental illness…." The court concluded that the regulations at issue "benefit the protected class" and "are sufficiently narrowly tailored to implement the goal of integration."[24]

This case is noted here simply to illustrate that there is a judicially–recognized concern about substantial aggregations of people with disabilities, whether they be people with mental illness or folks in recovery from substance use disorder (frequently a dual diagnosis with mental illness), tend to limit the opportunity to interact with people without the same disability — in contrast to a core characteristic of community residences.

23. Many of these recovery communities offer what is called "Level IV" support, the highest, most intense degree of support. In its description of "support levels" that service providers offer, the Florida Association of Recovery Residences (FARR) notes that "Level IV" "[m]ay be a more institutional in environment." *[sic] See* http://farronline.org/standards-ethics/support-levels.
24. *Matter of Oceanview Home for Adults, Inc. V. Zucker*, 215 A.D.3d 140 (2023).

Figure 13: Four Adjacent Town Homes That Have Been Occupied By a 28–person Recovery Community in West Palm Beach

Twenty–eight people in recovery have lived in this four townhouse recovery community in West Palm Beach.

Operators of recovery communities are known to move residents from one dwelling unit to another — *unlike how a family or roommates behave*. This sort of arrangement does *not* constitute a community residence in any sense of the term — remember that the essence of a community residence is to emulate a biological family. The segregated housing that the larger recovery communities create can run counter to core purposes of a community residence: to achieve normalization and community integration using neighbors without disabilities as role models. The very structure of a recovery community — especially those with more than 25 or so occupants — deliberately encourages a more inward orientation for residents that doesn't facilitate interaction with neighbors without substance use disorder.

Just a handful of jurisdictions have adjusted their zoning provisions to accommodate recovery communities.[25] In the absence of zoning provisions for recovery communities, some providers have skirted zoning provisions intended to prevent adverse clustering and concentrations by misusing the cap on the number of unrelated individuals in the local zoning code's definition of "family." In these instances, when a jurisdiction has a cap of four unrelated individuals in its definition of "family," for example, the operator places four people in recovery in each unit in a multifamily building, series of adjacent single family homes, or town homes — with a total number of residents substantially greater than the 12 in a community residence. The people in recovery, how-

25. Among these are Maricopa County, Arizona and the Florida jurisdictions of Pompano Beach, Davie, Coral Springs, Palm Beach County, Panama City, Oakland Park, and West Palm Beach.

ever, function as a single large "community," *not* as individual functional families. Concentrations and clusters of these mini–institutions can and do alter the residential nature of the surrounding community no less than a concentration of nursing homes would and maybe even more since the occupants of recovery communities are more ambulatory and may maintain a motor vehicle on the premises.

When a zoning code does not define "recovery community" and include zoning provisions specifically for them, a housing provider is free to place in each dwelling unit as many unrelated people in recovery as the definition of "family" allows and can create a *de facto* recovery community not subject to spacing or certification. Consequently, it is vital for any land–use ordinance to define "recovery community" and provide regulations for them.

A single recovery community can effectively recreate the circumstances in other jurisdictions where the courts have concluded that an institutional atmosphere was recreated. In *Larkin v. State of Michigan Department of Social Services,* the Sixth Circuit Federal Court of Appeals arrived at this conclusion when it referenced the decisions in *Familystyle*. In the *Familystyle* case, the operator sought to increase the number of group homes on one and a half blocks from 21 to 24 and the number of people with mental illness housed in them from 119 to 130. Referring to the federal district and appellate court decisions in *Familystyle,* the *Larkin* court noted, "The courts were concerned that the plaintiffs were simply recreating an institutionalized setting in the community, rather than deinstitutionalizing the disabled."[26]

The court made a similar point in *Matter of Oceanview Home for Adults, Inc. v. Zucker* where the court noted that transitional adult homes, in this case for 120 people, "are akin to institutionalized settings and are not beneficial to recovery for people with serious mental illness because, among other things, … restrict the ability of persons with serious mental illness to interact with persons who do not have serious mental illness...."[27] This decision is mentioned *not* to denigrate recovery communities which do have an important role to play in the continuum of housing for people in recovery from substance use disorder. The opinion addresses a 120–person adult care home. The court decision is included here to note the concern over community integration and the lack of opportunities in such a environment to interact with persons without disabilities — in contrast to a community residence offering greater opportunities for such interaction.

Some recovery communities are creating institutional settings in the Broward County cities of Pompano Beach and Oakland Park as well as in neighboring Palm Beach County.[28] In fact, the density of these large mini–institutions has often been greater than in the *Familystyle* case. The operators have recreated an institutional

26. *Larkin v. State of Michigan Department of Social Services,* 89 F.3d 285 6th Cir. (1996). *See also Familystyle of St. Paul, Inc. v. City of St. Paul*, 728 F.Supp. 1396 (D. Minn. 1990), aff'd, 923 F.2d 91 (8th Cir. 1991).

27. 215 A.D.3d 140 (2023), 188 N.Y.S.3d 773, 2023 N.Y. App. Div. LEXIS 2397 at 2403.

28. *See* Daniel Lauber, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, June 2018) 37–38 and Daniel Lauber, *Zoning Principles for Community Residences for People With Disabilities and for Recovery Communities in Oakland Park* (River Forest, IL: Planning/Com-

setting in the midst of a residential district. These mini–institutions not only impede achieving the core goals of normalization and community integration, but also alter the character of the neighborhood and the city's zoning scheme.

Figure 14: Thirty–Two Unit Multifamily Building Once Occupied by a Recovery Community in Oakland Park

Oakland Park staff reported that this 32–unit Oakland Park building housed a recovery community that the Florida Association of Recovery Residences declined to certify at the time.

As noted earlier, a key reason for community residences locating in residential zoning districts has long been that the neighbors without disabilities serve as role models for the people with disabilities. Consequently, this essential rationale for community residences expects the occupants of the community residences to interact with their neighbors. Filling multiple dwelling units with people in recovery is not conducive to achieving these fundamental goals. Instead the occupants of the recovery community will almost certainly interact, perhaps exclusively, with the other people in recovery rather than with the "clean and sober" people in the surrounding neighborhood — an inward focus that is characteristic of many recovery communities.

As a larger and significantly more intense use than an community residence, recovery communities exert a wider influence on the neighboring community. Consequently, it stands to reason that a greater spacing distance from any existing recovery community or community residence is warranted for a proposed recovery community.

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munications, March 2019) 38–40. The situation in the rest of Broward County is unknown because a county–wide study has not been conducted there. *Also see* Daniel Lauber, *Zoning Analysis and Framework for Community Residences for People With Disabilities and for Recovery Communities in Palm Beach County, Florida* (River Forest, IL: Planning/Communications, July 2020) 57–61.

Figure 15: Four Clustered Uncertified Former Recovery Communities in Pompano Beach

The four buildings with the reddish roofs in this photo from Google Earth were each occupied by 24 people in recovery, for a total of 96 people in 16 apartment units. The Florida Association for Recovery Residences denied certification for these sites which are no longer used as recovery communities.

Introducing multiple mini–institutions such as these can and has altered the residential character of the surrounding neighborhood.[29] In addition, there is no evidence of how such arrangements affect property values, property turnover rates, or neighborhood safety. The studies of the impacts of community residences examined actual community residences that emulate a family, *not* these mini–institutions. The *de facto* social service districts that clusters of recovery communities produce fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses.

It is important to remember that zoning is based on how each land use functions and performs. The original community residence concept is based on the community residence behaving as a "functional family," namely emulating a biological family to attain normalization and community integration. Such homes need to be in a residential neighborhood where the nondisabled neighbors serve as role models. Those are key cornerstones of the basis of the court rulings that require community residences to be allowed in residential districts — going back to before enactment of the

29. Lest we forget, the courts agree that cities have a legitimate government interest in preserving the residential character of their neighborhoods as discussed on page 110.

Fair Housing Amendments Act of 1988 which established people with disabilities as a protected class.

Figure 16: Former 80 Person Recovery Community in Palm Beach County

Forty apartments were occupied by 80 people when this Palm Beach County apartment building was occupied as a recovery community.

But filling a multifamily building with people in recovery — or filling a group of houses or town homes with people in recovery — hardly emulates a biological family in a residential neighborhood.[30] Instead of "clean and sober" people in the surrounding dwellings serving as role models, the folks trying to recover from substance use disorder are surrounded by other people in the same situation. While such living arrangements certainly can be conducive to the earliest stages of recovery, it is difficult to imagine how such segregated living arrangements foster the normalization and community integration at the core of the community residence concept. In fact, many, if not most "Level IV" recovery communities are more institutional in nature and do not even seek to foster community integration or the use nondisabled neighbors as role models.

These are among the reasons why spacing distances are so crucial to establishing an atmosphere in which community residences can enable their occupants to achieve normalization and community integration and facilitate utilization of neighbors as role models. And these are among the reasons why zoning should treat recovery communities as the mini–institutions that they functionally are.[31]

30. However, as noted earlier, a duplex or triplex with 12 residents altogether can function much like a community residence with the same external impacts, or lack thereof, as a community residence.

31. The case law that requires *zoning* to treat a community residence that fits within the cap on unrelated individuals in the definition of "family" is based on fact situations involving actual, singular community residences. *The case law under the Fair Housing Act regarding community residences for people with disabilities is very fact specific*. It is realistic to imagine that a court

Since recovery communities are most appropriately located in multifamily buildings, it is not rational to allow new recovery communities to be located in single–family districts where new multifamily housing is not permitted. But it is rational and appropriate to allow recovery communities in those zoning districts where multifamily housing, including duplexes and triplexes, is allowed.

Note, however, that in a single–family district that allows duplexes, triplexes, and/or quadraplexes as of right, the smaller recovery communities that are more similar in performance to a community residence should be treated as community residences rather than as the typical much larger recovery community, and should be allowed as a permitted use subject to licensing and narrowly–tailored spacing standards.

As explained beginning on page 67, the capacity of a neighborhood to absorb service dependent people into its social structure is limited. When two or more typical larger recovery communities are clustered on a block or adjacent blocks, it is very likely that they would exceed this capacity. Depending on the number of residents in a particular recovery community, this situation can warrant a significantly greater spacing distance for recovery communities allowed as of right in a zoning district than between community residences allowed as of right.

The distance between a proposed recovery community and the nearest community residence or recovery community ought to vary based on the number of occupants of the proposed recovery community. The occupants of a recovery community with, for example, up to 16 residents would likely be absorbed into the social structure of a neighborhood much like the occupants of a community residence with 12 occupants would be. Consequently, the spacing distance for such a *relatively* small recovery community ought to be the same as the spacing distance between community residences. However, a recovery community housing 100 or more people exerts influence over a much larger neighborhood and needs a larger social structure to absorb its much greater number of residents. Consequently larger recovery communities warrant a significantly greater spacing distance to facilitate absorption into a wider social structure and advance normalization and community integration through interaction with neighbors without disabilities — at least as much as a recovery community permits. Recovery communities in between these two extremes warrant a spacing distance somewhere between the smallest and largest spacing distance.

Therefore, it is only rational that the spacing distances for proposed recovery communities be tiered with the spacing distance increasing as the number of recovery community occupants increases.

When a recovery community is proposed to be located within the spacing distance of an existing community residence or recovery community, the heightened scrutiny of a case–by–case review is warranted to identify the likely impacts of the proposed recovery community on the nearby existing community residence or recovery community, as well as their combined impacts on the neighborhood.

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would recognize that, for example, placing a few dozen or more people with disabilities in multiple dwelling units in a multifamily building would constitute an institutional use.

Under the zoning approach this report recommends, an existing recovery community located in a pure single–family zoning district may become a legal nonconforming use as long as it obtains certification or licensing within a reasonable time frame. Such recovery communities, like any other legal nonconforming use, would not be allowed to expand.

Model zoning code definitions

These definitions assume that the definition of "family" or "household" in a local jurisdiction's zoning code allows up to four unrelated individuals to constitute a "family" or "household." Jurisdictions are, of course, free to set this cap at a higher or lower figure.

As discussed in considerable detail beginning on page 107, under the Fair Housing Act, zoning cannot regulate community residences that fit within this cap on unrelated individuals that constitute a family or household, when the definition of family or household allows any number of unrelated people to constitute a family or household, or when the zoning code does not define family or household.

These definitions should not be adopted without careful thought and possible customization for a specific jurisdiction. They serve as a starting point from which cities and counties — or the State of Florida — can build upon.

The definition of "community residence" is necessarily lengthy in order to encompass all the uses that constitute a community residence. It avoids the ambiguities in definitions that have plagued so many Florida jurisdictions over the decades. It distinguishes community residences for people with disabilities from the unlicensed and uncertified flop houses and boarding houses whose operators have sought to be improperly treated as a community residence.

While examples of the two types of community residences are included, these are "functional" definitions based on a use's performance and how it functions. This necessarily requires zoning regulators to make some informed judgment calls to assure that a proposed use is properly categorized.

Also included here is a definition for "recovery community" (which is examined in detail beginning on page 44) as well as other uses that are distinguished from a community residence (which includes recovery residences) or recovery community.

Community residences and recovery communities

Community residence: A community residence is a residential living arrangement for five[32] to 12 unrelated individuals with disabilities living as a single functional family in a dwelling unit, duplex, or triplex who need the mutual support furnished

32. As noted in the text above, these definitions use the example of a local zoning code defining a "family" or "household" to include up to four unrelated individuals. This topic is examined in considerable detail in Chapter 4, including the consequences for zoning for community resdiences and recovery communities when any number of unrelated persons can constitute a "family" and when the zoning code does not define "family" or "household" at all.

by other residents of the dwelling unit as well as the support services, if any, provided by any staff of the community residence. Residents may be self–governing or supervised by a sponsoring entity or its staff, which provide habilitative or rehabilitative services related to the residents' disabilities. A community residence emulates a biological family to foster normalization of its residents, integrate them into the surrounding community, and use neighbors as role models for those residents capable of going into the community and interacting with neighbors. Supportive inter–relationships between residents are an essential component. Its primary purpose is to provide shelter; foster and facilitate life skills; and meet the physical, emotional, and social needs of the residents in a mutually supportive family–like environment. Medical treatment is incidental as in any home, but does not include detoxification which is more than incidental medical treatment.

A community residence is considered a residential use of property for purposes of all city/county codes and regulations. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor any recovery community, congregate living facility, institutional or medical use, shelter, lodging or boarding or rooming house, extended–stay hotel, nursing home, vacation rental, or other use as defined in this code.

Community residences can include, but are not limited to, those residences that comport with this definition licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elder Affairs, the Florida Agency for Health Care Administration, and the Florida Department of Children and Families, pursuant to Chapter 419, Florida Statutes, Community Residential Homes; and Level 1 or 2 Recovery Residences certified by the state's designated credentialing entity established under Section 397.487, Florida Statutes, Substance Abuse Services.

A community residence occupied by five to 12 unrelated individuals with disabilities can be a "family community residence" or a "transitional community residence" as defined in this code.

Family community residence: A community residence that provides a relatively permanent living arrangement which, in practice and/or under its rules, charter, or other governing document, does not limit how long a resident may live there. The intent is for residents to live in the family community residence on a long–term basis of at least six months. Typical uses *can* include, but are not limited to, the following when they comport with the essence of this definition:

- Community residential homes defined under *Florida State Statutes* §419,001(1)(a)
- Assisted living facility for the elderly or other people with disabilities licensed under *Florida State Statutes* §429.02(5)
- Adult family–care home licensed under *Florida State Statutes* §429.60
- Intermediate care facility for people with developmental disabilities licensed *under Florida State Statutes* §400.96
- Housing licensed under *Florida State Statutes* §394
- Recovery residences certified under *Florida State Statutes* §397, currently administered by the Florida Association of Recovery Residences, typically

Levels 1 and 2 certified recovery residences (and possibly some Level 3 residences, where residency in practice or by rules is at least six months

- Oxford House or other similar self–governed long–term housing for people in recovery from substance use disorder, and with no limit on tenancy in practice or in its charter or rules

Transitional community residence: A community residence that provides a relatively temporary living arrangement for unrelated people with disabilities with a limit on length of tenancy typically less than six months which may be measured in weeks or months as determined either in practice or by the rules, charter, or other governing document of the transitional community residence. Typical uses can include, but are not limited to, the following when they comport with the essence of this definition:

- Group homes for people with disabilities that emulate a family, including, but not limited to, people with mental illness, substance use disorder, or physical disabilities
- Community residential homes defined under Florida State Statutes §419,001(1)(a)
- Housing with only outpatient treatment licensed under Florida State Statutes §394
- Recovery residences certified under Florida State Statutes §397, currently administered by the Florida Association of Recovery Residences, where residency in practice or by rules is typically less than six months, generally Level 3 and possibly Level 4 homes
- The separate community housing component for people with substance use disorder who may be undergoing detoxification or treatment at another location such as a day or night residential treatment center licensed under Florida State Statutes §397.311

Recovery community: Multiple dwelling units in multifamily housing including duplexes, triplexes, and quadraplexes; attached single–family dwellings; or a group of these types of dwellings that are not held out to the general public for rent or occupancy, that provide a mutually supportive drug–free and alcohol–free living arrangement for people in recovery from substance use disorder which, taken together, do not emulate a single biological family and are under the auspices of a single entity or group of related entities. A recovery community provides no more treatment than the sort of incidental treatment expected in residences. Recovery communities include land uses for which the operator is eligible to apply for certification from the State of Florida, pursuant to Chapter 397, Florida Statutes, as amended. The term does not include any other group living arrangements for people who are not disabled nor any community residence, congregate living facility, institutional or medical use, shelter, lodging or boarding house, extended stay hotel, nursing home, vacation rental, or other use defined or used in this code.

For code enforcement purposes, each dwelling unit in a recovery community located in a multi–family structure including duplexes, triplexes, and quadraplexes, shall be classified as a multi–family dwelling unit. Each dwelling unit in a recovery community located in attached single–family dwellings shall be classified as an attached single–family dwelling. Each detached single–family dwelling that a recovery

community occupies shall be classified as a detached single–family dwelling unit.

Related uses that are not community residences or recovery communities

Boarding or rooming house: A building other than a hotel, motel, residential inn, or bed and breakfast used to provide lodging for compensation, and where more than one (1) of the partitioned sections are occupied by separate families or rent is charged separately for the individual rooms or partitioned areas occupied by the renter or occupant. Individual living units may or may not be equipped with kitchen facilities. Congregate dining facilities may be provided for the guest. A boarding or rooming house is not a community residence nor a recovery community.

Congregate living facility: A facility that provides long–term care, accommodations, food service, and one or more assistive care services to persons not related to the owner or administrator by blood or marriage. A congregate living facility is a permanent or temporary group living arrangement for people without disabilities, a group living arrangement too large to emulate a family, a group living arrangement in which normalization and/or community integration are not integral elements, intermediate care or assisted living facilities that do not emulate a family, a group living arrangement that is an alternative to incarceration for people who pose a direct threat to the health or safety of others, a group living arrangement for people undergoing treatment in a program at the same site, and a facility for the treatment of substance use disorder where treatment is the primary purpose and use whether it provides only services or includes a residential component on site. A congregate living facility is not a community residence or a recovery community.

Nursing home: A home for aged, chronically ill or incurable persons in which three (3) or more persons not of the immediate family are received, kept, or provided with food and shelter or care for compensation, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured. A state–licensed facility or any identifiable component of any facility in which the primary function is to provide, on a continuing basis, nursing services and health–related services for the treatment and inpatient care of five (5) or more non–related individuals, including facilities known by varying designations such as rest homes, convalescent homes, skilled care facilities, intermediate care facilities, extended care facilities, and infirmaries. Accessory uses may include dining rooms and recreation and physical therapy facilities for residents, and offices and storage facilities for professional and supervisory staff. This use type does not include the home or residence of any individual who cares for or maintains only persons related to them by blood or marriage. A nursing home is not a community residence or a recovery community.

Again, these definitions provide a starting point for the actual language a city or county — or the State of Florida — might wish to adopt.

Chapter 4

Rational bases for regulating community residences and recovery communities

Key Takeaways

- **President Reagan's Fair Housing Amendments Act of 1988 requires zoning for community residences and recovery communities to be based on facts and to make the reasonable accommodation the act requires to enable these uses to locate in the residential neighborhoods essential to them to achieve their core goals for their residents.**
- **Clustering of community residences and/or recovery communities on a block or concentrating them in a neighborhood impedes their ability to facilitate their essential goals for their residents: normalization, community integration, and using nondisabled neighbors as role models.**
- **When intense enough, clustering and concentrating can produce a *de facto* social service district that undermines the ability of these homes to achieve their core purposes.**
- **Rationally–based spacing distances between a proposed community residence or recovery community and an existing one may be used to determine whether one of these uses is a permitted use.**
- **This spacing distance to be a permitted use is not rigid and the Fair Housing Act requires that a further reasonable accommodation be made through case–by–case review to determine if locating one of these uses within the applicable spacing distance will generate an adverse impact.**
- **A long line of court decisions makes it clear that zoning that does not treat community residences that fit within a jurisdiction's cap on the number of unrelated individuals that can constitute a "family" exactly the same as any other family, constitutes illegal discrimination on its face.**
- **Licensing and certification of community residences and recovery communities helps protect their occupants from abuse, exploitation, fraud, theft of funds, and incompetence while also protecting the surrounding neighborhood from illegal scam operations.**
- **Research has consistently found that licensed/certified community residences not clustered together do not affect property values.**

The foundations of the proffered zoning approach

This report examines and presents the basis and legal justification for a framework upon which to base refinements to statewide zoning and for local zoning to regulate community residences for people with disabilities and the related use, recovery communities, in accord with sound zoning and planning principles and the nation's Fair Housing Act. The proposed refinements to the state statutes, particularly Florida State Statute §419.001, based on this study will make the reasonable accommodation for community residences for people with disabilities and recovery communities that the Fair Housing Act mandates to achieve full compliance with national law. This objective, fact–based nonpartisan framework for the zoning approach this report recommends takes into account:

- The functions and needs of the different types of community residences and the people with the various disabilities who live in them
- The somewhat different functions and needs of recovery communities and the people recovering from substance use disorder who live in them
- 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 Fair Housing Amendments Act of 1988 amendments which constitutes the act's complete 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 and recovery communities
- 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)[1]
- Sound planning and zoning principles and policies
- 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) (2024)
- Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2024)
- 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 for Recovery Residences.

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

The legislative history of the Fair Housing Amendments Act of 1988 makes it abundantly clear that zoning for community residences for people with disabilities and recovery communities is to be fact–based:

> 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 discriminates against people with disabilities. Such discrimination often results from false or over–protective 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."[2]

The impacts, or lack thereof, of community residences for people with disabilities have probably been studied more than any other small land use. Appendix A of this report provides an annotated bibliography of a representative sampling of these studies.

To understand the rationale for the guidelines to regulate community residences this report proffers, it is vital to review what is known about community residences, including the appropriate locations they need to achieve their core goals; the number of residents needed to be both therapeutically and financially viable; the means of protecting their vulnerable populations from mistreatment, neglect, financial theft, incompetence, and exploitation; and their impacts, if any, on the surrounding community.

Most of the principles discussed in this section apply to both community residences and their close cousins, recovery communities.

Relative location of community residences

For at least 40 years, researchers have found that a very substantial proportion of housing providers do not hesitate to locate their community residences (including recovery residences) close to other community residences, especially when zoning does not allow community residences for people with disabilities as a permitted use as of right (with objective, narrowly–crafted standards) in all residential districts.

They tend to be clustered in a community's lower cost or older neighborhoods and in areas around colleges.[3] When local zoning did *not* require a rationally–based spac-

2 *House of Representatives Report Number 711, 100th Congress, 2d Session* 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.

3 *See* General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) 19. This comprehensive study found that 36.2 percent of the group homes for people with

ing distance between community residences allowed as permitted uses, clustering or concentrations of community residences were found in every jurisdiction for which Planning/Communications has conducted an Analysis of Impediments to Fair Housing Choice.[4]

Why clustering and concentrations are counterproductive

Locating community residences (and recovery communities) close to one another and placing a great many in a neighborhood can create a *de facto* social service district and hinder the ability of these homes to achieve normalization and community integration of their residents — among the core foundations upon 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. Many interact with neighbors further away especially when both have children together in school or engage in walking, jogging, or other neighborhood activities. The underlying precepts of community residences expect neighbors without disabilities who live near a community residence (and recovery community) to serve as role models to the occupants of the community residence (and recovery community, although perhaps to a lesser extent) — which requires interacting with these neighbors.

For normalization to occur, it is essential that occupants of a community residence interact with neighbors without disabilities as role models. But if another community residence (or a recovery community) is opened very close to an existing community residence (or recovery community) — such as next door or within a few lots of it — the residents of the new home can replace the role models without disabilities with individuals with disabilities and quite possibly hamper the normalization and community integration efforts of the existing community residence. Clustering three or more community residences on one or two adjacent blocks not only undermines normalization and community integration, but could inadvertently lead to a *de facto* social service district that alters the residential character of the neighborhood.

The known evidence shows that we can be quite confident that one or two nonadjacent community residences for people with disabilities on an average American block of 660 feet, or about nine lots apart,[5] are not likely to alter the residential character of a neighborhood or interfere with the goals of community residences.[6] Your author has not been able to find any comparable studies of recovery communities. One

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developmental disabilities surveyed were located within two blocks of another community residence or an institutional use. *Also see* Daniel Lauber with Frank S. Bangs, Jr., *Zoning for Family and Group Care Facilities,* American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) 14; and *Familystyle 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.

4 For example, *see* Daniel Lauber, *Naperville Housing Needs and Market Analysis 2009* (River Forest, IL: Planning/Communications, Dec. 2007) 47–49.

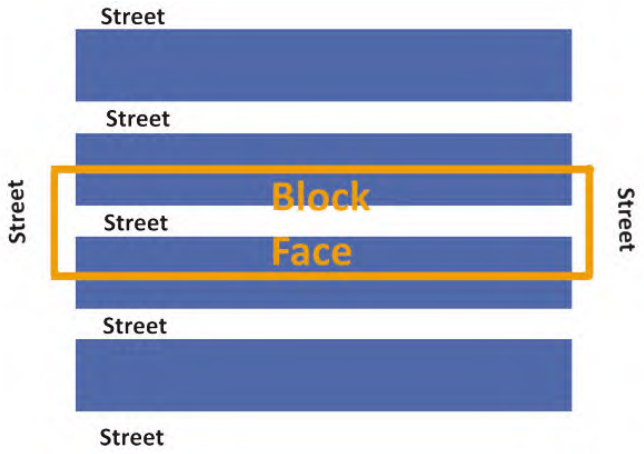
5 When calculating the number of lots, streets and bodies of water should be counted as one or more lots depending on their size.

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

can estimate with some confidence that two or more large *recovery communities* on a block face *will* very likely alter the residential character of the block thanks to their larger size and population, more intense concentration, and institutional nature.

The research strongly suggests that as long as several community residences are not clustered on the same block face or adjacent blocks, they will not generate these adverse impacts. Consequently, *when community residences are allowed as a permitted use,* it is most rational and reasonable to establish a spacing distance between them that keeps them apart at least the length of an average American block, which amounts to ten or 11 lots apart assuming a typical minimum lot width of 60 to 65 feet. This distance should assure there are enough dwellings between them to lessen the chances their occupants will interact *primarily or only* with the occupants of the nearby community residence(s). This sort of distance facilitates the core goals of normalization, community integration, and the use of neighbors without disabilities as role models.

Figure 17: Example of a Block Face



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

The minimum width of residential lots in Florida tend to run from 50 to 200 or more feet. So, under the approach described above where the spacing distance to be a permitted use is 660 feet, community residences could locate as of right just five lots apart in a zoning district where parcels are, for example, 150 feet wide. This situation would increase the likelihood that the residents of the two community residences would interact mostly or exclusively with the occupants of the other community residence rather than with their neighbors without disabilities. The likelihood is even greater when both community residences serve people with the same disability.

While many residential neighborhoods are laid out in a traditional grid pattern, newer subdivisions tend to sport curvilinear streets and cul–de–sacs. Applying a rigid permitted use spacing distance radius of 660 linear feet to those neighborhoods with largely curvilinear streets will not necessarily provide enough lots between community residences allowed as permitted uses to facilitate normalization, community integration, and the use of neighbors without disabilities as role models.

The zoning approach needs some flexibility to allow for the larger minimum lot widths and the curvilinear streets in many Florida residential neighborhoods.[7] Consequently, this report recommends that to be allowed as a permitted use, a proposed community residence (and recovery community) should be a specific rational distance *or* a specific number of lots, *whichever is greater,* from the closest existing community residence or recovery community — this report concludes that 660 feet (the length of an average American block) or nine lots are the most justifiable figures to use. This approach provides the least drastic means needed to attain the legitimate government interest of actually facilitating achievement of the core goals of community residences and recovery communities.

Taking everything known about community residences (and recovery communities) and their impacts or lack thereof, the state and local governments can be quite confident that these goals will be achieved and no adverse impacts generated when licensed or certified community residences and recovery communities seek to locate outside the applicable spacing distance from an existing one. Hence this study recommends administratively treating these as permitted uses when the applicable spacing distance is met and two other objective standards regarding licensing and maximum number or residents are complied with.

Locating within the permitted use as–of–right spacing distance

There isn't as much confidence that these goals would be attained when another licensed or certified community residence or recovery community were to locate *within* the applicable spacing distance of an existing one.

It is critical that application of a spacing distance be flexible to allow for the many circumstances where locating another community residence (or recovery community) within the spacing distance of an existing community residence (or recovery community) will not produce adverse impacts. That is why this report recommends establishing a case–by–case review process to enable exceptions to the spacing distance when narrowly–crafted standards to review the application are met. **It cannot be emphasized enough that there are many circumstances where a city or county should allow a proposed community residence or recovery community to locate within the applicable spacing distance for permitted uses in order to make the reasonable accommodation that the Fair Housing Act requires.** These situations are examined in great detail beginning on page 118.[8]

Consequently, this report recommends Level 1 Review for community residences and recovery communities to be allowed as permitted uses and a second, more precise

7 Flexibility is also needed to provide for the numerous circumstances where locating a community residence or recovery community within the spacing distance of an existing one won't interfere with normalization or community integration or create or intensify a cluster or concentration.

8 Failure to provide for locating within the designated spacing distance is one of the legal deficiencies in the current Florida statute §419.001 as explained later in this report on page 143 and the two pages that preceed it.

Level 2 Review when a proposed community residence or recovery community seeks to locate within the applicable Level 1 spacing distance to be a permitted use.

Level 1 Review: Measuring spacing distances for a permitted use.

While spacing distances are measured from the lot line of an existing community residence (or recovery community) that is closest to a proposed community residence, there are two primary schools of thought on the most appropriate method to measure that spacing distance — when determining whether a proposed community residence or recovery community should be allowed as a permitted use (aka "as of right").

"Radius" or "as the crow flies" method. The more feasible school of thought holds that the spacing distance for allowing community residences and recovery communities *as permitted uses* should be measured "as the crow flies" from the closest lot line of the nearest existing community residence (or recovery community) and the proposed community residence (or recovery community). This method establishes a *predictable* radius around existing community residences (and recovery communities) that can be quickly and accurately measured using a jurisdiction's geographic information system or printed maps. Even with superblocks, this approach would preclude a new community residence from locating as of right back to back or lot corner to lot corner to an existing community residence. This is the more appropriate and pragmatic approach to use in Florida and elsewhere when determining the spacing distance to be allowed as a *permitted use.*

"Pedestrian right of way" method. Another school of thought calls for measuring 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.

Implementing this approach to determine *permitted uses* ranges from extremely difficult to next to impossible. Under this approach, it would be very challenging, time consuming, and expensive for a prospective housing provider and for city or county staff to identify potential locations that meet the applicable spacing distance.

More importantly, this approach also leaves some gaping loopholes when used to determine permitted uses. This "pedestrian right of way" approach fails to achieve the objectives of spacing distances because it would allow clustering and concentrations to develop by enabling a community residence to locate as of right back to back or lot corner to lot corner with an existing community residence — one of the scenarios that spacing distances to be a permitted use seek to prevent from happening.

While the "pedestrian right of way" approach is impractical for determining spacing to be allowed as a permitted use, it can and should be employed as one factor to consider when a local jurisdiction conducts a case–by–case review of an application to locate *within* the applicable spacing distance as illustrated beginning on page 118 in Chapter 7.

Level 2 Review: Spacing distances in case–by–case–reviews

While the "pedestrian right of way" method is impractical and does not work for

determining whether a community residence or recovery community should be allowed as a permitted use, it is an important factor to consider when an applicant seeks to locate within an applicable spacing distance through this case–by–case review process. In a case–by–case review, the "pedestrian right of way" method should be among the primary factors considered when determining whether locating within the permitted use spacing distance would interfere with normalization, community integration, or using nondisabled neighbors as role models.

The bottom line on spacing distances:

Spacing distances never intended to be inflexible nor rigidly applied.

While the research shows that we can be quite confident that adhering to the chosen spacing distances to be a permitted use will not interfere with the ability of occupants of community residences to attain normalization and community integration and will not alter the residential character of a neighborhood, we can be equally confident that there are circumstances like those described above where allowing an exception to the applicable spacing distance will also have no effect on the ability to achieve these essential goals.

Every spacing distance used for permitted uses is an educated estimate of the minimum distance needed between community residences and recovery communities to achieve these goals — a line has to be drawn somewhere. It is very likely that close calls should usually be resolved in favor of the proposed use — but every fact situation must be evaluated on its own.

Consequently, the state statute and local zoning need to provide a mechanism to reasonably accommodate, on a case–by–case basis, proposals to locate a community residence or recovery community within the applicable spacing distance used for allowing a permitted use. These proposals should be *objectively* evaluated individually according to narrowly–crafted standards based upon the reasons for requiring a spacing distance to be a permitted use. Speculation, myths about the impacts of people with disabilities, and neighborhood opposition can *never* constitute a valid reason to deny an application to locate within a spacing distance.

For example, geography can have an impact. A freeway, major arterial, drainage channel, body of water, or small hill between the proposed and existing community residences that acts as a barrier to interaction of the occupants of the two sites will often make the distance along pedestrian pathways great enough to assure that the proposed community residence will not interfere with normalization and community integration at the existing site, discourage the use of nondisabled neighbors as role models, or alter the community's character.

Different populations in an existing and a proposed community residence can also make a difference when located within an applicable spacing distance. A proposed

community residence for the frail elderly, for example, is extremely unlikely to have any effect on the ability of an existing recovery residence down the block to achieve normalization and community integration of its residents and use neighbors without disabilities as role models. The variations on these scenarios are endless and require careful, thoughtful review to arrive at the proper legal decision.

Given all these factors, this report recommends:

- Employing Level 1 Review to determine whether a proposed community residence or recovery community is allowed as a permitted use, and
- Employing Level 2 Review for the case–by–case review conducted when a community residence or recovery community is proposed for a site *within* the applicable spacing distance from the closest existing community residence or recovery community.

These later situations require a case–by–case evaluation to make sure they won't hinder these core aims of the closest existing community residence (or recovery community). State statutes should provide for localities to conduct this case–by–case "backup" review using the jurisdiction's usual process, namely as a special use, conditional use, flexible use, special exception, or a waiver — albeit using only the narrowly–crafted standards proferred in this report.

The standards for determining whether to grant this "backup" approval need to be narrowly based on the reasons why the case–by–case review is being required. It is critical that this "backup" case–by–case review be included in any zoning treatment of community residences and recovery communities in order to provide the reasonable accommodation that the Fair Housing Act requires. The appropriate standards are examined in depth in Chapter 7.

Every jurisdiction that adopts the zoning approach recommended here needs to create a customized "Community Residence and Recovery Community Land Use Application" form much like the one in Appendix B of this study for *all* operators of *every* proposed community residence and recovery community to complete. This form will enable local zoning staff to fairly quickly determine the proper zoning treatment of the proposed use.

In addition, localities should maintain an up to date accounting of the number of applications and how each one is resolved.

Each local jurisdiction — and the state, if feasible — should also maintain a confidential database and map[9] of the locations of all existing community residences and recovery communities so it can apply the spacing distance to any proposed community

9 Confidentiality is recommended because it is possible that releasing the actual addresses of community residences and recovery communities *could* violate privacy laws. City and county attorneys will need to determine how this concern over privacy interacts with the requirements of Florida's public record laws. Keep in mind that the addresses of many community residences that the State of Florida licenses are easily available to the public on state–operated websites. The proposed zoning approach, however, requires maintaining the recommended database and map.

residence or recovery community.[10]

This database and map need to be kept current so that a proposed community residence or recovery community is not subjected to a spacing distance from a community residence or recovery community that has ceased operations. *A mechanism will be needed for an operator who closes one of these homes to promptly notify the city of its closure so the city can remove its location from this database and map.*

A deep dive into the technical and legal explanation

This section speaks solely of community residences. The research on which it is based was conducted *before* recovery communities came into being and it appears that similar research on recovery communities has not been conducted.

Essential to the normalization and community integration that community residences seek to achieve for their residents with disabilities is absorption 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.[11]

Social scientists note that while this capacity level exists, 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–dependent ghetto."[12]

According to one 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

10 While this is discussed in depth beginning on the next page, it is critical to note now that when the number of occupants of a community residence falls within the land–use code's cap on the number of unrelated individuals permitted in the jurisdiction's definition of "family," *the land–use ordinance must always treat the community residence as a "family" or "household." To do otherwise would constitute discrimination on its face in violation of the Fair Housing Act. So if a jurisdiction's zoning code definition of "family" sets a cap of four on the number of unrelated individuals that constitutes a "family," community residences for four or fewer must be treated the same as any other family. Such homes cannot* be used to calculate spacing distances for *zoning* purposes because they are, by definition, "families." 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 ennunciated 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*, 10–12 (Nov. 10, 2016).

11 Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date, but definitely before 1974) (mimeographed).

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

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.[13]

This research strongly suggests that there is a legitimate government interest to ensure that community residences do not cluster together on a block or adjacent blocks, nor concentrate in a neighborhood. While the research on the impact of community residences makes it quite clear that two community residences — especially those serving different populations — well separated on a block produce no negative impacts, there is a well–grounded concern that community residences located more closely together on the same block face — or more than two on a block face — 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 among their core characteristics.

Limitations on the number of unrelated residents

The majority judicial view, both before and after enactment of the Fair Housing Amendments Act of 1988, has been that a community residence constitutes a functional family and that zoning should treat a community residence as a residential land use even when the community residence does not fit within the definition of "family" in a jurisdiction's zoning or land–use code.[14]

At first glance, that approach appears to fly in the face of a 1974 Supreme Court ruling that allows cities and counties to limit the number of unrelated people that constitutes a "family" or "household." Zoning ordinances typically define "family" or "household" as (1) any number of related individuals and (2) a specific number of unrelated persons living together as a single housekeeping unit. As explained in the paragraphs that follow, the U.S. Supreme Court ruled that a local zoning code's definition of "family" can place this cap on the number of unrelated persons living together as a single housekeeping unit.[15] *But 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 on the number of unrelated people living together that constitute a "family" or "household."*

In *Belle Terre*, the U.S. Supreme Court upheld the Long Island 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

13 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.

14 The discussion that follows can get quite nuanced and *readers should not come to a conclusion before reaching the end.* While all the principles discussed here are applicable to community residences, some are *not applicable* to recovery communities, a land use that usually does *not* emulate a family and can essentially function as a mini–institution as explained later in this study.

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

"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.…"[16] Unlike the six college students who rented a house during summer vacation in Belle Terre, a community residence functions like a family, is not a home for transients, and is the antithesis of an institution. Community residences for people with disabilities foster the same goals that zoning ordinances and the U.S. Supreme Court attribute to single–family zoning.

Within months of the Supreme Court's *Belle Terre* decision came one of the first community residence court decisions to distinguish *Belle Terre* by addressing the functional differences between community residences and other group living arrangements like boarding houses. In *City of White Plains v. Ferraioli,*[17] New York's highest court refused to enforce the city's definition of "family" against a community residence for ten abandoned and neglected children. The city's definition of "family" limited occupancy of single–family dwellings strictly to related individuals. The court ruled "It is concluded that the group home, set up in theory, size, appearance, and structure to resemble a family unit, fits within the definition of family, for purposes of a zoning ordinance."[18]

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.…" [19] 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.'"*[20]

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.…"[21]

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16 Ibid. at 7–9.

17 313 N.E.2d 756 (N.Y. 1974).

18 Ibid, at 756.

19 Ibid. at 758–759.

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

21 Ibid.

In *Moore v. City of East Cleveland,*[22] U.S. Supreme Court 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 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."[23]

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."[24]

Since 1974, the large 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 codified the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

The definition of "family" in the land–use control ordinances of many Florida cities and counties are unnecessarily complex and restrictive. For the purposes of this study, its key provision establishes a four–person cap on the number of unrelated individuals that constitute a family.

Florida cities and counties should, for a variety of reasons, seriously think about replacing these needlessly complicated and difficult to enforce definitions with a more precise definition inclusive of modern domestic living arrangements along these lines:

> *Family: A family consists of any person living alone or any number of people related by blood, marriage, adoption, or guardianship; two unrelated individuals in a domestic partnership living as a single housekeeping unit along with their children including step children, adopted children, and children under guardianship; or up to four unrelated individuals who are not living together in a single domestic partnership with each other.*

This recommended definition of "family" encompasses nuclear, blended, and extended families while preserving the legal ability of the city to zone for community residences for more than four unrelated people with disabilities. It also continues to properly exclude rooming and boarding houses from the definition of "family."

And any jurisdiction is certainly free to set a cap other than four on the number of

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22 431 U.S. 494 (1977) at 517 n. 9.

23 Ibid. *Emphasis added.*

24 *City of White Plains v. Ferraioli,* 313 N.E. 2d at 758 (1974).

unrelated individuals *not* in a domestic partnership that constitute a "family." Four unrelated occupants is recommended to better facilitate those small community residences where having a roommate is needed for therapeutic viability. But as explained below, *zoning must treat any proposed community residence that fits within the chosen cap on unrelated individuals exactly the same as any other "family" and cannot apply a spacing distance or licensing requirement to community residences within the cap.*

This report recommends that each city and county continue to be free to establish its own zoning definition of "family." If the state wishes to adopt a statewide definition like that immediately above, the statute should allow local jurisdictions to adopt less restrictive definitions of "family." However, jurisdictions need to be fully aware of the consequences a less restrictive definition has on its ability to legally zone for community residences and recovery communities as explained beginning on page 106 of this report.

While this recommended definition of "family" would not allow groups of more than four unrelated people to occupy a dwelling unit, the Fair Housing Act requires all jurisdictions to make a "reasonable accommodation" for community residences that house more than the four unrelated individuals allowed under this recommended definition of "family." The entire zoning approach this study proposes constitutes this requisite reasonable accommodation for community residences occupied by more than four unrelated individuals with disabilities.[25] And it also makes the necessary reasonable accommodation for recovery communities.

However, as explained below, *the bottom line that determines the maximum number of occupants in all dwelling unit is the local property maintenance, housing, or building code provisions that prevent overcrowding.*[26] *The U.S. Supreme Court has made it quite clear that if the formula under this universal provision would allow, for example, just three people to live in a dwelling, then no more than three individuals can live there whether or not related even if the dwelling is a community residence for people with disabilities.*

The U.S. Supreme Court brought this point home in its 1995 decision *City of Edmonds v. Oxford House.*[27] 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.[28] Zoning ordinance restrictions that fo-

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25 All cities and counties are free to make the legislative decision to amend its definition of "family" to allow whatever number it desires of unrelated individuals to constitute a "family." The most common caps on the number of unrelated persons that can constitute a "family" are three and four. Four is more desirable because it enables roommates which is often needed in a community residence or recovery community for therapeutic purposes. As noted above, the *zoning must treat any community residence that fits within the chosen cap the same as any other "family."*

26 International Code Council, *2021 International Property Maintenance Code* (Country Club Hills, IL: 2020), Sec. 404.4.1. *Also see the discussion beginning on page 130.*

27 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).

28 Ibid. at 1781*[emphasis added]*. See the discussion of minimum floor area requirements beginning on page 130.

cus on the "composition of households rather than on the total number of occupants living quarters can contain" are subject to the Fair Housing Act.[28]

Protecting the residents

People with disabilities who live in community residences constitute a vulnerable population that needs protection from the sorts of widespread abuse and exploitation recounted in Chapter 2 of this report. Community residences for these vulnerable individuals need to be regulated to assure that their residents receive adequate care and supervision in a safe living environment.

Licensing and certification are the regulatory vehicles used to assure as much as feasible adequate care and supervision.[29] Florida, like many other states, has not established licensing or certification for some populations with disabilities housed in community residences. 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 and certification also tend to exclude from community residences people who pose a danger to others, themselves, or property. As noted earlier on page 43, the Fair Housing Act includes a "direct threat exclusion" for such individuals.

Consequently, **there is a legitimate government interest in requiring that a community residence or its operator be licensed or certified in order to be allowed as a permitted use**, namely as of right. If state licensing or certification does not exist for a particular type of community 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.[30]

Florida law appears to allow a municipality or county to establish its own licensing requirements for community residences *not* covered by state licensing legislation. For example, while community residences for people with eating disorders are beginning to appear around the country, we are unaware of any state that has established a license or certification for that use. In such a situation, the heightened scrutiny of case–by–case review is warranted so the local jurisdiction can make sure that the residents of such a proposed community residence are protected by requiring the applicant to demonstrate that it will operate using the sort of protections for occupants that licensing and certification normally provide.

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28 Ibid. at 1782.

29 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.

30 For example, the U.S. Congress has recognized and sanctioned the sober living homes 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. The charter and inspections are the functional equivalent of licensing or certification.

As of this writing, the State of Florida does not *require* licensing or certification of many recovery residences or recovery communities. Instead, the state established *voluntary certification* for sober living homes and recovery communities in 2015.[32] The state statute required the Florida Department of Children and Family Services to approve at least one credentialing entity by December 1, 2015.[33] The department named the Florida Association of Recovery Residences (FARR) as the sole credentialing entity. As §397.487 mandates, the association promulgates and administers requirements for certifying sober living homes (and recovery communities) and establishes procedures for the application, certification, recertification, and disciplinary processes. The Florida Association of Recovery Residences has instituted a monitoring and inspection compliance process, developed a code of ethics, and provided for training for owners, managers, and other staff.[34]

As the state statute requires, the operator of a proposed recovery residence (and recovery community) must include 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.[35] Each certified recovery residence (and recovery community) must be inspected at least annually for compliance. The certification process allows for issuance of provisional certification so the home can open. Provisional certification is issued based on the paperwork submitted to the Florida Association of Recovery Residences. Actual certification is issued only following at least one on–site inspection of the home conducted at least three months after the home opened and interviews with current and former residents and staff. Because the zoning codes of so many Florida jurisdictions run afoul of the Fair Housing Act, the certification process does not ask whether the local jurisdiction has issued zoning approval for proposed the recovery residence or recovery community.

The requirements of Florida's "voluntary" certification process and standards for recovery residences (and recovery communities) are comparable to the state's existing licensing processes and standards for community residences that serve other populations of people with disabilities.

Impacts of community residences and recovery communities

The impacts of community residences have been studied more than those of any small land use. More than 50 statistically–rigorous studies have found that licensed or certified community residences *not clustered* on a block face do not generate adverse impacts in the surrounding neighborhood. More specifically, the studies have found that community residences for people with disabilities:

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32 *Florida State Statutes,* §397.487 (2024).

33 *Florida State Statutes,* §397.487(2) (2024).

34 Ibid. The demanding standards that the Florida Association of Recovery Residences adopted are based on the nationally–accepted standards of the National Alliance of Recovery Residences. This certification applies to recovery residences, recovery residences, residential care treatment enters, and recovery communities.

35 Ibid. at §397.487(3).

- Do not reduce property values, nor the ability to sell even the houses adjacent to them
- Do not affect neighborhood safety nor neighborhood character — *as long as they are licensed and not clustered on a block face*
- Do not create excessive demand on public utilities, sewer systems, water supply, street capacity, or parking
- Do not produce any more noise than a conventional family of the same size

All told, *licensed or certified, unclustered* group homes, recovery residences, and assisted living facilities small enough to emulate a family have consistently been found to be good neighbors just like traditional families.

Appendix A provides an annotated bibliography of representative studies. Many of these studies include sober living homes, known in Florida as "recovery communities." The evidence is so consistent and the issue so well–settled that few studies have been conducted in recent years: *Community residences, including recovery residences, that are licensed and not clustered on a block face or adjacent blocks do not reduce property values and do not adversely affect the surrounding neighborhood.*

Unfortunately the body of research on the impacts of recovery communities is close to nonexistent.[36] In additional, researchers caution that their findings on the impacts of community residences and the efficacy of recovery residences might not apply to larger settings with "several dozen residents."[37]

Much more research on the impacts and efficacy of recovery communities is needed before it would be responsible for any jurisdiction, including the State of Florida, to adopt lesser zoning regulation of recovery communities than this report recommends.

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36 However, *see* B. Horn, A Joshi, and J. Maclean, "Substance Use Disorder Treatment Centers and Residential Property Value," in *American Journal of Health Economics,* Vol. 7, No. 2, Spring 2021. They note a small number of studies examining the impact of what they call "substance use disorder treatment centers" (SUDTC). They report that "there is surprisingly little work on the impact of SUDTCs on residential property values." They cite one 2014 study from central Virginia that found an eight percent reduction in residential property values from treatment centers, but the authors do not clarify whether these are at all residential in nature. In their own study set in Seattle, they report they found "no statistically significant evidence that SUDTC entrance into or exit from a local area leads to changes in residential property values." At 186.

Frustratingly, they do not explain exactly what they mean by the term "substance use disorder treatment center." So there is no way to know whether they are writing about pure treatment centers or recovery residences and/or recovery communities. Much of the language in this article suggests they are looking at the impacts of *residential* treatment centers rather than community residences or recovery communities. None of the three authors responded to multiple efforts by email and phone to reach them for clarity.

37 L. Jason, D. Groh, M. Durocher, J. Alvarez, D. Aase, and J Ferrari, "Counteracting 'Not in My Backyard': The Positive Effects of Greater Occupancy within Mutual–Help Recovery Homes" in Journal of Community Psychology, 2008 Sept. 1, 36(7), pp. 947–958, at 954.

Chapter 5

Clustering and concentrations illustrated

Key Takeaways

- **Clustering of community residences and/or recovery communities on a block or adjacent blocks has been taking place in Florida cities and counties *before* adopting the zoning approach recommended in this report and in jurisdictions that have not adopted this approach.**
- **Concentrations of community residences and/or recovery communities in a neighborhood has been occurring and creating *de facto* social service districts in Florida cities and counties *before* adopting the zoning approach recommended in this report and in cities and counties that have not adopted this approach.**

As explained in Chapter 4, clustering of community residences and/or recovery communities on a block or adjacent blocks can impede achieving the key goals of these two housing arrangements: normalization, community integration, and the use of neighbors without disabilities as role models. Concentrating these two uses in a neighborhood can not only interfere with attaining these essential goals, but also alter the residential character of the neighborhood and even produce a *de factor* social service district.

Several in–depth examples of clustering and concentrations are presented in detail in Chapter 7 beginning on page 122. To better understand this chapter, readers would be well advised to read that section of this report *before* proceeding.

Community residences and recovery communities clustering on a block or two and concentrating in neighborhoods — thus undermining their fundamental goals — has been an issue for more than half a century. Going back more than 50 years, community residences and recovery communities have all–too–frequently been clustered on a block or two and concentrated in neighborhoods throughout the nation. In 1974 the California State Department of Health found these uses were being concentrated in the "least desirable" areas of communities throughout the state.[1]

In researching our 1974 Planning Advisory Service Report *Zoning for Family and Group Care Facilities*, we found that community residences were, for a variety of reasons, often clustered and concentrated in lower–income neighborhoods and in college

1. California State Department of Health, *Report and Recommendations to the Legislature on the Impact of Local Zoning Ordinances on Community Care Facilities* (Sacramento: California State Department of Health, March 31, 1974) 6.

areas. Half of the respondents to our survey of city planners reported these uses had begun to concentrate.

About a decade later, the General Accounting Office found that, throughout the nation, community residences tended to be concentrated in certain neighborhoods.[2]

During the past 20 years, we have conducted more than two dozen studies for cities and counties that have examined the extent of clustering and concentrations of community residences.[3] Nearly every one of these research projects has found evidence of at least some clustering and some concentrations, ranging from emerging ones just beginning to form to long–established clusters and concentrations.

Clusters and concentrations exist in cities and counties throughout Florida. The intensity varies greatly from small nascent clusters and concentrations to some fairly intense ones.

As discussed in–depth in Chapters 4 and 7, the spacing distance to be a permitted use mitigates the development and intensification of these clusters and concentrations. The rest of this chapter presents examples of the wide array of clusters and concentrations that formed in the absence of the form of zoning this report recommends. The maps and narrative are adapted from some of the studies we have conducted for Florida cities and counties since 2017. These are simply examples and not intended to represent every city or county in the state.

Clustering and concentration examples

For each jurisdiction, we collected information on the locations of community residences and recovery communities from:

1. The Florida Agency for Health Care Administration's database of the following state–licensed community residences for people with disabilities that have been licensed under 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) (2019);
2. Recovery residences and recovery communities certified by the state's certification entity, the Florida Association of Recovery Residences, as authorized by the Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2019); and

2. General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled*, (Aug. 17, 1983) 61.
3. These have included studies dedicated to community residences and recovery communities as well as analyses of impediments to fair housing choice which also look at how the subject jurisdiction's zoning treats these two uses and whether clustering and/or concentrations exist.

3. Any and all Oxford Houses listed in Oxford House's online directory.

It's an open secret that many community residences, primarily uncertified recovery residences and recovery communities are operating under the radar throughout most of the State of Florida and are not registered or reported in any of the sources listed above. And it is believed that many of these may be the sort of illicit flop houses which were a focus of the Palm Beach County Grand Jury reported on in Chapter 2.[4] Consequently, most of the maps that follow do not include them and it is possible that these under the radar community residences are generating clusters or concentrations that, as of this writing, cannot be identified.

As explained in this study, clustering on adjacent blocks and concentrations in neighborhoods threaten the ability of the people with disabilities living in community residences and recovery communities to achieve normalization and community integration, and to use neighbors sans disabilities as role models. These three factors are among the essential core characteristics of community residences and, to some extent, of recovery communities as well. Consequently, this review of the locations of these two land uses within these sample jurisdictions necessarily focuses on whether any community residences and/or recovery communities are located in a way that would hinder achieving these three core characteristics due to clustering on a block or concentrations in a neighborhood.

For each sample jurisdiction, planning staff divided the city or county into study area maps to enable analysis and show the *relative* locations of confirmed community residences and recovery communities. For each jurisdiction sampled in this chapter, we'll show the full jurisdiction map when helpful to readers as well as subareas where clustering and/or concentrations were identified.

The analysis for each jurisdiction is adapted from the report for that jurisdiction. This chapter includes a sampling of subareas where clustering or concentrations were present at the time each study was conducted.

Please note…

Each set of maps was assembled as part of a study conducted for each jurisdiction before drafting zoning amendments. Under the zoning that was adopted, existing community residences and recovery communities were grand fathered in under the new zoning as long as they obtained state certification or requisite state license by a time certain, usually nine months.

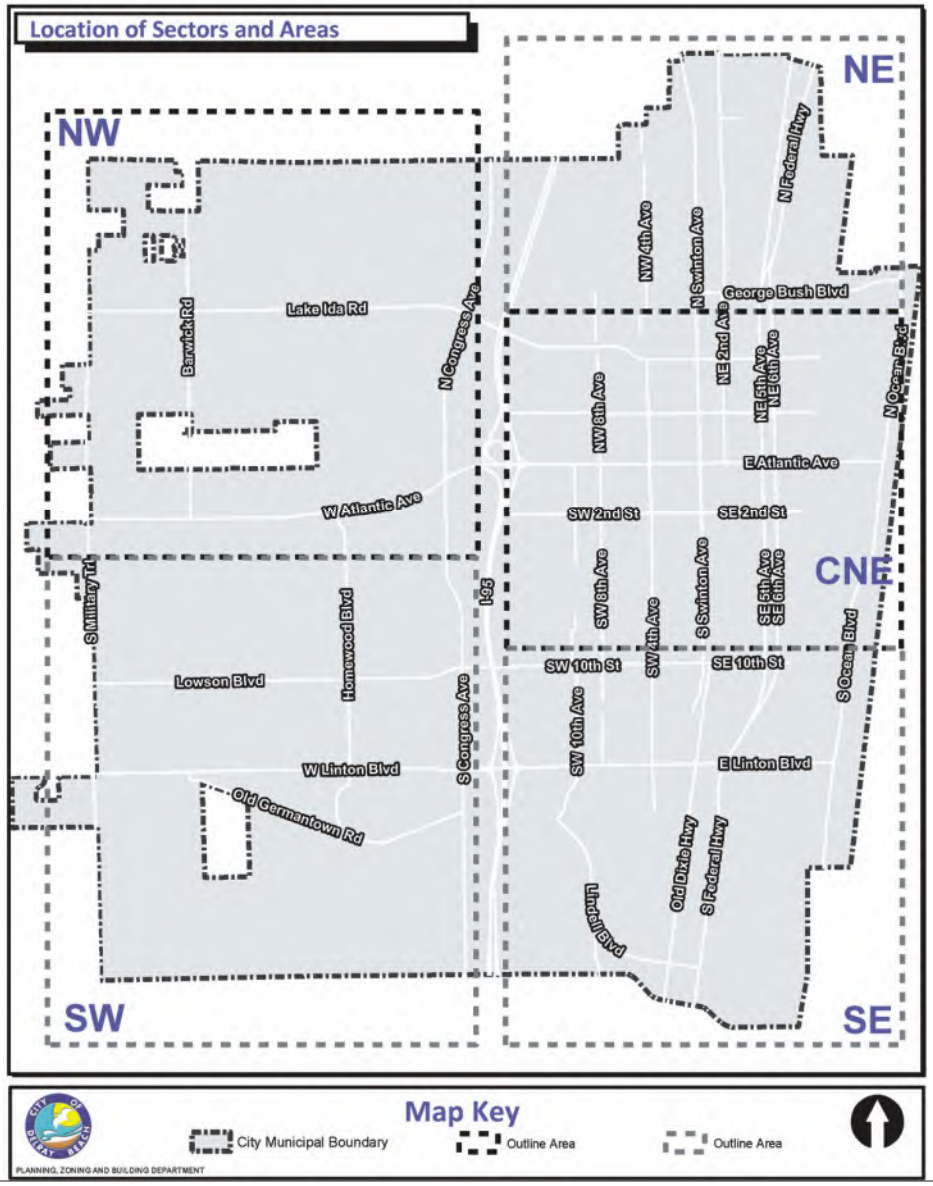
Each map is a snapshot in time taken when each jurisdiction's study was conducted. Since then, some sites have closed and others have opened.

4. Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida, *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment industry*, (Dec. 8, 2016). Available online at: http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf.

Some of the jurisdictions included unconfirmed sites on their maps. Those jurisdictions are identified in this chapter.

Delray Beach: The original epicenter: 2017

Figure 18: Delray Beach Divided into Five Sectors

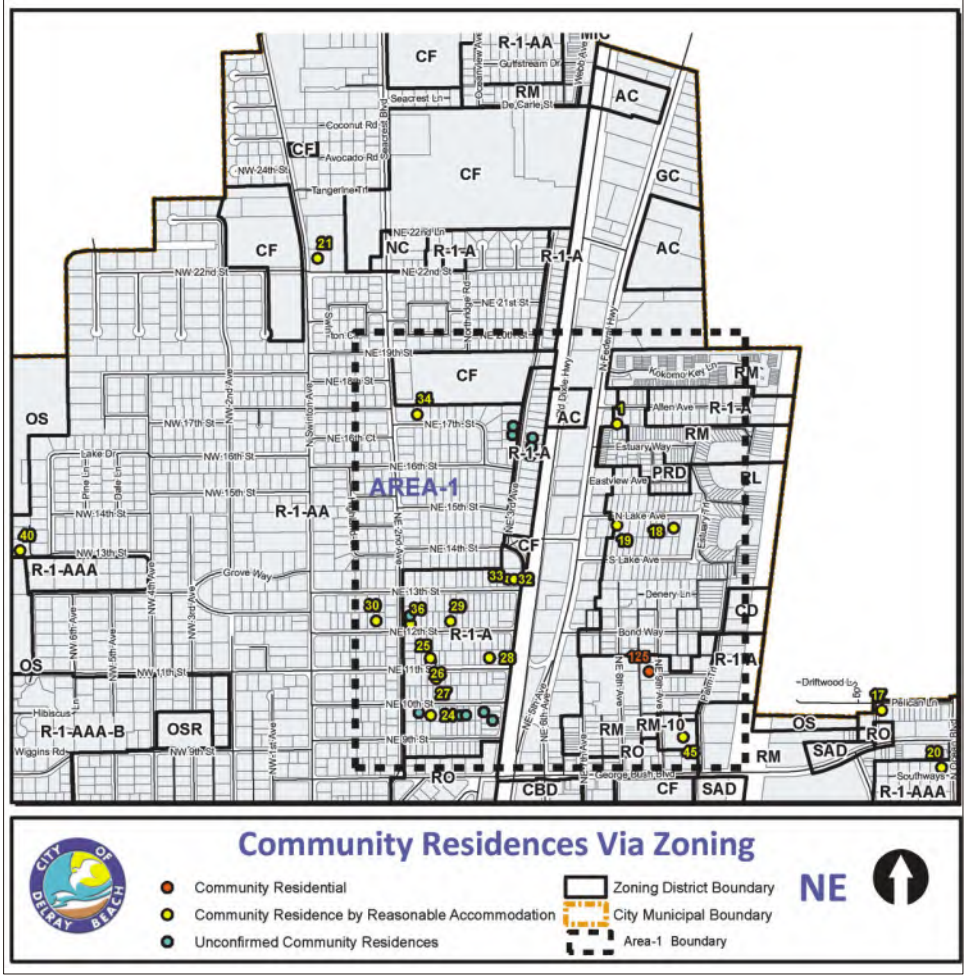


Source: City of Delray Beach, Florida, March 2017.

As the original epicenter of the recovery industry in the early 2000s, Delray Beach hosted at least 183 community residences for people with disabilities and recovery communities when we conducted its study in 2017. This figure included 64 sites that appeared to be operating as recovery residences but had not obtained a state license

or certification. These are unusually large numbers of a town with 66,000 year–round residents.[5]

Figure 19: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area–1 as of March 2017



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

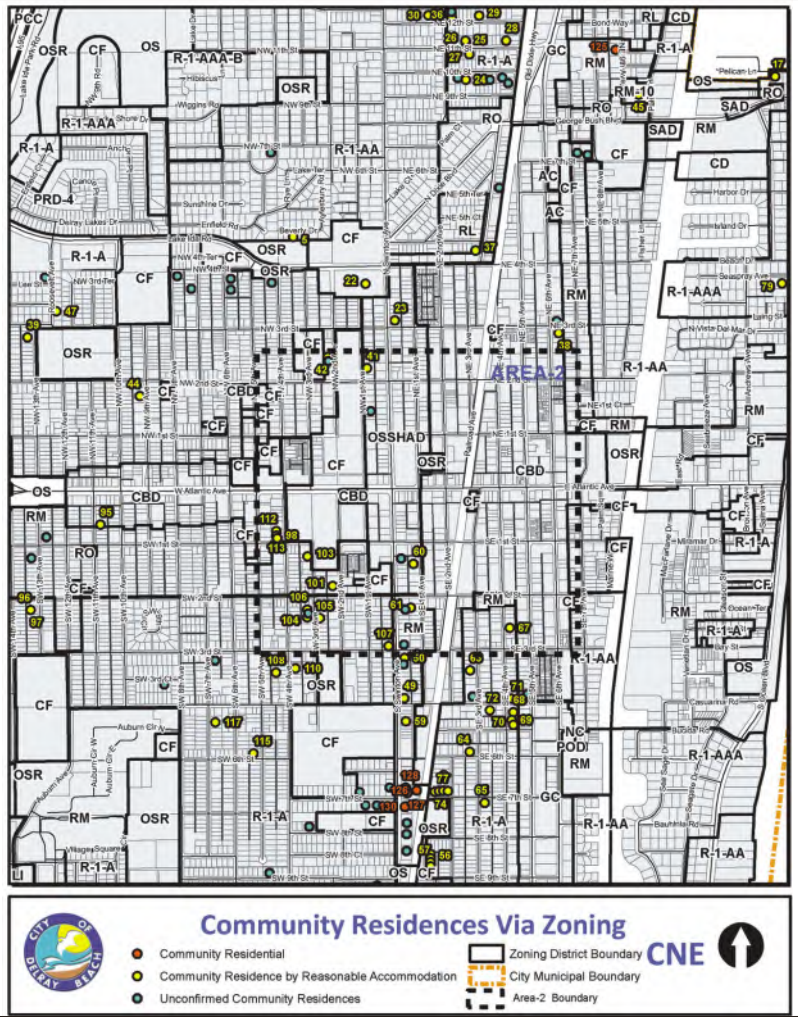
In Delray Beach's Northeast Sector, there were just four confirmed community residences for people with disabilities outside of Area–1. Within Area–1, there were 15 confirmed community residences. However, Figure 3 above reveals more than a half dozen instances of mild clustering within Area–1. Nearly all were west of Dixie Highway. The most intense concentration was 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 was developing here.

5. Source: Daniel Lauber, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, 3rd ed. August 2017) 23–33.

The city 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 extended further south into the north end of the Central Northeast Sector as shown in the map below.

Figure 20: Locations Known and Unconfirmed Community Residences for People With Disabilities in Area–2 as of March 2017

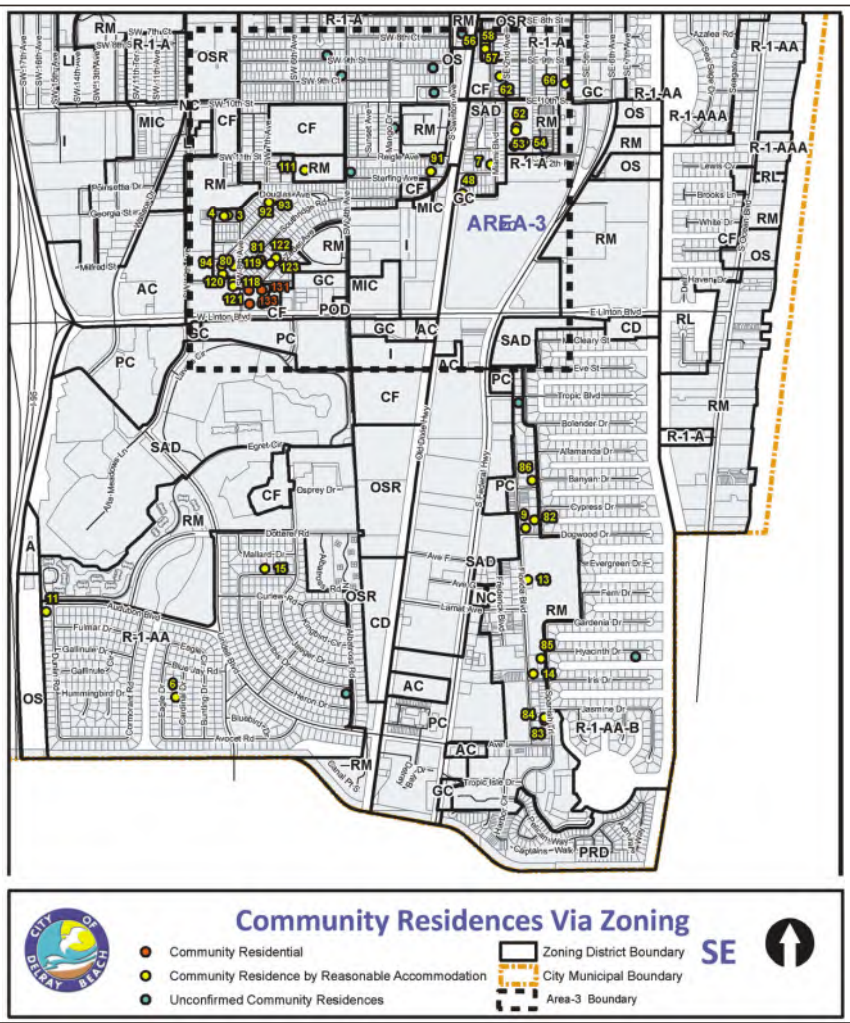


Source: City of Delray Beach, Florida, March 2017.

The Central Northeast Sector hosted the most community residences in Delray Beach. Thirty were concentrated within Area–2 with another 29 in the rest of the sector. While most of those in the rest of the sector were scattered, there were numerous instances of clustering, especially at the north and south ends of the sector. There appeared to be 31 sites of unconfirmed community residences outside Area–2 with six unconfirmed sites in Area–2 — all of which contributed 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 was more intense than the clustering at the south end of the adjacent Northeast Sector. While there was scattered clustering throughout the Central Northeast Sector, the clustering got increasingly intense in the middle of Area–2 and moved 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 exhibited 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.

Figure 21: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area–3 as of March 2017



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

The *de facto* social service district extended further south into the Southeast Sector as shown above in the Figure 16. Just a few blocks west and southwest of this *de facto* social service district was 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 identi-

fied seven sites in Area–3 that it thinks, but has not confirmed, are community residences.

Other community residences were 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 believed, but had not confirmed, that three locations outside Area–3 were operating as community residences.

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

Community residences and recovery communities were clustered and concentrated in Delray Beach's Northeast, Central Northeast, and Southeast sectors. There was only some mild clustering of community residences in the western half of the city where there were relatively few community residences and/or recovery communities.

Palm Beach County: 2020

The county was divided into 13 areas for analysis as shown in the map below. The area maps show:

1. The 264 known community residences and recovery communities in unincorporated Palm Beach County (white background on each map), and
2. The 80 community residences and recovery communities located in incorporated cities (grey background on each map) known to be located within two typical blocks (1,320 feet or a quarter mile) of their borders with unincorporated Palm Beach County.

Because clustering and concentrations do not respect county or municipal boundaries, this second group was included so we could identify any clustering or concentrations that include both unincorporated Palm Beach County and incorporated municipalities within the county.

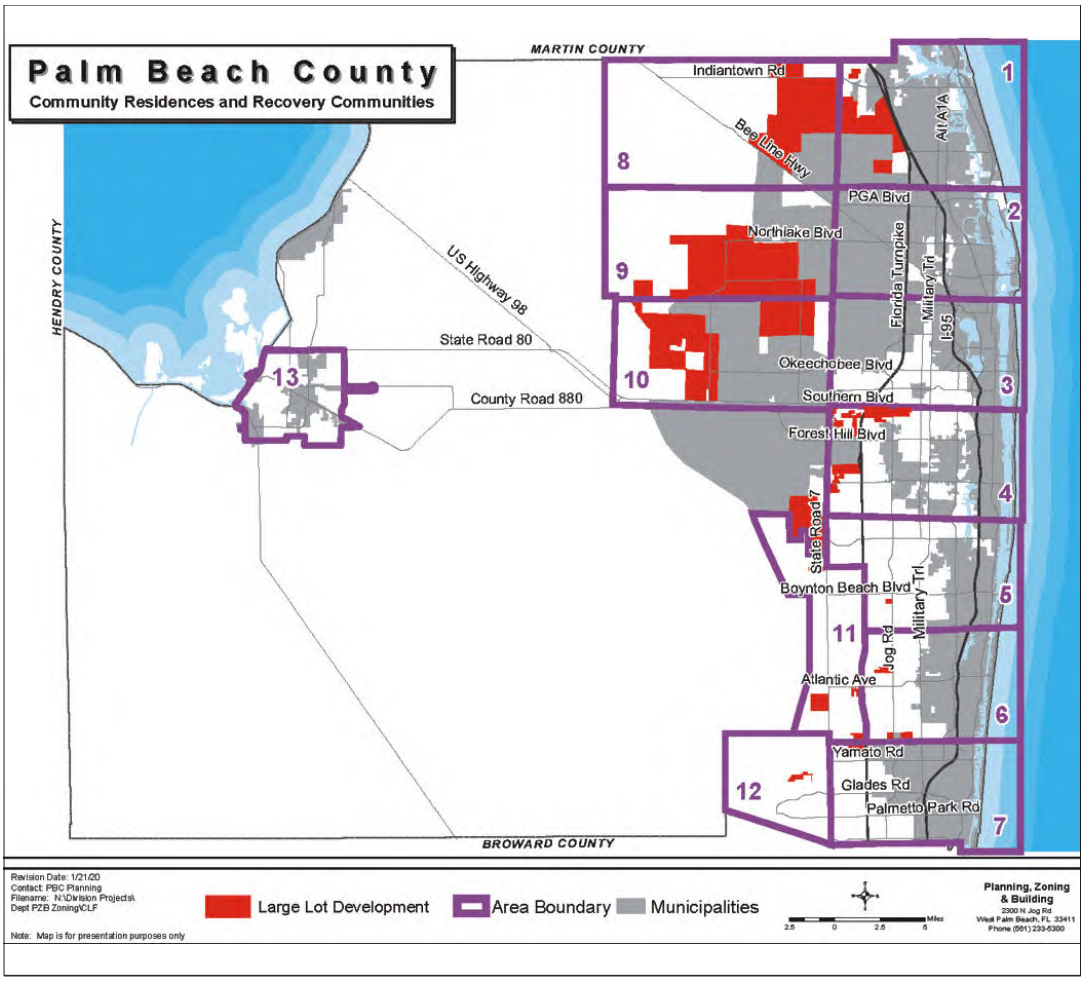
At the time of the study, no community residences or recovery communities were known to be located in adjacent Martin, Hendry, and Broward counties within two typical blocks of their borders with Palm Beach County.[6]

The maps and analysis on the following pages revealed that, with a few exceptions, the *very intense* concentrations of community residences and recovery communities that had formed in some southeast Florida jurisdictions had not developed in unincorporated Palm Beach County. However the spatial distribution of these homes in unincorporated Palm Beach County revealed some clustering and some concentrations that may have been developing. In the absence of appropriate zoning controls, these nascent clusters and concentrations can become more intense as happened in a

6. Source: Daniel Lauber, *Zoning Analysis and Framework for Community Residences for People With Disabilities and for Recovery Communities in Palm Beach County, Florida* (River Forest, IL: Planning/Communications, July 2020) 30–47.

number of southeast Florida cities.

Figure 22: Locations of the 13 Area Maps of Palm Beach County

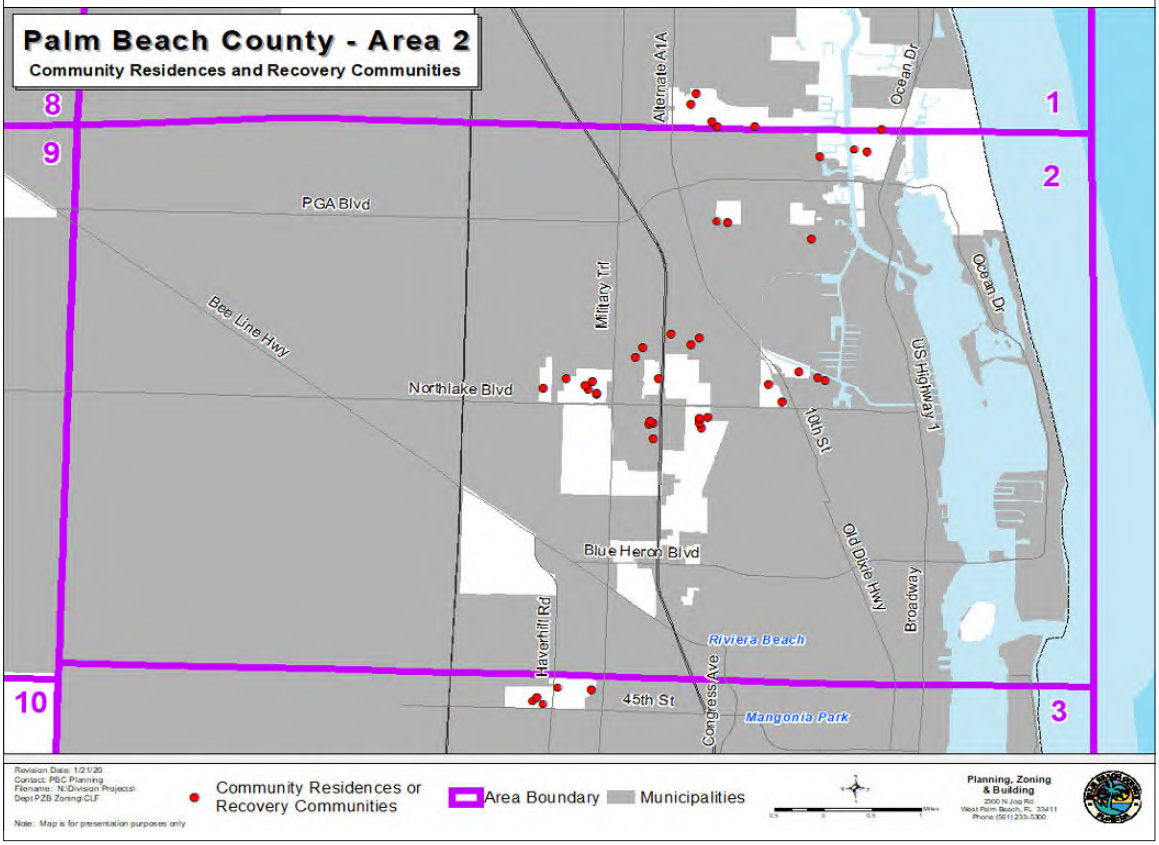


Source: Palm Beach County Planning, Zoning & Building, May 2020.

Areas 1 through 7 are along the county's east coast. Areas 8 through 12 are immediately to their west with Area 13 abutting the southeast corner of Lake Okeechobee. As the above map shows, large lots with a minimum lot width of at least 200 feet and minimum lot size of at least 1.25 acres, cover larger portions of Areas 8, 9, and 10 and much of the west end of Area 1. There is a small amount of large lot development in areas 4, 5, 6, 11, and 12.

Remember, the white background is unincorporated Palm Beach County. The grey background consists of incorporated cities within the county.

Figure 23: Relative Locations of Community Residences and Recovery Communities in Area 2



Source: Palm Beach County Planning, Zoning & Building, April 2020.

Unincorporated Palm Beach County Sites: 18
Sites in adjacent municipalities within two typical blocks: 12

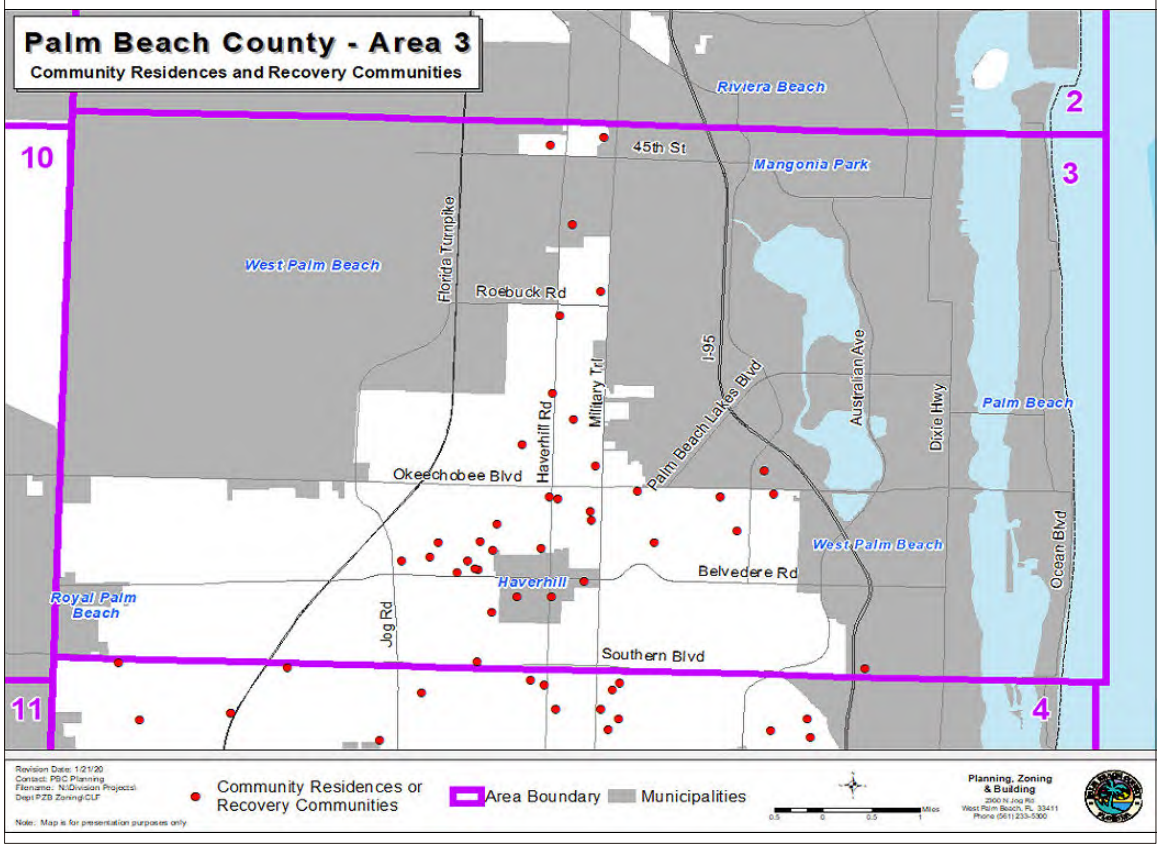
Immediately south of Area 1 is Area 2 where fewer than half of the community residences or recovery communities were clustered or in a mild concentration.

Six sites were north of Northlake Boulevard and west of Military Trail. Two were on adjacent lots with three others within a block of them. Another was two blocks away. A seventh was well separated from the other six.

Another five were clustered between Northlake and Constellation boulevards west of Burma Road. Three of the homes were adjacent with a fourth one lot south and across the street. A fifth was just three lots east of the northern most of the three adjacent homes.

The remaining Area 2 community residences or recovery communities were scattered.

Figure 24: Relative Locations of Community Residences and Recovery Communities in Area 3



Source: Palm Beach County Planning, Zoning & Building, April 2020.

Unincorporated Palm Beach County Sites: 30
Sites in adjacent municipalities within two typical blocks: 6

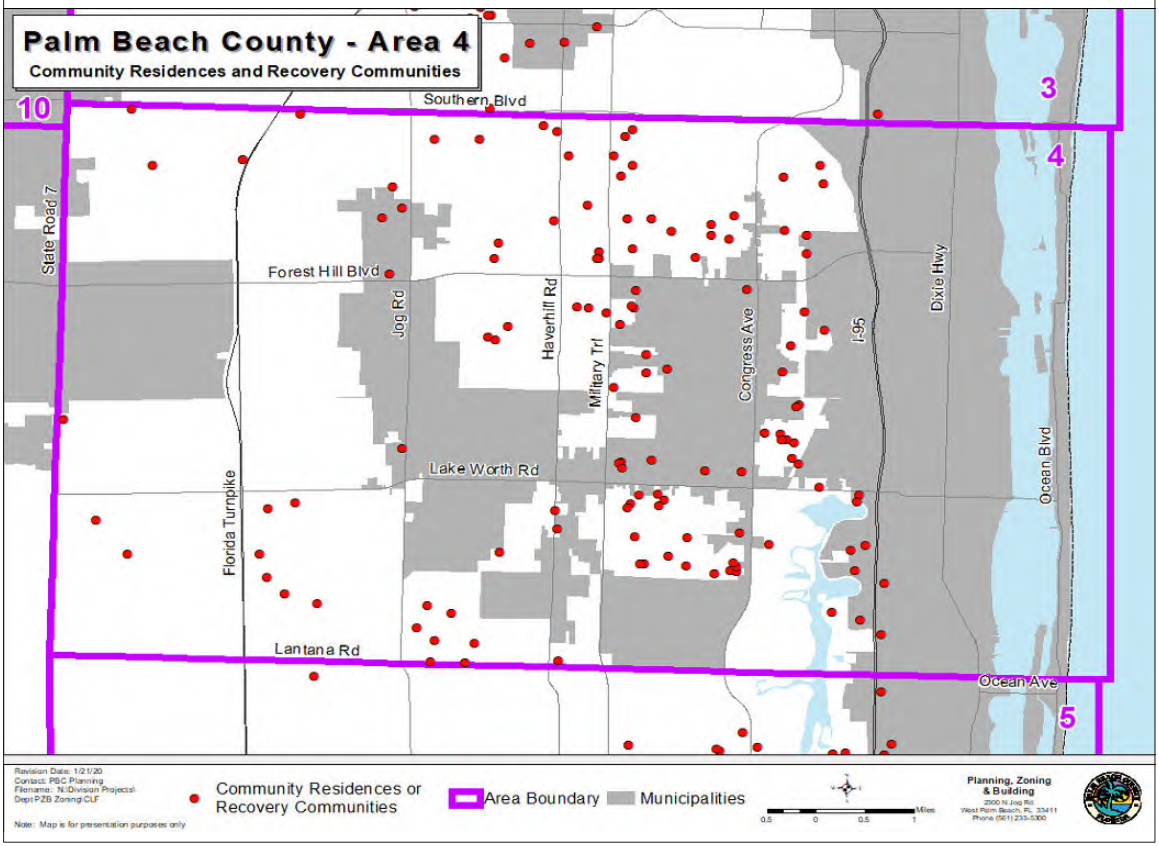
South of Area 2, rests Area 3 where most of its community residences and/or recovery communities were pretty well–scattered throughout the area. However, a number of the sites were in clusters and a concentration appeared to be emerging.

Two community residences and/or recovery communities between Okeechobee Boulevard and Elmhurst Road were just four lots apart while two blocks southeast of them were two sites separated by four lots.

A concentration may have been developing east of Jog Road between Belvedere Road and Oro Verde Boulevard. Of the nine community residences or recovery communities, two were separated by a single lot with another within a block. Two more were two and three blocks away. Three more were scattered west of this cluster and two more were scattered north of the cluster.

The other Area 3 community residences or recovery communities were widely scattered.

Figure 25: Relative Locations of Community Residences and Recovery Communities in Area 4



Source: Palm Beach County Planning, Zoning & Building, April 2020.

Unincorporated Palm Beach County Sites: 97
Sites in adjacent municipalities within two typical blocks: 29

More than a third of the community residences and recovery communities under the county's jurisdiction were located in Area 4, which sits immediately south of Area 3. Numerous sites were clustered in Area 4 and several fledgling concentrations had developed.

West of Haverhill Road between Canal Road and Cheryl Lane were two homes six lots apart. Several blocks east were two more within a block of one another between Garand and Winchester lanes.

East of Haverhill Road and south of Sutton Terrace, two were separated by a single lot with another north of them separated by a single lot and street. A few blocks south of Summit Boulevard and west of Kirk Road were two homes less than a block apart. Two more were a block apart east of Davis Road between Barrington and Housatonic drives.

Three were east of Sherwood Forest Boulevard between Purdy Lane and Rue Road. Two of them were separated by six lots. The third was about one and a half blocks from this pair. To their southeast were two located on adjacent lots south of Cresthaven Boulevard and west of Haverhill Road.

A concentration may have been in its nascent stages south of Canal Road and east of Carol Circle. Two were six lots apart with a third just one block east of them. Another block east were two on adjacent lots. A sixth was three blocks south.

Another budding concentration may have been developing east of Military Trail south of Lake Worth Road. Two homes were two lots apart with a third five lots northeast of them. Two to three blocks east were three more community residences or recovery communities, each separated by two lots.

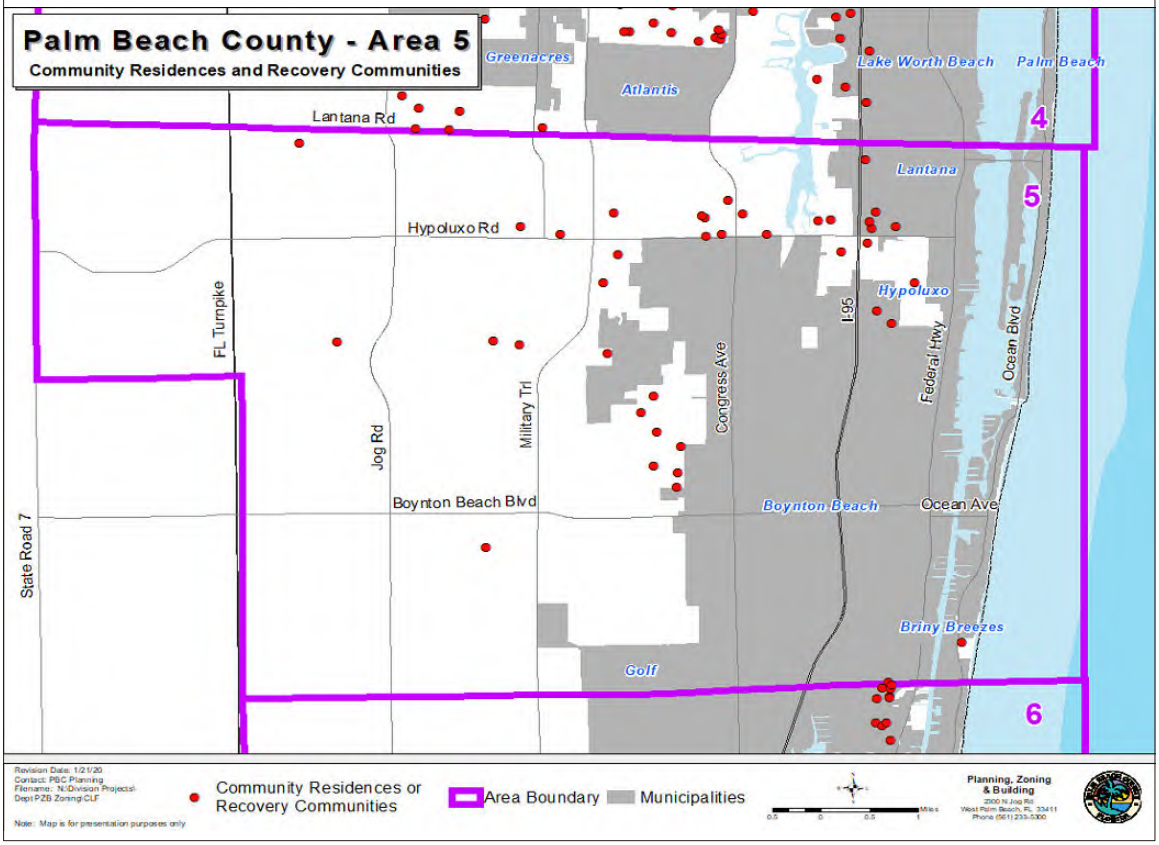
A concentration may have been developing with five community residences or recovery communities clustered north of 7th Avenue and east of Congress Avenue with three of them adjacent to each other. The fourth was three lots north and the fifth two blocks west. A sixth was four blocks south with a seventh in an incorporated city to the east.

A concentration appeared to be developing on several blocks north of the City of Atlantis. South of Roberts Lane and east of 32nd Drive was a cluster of five community residences and/or recovery communities with four on adjacent lots with the fifth separated from them by a single lot. Seven more were located in the blocks west and northwest of this cluster.

A concentration may have been in its early stages north of Lantana Road and west of Chestnut Hill Road where seven community residences and/or recovery communities were known to exist.

The remaining community residences or recovery communities in Area 4 were scattered.

Figure 26: Relative Locations of Community Residences and Recovery Communities in Area 5



Source: Palm Beach County Planning, Zoning & Building, April 2020.

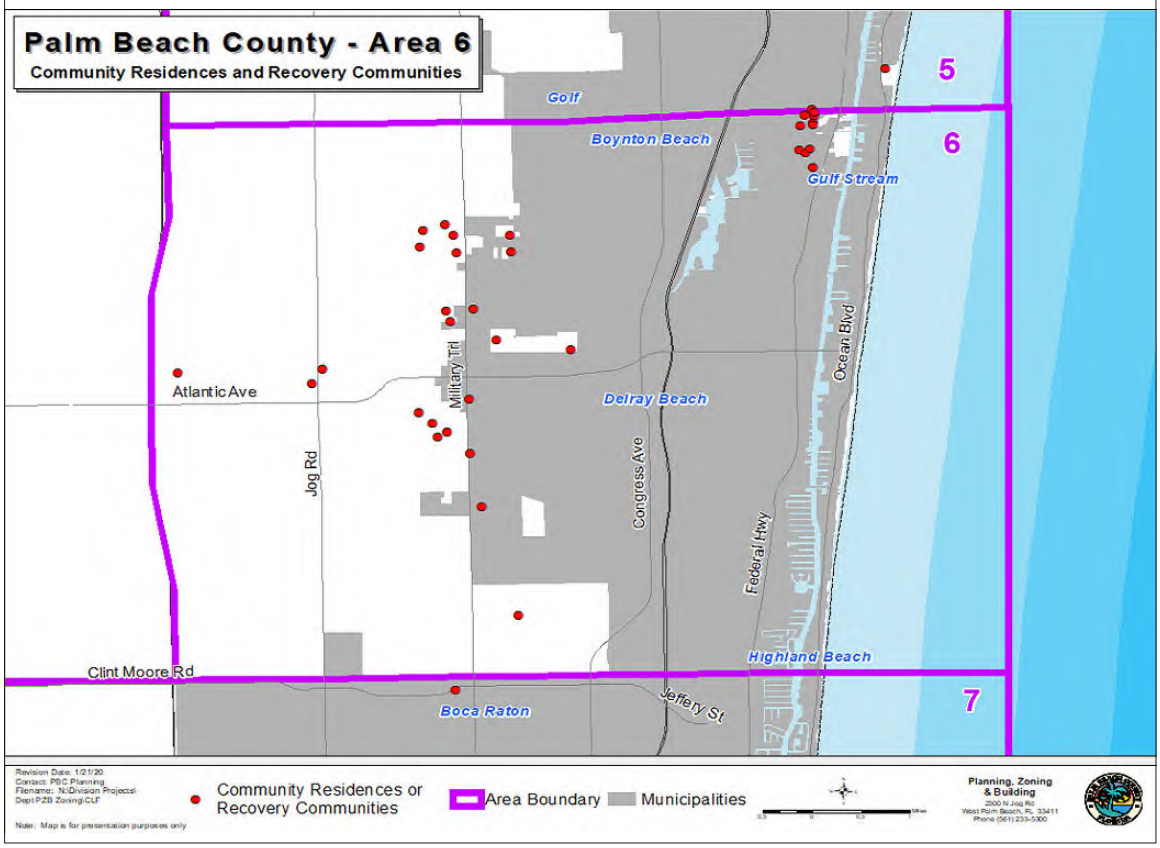
Unincorporated Palm Beach County Sites: 31
Sites in adjacent municipalities within two typical blocks: 8

Area 5 sits along the coast immediately south of Area 4. With a few exceptions, the community residences and recovery communities in Area 5 were scattered. North of Hypoluxo Road and west of Military Trail were two community residences or recovery communities located about three blocks apart. Two north of Palomino Drive and east of Venitian Drive, were separated by a single lot. Five more were scattered in the immediate neighborhood, although two were within a block of each other.

Another two were about 600 feet apart on either side of High Ridge Road north of Hypoluxo Road. A few blocks east in incorporated territory was a small concentration of four sites within a block or so of each other. Two were four lots apart on Glenwood Drive with two more a bit more than a block south of them along Willow Spring Circle. A group of four community residences or recovery communities south of Genevra Avenue and east of Lawrence Road *could* constitute a concentration in the making. A fifth site was just three blocks north.

The rest of the community residences or recovery communities in Area 5 were well scattered.

Figure 27: Relative Locations of Community Residences and Recovery Communities in Area 6



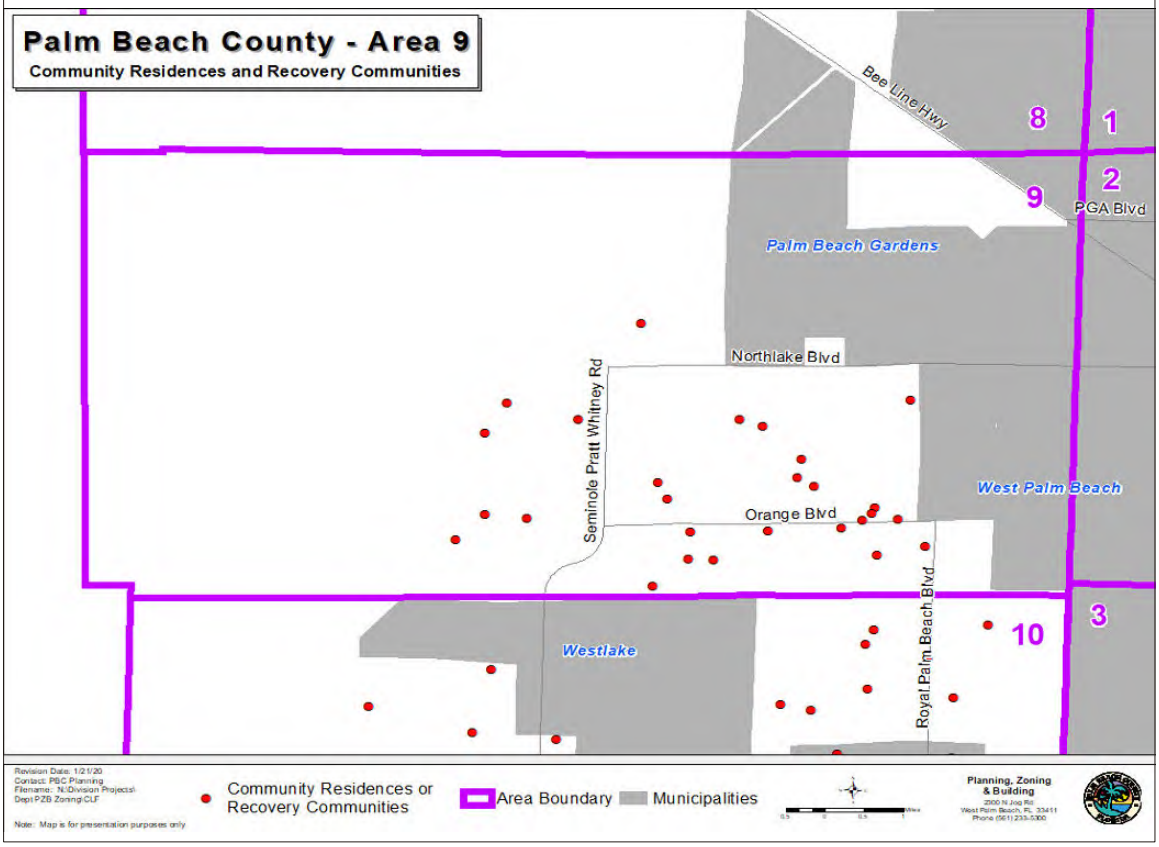
Source: Palm Beach County Planning, Zoning & Building, April 2020.

Unincorporated Palm Beach County Sites: 18
Sites in adjacent municipalities within two typical blocks: 16

Area 6 is located just north of the southeast corner of the county. A concentration of seven community residences or recovery communities rests in Boynton Beach just outside unincorporated Palm Beach County south of 28th Avenue and west of Old Dixie Highway. In this concentration were two adjacent sites with a third located two lots north and a fourth five lots west. Six lots south of this cluster were two adjacent sites with another site eight lots west of them. There were no sites close to these in unincorporated Palm Beach County.

Five community residences and recovery communities were situated in a square with Via Delray and Military Trail forming its southeast corner. They were generally one to two blocks apart. Similarly, four community residences or recovery communities were in the square west of Military Trail between Garfield and Washington roads. Two were just six lots apart.

Figure 28: Relative Locations of Community Residences and Recovery Communities in Area 9



Source: Palm Beach County Planning, Zoning & Building, April 2020.

Unincorporated Palm Beach County Sites: 27
Sites in adjacent municipalities within two typical blocks: 0

Area 9, where the minimum lot widths were at least 200 feet, is located immediately west of Area 2 and south of Area 8. While the 27 community residences or recovery communities *appeared* to be well–scattered throughout Area 9, many were within a few large lots of each other.

East of Apache Boulevard and between 75th Lane and 73rd Street were two sites within six lots of each other. Three more were each about eight lots from each other between Orange Boulevard and 64th Court, east of Hall Boulevard.

Two sites were eight lots apart west of 140th Avenue and north of 82nd Lane. A block east and six blocks south was another site with another one six lots south of it and another five lots southeast of that one.

A concentration might have been developing east of 140th Avenue between 76th Road and Tangerine Boulevard. Two sites were within five lots of each other in the northeast corner of that area. East of 130th Avenue were seven community residences and/or recovery communities. Two were separated by a single lot with a third just three lots away and a fourth seven lots from the third one. A fifth was just seven lots from the first cluster. Three more scattered sites were located south of 69th Street.

Pompano Beach: 2017

In addition to the licensed and certified community residences and recovery communities, the Pompano Beach study also included:[7]

1. **"Confirmed Community Residences"** were locations that the Broward County Sheriff's Department had concluded were operating as a recovery residence. These were recovery residences that had not applied for state certification issued through the Florida Association of Recovery Residences and that had not obtained the required zoning approval or reasonable accommodation. In each instance, the Sheriff's Department had conducted a site visit which either found signage indicating the site was a recovery residence or received a verbal confirmation from the owner or an occupant of the home that it was operating as a recovery residence.
2. **"Unconfirmed Community Residences"** were locations where the Broward County Sheriff's Department had reason to conclude that a recovery residence was operating, but had not yet confirmed it. These, too, were recovery residences that had not applied for state certification issued through the Florida Association of Recovery Residences and that had not obtained the required zoning approval or reasonable accommodation. The Sheriff's Department concluded that these sites — many of which were the subject of a phone call made to Code Compliance or the Sheriff's Department — were likely to be operating as recovery residences based on field observations that suggested use as a recovery residence: large multi–passenger commercial vans routinely parked at the property or loading/unloading groups of passengers from the property; "no trespassing" signs were used to keep drug dealers away from the home; commercial–style warnings that unauthorized vehicles will be towed; numerous vehicles parked on the lawn or overflow parking on the street; and significantly greater amounts of litter including cigarette butts and soda cans on the front lawn than would be expected from a biological family of comparable size. Language on official forms filed with the city also suggested that some of these sites were operating as uncertified and unlicensed recovery residences.

As shown in the legend of the citywide map on the next page, Pompano Beach had verified the existence of 66 certified or licensed community residences for people with disabilities within its borders. In addition, there appeared to be 102 locations that the Broward County Sheriff had confirmed were recovery residences as well as another 102 locations thought to be recovery residences, but not confirmed as such. These were unusually large numbers for a community the size of Pompano Beach with an estimated 109,000 residents in 2016.

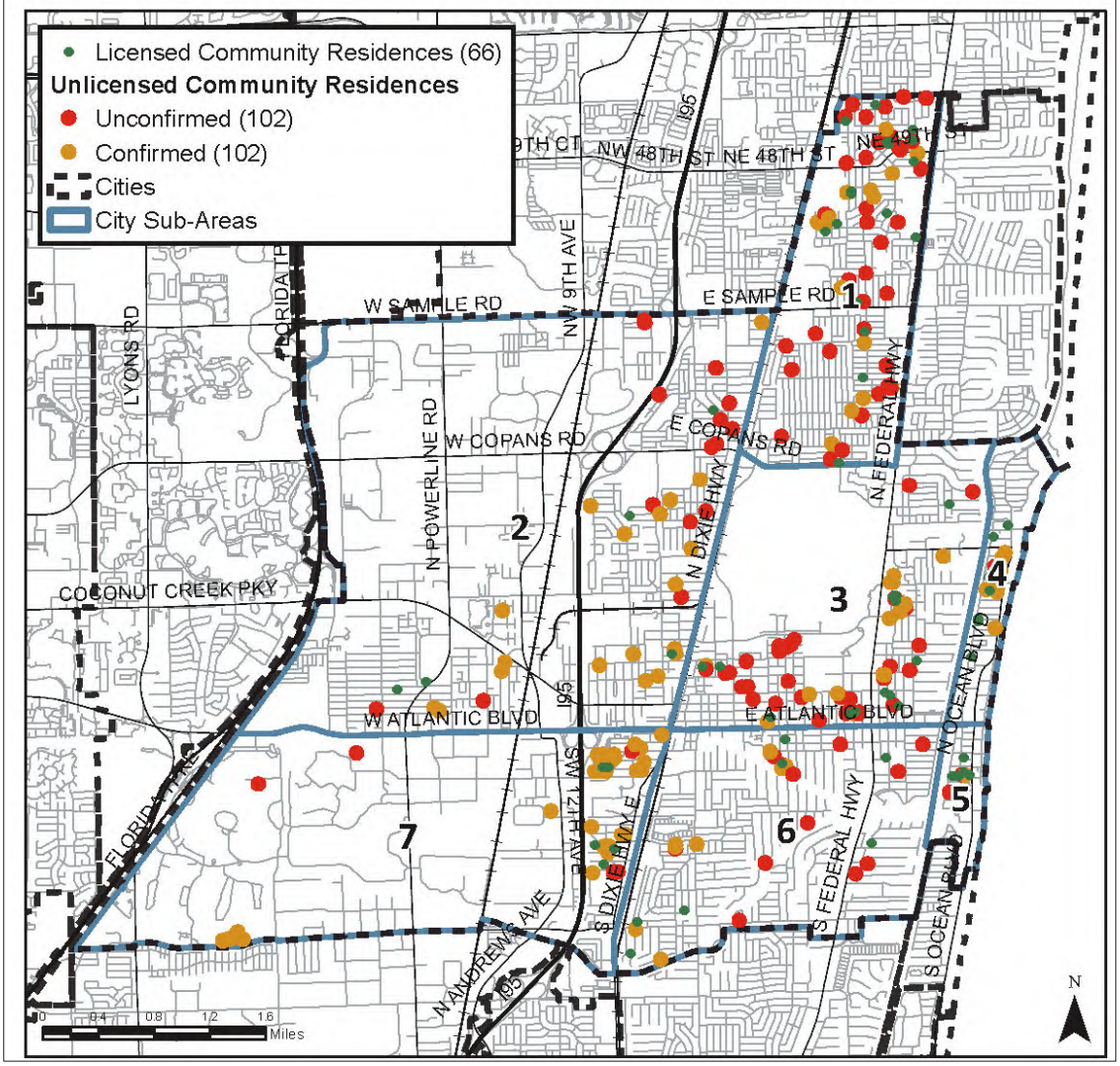
The city was aware of at least nine "recovery residences" in Pompano Beach located in multifamily buildings where the operators placed up to three individuals in

7. Source: Daniel Lauber, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, June 2018) *23*–34.

an apartment. One operator had set up four apartments housing a total of 24 people in each of four buildings on the same block — for a total of 96 people in recovery in the four buildings.

Another operator had placed 168 people in recovery on the same block. Still another operator had filled 28 apartments with 58 people in recovery at the same address. Another had placed 29 people in recovery in six apartments in the same building. At least four others had placed ten to 18 people in recovery in three to eight dwelling units in a building.

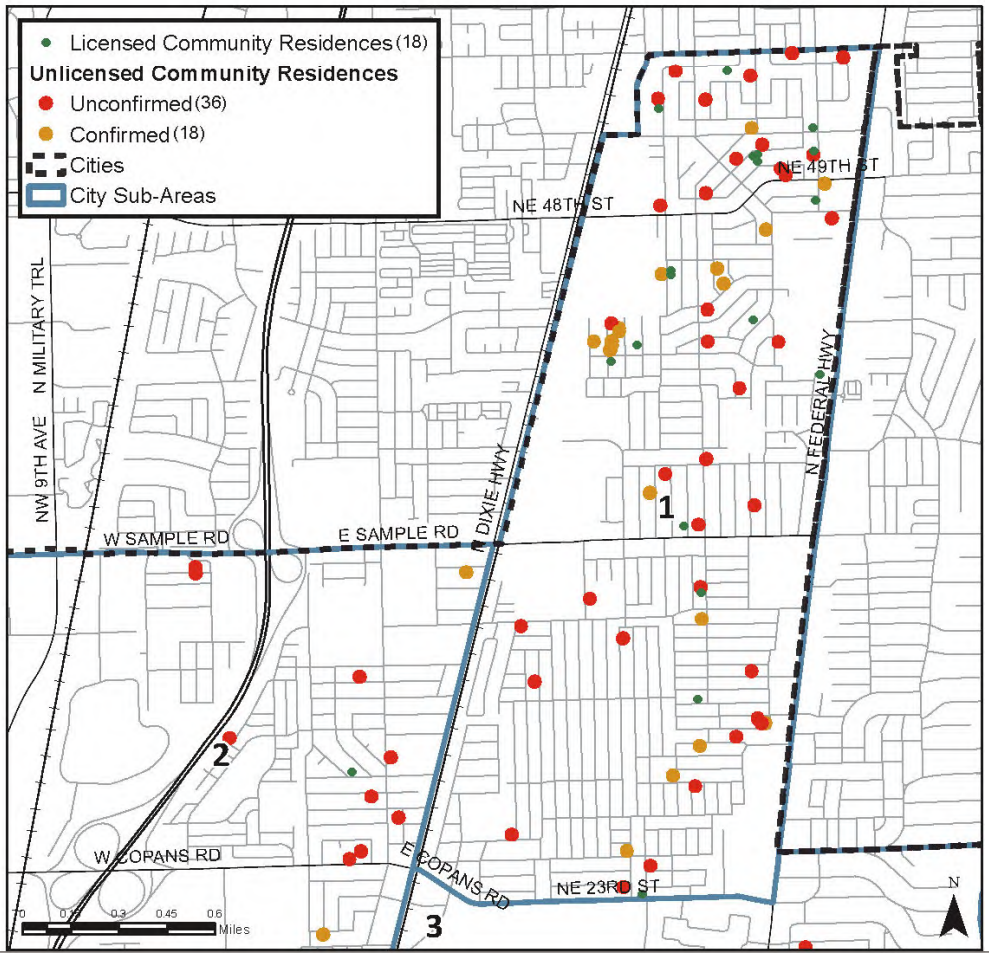
Figure 29: Seven Subareas of Pompano Beach



Source: City of Pompano Beach, Florida, November 2017.

The above map shows the relative locations of the seven subareas in the maps that follow as well as an overview of where community residences were located in Pompano Beach when the study was conducted in 2017.

Figure 30: Locations of Known and Unconfirmed Community Residences and Recovery Communities in Subarea 1, Highlands, Cresthaven as of August 2017



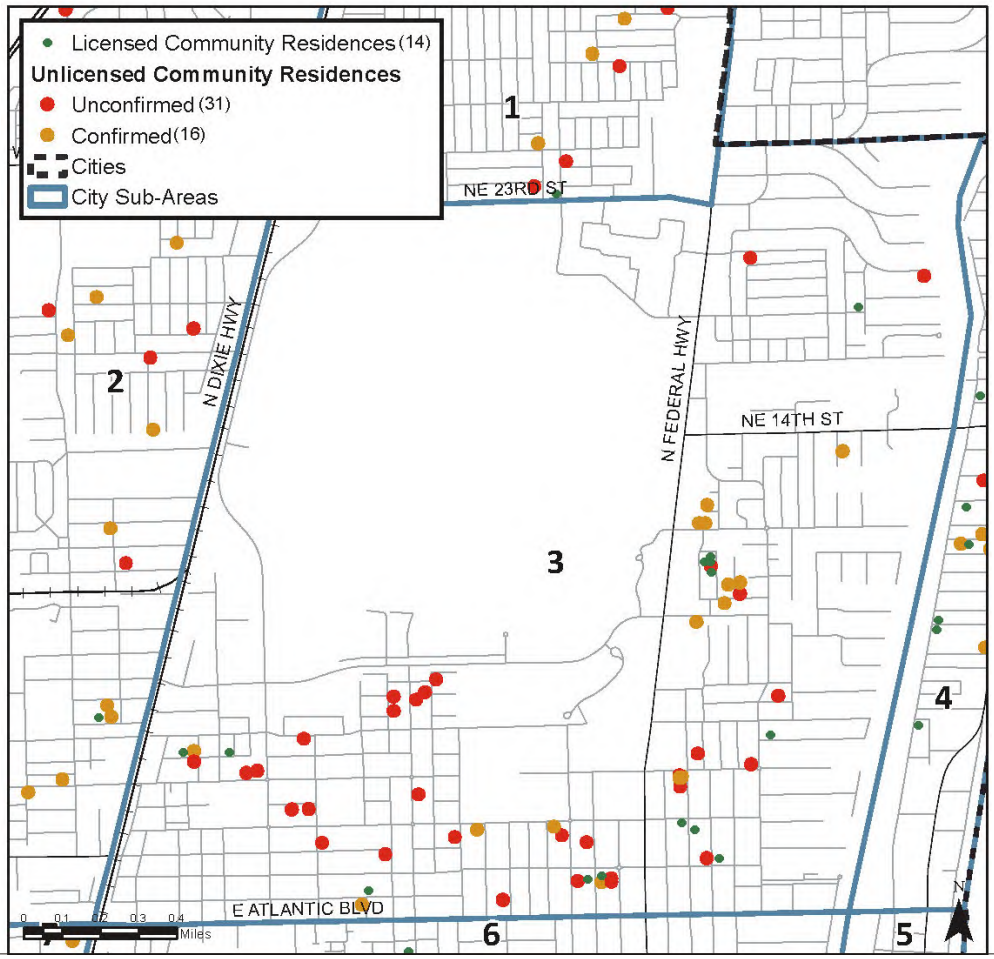
Source: City of Pompano Beach, Florida, November 2017.

The above map of Subarea 1 shows at least two concentrations of community residences in the Highlands, Cresthaven Subarea. One concentration of more several clusters consisted of a total of more than 20 community residences, running from the north border of the subarea to two blocks south of NE 49th Street between Dixie Highway and North Federal Highway. This concentration was particularly intense close to NE 49th Street where it appeared that a *de facto* social service district may be developing.

An intense concentration of seven community residences appeared about two blocks south of NE 48th Street and just east of Dixie Highway — very possibly already a *de facto* social service district.

While other community residences were pretty well scattered in the rest of the subarea, there were a few areas in what could be the early stages of clustering if additional community residences were to locate within a few doors or a block of existing community residences.

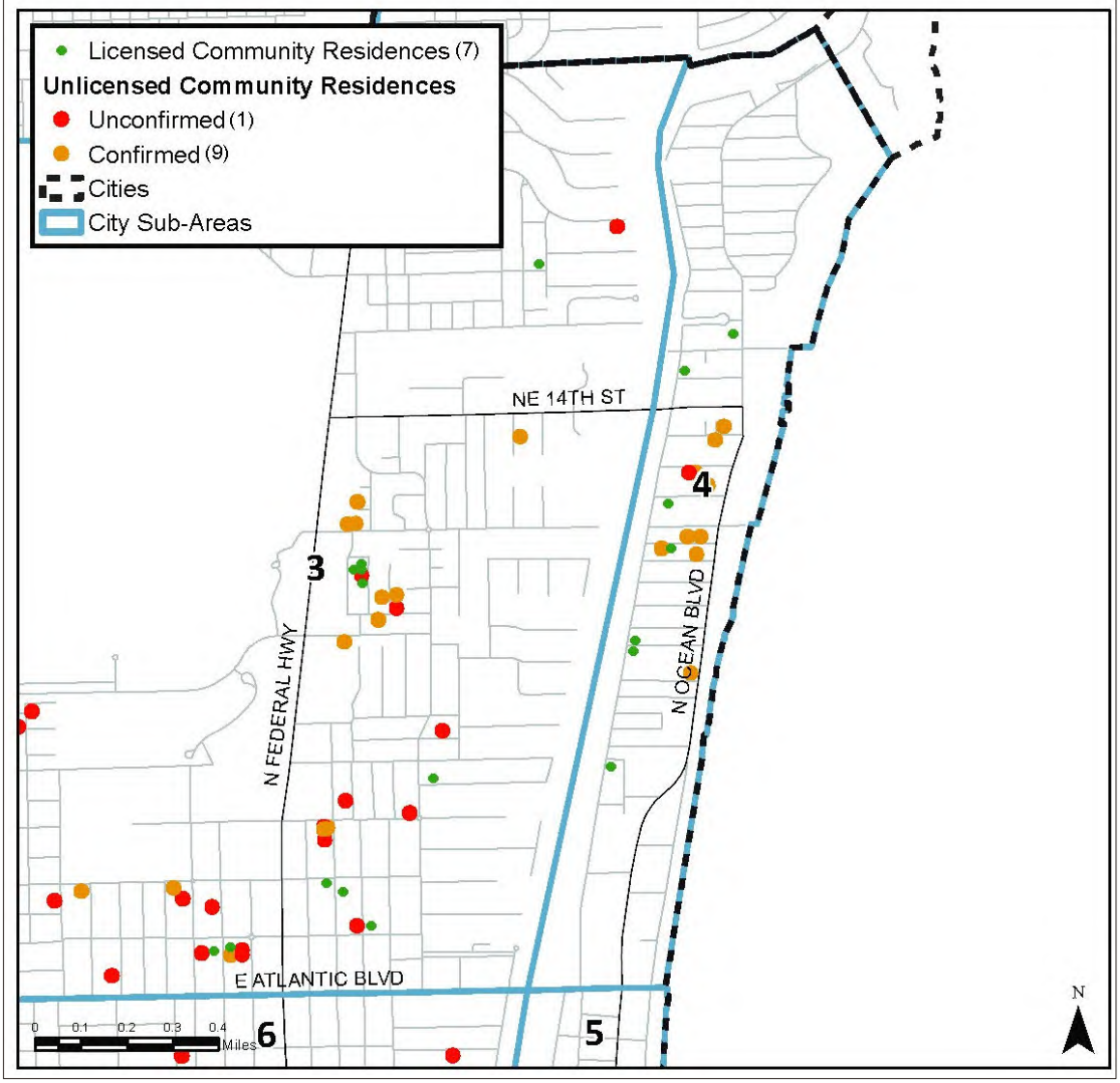
Figure 31: Locations of Known and Unconfirmed Community Residences and Recovery Communities Subarea 3, Northeast Pompano Beach, as of August 2017



Source: City of Pompano Beach, Florida, November 2017.

As shown in the above map of Subarea 3, many of the community residences in Northeast Pompano Beach were clustered together on a block and within a block of each other. There's a pretty dense concentration of about a dozen community residences on the blocks south of NE 14th Street and just east of North Federal Highway. There was a cluster of eight community residences just north of East Atlantic Boulevard and west of North Federal Highway. Most of the other community residences here were located within a few lots of another community residence.

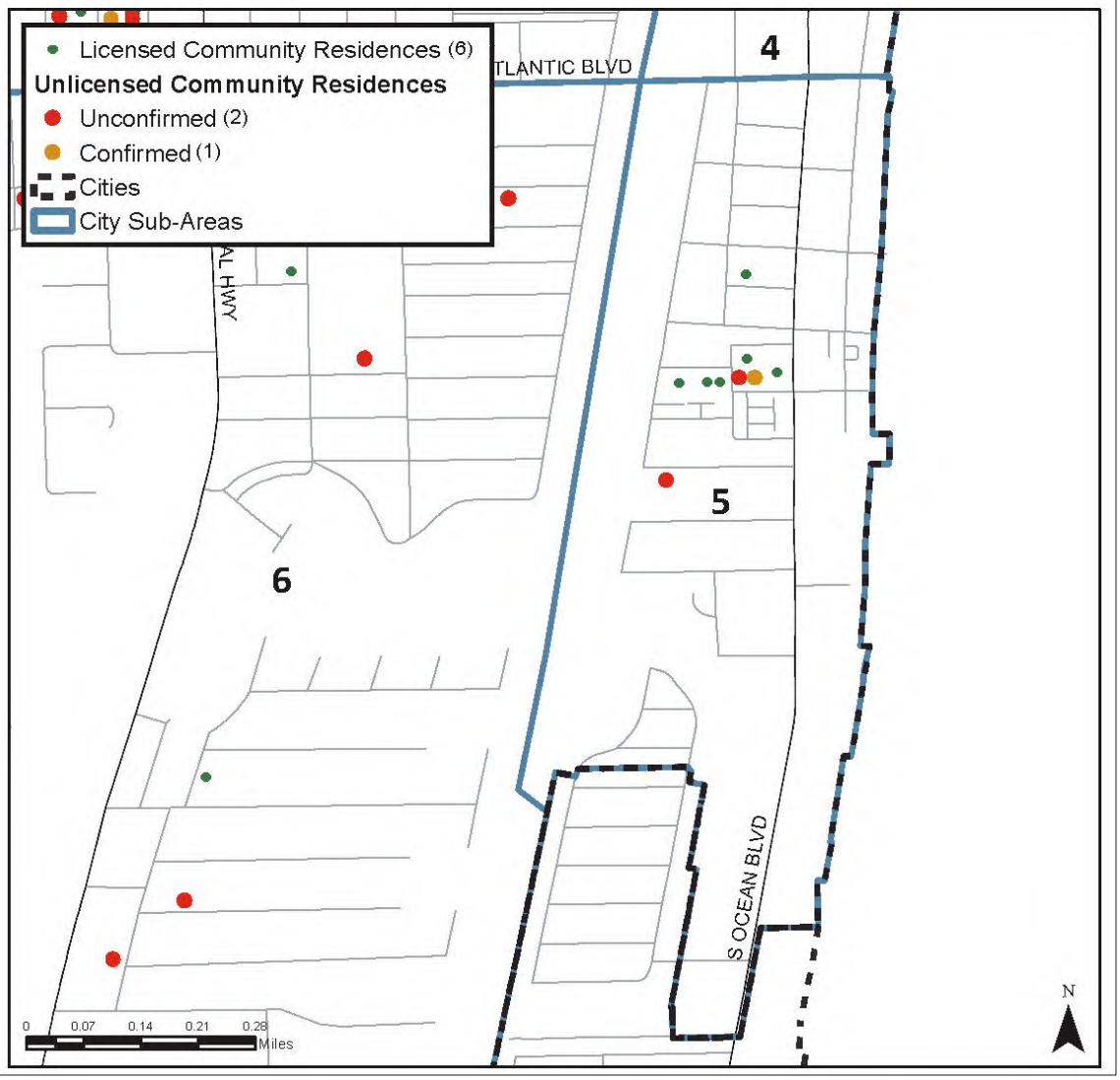
Figure 32: Locations of Known and Unconfirmed Community Residences and Recovery Communities in Subarea 4, Beach (North), as of August 2017



Source: City of Pompano Beach, Florida, November 2017.

As the above map of Subarea 4 shows, the city had identified 16 community residences for people with disabilities in Beach (North) plus one unconfirmed. All were located in the central third of the subarea. Nearly a dozen were located within four blocks of each other with several pairs on a block. This situation was illustrative of a concentration developing.

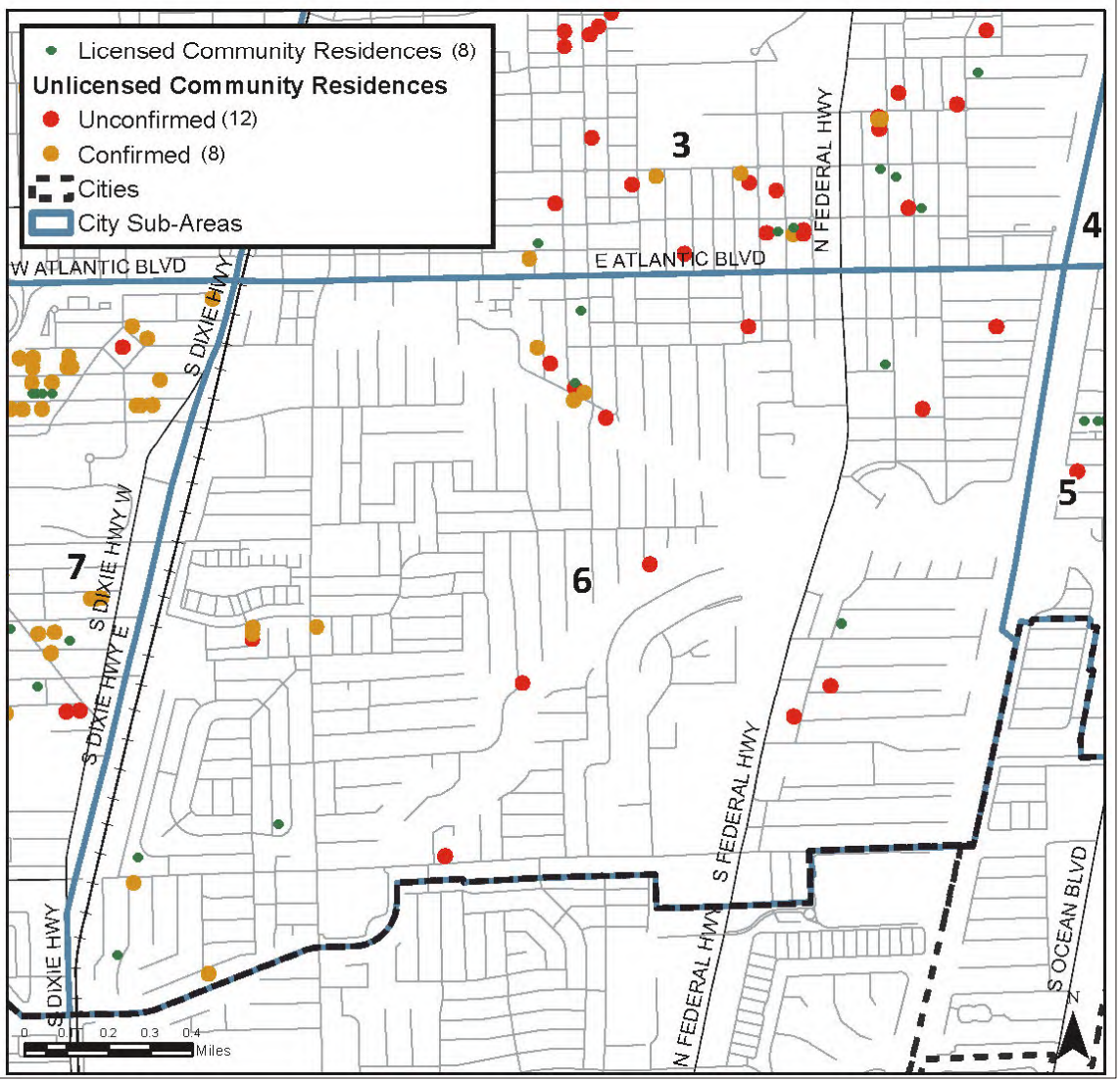
Figure 33: Locations of Known and Unconfirmed Community Residences and Recovery Communities in Subarea 5, Beach (South), as of August 2017



Source: City of Pompano Beach, Florida, August 2017.

There appeared to be seven community residences on two blocks in the center of Subarea 5. As explained beginning on page 61, this clustering of community residences for people with disabilities in the Beach (South) subarea runs counter to the underlying principles of community residences and interferes with achieving their core goals of normalization and community integration. In addition, this intense a cluster can effectively create a small *de facto* social service district.

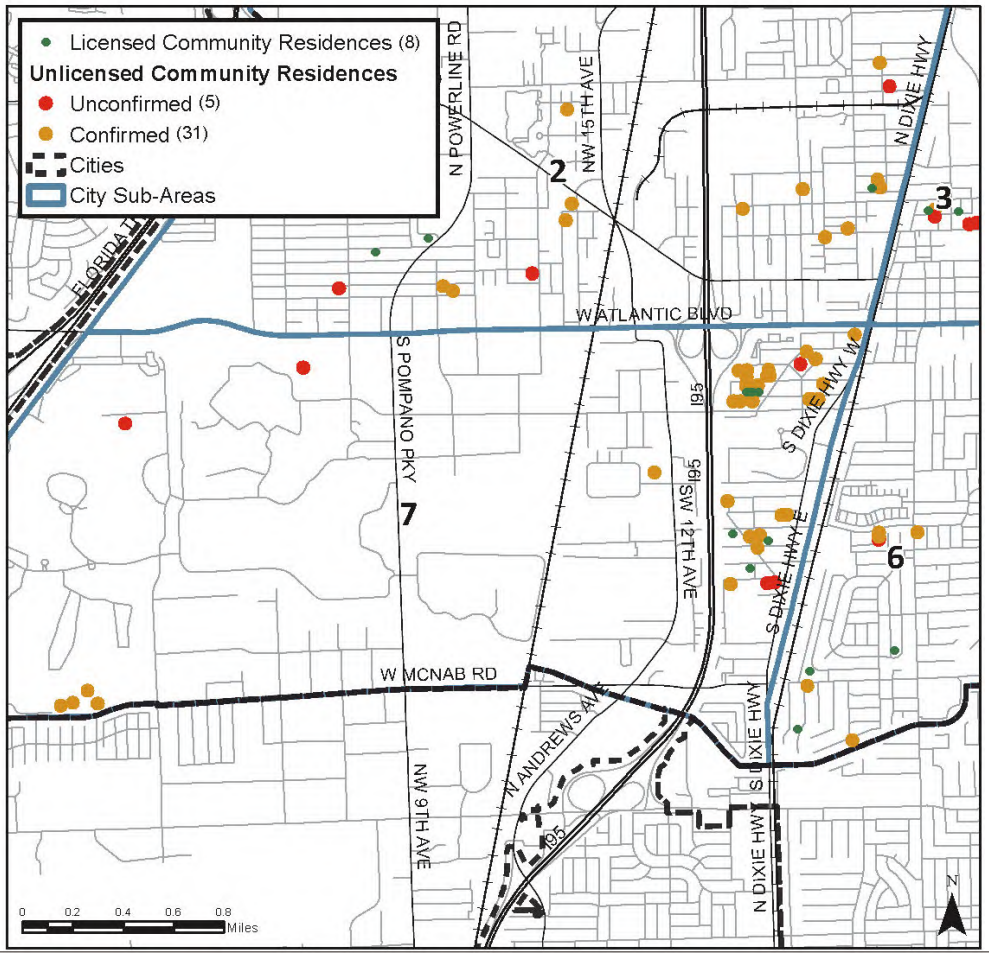
Figure 34: Locations of Known and Unconfirmed Community Residences and Recovery Communities in Subarea 6, Southeast Pompano, of August 2017



Source: City of Pompano Beach, Florida, November 2017.

Most of the community residences in Southeast Pompano were scattered. However there was a cluster of seven on just a few short blocks in the center of the north end of Subarea 6. Note also that there were concentrations of community residences just north of East Atlantic Boulevard in adjacent Subarea 3 and to the west in adjacent Subarea 7.

Figure 35: Locations of Known and Unconfirmed Community Residences and Recovery Communities in Subarea 7, Southwest Pompano, as of August 2017



Source: City of Pompano Beach, Florida, November 2017.

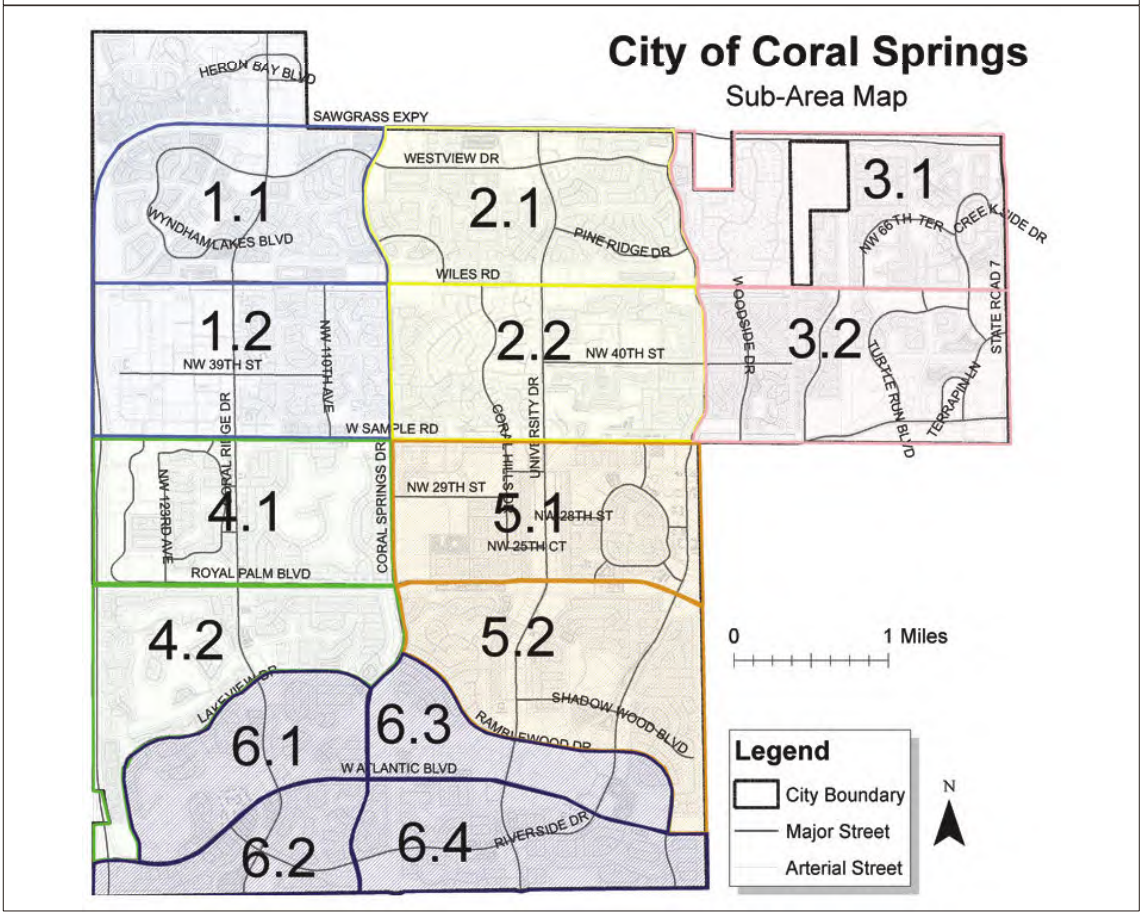
There was a small cluster of four community residences in the southwest corner of Subarea 7. There was a much more intense and larger concentration of community residences south of West Atlantic Boulevard between I–95 and South Dixie Highway West. The core of this concentration consisted of a dozen community residences on three adjacent blocks with two clusters, each consisting of three more community residences to the east. There was a strong possibility that this intense concentration may hinder the ability to achieve normalization and community integration and of the area becoming an identifiable *de facto* social service district.

Another concentration of a dozen community residences had developed a few blocks south with a core cluster of five community residences in the center of the concentration. Here, too, there was a good possibility that this concentration may hinder the ability to achieve normalization and community integration and of the area becoming an identifiable *de facto* social service district.

Overall, there was some clustering of community residences in every subarea of Pompano Beach. Most intense concentrations of community residences had developed and were developing in Pompano Beach in six of the seven subareas.

Coral Springs: 2023

Figure 36: Coral Springs Sub–Area Locations



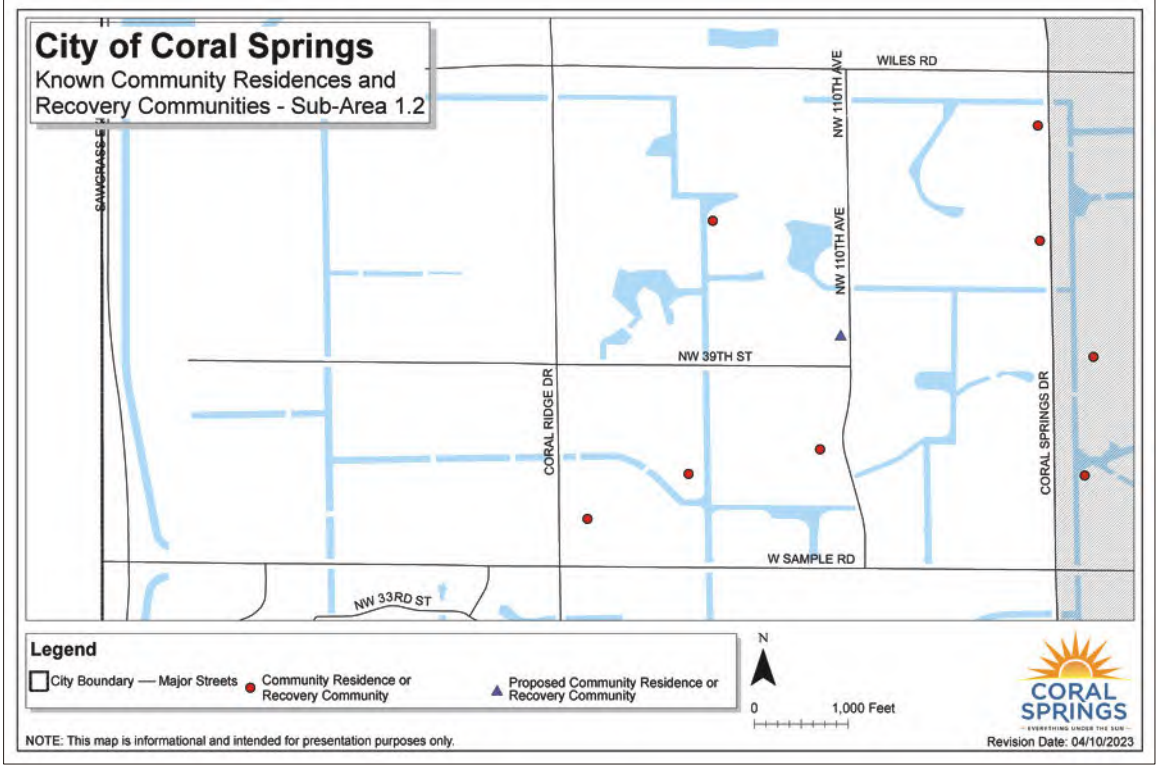
Source: City of Coral Springs, Florida, March 2023.

Sub–Area 1.2. In the map below, all six of the community residences and/or recovery communities in Sub–Area 1.2 were east of Coral Ridge Drive. The two closest community residences or recovery communities in Sub–Area 1.2 were separated by seven lots and 1,045 feet. The next two closest were ten lots and 1,300 feet apart. The two homes in the northeast corner were over 1,130 feet and 11 lots apart. Both of the other two community residences and/or recovery communities were separated by more than 2,550 feet and 17 lots from the closest community residence or recovery community.[8]

A nascent concentration *could* be developing north of West Sample Road between Corel Ridge Drive and NW 10th Avenue.

8. Source: Daniel Lauber, *Coral Springs Zoning Framework for Community Residences for People With Disabilities and for Recovery Communities* (River Forest, IL: Planning/Communications, July 2023) 38–53.

Figure 37: Relative Locations of Known Community Residences and Recovery Communities in Sub–Area 1.2



Source: City of Coral Springs, Florida, April 2023.

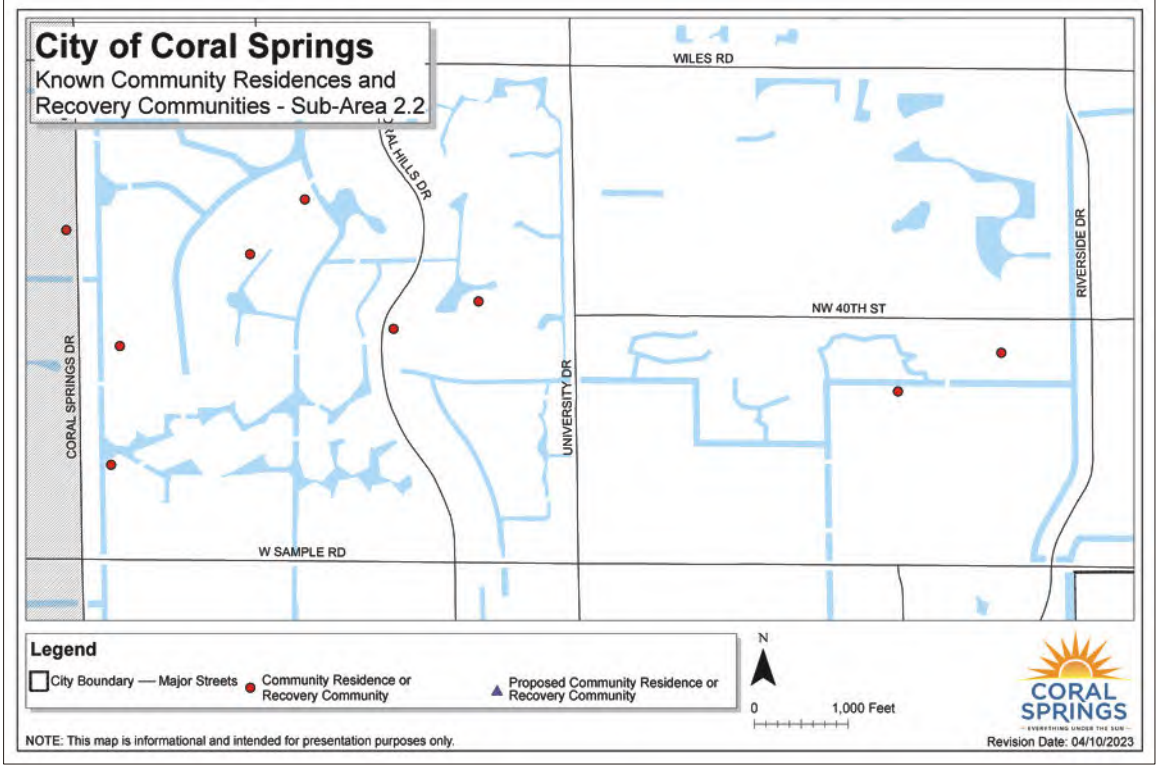
At the east end of Sub–Area 1.2, a concentration appears to have developed consisting of the two sites in Sub–Area 1.2 along Coral Springs Drive coupled with the six community residences and/or recovery communities east of Coral Springs Drive in Sub–Area 2.2 where some clustering had occurred.

Sub–Area 2.2. Two of the four community residences and/or recovery communities in the large lot area surrounding Coral Hills Drive were just 635 feet apart, separated by just three lots. Two blocks east of them were two more community residences and/or recovery communities within 556 feet of each other, with four lots between them. None of these four community residences and/or recovery communities was more than seven lots from another one. The juxtaposition of these four homes was the very definition of a cluster.

Southeast of this cluster were two more community residences and/or recovery communities, the first of which was about 1,500 feet from the cluster and separated by ten lots. About eight lots south of this site was another site that was a bit over 1,120 feet away.

Another community residence or recovery community was over 4,300 feet east of the cluster. An eighth community residence and/or recovery community was 1,040 feet away, separated by eight lots.

Figure 38: Relative Locations of Known Community Residences and Recovery Communities in Sub–Area 2.2

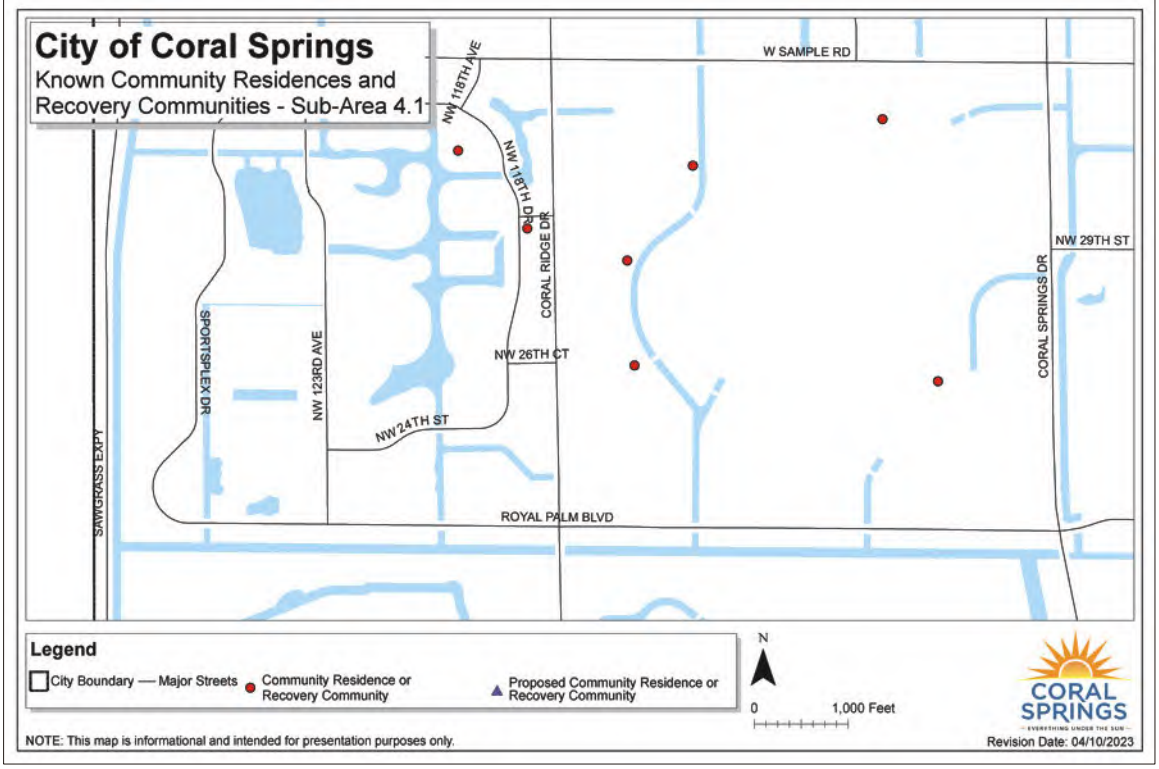


Source: City of Coral Springs, Florida, April 2023.

The concentration in the west end of Sub–Area 2.2 started about ten lots away from the two nearby community residences and/or recovery communities in the northeast corner of Sub–Area 1.2. There were no nearby community residences and/or recovery communities in the other sub–areas adjacent to Sub–Area 2.2.

Sub–Area 4.1. Seven community residences and/or recovery communities were concentrating, albeit not clustering, in the central portion of Sub–Area 4.1. The most northwest site was just over 950 feet from the closest community residence or recovery community, separated by five lots and two streets. That second site was about 950 feet west of a third site, separated by six lots and two streets. Over 950 feet south of this third site was a fourth separated by nine lots and two streets. A fifth site was a bit over 1,020 feet northeast up the street, separated by eight lots. The site to the northeast of the fifth site was more than 1,900 feet away. The seventh site was about half a mile southeast. It was more than 3,000 feet from the fourth site to its west.

Figure 39: Relative Locations of Known Community Residences and Recovery Communities in Sub–Area 4.1



Source: City of Coral Springs, Florida, April 2023.

A community residence or recovery community in adjacent Sub–Area 1.2 to the north sat about eight lots and three streets away from the closest community residence or recovery community in Sub–Area 4.1,

All of the other community residences and/or recovery communities in the adjacent sub–areas 4.2 and 5.1 were sufficiently far away that they were not going to interfere with normalization or community integration at the sites in Sub–Area 4.1.

Observations. While the extremely intense concentrations of community residences and recovery communities that had formed in numerous southeast Florida jurisdictions had *not* yet developed in Coral Springs, there were signs of two existing concentrations and some nascent concentrations that might have been developing as well as minimal clustering of sites in the city.

At the west end of Coral Springs, a concentration of community residences and/or recovery communities *might* be in the *very early* stages of developing in the south end of Sub–Area 1.2, north of West Sample Road between Corel Ridge Drive and NW 10th Avenue.

However, a concentration had already developed that included the northeast end of Sub–Area 1.2 and the west end of Sub–Area 2.2. The heart of the concentration was a cluster of four community residences and/or recovery communities around Coral Hills Drive. Two were just 635 feet apart and separated by only three lots. Two blocks east of them are two sites within 556 feet of each other with four lots between

them. None of these four was more than seven lots from another. This close juxtaposition of the four sites was unlikely to facilitate normalization or community integration, especially if all four house people with the same sort of disability. This arrangement is the poster child of "clustering."

A nascent concentration *might* have been developing in the west–most third of Sub–Area 3.2 where five community residences and/or recovery communities were located. Two were 720 feet with five lots between them — hardly conducive to facilitating normalization or community integration.

Although there was no clustering, a concentration of nine community residences and/or recovery communities may have been emerging in the central portion of Sub–Area 4.1 and adjacent Sub–Area 1.2.

Preventing clustering and concentration from developing and intensifying

Prior to the local studies being conducted, none of the sample jurisdictions in this chapter had adopted the sort of zoning approach this report recommends. Following adoption of some form of the zoning approach presented here, we have not received any notices of new clusters or concentrations forming or existing ones intensifying in the jurisdictions that have adopted the approach recommended in this report.

When these jurisdictions adopted this zoning approach, all existing community residences and recovery communities were grand fathered in as long as they obtained state certification or requisite state license by the date specified in the ordinance, generally nine months after adoption. Some jurisdictions like Pompano Beach conducted extensive efforts to advise the operators of the uncertified and unlicensed homes of this requirement.

As noted throughout this report, the zoning approach proffered here prevents the sort of clustering and concentrations illustrated in this chapter from developing at all. In addition, it prevents existing clusters and concentrations from intensifying.

Under the zoning approach this report recommends, the overwhelming majority of proposed licensed or certified community residences and recovery communities would be located outside of the applicable spacing distance and qualify as a permitted use.

For example, Mesa, Arizona which adopted this approach in July 2021, continues to be a hotbed for locating sober homes as recovery residences are called in Arizona. But under this zoning approach, the overwhelming majority of proposed community residences were able to locate outside spacing distances and were permitted uses. Mesa received its first application to locate within the spacing distance in February, 2024 — seven years after the ordinance was adopted — and correctly approved it under the specific fact situation.

Delray Beach, the first Florida jurisdiction to adopt an early and less evolved variation of the zoning approach this study recommends has received two applications to locate within the spacing distance since 2019.[9]

Following the initial rush of existing community residences to obtain zoning approval after the city's amendments were adopted in June 2018, Pompano Beach has received nine special exceptions application to locate within the spacing distance and three to exceed ten occupants in a community residence.[10]

Under the zoning approach this report recommends, the vast majority of community residences and recovery communities have received zoning approval without going through a case–by–case review — while maintaining the residential nature of the surrounding neighborhood.

9. Telephone interview with Rebekah Dasari, Principal Planner, Long Range Planning, City of Delray Beach, Florida (June 6, 2024).
10. Data provided by Pompano Beach Principal Planner Scott Reale, November 2023.

Chapter 6

Reasonably accommodating community residences and recovery communities in Florida

Key Takeaways

- **Under the Fair Housing Act, zoning for community residences for people with disabilities and for recovery communities must use the least drastic means to actually achieve legitimate government purposes.**
- **Community residences that do not exceed the number of unrelated individuals that constitute a "family" in the local land–use code comprise a family and like any other family, they are *not* subject to the zoning requirements recommended here.**
- **Family community residences must be allowed as a permitted use in all zoning districts where residential uses are allowed subject to three non–discretionary narrowly–crafted fact–based objectives.**
- **Transitional community residences must be allowed as a permitted use in all zoning districts where multifamily uses are allowed when they comply with three non–discretionary narrowly–crafted fact–based objectives and in pure single–family districts by individual review.**
- **Recovery communities must be allowed as a permitted use in all zoning districts where multifamily and institutional uses are allowed subject to two non–discretionary narrowly–crafted fact–based objectives.**
- **When a proposed community residence or recovery community does not meet all the objective criteria to be a permitted use, zoning must make a further reasonable accommodation via a case–by–case review to allow the use if it meets narrowly–drafted standards that are based on the reasons the individual review is required.**
- **Off–street parking requirements must be tailored to the actual number of motor vehicles maintained at the community residence or recovery community.**
- **No matter how many occupants licensing, certification, or zoning allows in a community residence or recovery community, the local code provisions to prevent overcrowding based on square footage prevail.**

The 1988 amendments to the nation's Fair Housing Act require all government jurisdictions — city, county, and state — 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, as well as recovery communities, to locate in the residential districts essential to their success. The zoning refinements this study recommends provides 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 or recovery community.

The legislative history of President Ronald Reagan's Fair Housing Amendments Act of 1988 makes it clear:

- Jurisdictions *cannot* require a case–by–case review (usually via a conditional use permit, special exception, or a special use permit) as the *initial* means of regulating family community residences for people with disabilities in residential districts; only as a secondary means.
- The act allows using case–by–case review and approval for transitional community residences in purely single–family districts (those that allow only detached single–family structures).
- Does not require local jurisdictions to allow in residential districts those community residences occupied by people who do *not* have disabilities since the Fair Housing Act excludes them from the protected class of people with disabilities.

As explained below, there are two types of community residences: "family community residences" and "transitional community residences." A third community–based congregate living arrangement for people in recovery from substance use disorder is called a "recovery community" which does *not* emulate a family. Because recovery communities do not resemble a community residence in nature and performance, they warrant a slightly different treatment in any jurisdiction's land–use regulations as explained beginning on page 44.

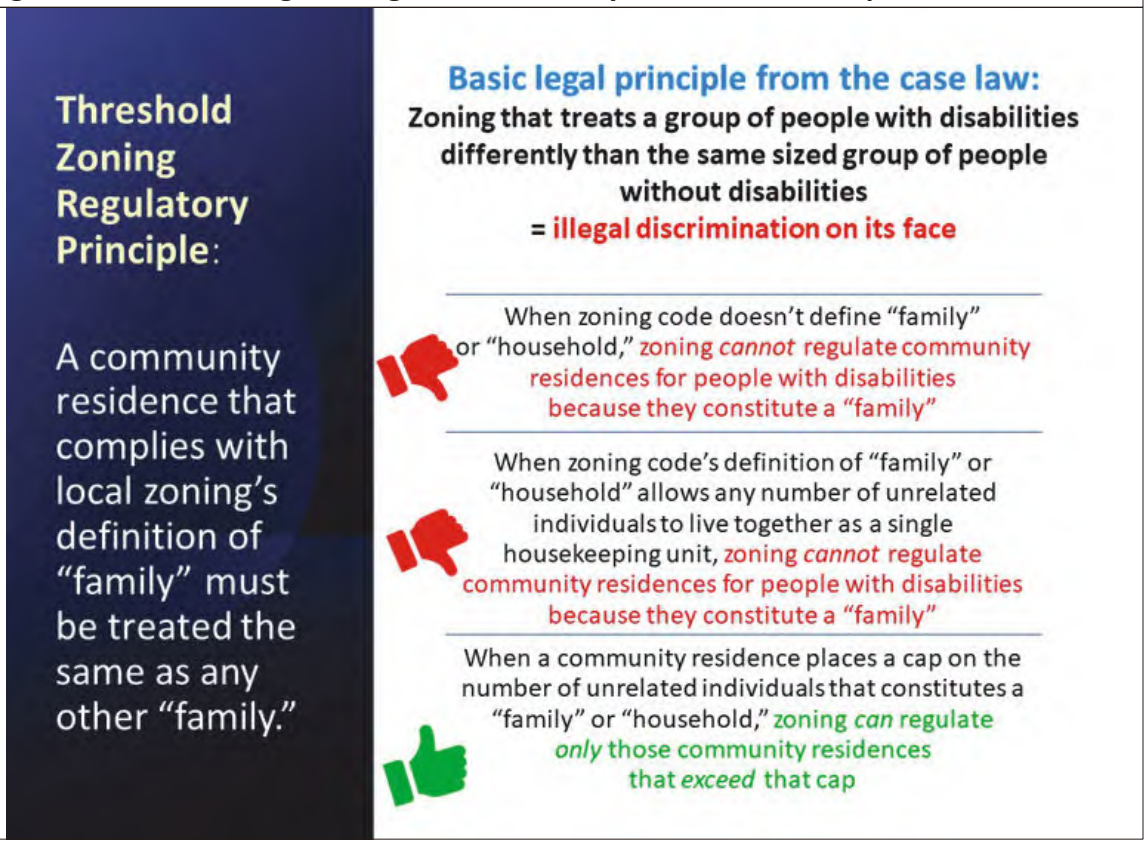
When a "community residence" is legally a "family"

Like any other dwelling, when a community residence for people with disabilities — it be "family" or "transitional" — fits within the cap of four unrelated persons as recommended for definitions of "family" in the local zoning codes, it must be allowed as of right in all residential districts the same as any other family.

The case law is very clear: No additional zoning restrictions can be imposed on a community residence for people with disabilities that fits within the cap on the number of unrelated individuals in the local land–use code's definition of "family." ***Consequently, when a zoning code allows, for example, up to four unrelated people to constitute a "family," the zoning ordinance cannot require certification, licensing, or a spacing distance around a community residence for people***

with disabilities that houses as many as four occupants.[1]

Figure 40: When Zoning Can Regulate Community Residences for People With Disabilities



As summarized in the above figure, the case law has made it quite clear that when a zoning code does not define "family" at all or allows any number of unrelated people to constitute a family, it *cannot* impose any additional zoning requirements on community residences for people with disabilities. If a jurisdiction did impose additional zoning requirements, it would be requiring them solely because the occupants were people with disabilities. But, legally speaking, they constitute families like all other families and imposing licensing or spacing requirements in these circumstances would constitute housing discrimination on its face. In the absence of a definition of "family" (or its equivalent) or a cap on the number of unrelated individuals that can constitute a "family," a city, county, or state cannot legally use zoning to regulate community residences for people with disabilities — and very likely recovery communities as well.

1. Remember that there is a distinction to be made between local zoning and the state's licensing or certification requirements. A state licensing or certification statute or rule can require licensing or certification of community residences for *any* number of residents, including recovery residences. State licensing or certification *can* establish rational spacing requirements between community residences of any number of residents — even those that fit within a jurisdiction's definition of "family." This is a very common state practice throughout the nation, although like in Florida, it has been seriously misapplied.

As explained beginning on page 71, the definitions of "family" should allow no fewer than four unrelated people living as a single housekeeping unit to constitute a family. **Any community residence for people with disabilities that fits within this cap of four must be treated as a "family" and such a home *cannot* be used for calculating spacing distances required by *local zoning*, as explained in footnotes on page 67 and 71.**[2]

So even though the recommended definition of "family" would not allow more than four unrelated people *not* in a single domestic partnership to live together, the Fair Housing Act does require every jurisdiction to make a "reasonable accommodation" for community residences that would house more than the recommended four unrelated people with disabilities so community residences can be established in the residential districts in which they need to locate to achieve their purposes. It's only when the number of occupants *exceeds* the maximum number of unrelated occupants allowed under a jurisdiction's definition of "family" that a land–use code *can* institute a spacing distance and licensing or certification requirement for community residences (and recovery communities) to be *allowed as permitted uses*. A local jurisdiction must establish a case–by–case review process as a backup to make a further "reasonable accommodation" when these two requirements are not met.

General principles to make the required reasonable accommodation to zoning restrictions

Taken as a whole, the case law suggests that the Fair Housing Act requires zoning codes to make reasonable accommodations for community residences for people with disabilities and for recovery communities that meet these three tests:

- The proposed zoning regulation must be *intended* to achieve a legitimate government purpose.
- The proposed zoning regulation must *actually achieve* that legitimate government purpose.
- The proposed zoning regulation 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."[3]

But the nation's Fair Housing Act is not the only law that affects how cities and

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2. This report recommends that the state continue to allow local jurisdictions to set their own cap in their zoning code's definition of "family." This cap should be large enough to alllow for roommates which, as noted earlier, are vital for community residences for people with mental illness and/or substance use disorder.
3. *Bangerter v. Orem City Corporation,* 46 F.3d 1491 (10th Cir. 1995) 1504. "FHAA" is the Fair Housing Amendments Act of 1988 which added these requirements.

counties in Florida can regulate community residences for people with disabilities. The State of Florida has adopted several statutes that restrict local zoning of state–licensed community residences for specific populations with disabilities. As discussed at some length earlier in Chapter 6, those state provisions that run afoul of the nation's Fair Housing Act need to be replaced.[4]

When to apply a spacing distance

It is critical to remember that spacing distances are applied and measured *only* between community residences and recovery communities (and congregate living facilities). As explained beginning on page 71, a *spacing distance is not applied to, nor measured from, a community residence that fits within the jurisdiction's cap on the number of unrelated individuals that can constitute a "family" in its land–use code.* Those are classified as a "family" under zoning and must be treated as a "family." To do otherwise would constitute housing discrimination on its face.

So when the local jurisdiction's zoning definition of "family" allows up to four unrelated individuals in a single housekeeping unit to dwell together, a community residence housing as many as four people with disabilities would be classified as a "family" and no spacing distance for community residences or recovery communities is measured from it or to it.

While local zoning cannot require a license or certification for a community residence that fits within the zoning definition of "family," the *State of Florida* certainly can require a license or certification for all types of community residences and recovery communities regardless how many people live in them and no matter how a city or county defines "family."

Zoning that would implement this study's recommendations will seek to enable community residences to locate in all appropriate residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering and concentrations (which undermine the ability of community residences to accomplish their purposes and function properly, and which can alter the residential character of a neighborhood) and of protecting the residents of the community residences from abuse, exploitation, and improper or incompetent care.

4. Our review finds that many provisions in §419 need to be replaced with a principled and rational zoning treatment of community residences for people with disabilities even if the legislature chooses not to adopt full statewide zoning provisions for community residences and recovery communities.. Current state statutes contain provisions that likely do not comply with the nation's Fair Housing Act are explained beginning on page 137.

The amendments to state statutes and/or local zoning would be 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 would constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.[5]

The courts, however, recognize that the preservation of the residential character of neighborhoods is also a legitimate government interest. A local government "may regulate the residential character of its neighborhoods, so long as they devise a means to protect the ability of recovering people to live in the residential neighborhoods in a meaningful way which takes in mind their need for a group living substance free environment."[6] And this is exactly what the zoning based on the recommended framework seeks to accomplish for all people with disabilities.

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 them as Florida's statutes currently do and was recommended back in 1974 when the use of spacing distances to be a permitted use was first put forth.[7]

***Remember**: Community residences for people with disabilities (both family and transitional) that house no more than the local zoning code's cap on unrelated residents in "family" or "single housekeeping unit" allows must be treated the same as any other family and cannot be included when calculating spacing distances between community residences for people with disabilities.*

Certification of Recovery Residences and Recovery Communities. The Florida Association of Recovery Residences (FARR) is the state's certification entity as explained beginning on page 73. FARR uses a demanding certification process to determine whether a recovery residence or recovery community is actually operating in accord with the National Alliance for Recovery Residences and the Florida Association of Recovery Residences certification standards — rather than depend on a prospective operator's promises of how she will operate the home. The steps required to achieve certification are available online at http://farronline.org/certification/apply–for–certification. Detailed domain, core principals, and standards are available to download at https://www.farronline.org/standards-ethics.

The application process requires the applicant to initially submit the necessary documentation and background screening. After the required documentation is submitted, FARR conducts an on–site inspection prior to issuing provisional certification. As the applicant continues to provide additional required documents, FARR makes its final determination to grant certification after the recovery residence or re-

5. The proposed zoning treatment of recovery communities also seeks to achieve largely similar goals.
6. *Jeffrey O. v. City of Boca Raton,* 511 F. Supp. 2d 1339 (SD Florida 2007).
7. Daniel Lauber with Frank S, Bangs, Jr., *Zoning for Family and Group Care Facilities* (American Society of Planning Officials, Planning Advisory Service Report No. 300, 1974). The American Society of Planning Officials is now called the American Planning Association.

covery community has been operating for 90 days. This enables FARR staff to conduct another on–site inspection after the site has been operating to interview additional residents, staff members, senior management, and the Certified Recovery Residence Administrator.[8] Once a recovery residence or recovery community has been granted certification, it is subject to an annual inspection and review of required documentation.

The Florida Association of Recovery Residences requires unrestricted access to interview management, staff, and residents to ensure that policies, procedures, and protocols are actually being followed. The organization conducts unannounced inspections at its discretion, as well as in response to a grievance or local concern.

FARR's provisional certification satisfies the certification requirements of the zoning approach recommended here. If permanent certification is denied, the recovery residence or recovery community could not continue to operate under the zoning approach this report recommends.

Community residences

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 12 individuals can successfully emulate a biological family.

Once the number of occupants exceeds 12, the home *can* start to take on the characteristics of a mini–institution rather than a family or a residential use. The state and local jurisdictions should establish that community residences housing no more than 12 people[9] should be treated as permitted uses as long as spacing and licensing/certification requirements are met.

But the courts have been quite clear that zoning needs to allow more people with disabilities to live in a community residence than ordinarily permitted as of right *when the additional residents are needed to ensure financial and/or therapeutic viability* (and the number of residents can still emulate a family). That legal principle is fully incorporated into the zoning framework that follows which establishes that as many as 12 people can occupy a community residence as a permitted use when the objective standards recommended here are met. But, as the court noted in its final order in *Jeffrey O. v. City of Boca Raton,* 511 F.Supp.2d 1339 (SD Florida, 2007) zoning must provide a way to make a further reasonable accommodation when, for example, more than 12 occupants are needed for financial or therapeutic viability. The recommended "Case–by–Case Backup" provides a regulatory vehicle to make that further necessary

8. *See Florida State Statutes* §396.4871 which describes the requirement that each site must have a certified recovery residence administrator in order to receive the state certification that FARR administers.
9. The maximum number of residents allowed as of right should be an even number to take into account the established need of assuring sober living home residents have a roommate. Similarly, there are similar therapuetic reasons that make it desirable for the occupants of a community residence for people with mental illness to have a roommate.

reasonable accommodation.[10] Standards for issuing case–by–case approval should require the applicant to demonstrate how it can and will emulate a family as well as why it needs more than 12 residents to assure therapeutic and/or economic viability.

Recommended zoning framework for "family community residences"

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. Occupants tend to live in them for at least six months, although there is no limit on how long people can reside there. In terms of stability, tenancy, and functionality, family community residences for people with disabilities have characteristics more akin to the traditional single–family home than do transitional community residences for people with disabilities.

To simplify matters, we'll assume a zoning definition of "family" that allows up to four unrelated individuals to live together. Jurisdictions are, of course, free to set a different figure as sanctioned by the U.S. Supreme Court.[11] To make this reasonable accommodation for more than four people with disabilities who wish to live in a community residence, the recommended reforms to the state statutes and/or local zoning codes would make *family* community residences for five 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:

While community residences typically locate in a single dwelling unit, there are some instances in Florida where all the units of a duplex or triplex with a total of no more than 12 occupants can constitute a community residence. Language will need to be carefully crafted to enable these to be treated as community residences.

10. Like virtually all court decisions involving community residences under the Fair Housing Act, the decisions referenced here are quite fact–specific. In some cases the plaintiff failed to prove that it the needed additional residents to ensure financial and/or therapeutic viability. Despite the different outcomes in these cases, a large majority of courts have found that additional residents should be allowed to ensure financial and/or therapeutic viability.
See *Smith & Lee Associates, Inc. V. City of Taylor, Michigan*, 102 F.3d 781 (6th Cir. 1996) at 795–796 and *United States v. City of Taylor,* 872 F.Supp. 423 (E.D. Mich. 1995). *Also see Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597 (4th Cir. 1997)* (plaintiff failed to show that seven additional residents were needed to achieve financial or therapeutic viability); *Brandt v. Village of Chebanse, 82 F.3d 172, at 173–174 (7th Cir. 1996)* (For "groups of handicapped persons who seek to live together … for mutual support," such as in a sober–living home, "some minimum size may be essential to the success of the venture"); *Harmony Haus Westlake v. Parkstone Property Owners Ass'n,* 440 F.Supp.3d 654 (2020); *Elderhaven, Inc. v. City of Lubbock, Tex.*, 98 F.3d 175 (5th Cir. 1996) (noting a critical mass may be required to make a group home economically feasible — the court also looked at therapeutic viability); *U.S. v. Village of Palatine,* (N.D. Ill, 1993, Case No. 93 C 2154) (District court decision found that the requested larger number of residents was necessary to assure Oxford House's financial viability; the decision was overturned by the Seventh Circuit for procedural reasons in 37 F.3d 1230, 1234 (7th Cir. 1994).
11. *See Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974).

- The specific family community residence or its operator must receive authorization to operate the proposed family community residence by receiving the license that the State of Florida requires, certification available through the Florida Association of Recovery Residences, or an Oxford House Charter, a self–imposed maintenance and set of criteria that are the functional equivalent of certification or licensing;[12] and
- The proposed family community residence is not located within a rationally–based distance of 660 feet or nine lots, whichever is greater, from any existing community residence or recovery community as measured from the nearest lot lines.

When a proposed family community residence does not meet both standards, the operator can apply for a case–by–case evaluation as explained beginning on page 116. *It is critical to remember that the 660 foot or nine lot spacing distance is only for determining whether a proposed community residence constitutes a permitted use.* As explained starting on page 116, a case–by–case evaluation looks at factors other than just the distance between sites to determine if allowing a proposed community residence would generate adverse impacts on the closest existing community residences and/or recovery communities or the neighborhood that would impede the ability of the community residences and/or recovery communities to attain their essential goals.

Recommended zoning framework for "transitional community residences"

Residency in a "transitional community residence" is more transitory than in a "family community residence" because transitional community residences either impose a maximum residency limit of less than six months, or actually house people for just a few weeks or months.[13] Unlike a family community residence, tenancy is measured in weeks or a few months, not years. This key characteristic makes a transitional community residence more akin in nature to multiple–family residential uses that exhibit a higher turnover rate typical of multifamily structures than the lower turnover rate typical of single–family dwellings.[14]

There will be circumstances where it is appropriate for a transitional community residence to be located in a single–family residential district, even when multifamily uses are not allowed in that single–family district. The Fair Housing Act requires ev-

12. There appears to be no legal reason why the State of Florida or any local jurisdiction could not require sober living homes 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 under the Oxford House Charter that are fairly comparable to the standards and procedures of licensing laws in states around the country. Consequently, Oxford Houses, as well as recovery residences certified by the State of Florida, would meet this first criterion.
13. Time limits typically range from 30 days to 90 days, and as long as almost six months, depending on the nature of the specific transitional community residence and the population it serves. With no time limit, many residents of family community residences live in them for many years, even decades.
14. This distinaction is nuanced. It is stressed that this makes transitional community residences more *similar in performance* to multifamily rental housing than to single–family housing.

ery jurisdiction 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 case–by–case review when an operator wishes to locate a transitional community residence in a pure single–family district using narrowly–crafted standards to determine whether this *particular* transitional community residence will fit within the character of the immediate neighborhood.

However, in districts where multifamily uses are allowed as of right, a transitional community residence for five to 12 people with disabilities should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

- The specific transitional community residence or its operator must receive authorization to operate the proposed transitional community residence by receiving the license that the State of Florida requires, the certification available through the Florida Association of Recovery Residences, or a self–imposed set of criteria that are the functional equivalent of certification or licensing (similar to the Oxford House Charter, although Oxford Houses are, by definition, family community residences); and
- The proposed transitional community residence is not located within a rationally–based distance of 660 feet or nine lots, whichever is greater, from an existing community residence or recovery community as measured from the nearest lot lines.

Measuring Spacing Distances

When measuring the spacing distance between a existing community residence (and/or recovery community) and a proposed one, it would be appropriate to craft zoning amendments that also treat each street and each body of water between the two sites as a "lot."

When a proposed transitional community residence does not meet both standards, the operator can apply for a case–by–case evaluation as explained beginning on page 116. And as with family community residences, this spacing distance is used only to determine whether the proposed transitional community residence is entitled to be a permitted use.

Recommended zoning framework for recovery communities

As discussed at length in Chapter 3, recovery communities range in size from one or two dozen occupants in a duplex, or triplex, to dozens in a group of detached or attached single–family homes, to 100 and more in multifamily housing. But since recovery communities possess a number of institutional performance characteristics as explained in Chapter 3, they are not compatible with single–family detached housing and should not be allowed as permitted uses in strict single–family districts where town houses, duplexes, and triplexes are not allowed as of right. In single–family districts where duplexes and/or triplexes are allowed as of right or as a special use (or conditional use, special exception, etc.), smaller recovery communities roughly comparable in size to a community residence *and* residents are expected to live at least six months, should be allowed as permitted uses subject to the two standards below.

In zoning districts where multifamily housing is *allowed on a case–by–case basis*, recovery communities should also be allowed on a case–by–case basis subject to narrowly–crafted criteria as recommended in this study.

Even the larger recovery communities, however, are largely compatible with multifamily housing. Consequently, a recovery community should be a permitted use in multifamily districts and other zoning districts where multifamily housing is *allowed as a permitted use,* subject to two objective, nondiscretionary administrative criteria:

1. The specific recovery community or its operator is at least provisionally certified by the Florida Association of Recovery Residences or licensed if the State of Florida were to adopt licensing for recovery communities, and
2. To be a permitted use, the appropriate distance between a proposed recovery community and the closest community residence or recovery community should vary by the number of occupants in the proposed recovery community and the closest existing community residence or existing recovery community. The spacing distance should gradually increase, for example, to 1,500 feet or 20 lots, whichever is greater, for a recovery community with 100 or more residents.[15]

Table 4 below illustrates this tiered approach to spacing distances. These figures are intended to illustrate the magnitude of the spacing distances and are certainly subject to fine tuning.

Table 5: Illustrative example of magnitude of tiered spacing distances for recovery communities to be a permitted use

Number of residents	Spacing distance is the greater of...	
	Minimum number of feet	Minimum number of lots (Treat each street and body of water as at least one lot)
Up to 16 residents	660	9
17 to 30 residents	900	12
31 to 50 residents	1,100	14
51 to 100 residents	1,300	16
100 and more residents	1,500	20

This table simply illustrates the magnitude of tiered spacing distances for proposed recovery communities to be a permitted use. These figures are subject to fine tuning.

Implementing this tiered approach, however, is a bit more complicated and nuanced than when only community residences are involved.

15. The rationales for a longer spacing distance for recovery communities and this "tiered" approach to spacing distances, are explained beginning on page 50.

A **When both recovery communities are in the same size tier,** use the tiered spacing distance that applies to both of them. For example, if both recovery communities would house no more than 16 occupants — the spacing distance between them to be a permitted use would be at least 660 feet or nine lots, whichever is greater as measured from the nearest lot lines.

B **When one recovery community is larger than the other,** use the tiered spacing distance of the *larger* recovery community. For example, if a recovery community for 16 people is proposed to be located 1,000 feet from an existing recovery community with 50 residents, the 1,100 foot spacing distance for the larger site is applied and the proposed recovery community would not be allowed as a permitted use and would need to go through case–by–case review.

C **When the nearest existing use of this type is a community residence,** apply the tiered spacing distance for the proposed recovery community from the existing community residence. This approach is needed because a proposed recovery community with more than 16 residents will exude a wider scope of influence than those with 16 or fewer residents, For example, to be a permitted use, a proposed recovery community for 75 people needs to be at least 1,300 feet or 16 lots, whichever is greater, from the closest community residence. If the proposed recovery community is within that spacing distance from the existing community residence, then it needs to go through the jurisdiction's chosen form of case–by–case review. There is one rather unique additional situation that requires using the spacing distance *from a proposed recovery community* rather than the spacing distance from the closest existing *community residence*. See page 161 for details on how to implement the spacing distance in this singular circumstance.

Remember, as explained on page 65, that *a spacing distance is not meant to be inflexible*. Just as with community residences, there will be circumstances where a proposed recovery community should be allowed to locate within the applicable spacing distance. Those situations warrant a case–by–case evaluation as explained below.

However, to prevent scam operators and abusive or exploitative treatment of people in recovery, and to assure proper operations, it is *critical that all recovery communities be certified or licensed* by the State of Florida or its designated certifying entity, the Florida Association of Recovery Residences. Consequently, zoning should *not* allow exceptions to the first standard above that requires certification or state licensing. This is a different situation than for community residences where no licensing or certification is even offered for some of them.

"Case–by–case review backup" — Essential for making the required "reasonable accommodation"

The Fair Housing Act's mandate to make a "reasonable accommodation" for community residences for people with disabilities and for recovery communities does not end with those that meet the standards to be allowed as a permitted use. There are four situations, explained earlier in this report, where zoning needs to make a fur-

ther reasonable accommodation when a proposed community residents of recovery community does not quality as a permitted use. These situations warrant case–by–case review.

Case–by–case review options

There are several ways a local jurisdiction can conduct the case–by–case review backup explained here. A city or county could use an existing process to make this further reasonable accommodation, namely a:

- Conditional use
- Special exception
- Special use
- Flexible use, or
- Dedicated reasonable accommodation process

A jurisdiction can choose to continue to use its zoning board or planning board that routinely conducts a public hearing on these case–by–case reviews or it can choose to assign the hearing and decision to a special magistrate like Coral Springs does. Appeals of administrative decisions can be assigned to a special magistrate as Delray Beach does.

Whichever approach a jurisdiction opts for, it can apply only the standards specified for each circumstance where a case–by–case review is required, not the usual standards normally employed for, say, a conditional or special use.

Circumstances when case–by–case review is necessary

Sometimes a housing provider will seek to establish a new community residence or recovery community within the designated spacing distance of an existing community residence or recovery community. For some types of community residences, licensing, certification, or accreditation are not even available in the State of Florida. And sometimes a community residence operator needs to house more than 12 people living in a family–like environment to ensure the community residence's therapeutic and/or financial viability. These situations warrant the heightened scrutiny of case–by–case review to:

- Ensure that the core goals of family emulation, normalization, community integration, and the availability of neighbors without disabilities to act as role models would still be ensured if the request is granted and prevent the creation or intensification of clusters on a block or adjacent blocks and concentrations in neighborhoods that undermine attaining these goals, and
- Protect the occupants of the prospective community residence or recovery community from the same mistreatment, exploitation, neglect, incompetence, and abuses that licensing, certification, and accreditation seek to prevent.

There are four circumstances where case–by–case review is essential for those community residences (and in the first circumstance, recovery communities as well) that do not meet the objective standards to be a permitted use in a zoning district:

1. Proposing to locate within the applicable spacing distance
2. When local, state, or federal licensing, certification, or accreditation is not available
3. When the operator of a community residence seeks to house more than 12 people (including live–in staff, if any)
4. When a transitional community residence is proposed to locate in a single–family district where multifamily housing (including duplexes, triplexes, and town homes) is not a permitted use or allowed at all

The explanations immediately below of how to evaluate applications for each of these four circumstances are necessarily detailed and nuanced. Note that the applicable standards are all narrowly–crafted and based on the reason why case–by–case review is needed in each of the four instances.

How to evaluate each circumstance where case–by–case review is needed

1 Proposing to locate within the applicable spacing distance

To determine whether a proposed community residence or recovery community should be allowed within the applicable spacing distance from the closest existing community residence or recovery community, the local jurisdiction would need to find that allowing the proposed use:

- Will not hinder the normalization for residents and community integration and the use of nondisabled neighbors as role models at the nearest existing community residence or recovery community, and
- Will not cumulatively alter the character of the neighborhood.

Employing a case–by–case review process gives each jurisdiction the ability to examine each request to locate within the spacing distance on an individual basis — which is essential because there will be many instances where locating another community residence or recovery community within the spacing distance of an existing one will *not* generate adverse impacts and should be allowed to comply with the Fair Housing Act.

Standard #1 to locate within a spacing distance

The proposed community residence or recovery community will not interfere with the normalization and community integration of the residents of the closest existing community residence or recovery community and the possible use of nondisabled neighbors as role models, and that the presence of other community residences and recovery communities will not interfere with the normalization and community integration of the residents of the proposed community residence or recovery community, and the possible use of nondisabled neighbors as role models.

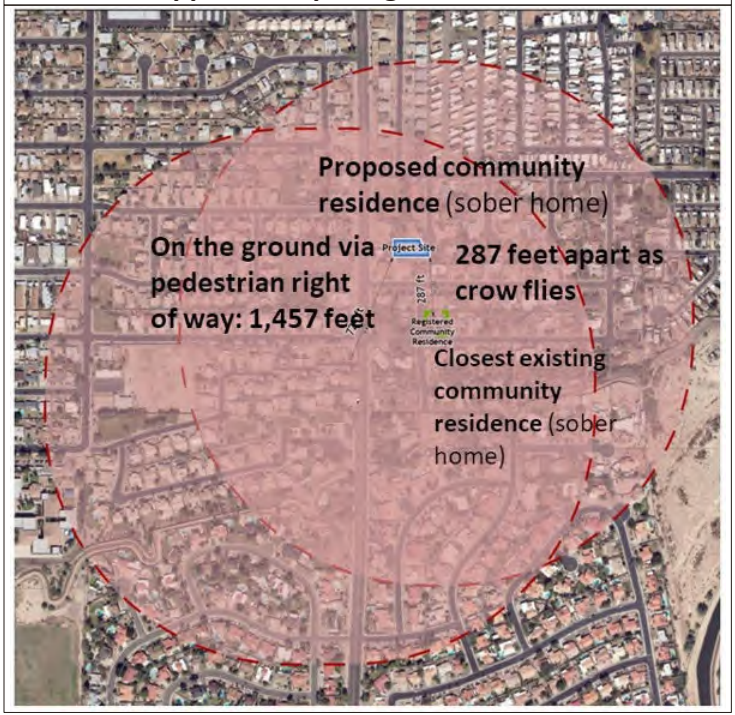
In the case of the first applicable standard, the decision should be substantially informed by measuring the on–the–ground distance between the proposed community

residence or recovery community and the closest existing community residence or recovery community along the "pedestrian right of way."

This distance may be substantial enough to minimize or eliminate the likelihood that residents of either site will even know the other one exists. And if the residents don't know the other site exists, it is extremely unlikely that the occupants of either community residence or recovery community will interact primarily or exclusively with the residences of the other community residence. Consequently, it is extremely unlikely that allowing the proposed community residence or recovery community would impede normalization, community integration, or the use of nondisabled neighbors as role models at either site.

In this real world example to the right, the proposed sober home is just 287 feet from an existing community residence, also a sober home with a different owner, well within the jurisdiction's 660 foot spacing distance to be a permitted use. But that's not the whole story as a closer look makes abundantly clear.

Figure 41: Overhead view of actual proposal to locate within the applicable spacing distance



Source: City of Mesa, Arizona and the Law Office of Daniel Lauber, 2024.

While the proposed sober home is 287 feet as the crow flies from the existing one, the residents of each site, of course, are people, not crows. The proposed sober home (see the blue circle in Figure 42 on page 120) would be located near the south end of this cul–de–sac and, thanks to the fenced in lots south of the proposed site, there is no direct on–the–ground path to the existing sober home.

The actual real world on–the–ground distance along the pedestrian right of way between the two sites is 1,457 feet — follow the blue lines in Figure 42. The sites are not even visible to each other. How likely is it that the residents of the existing home and the residents of the proposed home would even become aware that the other one exists? And if the residents of the two sites aren't aware the other exists….

… then the residents of neither community residence are likely to interact and possibly impede normalization or community integration at the other community residence and are not at all likely to interact among themselves rather than with nondisabled neighbors, enhancing the chance that they will employ the neighbors as role models.

Other factors, like geography, can also have an impact on how likely the residents of two nearby sites would interact. A freeway, major arterial, drainage channel, body of water, or small hill between the proposed and existing community residences will acts as a barrier to interaction of the occupants of the two sites. These geographic features will often make the distance along pedestrian pathways great enough to assure that the proposed community residence will not interfere with normalization and community integration at the existing site, discourage the use of nondisabled neighbors as role models, or alter the community's character.

The juxtaposition of the two homes in this scenario has the same impact as the geographical features just discussed.

And given that the two sober homes are under different ownership, it is very likely that their residents will *not* attend the same meetings or receive treatment at the same treatment center, further reducing the likelihood that they would become aware of the other sober home and interact primarily with its residents.

Obviously not every proposal to locate within the applicable spacing distance will be so clear cut. This example does, however, illustrate how to apply one of the narrowly–crafted standards to allow a proposed community residence or recovery community to locate within the applicable spacing distance using the case–by–case review method a jurisdiction adopts.

Figure 42: Actual on–the–ground distance between proposed and existing sites

Source: City of Mesa, Arizona and the Law Office of Daniel Lauber, 2024.

Standard #2 to locate within a spacing distance

The proposed community residence or recovery community, in combination with any existing community residences and/or recovery communities will not alter the residential character of the surrounding neighborhood by creating or intensifying an institutional atmosphere or *de facto* social service district by clustering community residences and/or recovery communities on a block face or adjacent blocks, or concentrating them in a neighborhood.

When evaluating an application to locate within the applicable spacing distance, a jurisdiction *can* consider the cumulative effect of the proposed community residence or recovery community. That's because altering the character of the neighborhood or creating a *de facto* social service district interferes with normalization and community integration and the use of neighbors without disabilities as role models — core characteristics of a community residence (and some recovery communities).

In other words, a local jurisdiction can consider whether the proposed community residence or recovery community in combination with any existing community residences and recovery communities would 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 and/or recovery communities on a block face or adjacent blocks, or in a neighborhood respectively. It is important, however, to understand that no jurisdiction, including a state, can just declare that allowing a community residence to locate within a spacing distance creates an over concentration nor that a community residence within 500 feet of a single–family zoning district "substantially alters the nature and character of an area" like the State of Florida does in *Florida State Statutes* §419.001.[16] The impropriety of these and other provisions in the Florida State Statutes is addressed in Chapter 6.

As reported earlier beginning on page 67, social scientists note that while neighborhoods have a limited capacity to absorb service–dependent people, namely residents of community residences and recovery communities, into their social structures, they cannot identify an absolute, precise level. 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–dependent ghetto."[17]

According to one 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

16. *Florida State Statutes,* §419.001(3)(c)3. (2024)
17. Jennifer Wolch, "Residential Location of the Service–Dependent Poor," 70 *Annals of the Association of American Geographers,* at 330, 332 (Sept. 1982).

characteristics." There are no universally accepted criteria for determining how many community residences are appropriate for a given area.[18]

Consequently, it would be folly to try to codify a specific number of how many community residences and/or recovery communities in a specific geographic area constitute a concentration or *de facto* social service district. Instead, determining when either of these phenomena exist or would exist requires careful, thoughtful case–by–case analysis as illustrated by the following examples.

The key question with this standard is what would constitute a cluster or concentration of community residences and/or recovery communities? As nebulous as this may seem, the answer is much like Supreme Court Justice Potter Stewart's threshold test for obscenity, " … I know it when I see it …."[19]

Clustering and concentrations illustrated

The two figures on the next two pages showing actual sites of community residences and recovery communities in Prescott, Arizona offer clear visualizations of clustering and concentrations.[20] Figure 43 is a map of the city's downtown neighborhood showing two concentrations encompassed in red, one with 21 sites and the other with 15, both within a fairly compact area.

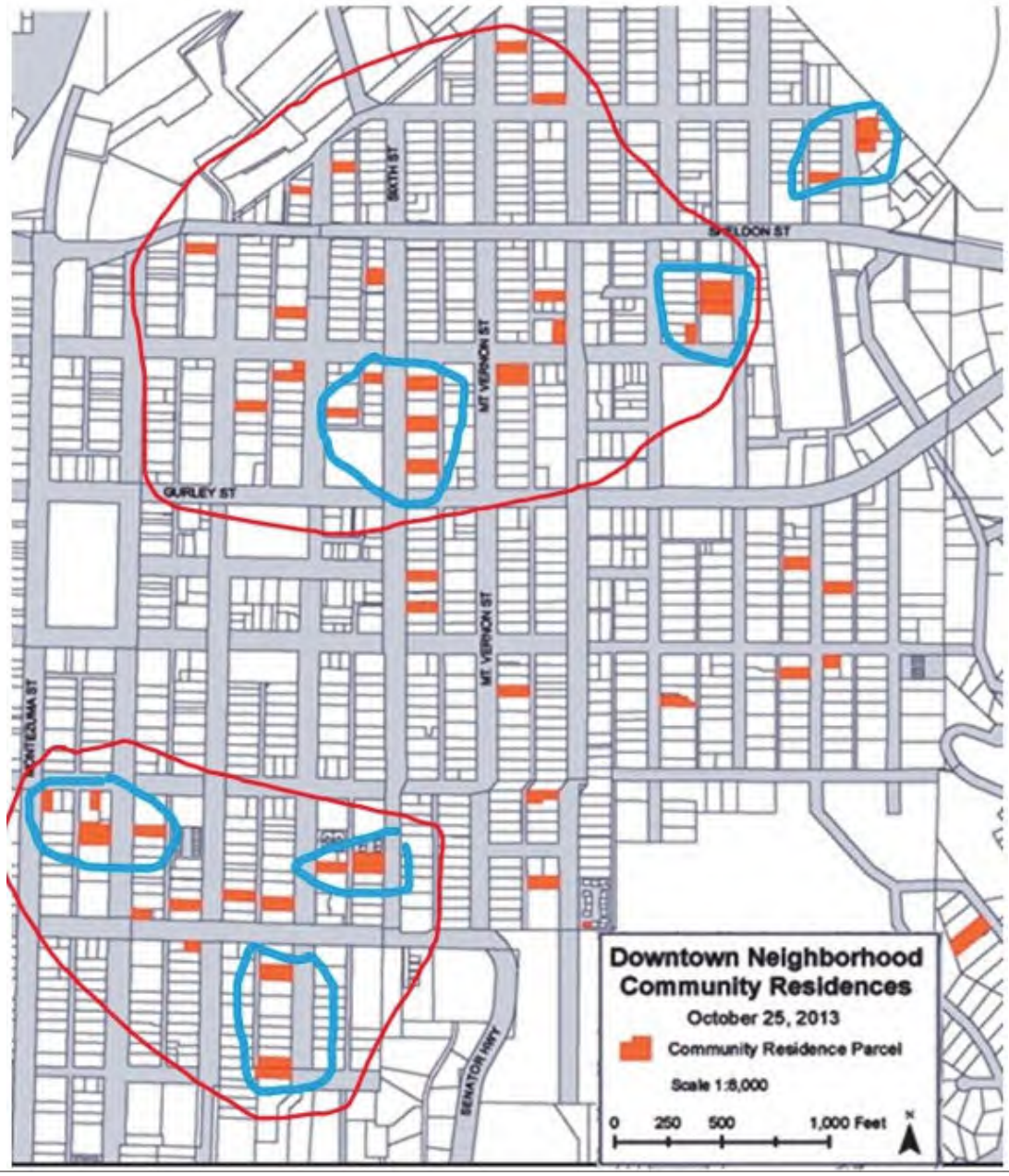
There are three clusters circled in blue, two within that concentration and a third cluster outside it. Within the lower concentration there are three clusters circled in blue. In addition there are two sites located back to back.

These clusters certainly increase the likelihood that the residents of these homes will be quite aware of the other homes and, if the residents have the same disabilities, increase the chances that they will interact primarily and even exclusively with the occupants of the other community residences in the cluster.

These two concentrations had produced a more institutional atmosphere in their neighborhoods and constituted small *de facto* social service districts.

18. 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.
19. *Jacobellis v. Ohio,* 378 U.S. 187, 197 (Stewart, J., Concurring) (1964).
20. More than 156 community residences, at least 110 of which were unlicensed and uncertified sober living homes, were located in Prescott, Arizona, a town of 41,000 before it adopted zoning similar to, but not nearly as fine tuned as the principled approach recommended here. *See* Daniel Lauber, *Prescott, Arizona: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, Feb. 2015).

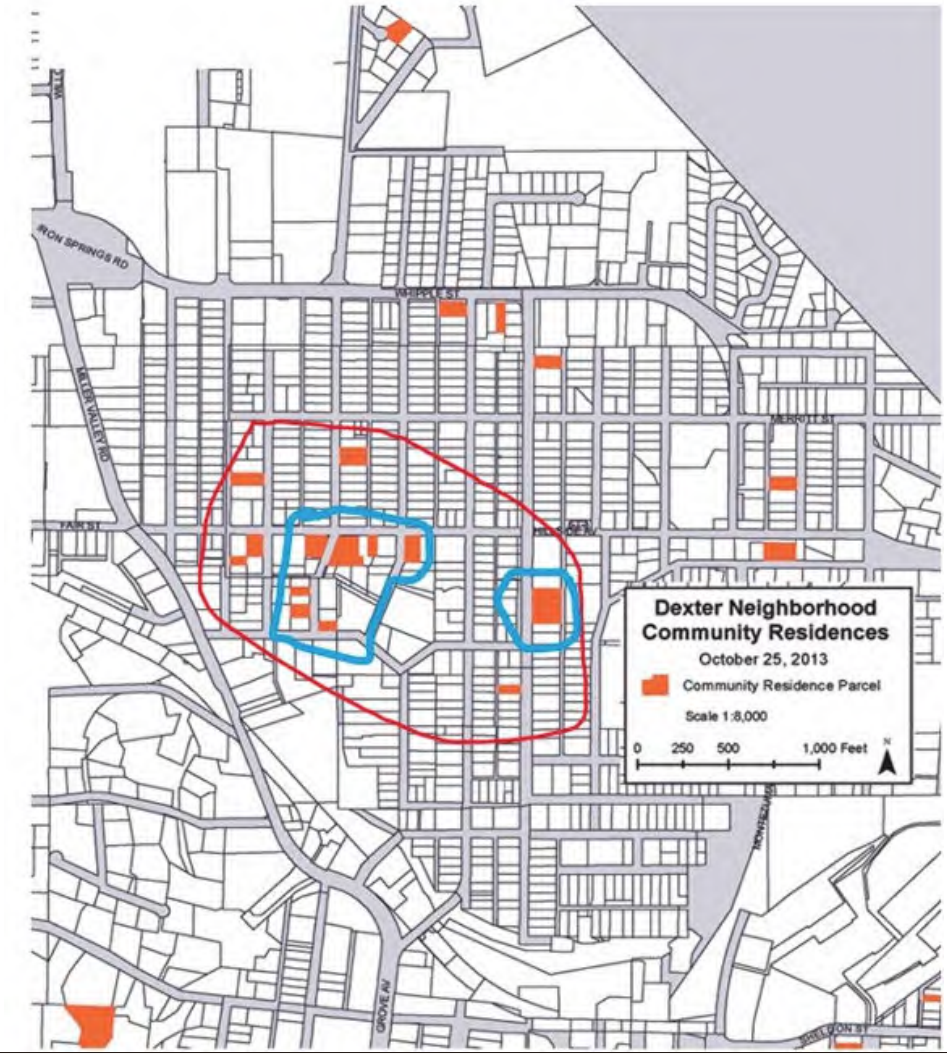
Figure 43: Examples of Clustering and Concentrations in Downtown Prescott, Arizona



An area encompassed in orange constitutes a concentration. An area encompassed in blue constitutes a cluster. Base map source: City of Prescott, Arizona, 2015.

Figure 44 below shows the Dexter neighborhood with a concentration of 19 community residences and two clusters within the concentration. The cluster on the right consists of four adjacent community residences. Nine community residences are clustered together on the left dominating the immediate area to create a small *de facto* social service district.

Figure 44: Examples of Clustering and Concentrations in the Dexter Neighborhood of Prescott, Arizona



An area encompassed in orange constitutes a concentration. An area encompassed in blue constitutes a cluster. Base map source: City of Prescott, Arizona, 2015.

Scenarios warranting case–by–case review for community residences, but for not recovery communities

In addition, applications to locate within the applicable spacing distance warrant-

ing case–by–case examination, three other circumstances warranting case–by–case review apply only to community residences and not recovery communities because:

- Situation 2: Certification of recovery communities is available throughout Florida via the Florida Association of Recovery Residences.
- Situation 3: The cap of 12 people applies only to community residences.
- Situation 4: While transitional community residences can locate in "pure" single–family districts via case–by–case review, recovery communities are not allowed to locate in these strictly single–family districts

2 When local, state, or federal licensing, certification, or accreditation is not applicable nor available

If an operator seeks to establish a community residence for which neither the State of Florida nor the federal government requires or offers a license or certification, or is not under a self–imposed license equivalency like the Oxford House Charter, the applicant would need to show that its proposed community residence will be operated in a manner comparable to typical licensing standards that protect the health, safety, and welfare of its occupants. While this provision is essential for community residences it is not needed for recovery communities because the State of Florida offers certification for recovery communities, currently through the Florida Association of Recovery Residences.[21]

First to state what is hopefully obvious, the housing provider needs to demonstrate on its initial zoning application that the residents will be people with disabilities.[22] If the housing provider cannot show this, the proposed use is not a community residence for people with disabilities.

Evaluating applications to establish a community residence for which no license or certification is available in the State of Florida would require demonstrating compliance with four standards, which together would assure the occupants of the proposed community residence would receive the same sort of protections that licensing and certification provide.

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21. Obviously, if the housing provider fails to obtain licensing or certification that is mandatory in Florida, it cannot operate in the State of Florida and the zoning application should be rejected and the housing provider reported to the proper state agency for possible prosecution if the provider starts operating such a facility without a required state license or certification. Even voluntary certification would be required for a community residence to be allowed under the zoning approach this report recommends. On the other hand, suspension of a license or certification, however, would not invalidate zoning approval since suspension is intended to give the operator time to correct deficiencies and have its certification or license reinstated.
22. This requirement does not warrant providing information about each individual resident. Doing so would likely violate privacy statutes. But it does mandate identifying the type(s) of disabilities of the prospective residents to be served.

Compliance standards when no license or certification is offered in Florida

1 The proposed community residence will be operated in a manner effectively similar to that of a licensed or certified community residence for people with disabilities.

2 Staff who reside and/or work in the community residence will be adequately trained in accordance with standards typically required by licensing or state certification for a community residence.

3 The community residence will emulate a biological family and be operated to achieve normalization and community integration.

4 The rules and practices governing how the community residence operates will actually protect the residents from abuse, exploitation, fraud, theft, neglect, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

Evaluating compliance with each standard

Standards 1 2 4 The applicant can demonstrate compliance with these standards by showing that it has obtained certification from a national, regional, or state organization that would be the functional equivalent of a state license or certification — much like the Oxford House Charter serves. If it does, reviewers should carefully examine the requirements to be issued by this nongovernmental certification to see if this certification would actually help assure compliance with these three standards. There is a chance that the certification would also require the proposed community residence to operate in accord with standard 3 above.

Standard 2 In addition to any requirements to receive nongovernmental certification (or absence of nongovernmental certification), the applicant could submit its job descriptions and hiring manual (if any) to show that staff will be trained in accord with the sort of standards that state licensing or certification typically requires for a community residence. The applicant should also report on how closely its training requirements resemble the training requirements the state imposes for community residences. In order to conduct this review, the local jurisdiction's planning staff needs to learn about the sort of staff training required for state–licensed community residences that house a similar population as those to be housed in the proposed community residence.

Standard 3 The applicant should provide evidence through testimony and/or its rules, operating manual, and/or certification requirements that the proposed community residence will indeed emulate a biological family's structure, mutual dependencies, interrelationships, and seek to achieve normalization and community integration of its residents. The applicant should explain the relational structure of the residents and staff. To demonstrate compliance with this standard, an applicant certainly can introduce evidence of how its similar existing community residences operate. The applicant could have residents and/or former residents from an existing community residence testify to explain how the home emulates a family.

Standard 4 The applicant can provide evidence of compliance through testimony and documentation such as its operating manual, rules, and other documents that govern how it intends to operate the proposed type of community residence.

3 When the operator of a community residence seeks to house more than 12 people (including any live–in staff)

As explained earlier in this study, one can be quite confident that as many as 12 people in a *community residence* can successfully emulate a family. That confidence declines as the number of occupants increases beyond 12. When a housing provider seeks to house more than 12 occupants in a community residence, the housing provider should have the opportunity to seek approval for more than 12 residents. The applicant would have to demonstrate that the proposed community residence will be able to emulate a biological family with the number of occupants sought and that this greater number is needed to assure therapeutic and/or financial viability. This situation can arise for community residences but not for recovery communities.[23]

Compliance with these four standards would warrant approval to allow more than 12 occupants in a proposed community residence.

Standard 1 The proposed number of residents greater than 12 is necessary to ensure the therapeutic and/or financial viability of the proposed community residence.

The applicant can use testimony and documentation to show that it needs to have more than 12 residents to ensure the therapeutic and/or financial viability of the proposed community residence. Court decisions under the Fair Housing Act have established that ensuring therapeutic and/or financial viability warrants allowing more occupants than a zoning statute or code allows as of right. Financial viability does not, however, mean maximized profit.

Therapeutic viability. To show that more than 12 residents are needed for therapeutic viability, the applicant needs to demonstrate that uses similar to the proposed use have not been able to achieve their therapeutic goals with fewer residents than the applicant seeks. With recovery residences, the applicant will need to demonstrate why he needs to exceed 12 residents when so many other recovery residences achieve their goals with as few as six to eight occupants. The applicant should show how her proposed community residence differs from those housing fewer people. Keep in mind, however, that different stages in recovery, for example, may warrant different numbers of residents to succeed.

23. Note that the State of Florida currently licenses some community residences as a "Community Residential Home" which allows as many as 14 occupants. If the state retains this provision, such homes would continue to be exempt from this cap of 12 occupants and could house as many as 14 people with disabilities regardless of what local zoning allows.

Standard 2 The primary function of the proposed community residence is residential where any medical treatment is merely incidental to the residential use of the property.[24]

To meet this standard, the applicant can provide testimony as well as written documentation including any license or certification it has or will obtain, its rules, and/or operating manual.

Standard 3 The proposed community residence will emulate a biological family and operate as a functional family.

The applicant should provide evidence through testimony and/or its rules, operating manual, and/or certification requirements that the proposed community residence will indeed emulate a biological family's structure and functioning, as well as seek to achieve normalization and community integration of its residents. The applicant should explain the relational structure of the residents and staff. When the applicant already operates similar uses, it can certainly introduce evidence of how its other similar community residences successfully emulate a family.

Standard 4 The requested number of residents in the proposed community residence will not interfere with the normalization and community integration of the occupants of closest existing community residence or recovery community.

The local jurisdiction should consider the factors discussed in the scenarios for locating within the spacing distance and the applicant can provide evidence that having more than 12 occupants won't interfere with the normalization and community integration of the occupants of the *closest* existing community residences and/or recovery communities, namely those (if any) within a few blocks of the proposed use. An applicant can make a credible argument that if none of these other uses is within the applicable spacing distance of the proposed use, then the code assumes the proposed use won't interfere with normalization or community integration of the nearby existing use(s), especially if they serve a different population.

4 When a transitional community residence is proposed to locate in a single–family district where multifamily housing (including duplexes, triplexes, and town homes) is not allowed as of right or at all

As noted earlier, there are times when a *transitional community residence* may be appropriate in single–family zoning districts that do not allow multifamily dwellings as a permitted use or at all. Case–by–case review provides the regulatory vehicle to examine these proposals on an individual basis to allow a transitional community residence in a single–family district that excludes even duplexes and triplexes when the applicant shows it is compatible with existing land uses.

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24. "Medical treatment" does not include Medically Assisted Treatment (MAT) which is functionally equivalent to a diabetic taking a daily dose of insulin.

Standard 1 The proposed transitional community residence will not interfere with the normalization and community integration of the residents of any existing nearby community residence or recovery community and that the presence of nearby community residences and recovery communities will not interfere with the normalization and community integration of the residents of the proposed transitional community residence.

Standard 2 The proposed transitional community residence, alone or in combination with any existing community residences and/or recovery communities 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 clustering community residences and recovery communities on a block or concentrating them in a neighborhood.

The local jurisdiction should consider the factors discussed earlier beginning on page 118 for locating within the applicable spacing distance. An applicant can make a very credible argument that if none of these other uses is within the applicable spacing distance of the proposed use, then the zoning code or statute assumes the proposed use won't interfere with normalization or community integration of the nearby existing use(s), especially if they serve a different population.

Reviewers should also look at the entire neighborhood to see how many other community residences and recovery communities are present. It will be necessary to make an educated judgment call as to whether the proposed use will alter the residential character of the neighborhood in the ways listed in the standard. Just three or four of these uses in a neighborhood does not constitute a concentration, create a *de facto* social service district, or alter the character of the neighborhood. Again, see the discussion beginning on page 118.

Standard 3 The proposed transitional community residence will be compatible with the residential uses allowed as of right in the zoning district.

It's quite possible that a proposed transitional community residence can be compatible with the permitted uses in a single–family district as long as the proposed transitional community residence is outside the applicable spacing distance and is licensed or certified — *but it will depend on the specific fact situation.* A transitional community residence where residents typically live for months rather than weeks certainly *can* be compatible. The applicant should present testimony (expert and/or experiential) and written evidence regarding compatibility with the uses allowed as of right. An applicant certainly can bring in neighbors of an existing transitional community residence similar to the one proposed to provide testimony on compatibility.

It bears mentioning that when a housing provider seeks to locate a transitional community residence in exclusively single–family zoning districts, the proposed home still must comply with the other zoning requirements including spacing, licensing/certification, and the 12–resident cap. The housing provider should also seek case–by–case review if it needs relief from any of these other requirements and the hearings should be consolidated into one.

It is vital to stress that court decisions and proper zoning policy and practice are clear that a decision under case–by–case review must be based on a record of factual evidence and not on neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities — and on the reasons the case–by–case review is required. Locating near a school, for example, is not a valid reason to deny approval of a community residence for people with disabilities or of a recovery community. As explained earlier in this report, restrictive covenants cannot exclude a community residence for people with disabilities — and such restrictions are irrelevant when evaluating an application for approval via case–by–case review or any other aspect of zoning.

Maximum number of occupants

In addition to zoning, there is a second layer of regulation that governs the maximum number of occupants in a community residence and in each dwelling unit that comprises a recovery community. While we can feel confident that as many as 12 individuals occupying a community residence can emulate a family (one of the core characteristics of a community residence), a local health and safety code — a property maintenance, housing, or building code — can further limit the number of occupants based on consistent, measurable, objective criteria.

Under the Fair Housing Act, it is clearly improper to apply building, housing, or property maintenance code standards for institutions, lodging houses, boarding houses, rooming houses, hotels, or fraternities and sororities to community residences for people with disabilities. These particular codes must treat these community residences the same as other residential uses in the same type of structure.

Under fair housing case law, it is clear that housing, building or property maintenance code provisions *that determine the maximum number of occupants,* are required to treat community residences established in single–family structures the same as all other single–family residences. Those located in a duplex, triplex, quadraplex, or other multifamily structure are to be treated the same as all other residences in that type of structure.

The maximum number of occupants is typically regulated to prevent overcrowding for health and safety reasons in a jurisdiction's minimum housing code, property maintenance code, or building code.

Cities and counties throughout Florida tend to adopt a version of *2021 International Property Maintenance Code*[25] which establishes minimum floor areas in bedroom and "living rooms" (defined as rooms in which people live) to prevent overcrowding:

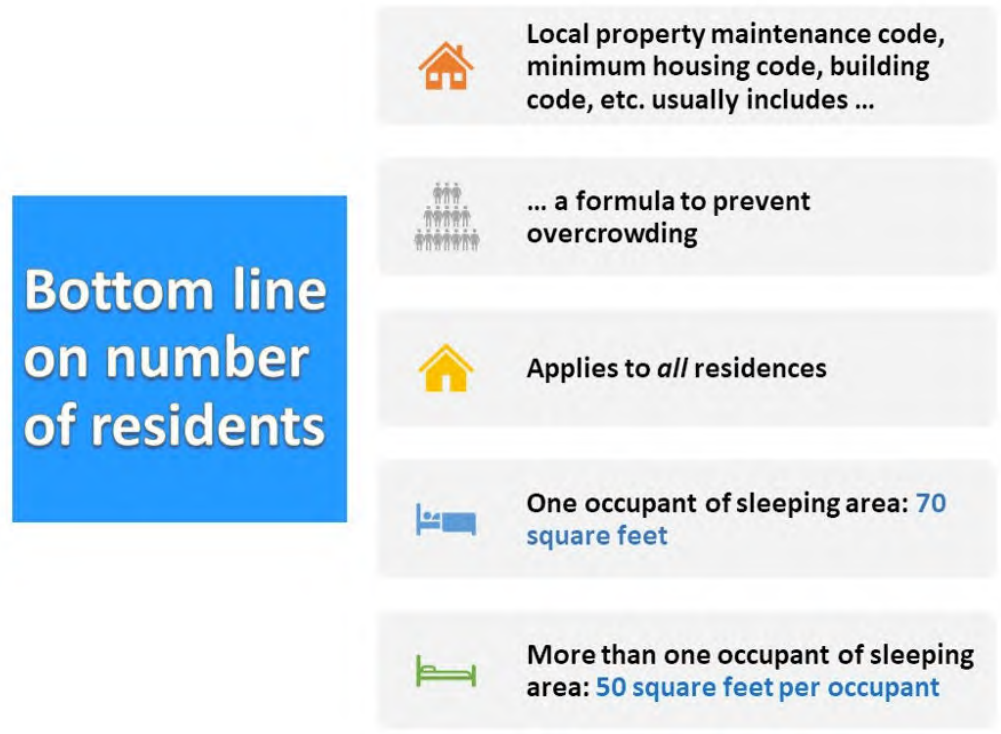
> **404.4.1 Room area.** Every living room shall contain not less than 120 square feet (11.2 m^2) and every bedroom shall contain not less than

25. International Code Council, *2021 International Property Maintenance Code* (Country Club Hills, IL: 2020). There are multiple versions of this code, but they all contain the language in §404.4.1 shown here.

> 70 square feet (6.5 m^2) and every bedroom occupied by more than one person shall contain not less than 50 square feet (4.6 m^2) of floor area for each occupant thereof.[26]

These minimum floor area requirements to prevent overcrowding apply to *all* dwelling units in jurisdiction, including community residences for people with disabilities and each dwelling unit in a recovery community.

Figure 45: The bottom line on the number of occupants in all dwellings



A bedroom in which just one person sleeps needs to be at least seven feet by ten feet or other dimensions that add up to 70 square feet. A bedroom in which two people sleep must be at least 100 square feet in size, or ten by ten, for instance. The size of a bedroom for three individuals would have to be at least 150 square feet, or ten by 15, for example.[27] Keep in mind that these are *minimum* criteria to prevent overcrowding based on health and safety standards for all residential dwellings. 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* dwelling units including community residences for people with disabilities and recovery communities. The Court ruled

26. Ibid, Sec. 404.4.1.
27. Obviously these dimensions are merely examples. A 150 square foot room could also be 12 feet by 12.5 feet as well as other dimensions that add up to 150 square feet.

that the Fair Housing Act does *not* require a jurisdiction to grant a reasonable accommodation from this type of code provision.[28]

Very often a state's licensing rules and regulations for community residences set a maximum number of individuals that can live in a licensed community residence. In Florida, sites licensed as a "community residential home"[29] currently may house as many as 14 people. *But no matter how many people state licensing allows, the number of residents cannot exceed the maximum number permissible under the provision suggested above — which applies to* all *residences.* For example, if a particular house has enough bedroom space to be occupied by up to three people under the property maintenance code's formula, then no more than three people can live there legally whether the residence is occupied by a biological family or the functional family of a community residence — no matter how many residents a state's licensing allows.

Nonetheless, a jurisdiction can still establish a cap on the number of individuals who can live in a community residence based on a determination of how many unrelated people can successfully emulate a biological family. Given that emulation of a biological family is a core component of community residences for people with disabilities, it is reasonable for a jurisdiction's land–use code to establish the maximum number of individuals in a community residence it is confident can actually emulate a biological family such as 12.[30] There's not as much confidence that larger aggregations can successfully emulate a family — which is why this report recommends allowing proposals for more than 12 residents through a case–by–case review.

Consequently this report recommends capping community residences at 12 occupants and allowing case–by–case consideration of proposals to house more than 12 individuals (including live–in staff) in a community residence. The applicant would have the burden of showing that the community residence needs more than 12 residents to achieve therapeutic and/or economic viability, and to convincingly demonstrate that the group will emulate a biological family. The proposed community residence would still be subject to the spacing and licensing/certification requirements applicable to all community residences housing more than four people with disabilities.

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28. *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 *Boston University Law Review,* 1, 41–45 (1976)." At 733. *[Emphasis added]*
29. *Florida Statutes, §419.001* (2024).
30. There are circumstances where a community residence might be located in a duplex or triplex rather than a detached single–family house.

Other zoning regulations for community residences

All the other zoning district regulations apply to a community residence (and recovery community) including height, lot size, yards, building coverage, habitable floor area, and signage. There is no need for a local land–use code to repeat these requirements in its sections dealing with community residences for people with disabilities or for recovery communities.

Off–Street Parking. Localities can establish off–street parking requirements for community residences for people with disabilities. Depending on the nature of the disabilities of residents, some community residences generate parking needs that exceed what a biological family would likely generate and others will need fewer spaces. However, there has to be a factual, rational basis to impose more demanding off–street parking requirements on community residences for people with disabilities that exceed the cap of four unrelated individuals recommenced here for the zoning definition of "family."

It is important that those community residences that fall *within* the definition of "family" be subject to the same off–street parking requirements for the type of structure in which they are located (single–family detached, single–family attached, duplex, triplex, multifamily, etc.).

But for those community residences that exceed four residents, it's necessary to craft off–street parking requirements that recognize the different types of community residences because they generate very different off–street parking demand. Generally, the occupants of community residences do not drive. People with developmental disabilities and the frail elderly do not drive and will not maintain a motor vehicle on the premises. They will get around the city with a vehicle and driver that the housing provider furnishes, usually a van or minivan. A very small percentage, if any, of people with mental illness might have a driver's license and keep a vehicle on the premises — nearly all will be transported by van or avail themselves of public transportation.

But unlike the other categories of disabilities, people in recovery often drive and keep a motor vehicle, motorcycle, or scooter on the premises. 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 clean and sober manner. So one of the most common requirements to live in a legitimate recovery residence or recovery community is that each resident agrees to spend the day at work, looking for a job, or attending classes. They cannot just sit around the home during the day.

However, in addition to providing off–street parking for residents who maintain a motor vehicle at the premises, it is rational to require off–street parking for staff members, whether they be live–in staff or staff that works on shifts. Cities and counties need to carefully craft off–street parking requirements for community residences for people with disabilities and for recovery communities that vary with the actual needs of people with *different* disabilities.

Visitor parking can be accommodated the same as it is for all residential uses.

Chapter 7

Flaws in the current Florida state statute and in local zoning

Key Takeaways

- **Florida State Statute §419.001 establishes maximum restrictions on zoning for *some* community residences for *some* people with *some* disabilities.**
- **Nearly all of §419.001 was adopted *before* the case law on these uses matured and *before* much was known about them — consequently §419.001 warrants extensive updating to remove outdated legally unjustified provisions that expose the State of Florida and localities to substantial legal liability and to encompass the full array of housing arrangements for people with disabilities.**
- **Given the matured case law and the growth in understanding of the nature and impacts (or lack thereof) of community residences and recovery communities, there is no justifiable or legal basis for the current excessive 1,200 foot spacing distance between community residential homes in §419.001(2).**
- **§419.001 fails to allow "community residential homes" to locate within the designated spacing distance from an existing "community residential home."**
- **Contrary to long– and well–established case law, §419.001 applies its spacing requirements to community residences for people with disabilities that fall within a local zoning code's cap on the number of unrelated individuals that constitutes a "family" or "household."**
- **Nor does the case law allow the spacing requirements of §419.001 to be applied to community residences in local jurisdictions where their zoning allows any number of unrelated people to constitute a "family" or "household" or when its zoning does not define these terms.**
- **Given the matured case law and the growth in understanding about community residences, there is no legal nor factual basis for §419.001(3)(c)(3) to assert that locating a community residential home**

within 500 feet of a single–family zone creates a concentration and "substantially alters the nature and character of an area."

- **Based on greater understanding of community residences developed over the decades, there is no rational nor legal basis for §419.001 to treat community residences for people with disabilities with up to six occupants and those with seven to 14 residents differently.**
- **§419.001 applies to a subset of community residences for people with disabilities** (that exceed the cap on unrelateds in the definition of "family" in local zoning codes)**.**
- **The state statutes do not address zoning for recovery communities or Oxford Houses.**
- **Most local zoning codes in Florida include flawed zoning provisions.**

All but 11 states have adopted some form of statewide zoning for some community residences for people with disabilities. *Like Florida's §419.001, the bulk of these were adopted well before the case law on zoning for community residences and for recovery communities matured.* So it's no surprise that, like so many other states, the Florida statutes contain provisions that do not pass muster under President Ronald Reagan's Fair Housing Amendments Act of 1988.

The previous chapters reviewed in detail the need for proper zoning treatment of community residences for people with disabilities and for recovery communities. Chapter 4 explained the legal basis for the zoning approach proferred in Chapter 6 to comply with the Fair Housing Act. This chapter identifies, in light of the information conveyed in chapters 3 through 6, the deficiencies in §419.001 that need to be mitigated so the State of Florida can comply with President Reagan's Fair Housing Amendments Act of 1988 and to protect the State of Florida and its local jurisdictions from potentially costly litigation.

Your author and Frank S. Bangs, Jr. first introduced the application of rationally–based spacing distances between community residences (and later recovery communities as well) to be permitted uses exactly 50 years ago. The purpose of a rational spacing distance has always been to provide a way to allow these uses in compatible residential areas as a permitted use in a way that prevents negative impacts on their occupants and concentrations that alter the residential nature of the surrounding neighborhood.[1]

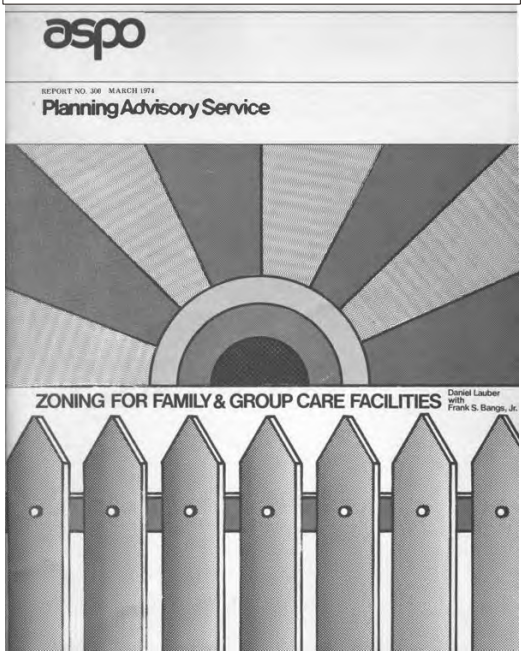
The approach proferred in this 1974 report was a first fledgling attempt to bring rationality and sound zoning and planning principles to zoning for these uses.

In retrospect, the 1974 PAS Report put forth processes to prevent clustering on a block and concentrations in a neighborhood that were fairly crude, much like initial

1. Daniel Lauber with Frank S. Bangs, Jr., *Zoning for Family and Group Care Facilities* (American Society of Planning Officials, Planning Advisory Service Report No. 300, 1974). The American Society of Planning Officials is now the American Planning Association.

BETA versions of computer software. But like the evolution of computer software, these processes have evolved substantially into those recommended in this current study 50 years later.

Figure 46: 1974 Report That Introduced Spacing Distances for Group Homes To Be a Permitted Use



The 1974 approach can accurately be dubbed "Zoning for Community Residences BETA Version 0.5." The approach this report recommends constitutes "Zoning for Community Residences *and Recovery Communities* Release Version 20."

So when states and local jurisdictions started adopting spacing distances, they frequently misinterpreted their purpose, how they are supposed to work, and the distance needed to achieve their goals. Many adopted spacing distances far greater than the length of the average American block, 660 feet. Throughout the nation, few state statutes on this subject are based on thorough analysis, research, and current case law. Few are principled. Only a handful cover all members of the protected class of people with disabilities, with nearly all applying only to people with intellectual disabilities and/or folks with mental illness. Nearly all were the result of good intentions on the part of state legislators combined with very effective special interest lobbying rather than thorough research, review of the case law (which again, was in its infancy at the time most states, including Florida, first adopted spacing distances), and applying a comprehensive fact–based approach that took into account all that is known about these land uses. Far too many are still based in large part on "Zoning for Group Homes BETA Version 0.5."

This chapter comprehensively examines the State of Florida's current statewide zoning that covers some community residences for people with some disabilities and identifies provisions that need to be revised to comply with the nation's Fair Housing Act. Common flaws in city and county zoning treatment of community residences for people with disabilities and for recovery residences are also identified.

State statutes are not safe harbor for cities and counties

Many cities and counties have a false sense of security believing that adopting zoning provisions identical to their state's statewide zoning for community residences will protect them from legal jeopardy. Nothing could be further from the truth.

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* violate 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 provisions in the Nevada statute on community residences for people with disabilities violated the Fair Housing Act.[2]

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 *all* group homes, including those that fit within its zoning code's definition of "family" which limits to three the number of unrelated people that constitutes a "family." Beaumont settled the case for $475,000 in damages while agreeing to discontinue imposing its unsupportable half–mile spacing distance as well as its excessive building code requirements.[3]

Current Florida state zoning for community residences and recovery communities

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 Elder 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.[4] *Some of these homes house people with disabilities while others do not.*[5] This re-

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2. *Nevada Fair Housing Center v. Clark County* and *Clark County v. Nevada Fair Housing Center,* 565 F.Supp.2d 1178 (2008). The State of Nevada repealed its statewide zoning following lawsuits where both the federal district court and the court of appeals found that the state's zoning provisions were facially discriminatory. Your author was a consultant to Clark County during its subsequent settlement negotiations and is quite familiar with the case and the unusual facts involved. In 2005, Clark County amended its zoning provisions to make them more receptive to community residences including sober living homes in accord with the Fair Housing Act (your author was also the county's consultant on these amendments). Two years later, displeased with this more receptive zoning in Clark County, the state legislature adopted some draconian amendments to the state statutes that pre–empted Clark County's zoning reforms. Among the new state provisions was a requirement establishing a 1,500 to 2,500 foot spacing distance for all community residences, even those that complied with a local jurisdiction's definition of "family." It was these new state statutes that were found to be facially discriminatory in 2008.
3. *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).
4. *The zoning standards appear in Title XXX, Social Welfare, Chapter 419, "Community Residential Homes," §419.001, "Site selection of community residential homes," Florida Statutes,* §419.001 (2023).
5. The nature of the residents of these homes are defined in *Florida Statutes*. Among those with disabilities are "frail elder"as defined in §429.65, "person with disability" as defined in §760.22, 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

view focuses on community residences occupied by people with disabilities who do not pose a threat or danger, the class protected by the nation's Fair Housing Act.

Before examining the impact of the state's statute on zoning for community residences, it is important to note that the Florida statute gives localities some leeway to craft less restrictive local zoning provisions despite the pre–emptive nature of the state statute:

> 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*.[6]

Consequently, any local jurisdiction is free to adopt its own zoning regulations for community residences for people with disabilities that are "more liberal" — namely less restrictive — than the state's.[7]

The analysis that follows closely examines the current state statute, §419.001, and applies current case law and the expanded knowledge of these group housing arrangements for people with disabilities to identify provisions in §419.001 that warrant revision to abide by the nation's Fair Housing Act.

Flaws in Florida's current statewide zoning provisions

Section 419.001 of the Florida State Statutes governs zoning for some types of community residences for some types of disabilities. These provisions set the maximum restrictions a local jurisdiction can impose on these select uses. If a city or county does not adopt its own zoning provisions for these uses, §419.001 offers the only zoning for them.

In Florida, the state statute defines "community residential home" as a dwelling unit licensed by one of five state agencies that "provides a living environment for seven 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."[8] This language gives the impression that "community residential homes" house seven to 14 residents.

That's not exactly the case. Later the statute speaks of "[h]omes of six or fewer res-

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of this writing, the State of Florida does not require licensing of community residences that serve people in recovery, although it offers credentialing which is required in order for a recovery residence or recovery community to receive referrals from treatment centers or refers people to a treatment center.

6. *Florida State Statutes,* §419.001(10) (2024). *Emphasis added.*
7. 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."
8. *Florida State Statutes,* §419.001(1)(a) (2024).

idents which otherwise meet the definition of a community residential home shall be deemed a single–family unit and a noncommercial, residential use for the purpose of local laws and ordinances."[9]

Without any stated rational basis, the statute treats homes for up to six residents differently than those for seven to 14 residents. This division into two categories based on the number of residents appears to rest on the 1974 Planning Advisory Service Report where we divided group homes into two categories based on size. Over the decades it became obvious there was no rational basis for that division. We had chosen it based on the dividing point for building codes at the time. Instead, as explained in some depth in earlier chapters, differentiation into the two types of community residences should be based on their performance characteristics, just like all zoning classifications are supposed to be based.

Unjustifiably lengthy spacing distances

Under §419.001, 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."[10] Here the phrase "another existing community residential home" *appears* to mean a home for seven to 14 residents.

As explained in chapters 3 through 6, these spacing distances are greater than needed to actually achieve legitimate government interests.

The smaller homes are not required to comply with the statute's notification provisions if, before they receive their state license, the "sponsoring agency" supplies to the local jurisdiction 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." This is required in order to show that the proposed homes would not be located within the state's 1,000 foot spacing distance from an existing community residential home for six or fewer residents or the state's 1,200 foot spacing distance of an existing community residential home for seven to 14 individuals. When the

Limited Scope of §419.001

It is vital to remember that the limitations on local zoning that §419.001 sets on the location of "community residential homes" apply only to the community residences licensed as "community residential homes" by five state agencies. Local jurisdictions are perfectly free to establish different rationally–based, Fair Housing Act compliant zoning regulations for community residences and recovery communities these five state agencies do not license as well as less restrictive zoning on those the state does license. As explained earlier, most sober living homes and recovery communities currently are subject to voluntary certification administered for the state by the Florida Association of Recovery Residences (FARR).

9. *Florida Stste Statutes,* §419.001(2) (2024).
10. Ibid.

home is actually occupied, the sponsoring agency is required to notify the local government that the requisite license has been issued.[11]

This statute does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.[12] In addition, the statute states that nothing in it "shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate."[13]

Conflicting provisions

When any jurisdiction flips basic concepts on their heads and requires a more intensive review of "community residential homes" in multiple family zoning districts than in single–family districts, it departs from the rationality of sound planning and zoning practice.[14] Unlike in single–family districts, Florida's 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.[15]

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

11. 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) (2024).
12. *Florida State Statutes,* §419.001(2) (2024).
13. *Florida State Statutes,* §419.001(9) (2024).
14. Florida's statute §419.001 is the first time in 50 years of monitoring zoning regulations for community residences that the author has seen a jurisdiction apply more heightened scrutiny for locating community residences in multifamily zones than in single –family zones. Normally and rationally, any greater scrutiny is applied in single–family zones. The basis for this provision is unknown.
15. *Florida State Statutes,* §419.001(3)(a) (2024).

establish the home at the proposed site.[16]

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 state's spacing distances are met.*[17]

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

- When the proposed home does not conform to "existing zoning regulations applicable to other multifamily uses in the area"[18]
- When the proposed home does not meet the licensing agency's applicable licensing criteria, "including requirements that the home be located to assure the safe care and supervision of all clients in the home"[19]
- When allowing the proposed home would result in 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, 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.***"[20]

While the first criterion is reasonable, it is also redundant because all residential uses are routinely required to conform to zoning regulations. It is unclear why community residences for people with disabilities were singled out.

The second standard is unnecessary because a proposed home that doesn't meet the licensing agency's criteria 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."

16. *Florida State Statutes,* $419.001(3)(b) (2024).
17. *Florida State Statutes,* §419.001(2) (2024).
18. *Florida State Statutes,* $419.001(3)(c)1. (2024).
19. *Florida State Statutes, $419.001(3)(c)2. (2024).*
20. *Florida State Statutes,* §419.001(3)(c)3. (2024). *Emphasis added.*

Unsubstantiated, unsustainable standards

The third set of criteria lacks any basis in fact or case law. The statute declares that locating a new community residence within the 1,200 spacing distance constitutes "an overconcentration" of community residences "that substantially alters the nature and character of the area."[21]

In 50 years of working with zoning for community residences for people with disabilities, the author of this study has never come upon any factual basis for that conclusion and this kind of *complete ban* on allowing community residences within a spacing distance. The rationale behind this study's recommendation to require a case–by–case review for a community residence that would be located within the spacing distance is to enable an individual examination of the facts to determine whether the proposed home would, indeed, interfere with the ability of any existing community residence (or recovery community) to achieve its core functions of normalization and community integration of its residents, and using neighbors as role models. We are unaware of any factual information to suggest that the *mere presence* of another community residence within 1,200 feet of an existing community residence could *ever* create an overconcentration or that it could *ever* substantially alter the nature and character of any neighborhood.[22] As noted earlier Chapter 4, there are many circumstances where locating within 660 feet generates no adverse impacts and certainly does not, by itself, create a concentration or alter the nature and character of the area. See the discussion in Chapter 4 as well as the examination of illustrative clustering and concentrations in Prescott, Arizona beginning on page 122.

It is unknown what the factual or analytical basis is for §419.001 to declare that a community residence located within 1,200 feet of another community residence constitutes an "overconcentration" of community residences "that substantially alters the nature and character of the area."

It's the same situation with the declaration that locating a community residential home within 500 feet of single–family zoning "substantially alters the nature and character of the area."

Today, we know so much more about the impacts of community residences than when these provisions were drafted. Nothing in the case law suggests that these current provisions could survive a court test.

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"

21. Ibid.
22. For a thorough discussion of these points, *see* American Planning Association, *Policy Guide on Community Residences* (Chicago: American Planning Association, Sept. 22, 1997) 8. For an even more detailed analysis, *see* 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. Both are available at http://www.grouphomes.law.

simply lacks any factual foundation.[23] It is important to remember that the Fair Housing Act requires that zoning regulations not be based on myths or misconceptions about people with disabilities and the effects of their residency as noted on page 60.

Failure to allow exceptions to the spacing distances

In addition, *the state statute simply does not allow for the necessary and proper review of an application to establish a community residence within the spacing distance required to be allowed as of right*. As explained in Chapter 4, it is critical that zoning provides for the case–by–case review of proposals for such homes to evaluate on the facts presented whether allowing the proposed community residence (or recovery community) would actually result in an overconcentration or actually alter the character of the surrounding neighborhood. The Florida statute effectively prohibits any jurisdiction operating solely under §419.001 the ability to conduct the proper review that the nation's Fair Housing Act mandates to allow these uses to locate with the spacing distance required to be a permitted use.

These state statutory provisions regarding overconcentrations and alteration of the nature and character of an area have no known basis in fact. They impede 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. At a minimum, the state needs to replace these provisions in §419.001 with those recommended in this report in order to comply with the nation's Fair Housing Act.

However, as explained beginning on page 138, the state statute allows local jurisdictions to adopt zoning provisions that are less restrictive than the state's — which authorizes cities and counties to avoid exposing themselves to legal liability by adopting their own more receptive zoning regulations. As Beaumont, Texas learned so painfully and expensively, complying with an illegal state statute does *not* protect a local government from legal liability and paying rather substantial legal damages.

Failure to address certified recovery residences, Oxford House, recovery communities, and all types of disabilities

The state statutes do *not* establish any zoning standards for most recovery residences or for recovery communities. As discussed earlier, the state statutes do establish voluntary certification for recovery residences and recovery communities administered by the Florida Association of Recovery Residences. The credentialing standards and processes are even more demanding than existing licensing laws in many states. But §419.001 addresses only those community residences licensed as a "community residential home."

The state statutes also do not provide for the unstructured, self–governed recovery residences called "Oxford House." This is perfectly understandable. Even though the first Oxford Houses opened in 1975, they did not arrive in any number in Florida until 2019, long after nearly all of §419.001 was written.

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23. *Florida State Statutes,* §419.001(3)(c)3. (2024).

Congress has recognized Oxford House which has its own internal monitoring system in place to maintain compliance with the Oxford House Charter.[24] The standards and procedures that both Oxford House and the State of Florida's current certification of recovery residences employ are functionally comparable to licensing requirements and procedures for sober living homes in other states. The zoning approach suggested here recommends that the Oxford House Charter and certification of recovery residences and recovery communities by the Florida Association of Recovery Residences be treated as the functional equivalent of state licensing and that certification or licensing be mandatory with the Oxford House Charter being treated the same as certification or licensing for zoning purposes.

It's very understandable that the Florida state statutes do not address zoning for recovery communities since the recovery community concept did not exist at the time §419.001 was written. Certification of some recovery residences in Florida also did not exist at the time. Oxford Houses did exist, but none were present in the State of Florida at the time. The state statutes need to be refined to include coverage of all recovery residences including those current called "recovery residences," including Oxford Houses, and recovery communities in accord with this report's recommendations.

And as noted earlier, §419.001 does not cover *all* community residences for *all* types of disabilities. Its application needs to be extended to all community residences for all types of disabilities and it needs to be flexible enough to encompass further refinements to the legal definition of "disabilities." It cannot be limited just to uses licensed as "community residential homes."

Failure to require licensing or certification for all community residences and recovery communities

As discussed earlier, Florida requires licensing for only a subset of community residences and not at all for recovery communities. As discussed at length in Chapter 4 beginning on page 72, licensing or certification for all community residences and recovery communities is critical. The state statutes make this requirement, while treating the Oxford House Charter as the equivalent of a license. The statutes should also provide a process to allow community residences for people with disabilities for which no license or certification is available in Florida through a case–by–case review in order to make the requisite reasonable accommodation — as recommended in Chapter 6.

Flaws in local zoning treatment of community residences and recovery communities

Many Florida cities and counties simply replicate the state's zoning treatment of community residences and recovery communities in their own land–use codes. Other of these local zoning codes introduce additional flaws to regulating community resi-

24. Oxford House does not allow its sober living homes to open in a state until Oxford House has established its monitoring processes to assure that Oxford Houses will operate in accord with the standards set forth in the Oxford House Charter.

dences and recovery communities. These all–too–common defects in local city and county zoning include, but are not limited to:

- Failing to treat a community residence exactly the same as any other family when the number of occupants fits within the cap on the number of unrelated people that can constitute a family in the zoning code's definition of "family"
- Failing to treat a community residence exactly the same as any other family when the zoning code's definition of "family" allows any number of unrelated people in a single housekeeping unit to constitute a family
- Failing to treat a community residence exactly the same as any other family when the zoning code does not define "family"
- Failing to make the necessary reasonable accommodation to even allow community residences that exceed the cap on unrelated individuals that constitute a family in the jurisdiction's zoning code definition of "family"
- Failing to provide a case–by–case review process to make a reasonable accommodation to allow these uses to locate within the applicable spacing distance required to be a permitted use
- Failing to provide a case–by–case review process to make a reasonable accommodation to allow a community residence for which no license or certification is available
- Failing to provide a case–by–case review process to make a reasonable accommodation to allow more occupants to live in a community residence than is allowed as a permitted use
- When deciding case–by–case review, failing to employ narrowly–tailored standards based on the reasons why individual review is required and instead apply the same standards for deciding, for example, all conditional uses
- Completely excluding transitional community residences from pure single–family districts
- Always requiring case–by–case review for community residences and recovery communities to locate in residential zoning districts
- Imposing an unjustifiably excessive spacing distance between community residences and/or recovery communities
- Misinterpreting the function of spacing distances and declining to approve applications to locate within an applicable spacing distance even when standards for approval are met
- Categorizing zoning treatment of community residences by the number of residents rather than as family and transitional community residences
- Completely excluding recovery communities from districts where multifamily housing is allowed
- Failing to provide for recovery communities in duplexes, triplexes, and multifamily zoning districts
- Failing to narrowly tailor off–street parking requirements to the parking needs of the actual number of motor vehicles the community residence or recovery community generates

Chapters 4 and 6, as well as the earlier portions of this chapter, explain why these zoning practices run afoul of the case law under the Fair Housing Amendments Act of

1988. The State of Florida could eliminate all these defects in local zoning codes if it were to adopt the comprehensive refinement to the state statutes put forth in Chapter 8.

Key flaws in local fire safety, building, and property maintenance codes

In addition, many Florida jurisdictions apply inappropriate property maintenance, building, and fire safety code provisions to community residences and recovery communities. For example, if the residents of a community residence or a recovery community are capable of self–evacuation in an emergency like a fire, there is no legitimate basis to require a fire suppression system unless the jurisdiction's code requires one for *all* residential structures of the same type (detached single–family structure, town house, duplex, multifamily building, etc).[25]

Since 2021, Florida has effectively prohibited localities from treating certified recovery residences (and possibly recovery communities as well) as anything but the single–family or duplex structure in which they are located.[26] The model definitions of these uses that begin on page 54 in Chapter 3 provide that the jurisdiction's building, property maintenance, and fire safety codes treat community residences and recovery communities as the type of structure in which they are located.

To comply with the case law on this subject, the State of Florida ought to expand the state statute's requirement to cover all community residences for people with dis-

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25. The majority opinion in the case law has long required localities to apply residential building, property maintenance, and fire safety codes to community residences for people with disabilities and prohibited requiring fire suppression systems for community residences for people with disabilities where the occupants are capable of self–evacuation. *See Oxford House v. Browning,* 266 F. Supp. 3d. 896 (M.D. La, 2017); *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).*Alliance for the Mentally Ill v. City of Naperville*, 923 F.Supp. 1057 (N.D. Ill. 1996); *Potomac Group Home v. Montgomery County,* 823 F.Supp. 1285 (D. Md. 1993); Bangerter v. Orem City, 46 F.3d 1491 (10th Cir. 1995); *Marbrunak v. City of Stow,* 974 F.2d 43 (6th Cir. 1992); *Tsombanidis v. West Haven Fire Department,* 352 F.3d 565 (2d Cir. 2003), aff'g in part and reversing in part, 180 F.Supp.2d 262 (D.Conn. 2001) and 208 F.Supp.2d 263 (D. Conn. 2002).

    A 1993 opinion by the Maryland Attorney General succinctly sums up the majority view even 31 years later: "If, despite their disabilities, the residents of the group home are as capable of reacting to a fire emergency as residents in a single family dwelling would be, special safety code provisions may not be applied. … [I]t is our opinion that the federal Fair Housing Amendments Act prohibits enforcement of fire safety code requirements in a small private group home for the mentally ill if the requirements are neither imposed on single–familiy dwellings nor tailored to the unique and specific needs and abilities of the home's residents." "Housing — Applicability of Fair Housing Amendment Act to Fire Safety Code Requirements," 78 Maryland Attorney General Opinion 40 (June 25, 1993) at 40, 47.

26. In 2021, the legislature enacted SB 804 that requires single–family and two–family structures converted into a recovery residence continue to be treated as a single–family or two–familiy home under the *Florida Building Code* and *Florida Fire Prevention Code*. As a result, a fire suppression system cannot be required in these recovery residences unless it is required in *all* single–family and two–family homes. *Florida State Statutes* §553.80(9) and §633.208(11) respectively.

abilities and recovery communities with the proviso that the occupants are capable of self–evacuation.

Distinguishing community residences and recovery communities from vacation rentals

In some circles there appears to be confusion over the critical differences between vacation rentals and community residences for people with disabilities. There are people who mistakenly assert that they should be treated as favorably as short–term vacation rentals.

It is vital for state decision makers to understand that community residences for people with disabilities, including the recovery residences licensed as "recovery residences" in Florida, are diametrically different land uses than vacation rentals subject to different zoning and licensing or certification treatments.

The Florida legislature has 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 that were in place on June 1, 2011 were allowed to stand.[27]

This state law has 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 akin to a mini–hotel 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 owner–occupant of the property.

The language in the state statutes does not suggest any similarities between vacation rentals and community residences for people with disabilities. The Florida state statutes define "vacation rental" as:

> any unit or group of units in a condominium or cooperative or any individually or collectively owned single–family, two–family, three–family, or four–family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[28]

The state statutes define "transient public lodging establishment" as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[29]

27. *Florida Statutes,* §509.032(7)(b) (2023).
28. *Florida Statutes,* §509.242(1)(c) (2023).
29. *lFlorida State Statutes,* §509.013(4)(a)1. (2023).

Community residences for people with disabilities constitute a very different land use than a "transient public lodging establishment." No community residence for people with disabilities is "held out *to the public* as a place regularly rented to guests" *[emphasis added]*. Each community residence houses people with a certain type of disability — *not* members of the general public. In fact, by definition, occupants of a community residence are not "guests" in any sense of the word. They are residents, not transient vacationers.

In contrast to a "vacation rental" which, by state law, is a "transient public lodging establishment," a community residence is by definition a single housekeeping unit that seeks to emulate a biological family to achieve normalization and community integration of its occupants with disabilities. 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 — very different than a vacation rental.

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 absolutely absent from vacation rentals. The occupants of a community residence rely on their neighbors without disabilities to serve as role models to help foster habilitation or rehabilitation — a concept completely foreign to a transient public lodging establishment. 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, relationship and nature of occupants, and regulatory framework, there is nothing comparable between community residences for people with disabilities including recovery residences and transient public lodging establishments including vacation rentals.

Recovery communities. Recovery communities, examined at length in Chapter 3 beginning on page 44 are also quite different than vacation rentals. Like a community residence, a recovery community houses only people with a disability, in this case people in recovery from substance use disorder. The residents in each dwelling unit are expected to provide support to one another as well as to everybody in the recovery community which range in size from roughly a 16 to more than 100 people in recovery. Even though recovery communities are structurally different than community residences, both have the same core aims noted immediately above — goals not related to a vacation rental. From the perspective of type of use, functionality, purpose, operations, relationship and nature of occupants, and regulatory framework, a recovery community is a very different land use than a transient public lodging establishment like a vacation rental.

Chapter 8

Recommendations for state statute and local zoning ordinances

Key Takeaways

- **Largely written *before* applicable case law matured and much was known about the nature of the housing it regulates, the state statute §419.001 that establishes maximum restrictions on zoning for *some* community residences for *some* people with *some* disabilities understandably warrants substantial revisions to bring it into compliance with President Reagan's Fair Housing Amendments Act of 1988.**
- **Given when many of the provisions in §419.001 were written it is understandable that §419.001 contains a number of problematic provisions that lack factual or legal justification, exposing the State of Florida and localities to substantial legal liability.**
- **At a bare minimum, the legislature should update §419.001 by repealing those provisions in §419.001 that this report identifies as running afoul of the nation's Fair Housing Act and, replacing them with provisions that comply with the act.**
- **The legislature should seriously consider replacing §419.001 in its entirety with the comprehensive up–to–date balanced zoning approach Chapter 6 of this report recommends to bring state law into full compliance with the Fair Housing Amendments Act of 1988.**
- **Retain the provision in state law that allows local jurisdictions to adopt "more liberal" zoning for community residences for people with disabilities and recovery communities.**
- **Both state and local zoning need to comply with well–settled case law that a community residence for people with disabilities that fits within the local zoning code's cap on the number of unrelated individuals that constitutes a "family" or "household" constitutes a "family" or "household" and shall be treated exactly the same as all families or households.**
- **Also adopt this same treatment for local jurisdictions that allow any number of unrelated individuals to constitute a "family" or "household" and to those jurisdictions that do not define either of these terms.**

- **Statewide and local zoning for community residences need to treat community residences the same for *all* types of disabilities.**
- **All existing licensed or certified community residences and recovery communities will be grand fathered in under any of the refinements to local and state zoning this report recommends.**

First, this chapter gathers together in one place the recommendations of this report to make the reasonable accommodations the Fair Housing Act requires for community residences for people with disabilities and for recovery communities — using the least drastic means needed to actually achieve the legitimate government interests identified in this report.

After describing how state and/or local zoning for these two uses should be structured and implemented, the chapter presents legislative options that range from specifying current state statutory provisions that urgently need to be removed and replaced, to the needed comprehensive reform of the state statutes and local zoning ordinances to encompass all community residences and recovery communities in compliance with the Fair Housing Act.

Recommended zoning approach to comply with the Fair Housing Act

Whether accomplished by state statute or local zoning ordinance, zoning for community residences for people with disabilities and recovery communities needs to be structured to comply with the reasonable accommodation requirements of President Reagan's Fair Housing Amendments Act of 1988 which added people with disabilities as a protected class.

Figure 47: Key Legal Principles to Guide Zoning for Community Residences and Recovery Communities

The zoning approach this report recommends seeks to provide the reasonable accommodations that the case law under the Fair Housing Act requires by proffering the least restrictive means needed to actually achieve the legitimate government interests. These legitimate government interests include, but are not limited to:

- Protecting people with disabilities living in community residences and recovery communities from unscrupulous, unqualified, and incompetent operators by requiring licensing, certification, or the functional equivalent
- Assuring that health and safety needs of the occupants with disabilities are met by requiring licensing, certification, or the functional equivalent
- Facilitating the essential core characteristics of community residences of emulating a family, normalization, community integration, and the use of neighbors without disabilities as role models by preventing clustering and concentrations of community residences and/or recovery communities from developing or intensifying
- Preventing the creation of *de facto* social service districts which undermine the ability of community residences and recovery communities to achieve their core goals.

Zoning approach time tested in the laboratory of local government

This zoning approach and its functional definitions presented in Chapter 3 have been successfully tested for decades in the laboratory of local government. The legality of the only two ordinances that have been challenged was upheld.[1]

While hundreds of cities and counties across the nation have adopted some variation of this approach and its predecessors, the following are among those that have adopted the full current approach this study recommends:

- Coral Springs, FL
- Davie, FL
- Delray Beach, FL
- Fort Lauderdale, FL
- Oakland Park, FL
- Palm Beach County, FL
- Panama City, FL
- Pompano Beach, FL
- Cave Creek, AZ
- Maricopa County, AZ
- Mesa, AZ
- Prescott, AZ
- Boulder City, NV
- Clark County, NV
- Mesquite, NV
- Dublin, OH
- Herrin, IL
- Sandwich, IL
- Countless jurisdictions have adopted at least some elements of this approach

1. Fort Lauderdale's variation of the zoning approach proffered here was upheld by the federal Court of Appeals in *Sailboat Bend Sober Living v. City of Fort Lauderdale, Florida,* 46 F.4th 1268 (11th Cir. 2022). The zoning itself is discussed at length in the district court decision in *Sailboat Bend Sober Living v. City of Fort Lauderdale, Florida,* 479 F.Supp. 3rd (2020). On December 15, 2022, the Ohio Civil Rights Commission issued "Letters of Determination Upon Reconsideration" ruling that the City of Dulbin "has not engaged in unlawful discriminatory practice." The determinations dismissed two challenges to the version of this approach that Dublin, Ohio had adopted eight years earlier. The complaints were entitled *Miami Valley Fair Housing Center, Inc. v. City of Dublin, Ohio City Council, et al.* TOLH1(49012)10052021 AMENDED and *Ottercreek Group LLC v. City of Dublin, Ohio City Council, et al.* TOLH1 (49013) 10052021 AMENDED.

Protecting the occupants of community residences for people with disabilities and of recovery communities also protects the neighborhoods in which the homes are located. Adopting this study's recommendations at the state and local levels will help assure that adverse impacts will not be generated. As with all land–use regulations, local city and county staff would enforce compliance with the jurisdiction's zoning provisions, be they local or statewide.

The zoning approach presented here, based on the findings of this report, constitutes the maximum regulation compliant with the Fair Housing Act. The State of Florida should continue to allow any local jurisdiction to adopt zoning for these uses that allows lesser regulation as long as licensing and certification requirements are maintained.

This zoning approach is suitable for adoption by the State of Florida and by individual cities and counties.

Fundamental challenge: Overcoming the mismatch between recovery housing resources and need

A fundamental challenge the state's efforts to curb the substance use epidemic is the mismatch between where the solutions — recovery residences and recovery communities — are located and where drug and alcohol addiction is doing the most damage. As shown in Chapter 2, for example, the counties with the highest death rates due to drug poisoning are the ones with the fewest recovery residences and recovery communities. Your author has observed that local zoning practices that do not comply with the Fair Housing Act pose a barrier to these uses locating where they are most needed.

The challenge is to determine how best to overcome these exclusionary zoning codes. One option is to incorporate into the state statutes the zoning recommended in this report. Another is to devise some incentives to facilitate adoption of the zoning approach recommended in this report by cities and counties.

Zoning for community residences

Pivotal role of the local zoning code's definition of "family"

As explained at length beginning on page 107, the local jurisdiction's zoning code definition of "family" is the pivotal threshold question when it comes to zoning for community residences for people with disabilities. A city or county with a zoning code that does not define "family" (or "household") at all or allows any number of unrelated individuals to dwell together as a single housekeeping unit, simply cannot use zoning to regulate community residences for people with disabilities or to regulate recovery communities. In these two circumstances, imposing any zoning requirements on these two uses not applicable to *every* family constitutes facial discrimination in violation of the nation's Fair Housing Act.

Similarly, when the local zoning code definition of "family" places a cap on the number of unrelated people that can constitute a "family" — for example, four — any community residence for folks with disabilities as well as recovery residences where each dwelling unit houses no more than four unrelated individuals with disabilities must be treated exactly the same as any other family. It would constitute discrimina-

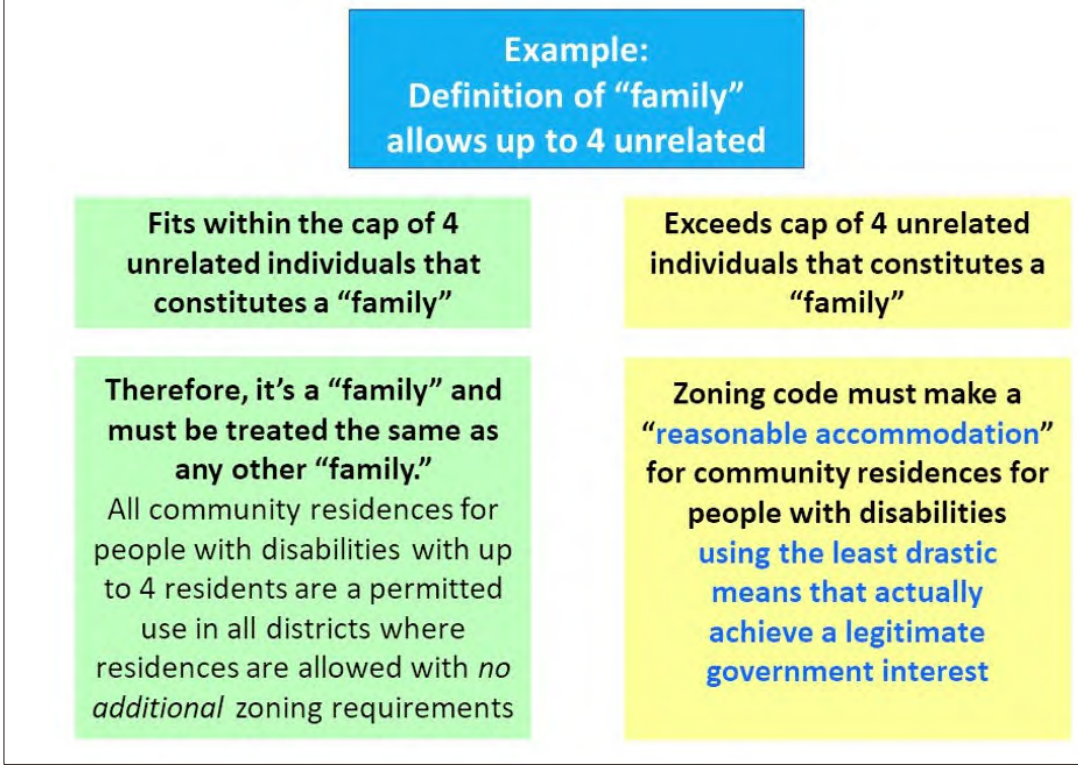
tion on its face in violation of the nation's Fair Housing Act if a jurisdiction were to impose any additional zoning requirements on these two uses with up to four occupants in this example that are not applicable to *every* family.

But when a zoning ordinance limits a family, in this example, to four unrelated individuals, no group of five or more unrelated individuals can dwell together in a dwelling unit as of right.[2] *That's when the "reasonable accommodation" requirement of President Reagan's Fair Housing Amendments Act of 1988 kicks in* to level the playing field for people with disabilities who need a group living environment to live in the community.

As explained in depth in Chapter 4, the legal obligation to make a reasonable accommodation requires the state and local jurisdictions to allow residences dedicated to housing people with disabilities in residential zoning districts when they exceed the cap in the jurisdiction's zoning code definition of "family" (or "household" when used instead of "family").

This reasonable accommodation certainly can include zoning requirements that actually achieve the legitimate government interests noted beginning on page 151.

Figure 48: Threshold Question: Effect of Zoning Code Definition of "Family" on Zoning Treatment of Community Residences



2. For the sake of siimplicity, this chapter will continue to use a cap of four unrelated individuals in the applicable zoning code's definition of "family."

Cities and counties run afoul of the Fair Housing Act when they subject a community residence that fits within its "family" definition's cap on unrelateds to any zoning requirements not applicable to *all* families — such as a spacing distance or licensing requirement.

Legislative recommendations

Any state statute on zoning for community residences and all local zoning provisions for them should clearly state that a community residence that fits within the local zoning code's cap on the number of unrelated individuals that comprises a "family" constitutes a family and is subject only to zoning requirements applicable to all families.

State and local zoning regulations for community residences should make it clear that a community residence that constitutes a family cannot be used to calculate a spacing distance between community residences and/or recovery communities.

Zoning treatment of family and transitional community residences

One of the serious flaws in the current state statute, §419.001, is that it covers only a fraction of the community residences for people with disabilities, excluding most recovery residences and all recovery communities from its coverage.

It is critical that the state statute and local zoning codes define "community residences" to cover the full array of disabilities and the full continuum of community residences as well as defining "recovery communities."

At the state level, this would require adding definitions for "community residence," "family community residence," "transitional community residence," and "recovery community" to the state statutes. It would *not* require altering existing licensing provisions of the different uses that fit within each of these four functional definitions. Examples of definitions of these terms begin on page 54.

And as explained in Chapter 3, there is no legal justification to divide community residences into different categories based on the number of occupants. Since all zoning is performance based, any categorization of community residences should be based on their performance characteristics as detailed in Chapter 3. Nor should the definitions be solely in terms of specific state licenses.

Like the rest of this zoning approach, these functional definitions have been well tested in Florida cities and elsewhere throughout the nation.

Legislative recommendation

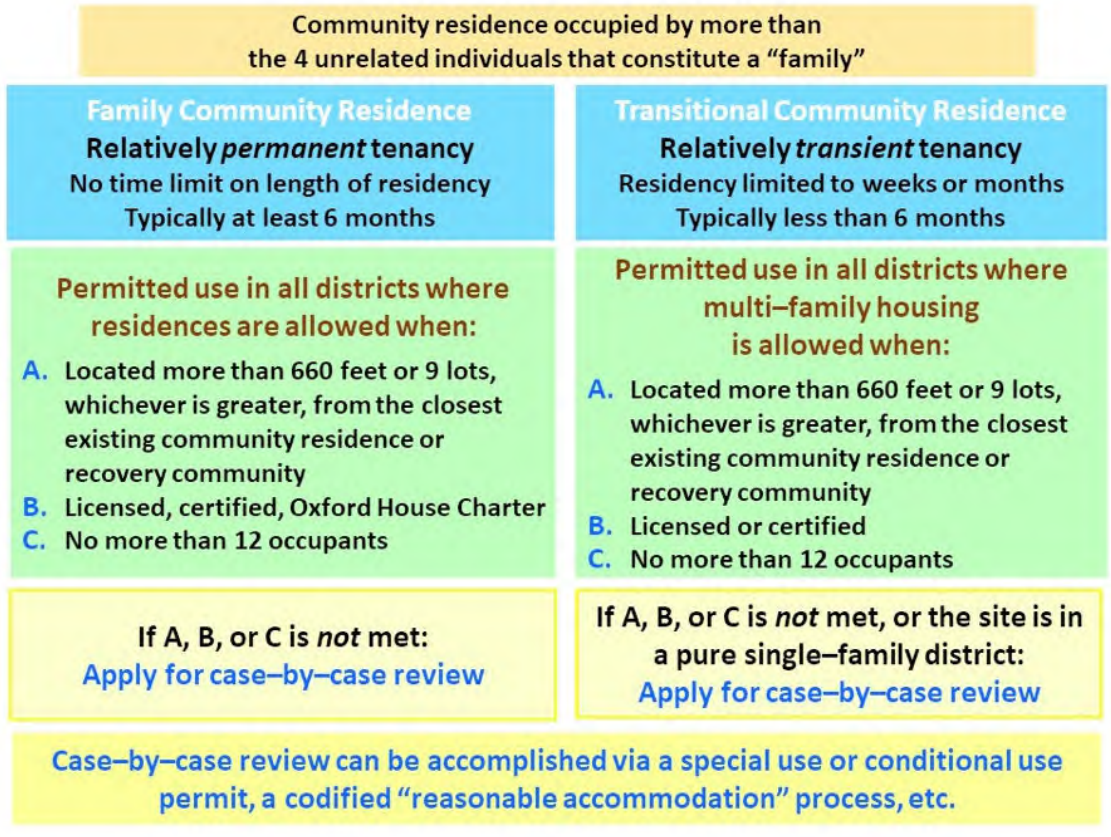
The state statute and local zoning should adopt the functional definitions of community residence, family community residence, transitional community residence , and recovery community that appear beginning on page 54.

When a permitted use

When the number of unrelated occupants in a proposed community residence *exceeds* the cap of, for example, four unrelated individuals in the definition of "family," the Fair Housing Act requires, at a minimum, that family community residences for five to 12 people with disabilities should be allowed as of right as a permitted use in all residential districts when narrowly–tailored objective, rationally–based licensing/certification and spacing standards are met. Transitional community residences housing five to 12 individuals should be allowed as a permitted use in all districts where multifamily housing is allowed subject to these same two criteria and should be allowed in purely single–family districts via a case–by–case review process providing a further reasonable accommodation based on narrowly–drawn standards that are as objective as possible to ensure compatibility with the single–family neighborhood.

The flow chart below summarizes the zoning structure recommended in Chapter 6 that should guide the reform of the State of Florida's zoning for community residences as well as local zoning ordinance reform to bring the State of Florida and local jurisdictions into compliance with the Fair Housing Act.

Figure 49: Zoning Treatment of Family and Transitional Community Residences



While this study concludes that a cap of four unrelated individuals to constitute a "family" is the sweet spot, this number is simply an example here. As noted in Chapter 4, local jurisdictions are free to adopt a higher or lower cap.

Legislative recommendation

The state statutes and local zoning codes should be updated and reconstituted by adopting the zoning approach for community residences summarized in the figure above and detailed in Chapter 6. It should be clearly stated that specific narrowly–crafted standards for case–by–case review should be employed rather than the usual general standards used when evaluating an application, for example, to issue a conditional use permit or similar permit.

When standards to be a permitted use are not met: Case–by–case review

When a proposed community residence for more than four people (in our example) does not satisfy the three criteria above to be allowed as a permitted use, the heightened scrutiny of a case–by–case review process is warranted to:

- Ensure that the core goals of emulating a family, normalization, community integration, and the availability of neighbors without disabilities to act as role models would still be ensured if the request is granted and prevent the creation or intensification of clusters on a block or adjacent blocks and concentrations in neighborhoods that undermine attaining these goals, and
- Protect the occupants of the prospective community residence or recovery community from the mistreatment, exploitation, neglect, incompetence, and abuses that licensing, certification, and accreditation seek to provide.

There are four circumstances where case–by–case review is essential for those community residences (and in the first instance, recovery communities as well) that do not meet the objective standards to be a permitted use in a zoning district:

1. Proposing to locate within the applicable spacing distance
2. When local, state, or federal licensing, certification, or accreditation is not available
3. When the operator of a community residence seeks to house more than 12 people (including live–in staff, if any), and
4. When a transitional community residence is proposed to locate in a single–family district where multifamily housing (including duplexes, triplexes, and town homes) is not a permitted use or allowed at all.

State legislation and local zoning ordinances need to establish narrowly–crafted standards for evaluating each situation. The standards should address the reasons why the review is required.

1 Locating within the applicable spacing distance

To determine whether a proposed community residence or recovery community should be allowed within the applicable spacing distance from the closest existing community residence or recovery community, the standards should require that allowing the proposed use:

- Will not hinder the normalization for residents and community integration and the use of nondisabled neighbors as role models at the nearest existing community residence or recovery community, and
- Will not cumulatively alter the character of the neighborhood.

This review requires careful consideration of a number of factors as examined in detail beginning on page 118. It is vital to remember as strongly stated in Chapter 6, that the spacing distance is not intended to be inflexible. It is simply the distance where we can be confident that locating another community residence or recovery community is not going to impede normalization, community integration, or the use of nondisabled neighbors are role models at the closest existing community residence, recovery community, or congregate living facility. This is where a city or county should employ the "pedestrian right of way" method discussed in Chapter 4 to measure the distance between the proposed community residence and the closest existing community residence or recovery community as a major factor in determining whether the proposed community residence would be likely to interfere with these nearby sites.

Legislative recommendation

State legislation and local ordinances should make it clear that the spacing distance is not intended to be inflexible and that exceptions to it should be granted when the narrowly–drawn standards are met.

Not retroactive

Should the legislature or any local jurisdiction adopt the zoning approach this report recommends, *all existing community residences and recovery communities would be grand fathered in* no matter where they are located as long as they obtain the appropriate state license, certification, or an Oxford House Charter — exactly the same way the cities and counties that have adopted this zoning approach have treated them.

If adopted statewide, the state should grant housing providers at least one year to obtain their available license or certification.

When adopted by a city or county, at least nine months should be allowed to comply.

These time frames should prevent overwhelming the licensing and certification entities with applications.

2 No license or certification available.

If an operator seeks to establish a community residence for which neither the State of Florida nor the federal government requires or offers a license or certification, or is not under a self–imposed license equivalency like the Oxford House Charter, the applicant would need to show that its proposed community residence will be operated in a manner comparable to typical licensing standards that protect the health, safety, and welfare of its occupants. The burden rests on the housing provider to show that the proposed home would meet the narrowly–crafted standards, based

on this report, to receive zoning approval. Under the zoning framework this study advances, *a community residence not issued a required license, certification, accreditation, or Oxford House Charter would not be allowed at all.*[3] But when no certification, licensing, accreditation, or Oxford House Charter is even available, the operator of a proposed community residence would need to seek an individual review.

Legislative recommendations

State legislation and local ordinances should provide for those instances where licensing or certification is not available using the narrowly–crafted standards specified beginning on page 125.

State legislation and local ordinances should expressly treat the Oxford House Charter as the functional equivalent of certification by the state's certifying entity.

3 More than 12 residents

A community residence proposed to house more than 12 individuals should be required to obtain case–by–case zoning approval. As explained in Chapter 3, there is little doubt that as many as 12 people in a *community residence* can successfully emulate a family — one of the core characteristics of community residences. That confidence declines as the number of occupants increases beyond 12.

When a housing provider seeks to house more than 12 people (including live–in staff) in a community residence, the housing provider should have the opportunity to seek approval for more than 12 residents. The applicant would have to demonstrate that the proposed community residence will be able to emulate a biological family with the number of occupants sought, that this greater number is needed to assure therapeutic and/or financial viability, the primary function is residential where any medical treatment is merely incidental to the residential use of the property and this larger aggregation will not interfere with normalization and community integration at the closest existing community residence or recovery community.

Legislative recommendation

State legislation and local ordinances should allow for more than 12 occupants of a community residence when the narrowly–drawn standards beginning on page 127 are met.

3. Some licensing agencies require local zoning approval *before* issuing a license. To avoid a Catch–22 situation of which only Franz Kafka would be proud, the city can grant zoning approval conditioned on the applicant receiving its license within a specific reasonable time period. To avoid this situation, the Florida Association of Recovery Residences very prudently initially issues provisional certification and then annual certifcation following inspections conducted about three months after a recovery residence or recovery community has been operating. The zoning amendments will revoke zoning approval if the annual certification is denied or not renewed.

4 Transitional community residence seeks to locate in single–family district

There are circumstances when a *transitional community residence* may be appropriate in single–family zoning districts that do not allow multifamily dwellings. Case–by–case review provides the regulatory vehicle to examine these proposals on an individual basis to allow a transitional community residence in a single–family district that excludes even duplexes and triplexes when the applicant shows it is compatible with existing land uses.

In addition to the standards to assure the proposed transitional community residence will not negatively affect existing community residences and will not create or intensify a cluster or concentration, the applicant needs to show that the proposed transitional community residence will be compatible with the permitted uses in the zoning district.

Legislative recommendation

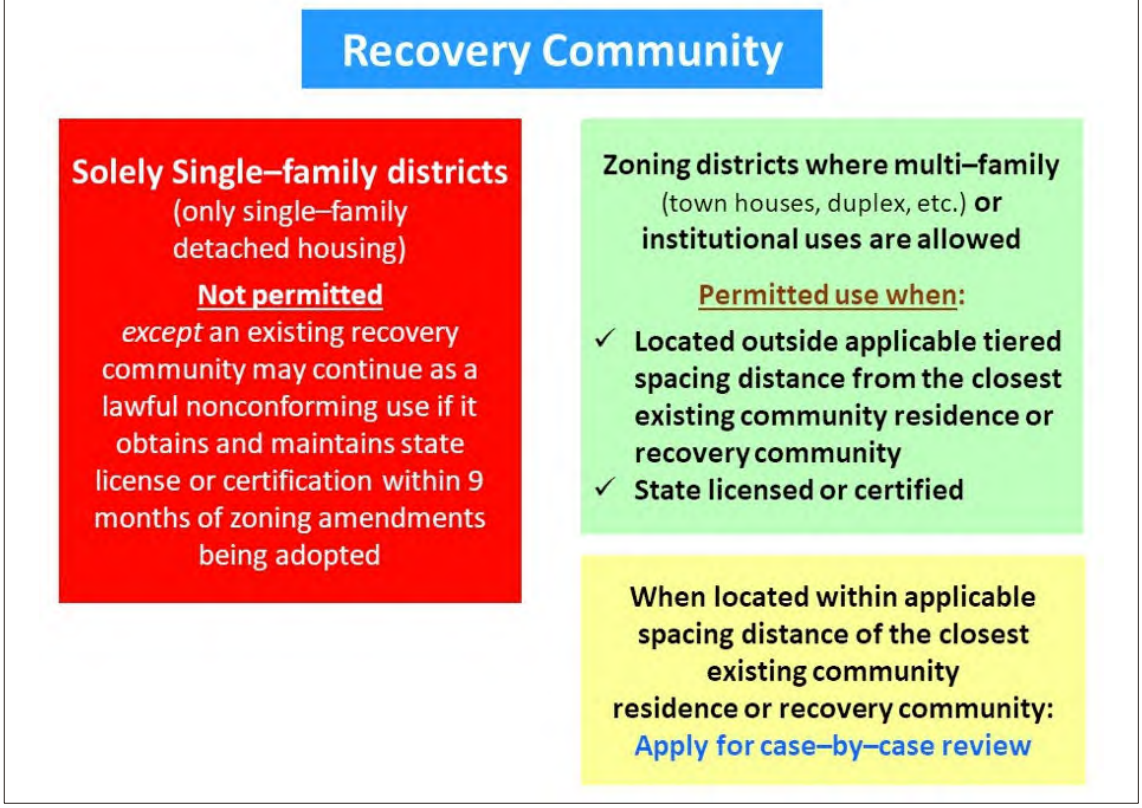
State legislation and local ordinances should allow transitional community residences to locate in single–family districts when the narrowly–drawn standards beginning on page 128 are met.

Zoning for recovery communities

While the first recovery communities appear to have been located in apartment buildings, they are also opening in duplexes, triplexes, quadraplexes, and series of detached or attached single–family homes. As explained in Chapter 4 beginning on page 44, recovery communities exhibit somewhat different characteristics than their community residence cousins, some of which are institutional in nature. Many of the Level 4 recovery communities are more institutional in nature and do not seek to foster community integration or use nondisabled neighbors as role models. Consequently, as noted in Chapter 4, a slightly different zoning approach is well warranted.

Recovery communities range in size from fewer than 20 to well over 100 occupants. Because the geographic sphere of a recovery community's influence varies proportionately with its size, zoning should apply a tiered approach to spacing distances for recovery communities based on the number of occupants in a proposed recovery community as discussed in depth starting on page 44.

Figure 50: Zoning Treatment of Recovery Communities



When a permitted use

A proposed recovery community should be a permitted use only in districts where multifamily housing (including town homes, duplexes, triplexes, quadraplexes, and/or apartment buildings) is allowed as long as (1) the housing provider obtains the available state certification or license, and (2) the recovery community is located outside the designated spacing distance from the closest community residence or recovery community. This spacing distance could range from 660 feet or nine lots, whichever is greater, for recovery communities with up to 16 residents to 1,500 feet or 20 lots, whichever is greater, for recovery communities with 100 or more residents. A graduated scale of spacing distances will be needed for each tier of recovery communities with between 17 and 99 residents.[4]

Table 4 below illustrates this system of tiered spacing distances. These figures are solely intended to illustrate the magnitude of the appropriate spacing distances and are certainly subject to fine tuning.

4. As noted earlier, these are illustrative numbers subject to refinement.

Table 6: Example of Magnitude of Tiered Spacing Distances for Recovery Communities to be a Permitted Use

Number of residents	Spacing distance is the greater of...	
	Minimum number of feet	Minimum number of lots (Treat each street and body of water as at least one lot)
Up to 16 residents	660	9
17 to 30 residents	900	12
31 to 50 residents	1,100	14
51 to 100 residents	1,300	16
100 and more residents	1,500	20

This table simply illustrates the magnitude of tiered spacing distances for proposed recovery communities to be a permitted use. These figures should not be blindly adopted and are subject to fine tuning.

Addressing a singular situation: There is one unique situation unaddressed until now: When a proposed recovery community for more than 16 people is closest to an existing community residence. Here is a nuanced and principled approach to handle this circumstance.

Instinctively one would think to apply the 660–foot or nine lot, whichever is greater, spacing distance around a community residence to determine if the proposed recovery community is a permitted use. But that approach fails to take into consideration the wider geographic sphere of influence of these larger recovery communities and their effect on the carrying capacity of the immediate neighborhood to absorb service dependent people into their social structure as examined in Chapter 4.

In order to prevent adverse impacts in this situation, statutory or ordinance language on spacing distances should be crafted to require that the applicable tiered spacing distance of a recovery community is applied around the existing community residence to determine if the proposed recovery community is a permitted use.

For example, when a recovery community for 60 people is proposed, it would be allowed as a permitted use only if there were no community residences or recovery communities within 1,300 feet or 16 lots, whichever is greater, of its proposed site.

When not a permitted use: Case–by–case review

As explained above, the only circumstance where a proposed recovery community would warrant case–by–case review is when it seeks to locate within the spacing distance of an existing recovery community or community residence.

The same principles beginning on page 156 that govern the case–by–case review of community residences proposed to locate within the spacing distance of an existing community residence or recovery community apply here as well.

Legislative recommendation

The state statutes and local zoning ordinances should be amended to define "recovery community" and regulate them through zoning as spelled out beginning on page 114.

No exception to certification/licensing requirement.

As explained in Chapter 6, there is no reason to require other reasonable accommodations for recovery communities in Florida since the state offers certification of this use. This report strongly recommends that the State of Florida *require* certification of all recovery communities and that cities and counties allow only certified recovery communities within their borders.

Legislative recommendation

The state statutes and local zoning ordinances should be amended to allow only certified or licensed recovery communities with no exceptions.

Implementation

In order to implement the current spacing distances that §419.100 already imposes, cities and counties have had to use their own internal mapping systems, be it a geographic information system and/or a database, with the locations of all housing that §419.001 covers. To implement and administer this study's recommendations, each local jurisdiction needs to continue to maintain an internal map and its own internal database of all community residences for people with disabilities and of recovery communities within the jurisdiction and within 1,500 feet and 20 lots, whichever is greater, of its borders[5] — otherwise it would be impossible to implement the recommended spacing distances as well as the current spacing distances in §419.001. Consequently, adopting the zoning approach proffered here asks cities and counties to continue to perform what ought to be their normal, routine record keeping in order to implement their zoning codes even under the current state statute.

Before renting or purchasing a site for a community residence or recovery community, the housing provider needs to know if the proposed location is within any applicable spacing distances of an existing community residence or recovery community.

Consequently, it is essential that cities and counties furnish to providers of community residences and recovery communities the same sort of planning and zoning ser-

5. The adverse effects of clusters and concentrations do not respect municipal boundaries. These distances are illustrative only and subject to refinement. Since it is possible that community residences for people with disabilities and recovery communities may be located within the spacing distance a jurisdiction chooses to adopt, it is critical that each city and county be fully aware of any community residences and recovery communities outside its borders that are located within the designated spacing distance. The spacing distance is measured from the closest existing community residence or recovery community including those outside a jurisdiction's borders.

vices they routinely provide all developers, namely the full regulatory information a developer needs to make an informed determination of whether her proposed development complies with local zoning or needs a special zoning permit like a conditional use. Local jurisdictions usually provide this *initial* service *at no cost* to a prospective developer. Similarly, local jurisdictions should provide the information listed immediately below to the operator of a prospective community residence or recovery community. *This request does not require submission of the sort of application described in Appendix B beginning on page 172*. A simple written or oral request is all that should be necessary. Upon request, the jurisdiction should provide, *in a very timely manner and at no cost,* to a housing provider:

- *If outside the applicable spacing distance:* A written statement affirming that the proposed location is *not* within the spacing distance of any existing community residence or recovery community.
- *If within the applicable spacing distance:* A detailed map with lots, streets, waterways, and other geographical features that might affect contact between the occupants of the sites at issue showing the proposed site and the location(s) of the existing community residences and recovery communities in the neighborhood including those of which the proposed site is within its spacing distance. So the housing provider can make its argument to be allowed via case–by–case review, the jurisdiction should also identify the type of each use (group home, assisted living, recovery residence, recovery community, etc.) and the nature of the population served (people with mental illness, intellectual disabilities, in recovery from substance use disorder, frail elderly, etc.). The map should show all of these uses within the applicable spacing distance and the larger neighborhood.

Armed with this information, a housing provider can decide whether to proceed and, if within a spacing distance, seek an individual review for its proposed site. If the housing provider decides to locate at a particular site, the housing provider will be required to complete and submit the sort of application form described in Appendix B beginning on page 172.

In addition to requiring the application form to be submitted for *all* proposed community residences and recovery communities, it is crucial that the operators of *all* proposed community residences — including those that comply with the definition of "family" — submit this form so the city or county can determine whether the use is a "family" and therefore exempt from the zoning requirements unique to community residences. Any zoning application fee should be fully and promptly refunded to a proposed community residence that meets the definition of "family." When a community residence complies with a jurisdiction's zoning definition of "family," the locality should not charge the community residence any fees other than those applicable to *all* residential structures (single family detached, multifamily, etc.) housing a family.

To enable a jurisdiction to evaluate the impact and efficacy of the amendments it or the state adopts, the jurisdiction needs to maintain a current accounting of the number of applications submitted and how each one is resolved.

Training. If adopted, any zoning or state statutory amendments based on this report will establish a principled and nuanced zoning treatment of community residences and recovery communities. It is critical that local staff and officials who participate in

the review process be adequately trained in how to evaluate compliance with the new standards for each circumstance where case–by–case review is required and understand the sort of evidence that can show compliance with each standard. And it is equally vital that they fully understand that their decisions must be based solely on the specified standards.

The State of Florida and local jurisdictions would be very prudent to provide such training to current and future employees involved in zoning intake and administration as well as to current and future members of their governing boards and boards and special magistrates involved in their case–by–case review process. In–person and online training can likely be arranged with the Florida Chapter of the American Planning Association and with the Florida League of Cities.

Amendments to state statutes needed to comply with the Fair Housing Act

Chapter 7 identified a number of provisions in Florida's statutes governing zoning for community residences that urgently need be repealed and replaced to comply with the nation's Fair Housing Act. In addition to those, other refinements to the state statutes and local zoning codes are needed to bring them into compliance with the Fair Housing Act and to protect Florida taxpayers from potentially costly lawsuits that can be avoided by amending state statutes as recommended herein.

Provisions to repeal and replace at the first opportunity

While statesmanship and bipartisanship are needed to accomplish this goal, it could take quite some time to draft the complicated legislation Chapter 6 recommends and to enact it. Consequently, it's important to identify here those provisions that urgently need to be brought into compliance with the Fair Housing Act.

These include the provisions in §419.001 that Chapter 7 identified as contrary to the nation's Fair Housing Act. Correcting these provisions will save taxpayers the cost of expensive litigation should any jurisdiction deny zoning approval for a proposed community residence based on the standards in §419.001.

Legislative recommendation

Repeal and replace the spacing distances in §419.001(2) with justifiable spacing distances.

This provision establishes an unjustifiable and unprincipled spacing distance between "community residential homes" housing no more than six people of 1,000 feet. The statute requires a minimal 1,200 distance between these homes and community residential homes housing more than six people. While the statute appears to allow local governments to make a reasonable accommodation via case–by–case review to locate within either spacing distance, there is nothing in the statute to assure that local governments arrive at this decision in a manner that complies with the Fair Housing Act.

For the reasons articulated in Chapter 4 of this report, there is no justifiable or factual reason for these two different spacing distances. It is urgent that the legislature repeal both spacing distances and replace them with a single justifiable distance of no more than 660 feet or nine lots, whichever is greater as recommended in Chapter 6. The legislature needs to make it very clear that cities and counties may make a reasonable accommodation to allow these community residential homes to locate within the spacing distance.

Legislative recommendation

Repeal and replace §419.001(3)(c)3 with justifiable spacing distances and delete and replace the language about what constitutes an "overconcentration" and altering the nature and character of an area.

The provision declares that a community residential "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. This well–intentioned provision was likely written before the case law matured and before spacing distances and concentrations were well understood. We have learned so much more about what constitutes a concentration as examined in chapters 4 and 5.

As extensively analyzed in Chapters 4 and 5, the state statute's spacing distance lacks a factual or theoretical basis. To bring §419.001 up to date, this provision needs to be repealed as soon as possible and replaced with carefully considered and drafted language that establishes a spacing distance required to be a permitted use that is no greater than 660 feet or nine lots, whichever is greater. No statute simply can simply declare locating within 1,200 feet to constitute an "overconcentration" — it needs a substantiated basis for all the reasons articulated in Chapters 4 and 5. It is difficult to imagine how any court could fail to conclude that the current provision does not constitute housing discrimination.

Similarly, the provision declaring that, in multifamily zoning districts, a community residential home for more than six residents "located within a radius of 500 feet of an area of single–family zoning substantially alters the nature and character of the area" also lacks a factual or theoretical basis and it too needs to be replaced.

Legislative recommendation

Amend §419.001(5) to eliminate ambiguity and specify that the spacing distance requirements are to be measured from the closest lot lines and delete the reference to single–family zoning.

The current language in §419.001(5) shown below is too vague to be applied consistently. What is the "nearest point of an existing home? Is it the structure itself? Is it the lot line?

> All distance requirements in this section shall be measured from the nearest point of the existing home or area of single–family zoning to the nearest point of the proposed home.[6]

This vague language on measuring the spacing distance provides little guidance on how to actually measure the spacing distance. The provision should be replaced with language along these lines:

> All distance requirements in this section shall be measured from the closest lot line of the proposed community residential home to the closest lot line of the nearest existing community residential home.

The phrase "or area of single–family zoning" needs to be deleted since it won't be relevant if and when the legislature repeals the designated provisions in §419.001(3)(c)3 as urged by the legislative recommendation above this one.

Legislative recommendation

Amend §397.311 to add the functional definition of "recovery community" on page 56 of this report.

> "Recovery residence" means a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer–supported, alcohol–free, and drug–free living environment.[7]

It's a bit ambiguous whether the current statutory definition of "recovery residence" above encompasses recovery communities. The definition is really unclear as to whether the phrase "or other form of group housing" encompasses the recovery communities examined in this report since recovery communities consist of multiple dwelling units. The state would be prudent to add to §397.311 a functional definition of "recovery community" like that on page 56 of this report and make it clear that recovery communities are subject to certification by the state's certifying entity, currently the Florida Association of Recovery Residences.

However, it would also be advisable to establish spacing distances in §419.001 specifically for recovery communities along the lines of those Chapter 6 recommends.

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6. *Florida State Statutes,* §419.001(5) (2024).
7. *Florida State Statutes,* §397.311(38) (2024).

Legislative recommendation

Amend §553.80(9) and §633.208(1) and/or other applicable state statutes to apply to all licensed or certifed community residences where occupants are capable of self–evacuation in an emergency.

These two provisions require that converting a single–family or two–family structure into a certified recovery residence or an Oxford House does not alter the structure's status under the *Florida Building Code* and *Florida Fire Prevention Code*. As explained beginning on page 146, the case law is clear that these codes and similar ones from other sources should continue to treat community residences for people with disabilities who can self–evacuate in an emergency no differently than before the structure a community residence occupied the home. Since some occupants of a community residents need assistance to evacuate in an emergency, any amendment should include the proviso that the residents be capable of self–evacuation and should include a procedure to apply these provisions to community residences for people with disabilities for which no license or certification is available in the State of Florida.

Comprehensive revamping of §419.001 and related statutes advised

As noted earlier, §419.001 was written well before the case law on zoning for these uses matured and the majority view that has guided this report has evolved. Hopefully this report will spur the State of Florida to show the rest of the states how to revisit their statutes on these uses to bring them up to date in accord with the case law and the more extensive knowledge base that has developed in the 26 years since the Fair Housing Act was amended to add people with disabilities as a protected class.

Consequently, it's no surprise that the zoning treatment of these uses warrants a thoughtful and comprehensive overhaul using the zoning approach proposed in Chapter 6 of this report to bring about full compliance with President Reagan's vision in the Fair Housing Amendments Act of 1988.

There's a fundamental need to define "community residences" to encompass *all* the different types of group housing arrangements currently scattered among the state statutes — as explained in Chapters 3, 4, and 6. This will require amending other portions of the state statutes that govern assisted living homes and other uses that effectively function as community residences for people with disabilities. This does not, however, require changing their licenses.

Amendments to the state statutes need to establish a single broad functional definition of "community residence" like that on page 54 as well as the definitions of "family community residence" and "transitional community residence" on page 55. Keep in mind that other provisions in the state statutes will also need to be amended to ensure consistency and compatibility, including recognizing the functionally broad scope of community residences.

In addition, the current statutes do not clearly address the recovery communities which are a vital element in the state's efforts to curb the substance use epidemic and need to define "recovery community" with a functional definition like that on page 57.

Legislative recommendations

Repeal and replace §419.001 in its entirety with a principled and fact–based zoning approach in compliance with the Fair Housing Act that encompasses the full continuum of community residences for people with disabilities as well as recovery communities as proffered in Chapter 6 of this report.

Amend those other provisions in the state statutes needed to adopt the zoning approach presented in Chapter 6 of this report.

Next Steps

Florida was a pioneer with its statewide zoning for community residential homes adopted before the applicable case law matured. It was a pioneer with its approach to recovery residences. And it has led the nation in developing new tools to mitigate the substance use epidemic that has swept across the nation.

Now is the time for Florida to lead the nation once again by bringing its zoning and licensing/certification for community residences for people with disabilities and for recovery communities into the 21st century based on the case law that has matured since the state first addressed these land uses.

At a bare minimum, at its first opportunity the State of Florida would be prudent to implement the corrective measures to its statewide zoning for community residences recommended beginning on page 164. This includes addressing recovery communities, the concept of which didn't even exist when §419.001 was adopted.

In the not–too–long run, the State of Florida might wish to adopt the full comprehensive approach recommended here to bring its current statewide zoning regulations to comply with President Reagan's Fair Housing Amendments Act of 1988. We have seen that piecemeal adoption simply does not work.

The balanced approach presented here has been well–tested in the laboratory of local governments in Florida and across the nation as noted on page 151. It provides the protections people with disabilities need to live safely in their least restrictive living environment and for their community residences and recovery communities to achieve their core goals for their residents — all while maintaining the residential nature of surrounding neighborhoods so essential for these homes to succeed.

Nobody pretends adopting this principled approach will be simple or easy. It will take time and care to craft the comprehensive, principled, and justifiable approach this report proffers.

But it's an effort well worth undertaking for the benefit of Floridians with disabilities and all Florida taxpayers.

Appendix A: Representative studies of community residence impacts

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 was used, the studies consistently 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, or 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. Readers will no doubt notice that few studies have been conducted recently. That's because this issue has been examined so exhaustively and consistently found no adverse impacts when the homes are not clustered together on a block or two. Consequently, funding just isn't available to conduct more studies on this topic. The funding situation is like that for studies of whether smoking causes cancer. The question is simply too well–settled to justify funding even more studies.

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).

J. R. Cook, "Neighbors Perceptions of Group Homes," *Community Mental Health Journal*, 1197; 33:287–299 [PubMed: 9250426]. Group homes exert very little impact on the surrounding neighborhood and usually blend into their community.

L. Jason, D. Groh, M. Durocher, J. Alvarez, D. Aase, and J Ferrari, "Counteracting 'Not in My Backyard': The Positive Effects of Greater Occupancy within Mutual–Help Recovery Homes" in *Journal of Community Psychology*, 2008 Sept. 1, 36(7), pp. 947–958. Writing about Oxford Houses, the authors report, "Group homes can be a deterrent to crime because residents are generally required to maintain positive behaviors (e.g., sobriety) and are often vigilent."

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.)

Appendix B: Sample initial zoning compliance application form

To implement the zoning approach proposed in this report, cities and counties will need to create a form for applicants wishing to establish a community residence for *any* number of people with disabilities or a recovery community. The form will enable local planning staff to pretty quickly determine whether the proposed community residence or recovery community:

- Is actually a community residence, recovery community, or a "family" under the jurisdiction's local zoning provisions (if a family, the local zoning code treats the proposed use exactly the same as any other family and the application fee should be promptly refunded to the applicant);
- Is a permitted use in the zoning district in which it is proposed to be located;
- Is required to apply for a case–by–case review because the proposed location is within the spacing distance of an existing community residence or recovery community;
- Is a community residence required to apply for case–by–case review because no acceptable license or certification is available;
- Is a community residence required to apply for case–by–case review to house more than 12 individuals;
- Is a transitional community residence required to apply for case–by–case review to locate in a pure single–family zoning district (detached single–family homes are the only residential uses allowed as of right);
- Meets the minimum floor area requirements to which *all* residences are subject; and
- Provides the required minimum number of required off–street parking spaces.

The application form that Pompano Beach, Florida developed *illustrates* such a form. It can be expanded and adapted for use by any city or county. *This initial application form and any form for submitting a case–by–case review should seek only information directly related to evaluating compliance with the applicable standards.*

The application fee, if any, should be nominal. It bears repeating that when the proposed use is determined to constitute a "family" under the local zoning, any initial application fee should be promptly refunded in full.

Completing this form places no burden on people with disabilities while offering them substantial benefits by enabling the city to prevent clustering and concentrations that can impede the ability to achieve the normalization and community integration essential to successfully operate a community residence or recovery community, and assure their residents with disabilities are protected from abuse, neglect, theft, incompetence, and exploitation by requiring that the housing provider be properly licensed or certified.

City of Pompano Beach
Department of Development Services

100 W. Atlantic Blvd Pompano Beach, FL 33060
Phone: 954.786.4668 **Fax:** 954.786.4666

License Year _____

Community Residence & Recovery Community Application

Lying or misrepresentation in this application can lead to revocation. (155.8402.B. Revocation of Approval)

PROCEDURE:
Submit this completed application to the Business Tax Receipt Office *or* send the completed application to the Business Tax Receipt Division to the attention of the Chief BTR Inspector. Staff will process the application, and it will be routed to a planner for review.

APPLICATION CHECKLIST: The following documentation shall be submitted with this completed application:

	Submittal Requirement	Contact
☐	A copy of the state license with the State of Florida to operate the proposed community residence ***(when applicable)***	State of Florida Department of Health Address: 4052 Bald Cypress Way Tallahassee, FL 32399 Phone: 850-245-4277 Website: http://www.floridahealth.gov/
☐	A copy of the Oxford House's "Conditional Charter Certificate" or "Permanent Charter Certificate" ***(when applicable)***	Oxford House, Inc. Address: 1010 Wayne Avenue, Suite 300 Silver Spring, MD 20910 Phone: (800) 689-6411 Website: http://www.oxfordhouse.org/userfiles/file/index.php
☐	A copy of the provisional certification to operate the proposed community residence or recovery community ***(when applicable)***	Florida Association of Recovery Residences Address: 326 W Lantana Rd., Suite 1 Lantana, FL 33462 Phone: (561) 299-0405 Website: http://farronline.org/
☐	A copy of the certification or license to operate the proposed community residence or recovery community ***(when applicable)***	Florida Association of Recovery Residences Address: 326 W Lantana Rd., Suite 1 Lantana, FL 33462 Phone: (561) 299-0405 Website: http://farronline.org/
☐	A copy of the certification or license to operate the proposed assisted living facility ***(when applicable)***	Agency for Health Care Administration Address: 2727 Mahan Drive MS #30 Tallahassee, FL 32308 Phone: (850) 412-4304 Website: http://ahca.myflorida.com/
☐	A copy of the standard rental/lease agreement to be used when contracting with occupants.	
☐	Detailed exterior site plan identifying property lines, parking spaces, storage area of garbage receptacles, screening of garbage receptacles, fences, and other similar accessory features.	
☐	Detailed interior floor plan identifying all bedrooms (with dimensions excluding closets), exits and location of fire extinguishers. *(fill in the information required on the table on page 4 of this application)*	
☐	A letter of authorization that is notarized by the property owner or corporate officer (if the property is owned by a partnership, corporation, trust, etc. or the application is being submitted on behalf of the owner by an authorized representative.)	
☐	A copy of the development order, approving a Special Exception, for the proposed use (if applicable).	
☐	A copy of the order, approving Reasonable Accommodations, for the proposed use (if applicable).	

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Family (City Ordinance / Zoning Code / Chapter 155 Article 9 Part 5)
An individual or two or more persons related by blood, marriage, state-approved foster home placement, or court-approved adoption—or up to three unrelated persons—that constitute a single housekeeping unit. A family does not include any society, nursing home, club, boarding or lodging house, dormitory, fraternity, or sorority.

Family Community Residence (City Ordinance / Zoning Code / §155.4202. H.)
A family community residence is a community residence that provides a relatively permanent living arrangement for people with disabilities where, in practice and under its rules, charter, or other governing document, does not limit how long a resident may live there. The intent is for residents to live in a family community residence on a long-term basis, typically a year or longer. Oxford House is an example of a family community residence.

Transitional Community Residence (City Ordinance / Zoning Code / §155.4202. I.)
A transitional community residence community residence is a community residence that provides a temporary living arrangement for four to ten unrelated people with disabilities with a limit on length of tenancy less than a year that is measured in weeks or months as determined either in practice or by the rules, charter, or other governing document of the community residence. A community residence for people engaged in detoxification is an example of a very short-term transitional community residence.

Recovery Community (City Ordinance / Zoning Code / §155.4203. B.)
A recovery community consists of multiple dwelling units in a single multi-family structure that are not held out to the general public for rent or occupancy, that provides a drug-free and alcohol-free living arrangement for people in recovery from drug and/or alcohol addiction, which, taken together, do not emulate a single biological family and are under the auspices of a single entity or group of related entities. Recovery communities include land uses for which the operator is eligible to apply for certification from the State of Florida. When located in a multiple-family structure, a recovery community shall be treated as a multiple family structure under building and fire codes applicable in Pompano Beach.

Licensing and Certification									
☐	**Family Community Residence**	☐	**Transitional Community Residence**	☐	**Recovery Community**	☐	**Assisted Living Facility**	☐	**Other:** _____

☐	**Agency has issued a certification, provisional certificate or license to operate the community residence as a:**	
☐	**FARR Certification Level (if applicable)**	
☐	**Name of State Licensing or Certification Agency:**	
☐	**Statutory number under which license is required:**	

Describe the general nature of the resident's disabilities (developmental disabilities, recovery from addiction, mental illness, physical disability, frail elderly, etc.) *Do not discuss specific individuals:*

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STREET ADDRESS (of the Subject Property):				**FOLIO #:**			
# of Live-in Staff				**Maximum # of Residents (Licensed)**			
Minimum Duration of Residency				**Maximum Duration of Residency**			
Day(s)	**Month(s)**	**Year(s)**	**No Minimum**	**Day(s)**	**Month(s)**	**Year(s)**	**No Maximum**
			☐				☐
# of Bedrooms				**# of Dwelling Units**			
Will the residents be able to maintain a motor vehicle?			**No** ☐				**Yes** ☐
# of Parking Spaces On-Site				**# of Parking Spaces Off-Site** *(if applicable)*			
Has a certification been applied for and a provisional certification been issued?			**No** ☐				**Yes** ☐
Special Exception # *(if applicable)*				**Date Provisional certification was issued** *(if applicable):*			

Property Owner (Please Print)	**Applicant / Agent Information (Complete if the applicant / agent is not the owner of the property)**
Business Name (if applicable):	**Business Name (if applicable):**
Print Name and Title:	**Print Name and Title:**
Mailing Street Address:	**Mailing Street Address:**
Mailing Address City/ State/ Zip:	**Mailing Address City/ State/ Zip:**
Primary Phone Number:	**Primary Phone Number:**
Secondary/ Cell Phone Number:	**Secondary/ Cell Phone Number:**
Email:	**Email:**

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Number of Occupants:

Bedroom	Dimensions of each bedroom (excluding closets) in feet: Width (ft) X Length (ft)		Total Square feet in bedroom (excluding closets) Area (ft^2)	Number of residents (including any live-in staff) to sleep in each bedroom	Total gross floor area of all habitable rooms
1			0		If you're unsure how to measure this, ask City staff for instructions. Print the total gross floor area in the cell below:
2			0		
3			0		
4			0		
5			0		
6			0		
7			0		
8			0		
			Totals	0 Residents	0 Square feet

Please return this completed application to:

Development Services Department
100 West Atlantic Boulevard Room 352
Pompano Beach, FL 33060

Questions? Need assistance?
Call city staff at (954) 786-4679

City of Pompano Beach
Department of Development Services

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Local 24 Hour Contact Affidavit

In accordance with the responsibilities of a 24-hour contact person as provided for in § 153.33(F), the responsibilities of the 24-hour contact person include:

- Be available and have the authority to address or coordinate problems associated with the property 24 hours a day, 7 days a week;
- Monitor the entire property and ensure that it is maintained free of garbage and refuse; provided however, this provision shall not prohibit the storage of garbage and litter in authorized receptacles for collection;
- See that provisions of this section are complied with and promptly address any violations of this section or any violations of law, which may come to the attention of the 24-hour contact person and
- Inform all occupants prior to occupancy of the property regulations regarding parking, garbage and refuse, and noise.

I certify that I have read and understand the information contained on this affidavit, and that to the best of my knowledge such information is true, complete, and accurate.

BEFORE ME, the undersigned authority, personally appeared _____ (PRINT NAME) Who after being duly sworn, deposes and says: That I am the person whose signature appears below, and that the information I have provided above in this document is true and correct.

24 Hour Contact	Property Owner ◯	Responsible Party ◯	Other (below) ◯
Business Name (if applicable):		**Print Name:**	
Relationship to Property Owner (if applicable):		**Title:**	
Physical Street Address of Home or Business:		**Address City/ State/ Zip:**	
Primary Phone Number:		**Secondary/ Cell Phone Number:**	
Signature:		**Date:**	

SWORN TO AND SUBSCRIBED before me this _____ day of _____ 20_____, in Pompano Beach, Broward County, Florida.

Notary Public
Seal of Office

_____
Notary Public, State of Florida

_____
(Print Name of Notary Public)

_____ Personally Known
_____ Produced Identification
Type of identification Produced: