DRAFT

Clearwater Zoning Framework for Community Residences for People With Disabilities and for Recovery Communities

April 8 2024 Draft

CLEARWATER
BRIGHT AND BEAUTIFUL · BAY TO BEACH

This is a draft report is a work in progress that has not yet been reviewed by city officials. The city has very graciously allowed this report to be shared with the attendees of this 2024 Civil Rights Summit on Fair Housing conducted by the Michigan Department of Civil Rights.

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April 2024

DRAFT

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This study uses the most recent data available at the time it was written. Consequently, some tables and figures do not include data for 2023 or 2022 since data for those years were not available as of this writing.

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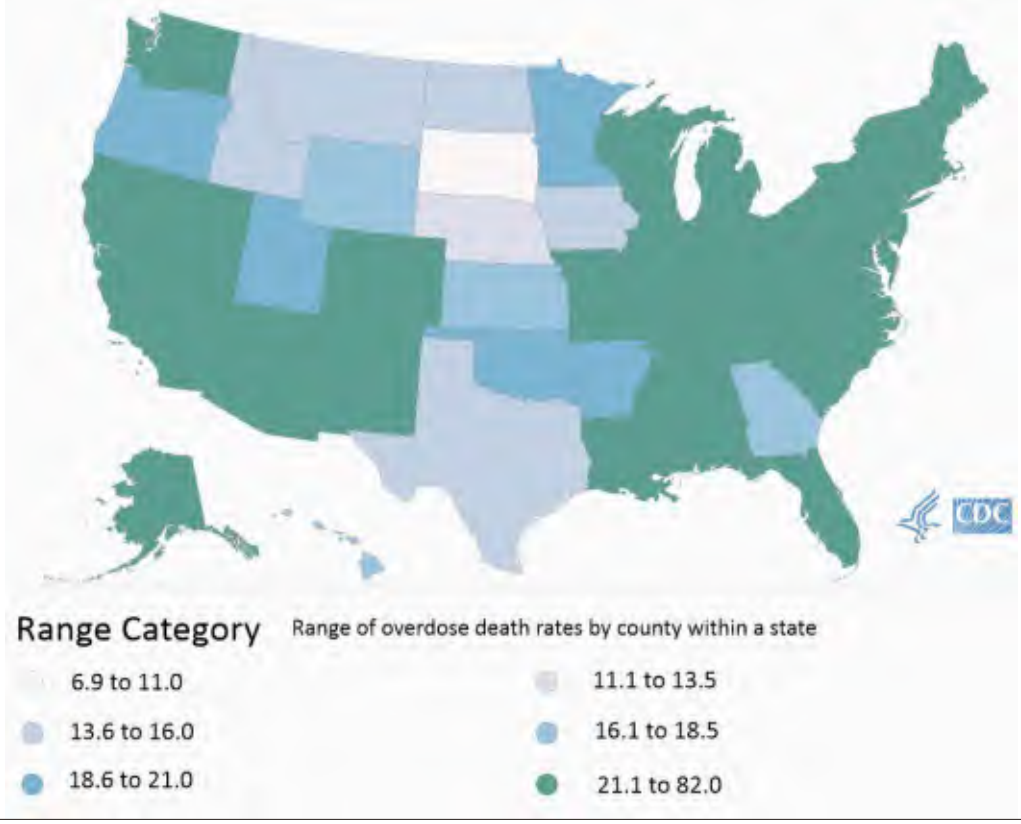
IMPORTANT:
Clearwater uses what it calls a “flexible use” to handle case-by-case reviews when a land use is not a permitted use. The flexible use is essentially the same thing as a special use, conditional use, or special exception — just under a different name.

Florida's Substance Abuse Disorder Epidemic

As Figure 1 below illustrates, the State of Florida is among the states leading the nation in the deadly and heartbreaking nationwide drug overdose epidemic. Nearly every state continues to experience a deadly rise in the misuse and abuse of opioids on top of the on–going health crisis created 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 population, to 32.4 in 2021.[1]

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.

1. Centers for Disease Control and Prevention, "Drug Overdose Deaths Remained High in 2021," https://www.cdc.gov/drugoverdose/deaths/index.html..

Florida has been among the states with the highest rates of death due to drug overdoses. The "range categories" in Figure 1 above 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 experienced 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.

The sober living home or recovery residence has long been one of the most effective tools to combat substance use disorder and help its residents attain a long–term clean and sober life. Properly operated and located, sober homes (one type of community residence for people with disabilities) offer a 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.

This study recommends to Clearwater officials a framework for land–use regulation of "community residences for people with disabilities" including "sober homes" as well as the related, but much larger "recovery community" for people recovering from substance use disorder. 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, 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 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 from mistreatment, abuse, exploitation, and incompetence while advancing their normalization and community integration which are core principles of community residences for people with disabilities.

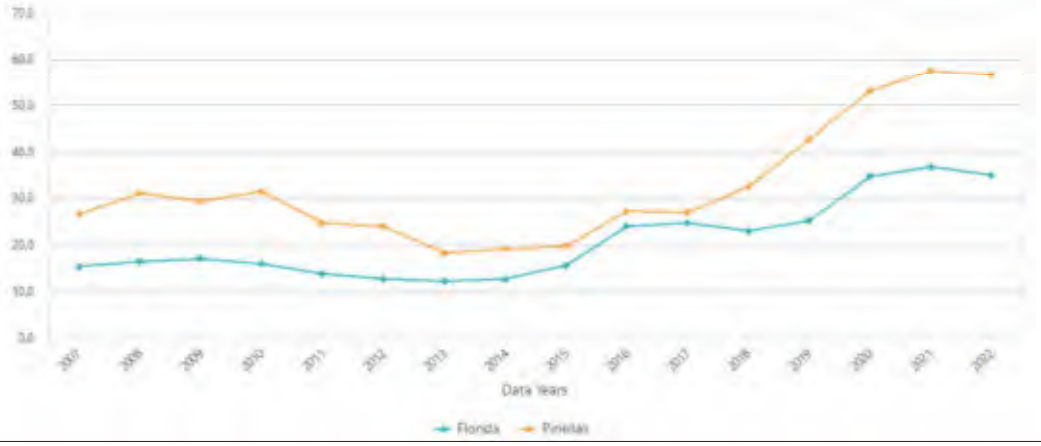
The State of Florida and Pinellas County

As Figure 2 below illustrates, the annual rate of deaths in Florida due to drug poisoning has risen 228 percent, from 15.3 in 2007 to 34.9 deaths per 100,000 population, a slight dip since it peaked in 2021.

But death rate due to drug use in Pinellas County where Clearwater is located has remained consistently higher every year than for the state as a whole, increasing 212 percent from 26.6 in 2007 to 56.6 in 2022. The death rate in Pinellas county continues to be greater than in three–fourths of the Florida's counties.[2]

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

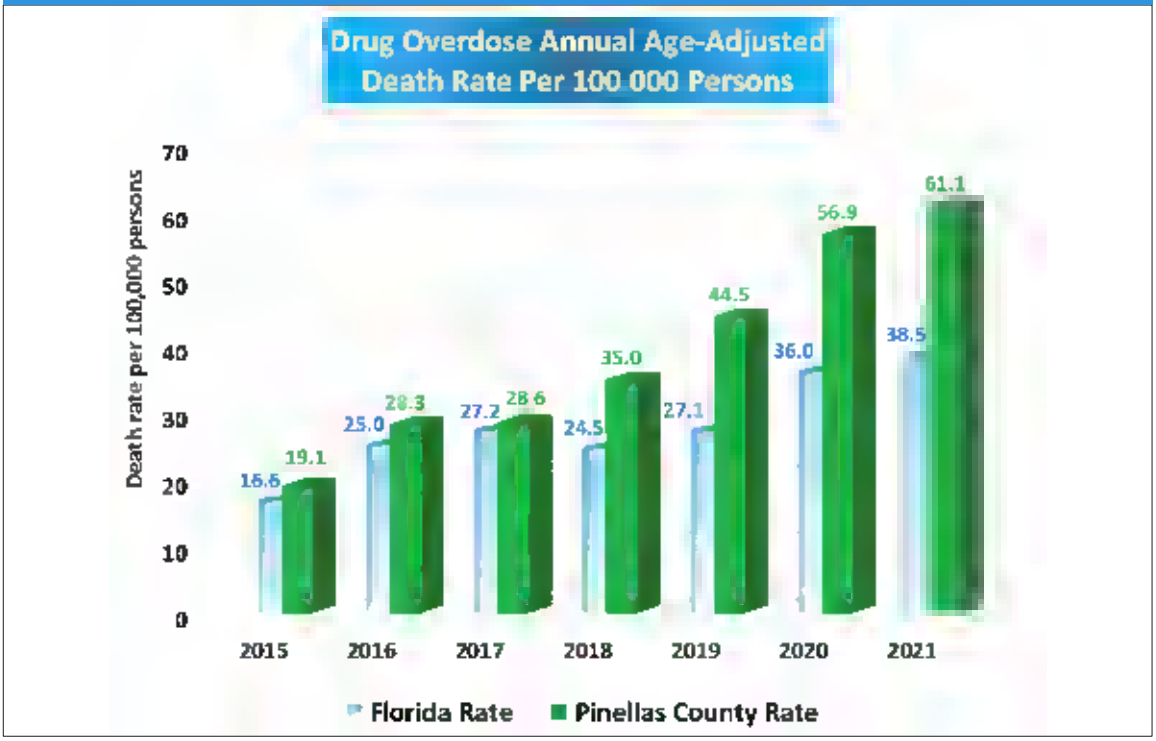
Figure 2: Age–Adjusted Death Rates Per 100,000 Population Due to Drug Poisoning: 2007– 2022



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

Figure 3 below shows a consistently higher death rate from drug overdoses in Pinellas County than for the state as a whole — and the difference has been increasing at an accelerated rate since 2017.

Figure 3: Pinellas County and Florida Death Rates Due to Drug Overdoses: 2015–2021

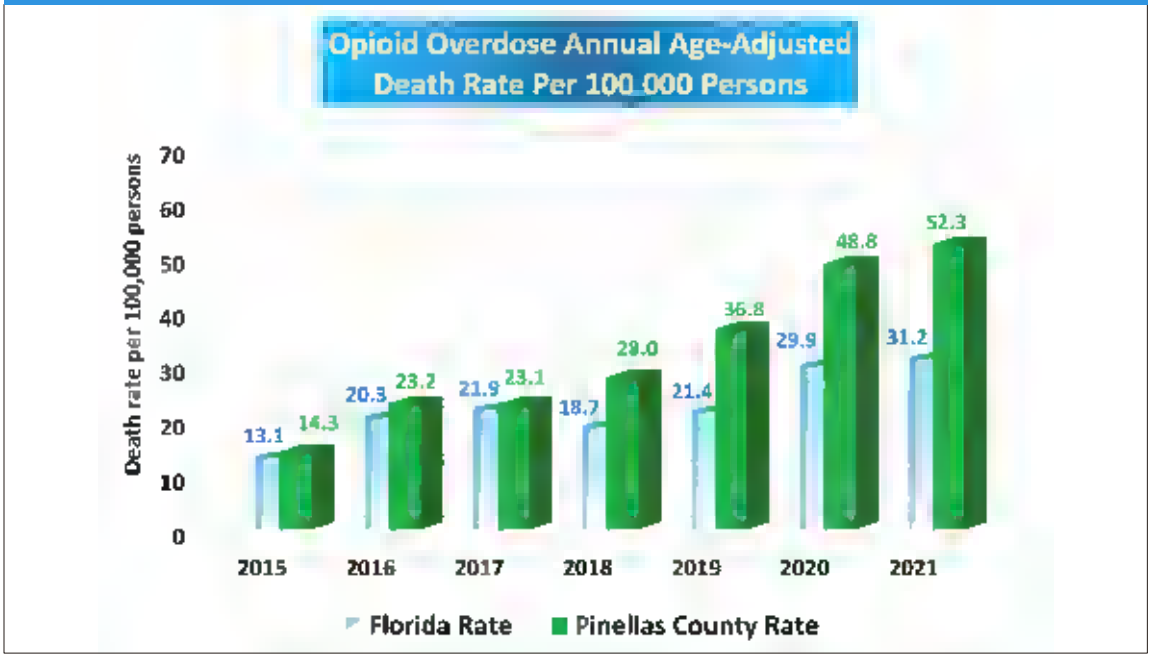


Source: *Substance Use Dashboard,* Florida Department of Health, Bureau of Community Health Assessment, Division of Public Health Statistics and Performance Management at https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Report.

And as Figure 4 below suggests, it's opioid use that has fueled the growing drug and alcohol death epidemic throughout Florida, especially in Pinellas County.

Since at least 2015, the death rate from opioid–induced overdoses per 100,000 population in Pinellas County has consistently exceeded the statewide rate — a difference that has been growing since 2018. Increases in the death rate from opioids (shown below in Figure 4) are responsible for nearly all of the increases in the death rates from all overdoses (show above in Figure 3).

Figure 4: Opioid Overdose Death Rates in Pinellas County and Florida: 2015–2021



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.

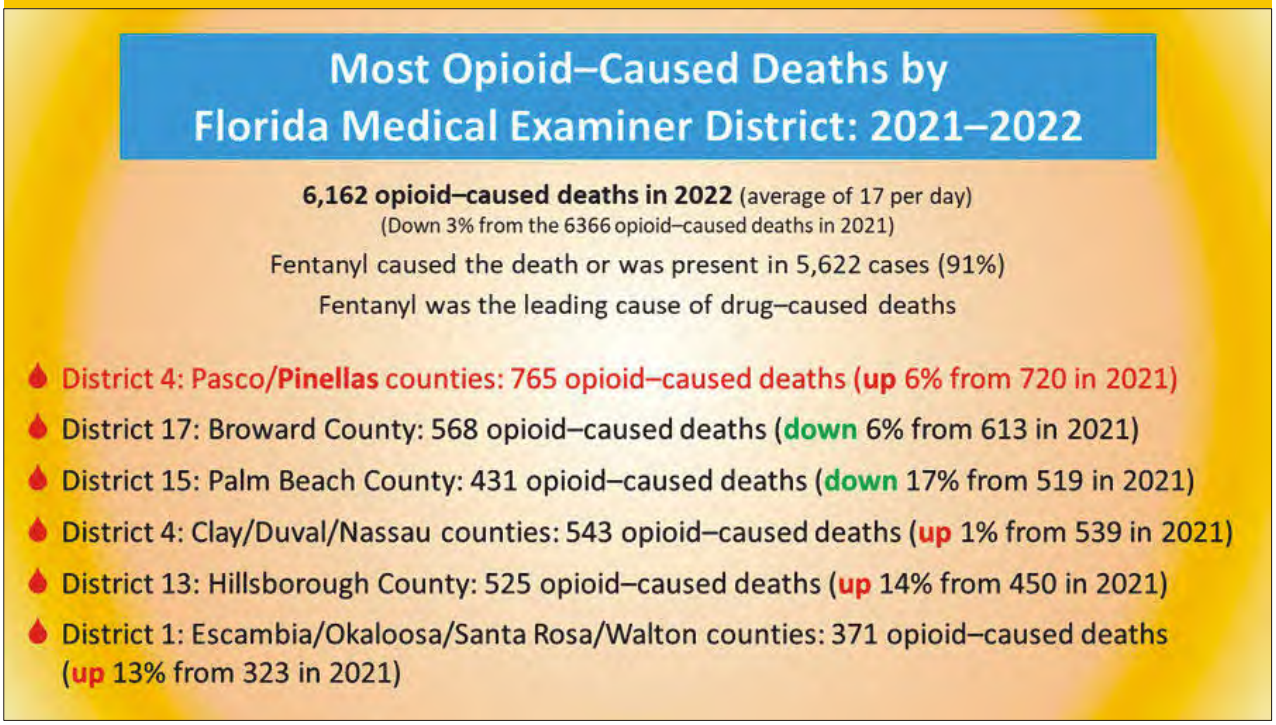
Table 1 below provides a clearer perspective of the situation in Pinellas County. For quite some time, there have been more opioid–related deaths in Florida Medical Examiner District 6, which consists of Pinellas and Pasco counties, than in any of the other 24 districts.

A decade ago, only one Florida county, Manatee, experienced ten or more deaths from fentanyl per 100,000 population.[3] Since then, fentanyl use has exploded throughout the state. By 2016, fentanyl and fentanyl analogs[4] had be-

3. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2014 Annual Report* (Sept. 2015) 32.
4. 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

come, and remain, the leading cause of drug deaths in Florida.[5]

Table 1: Most Opioid–Caused Deaths by Florida Medical Examiner District: 2021–2022



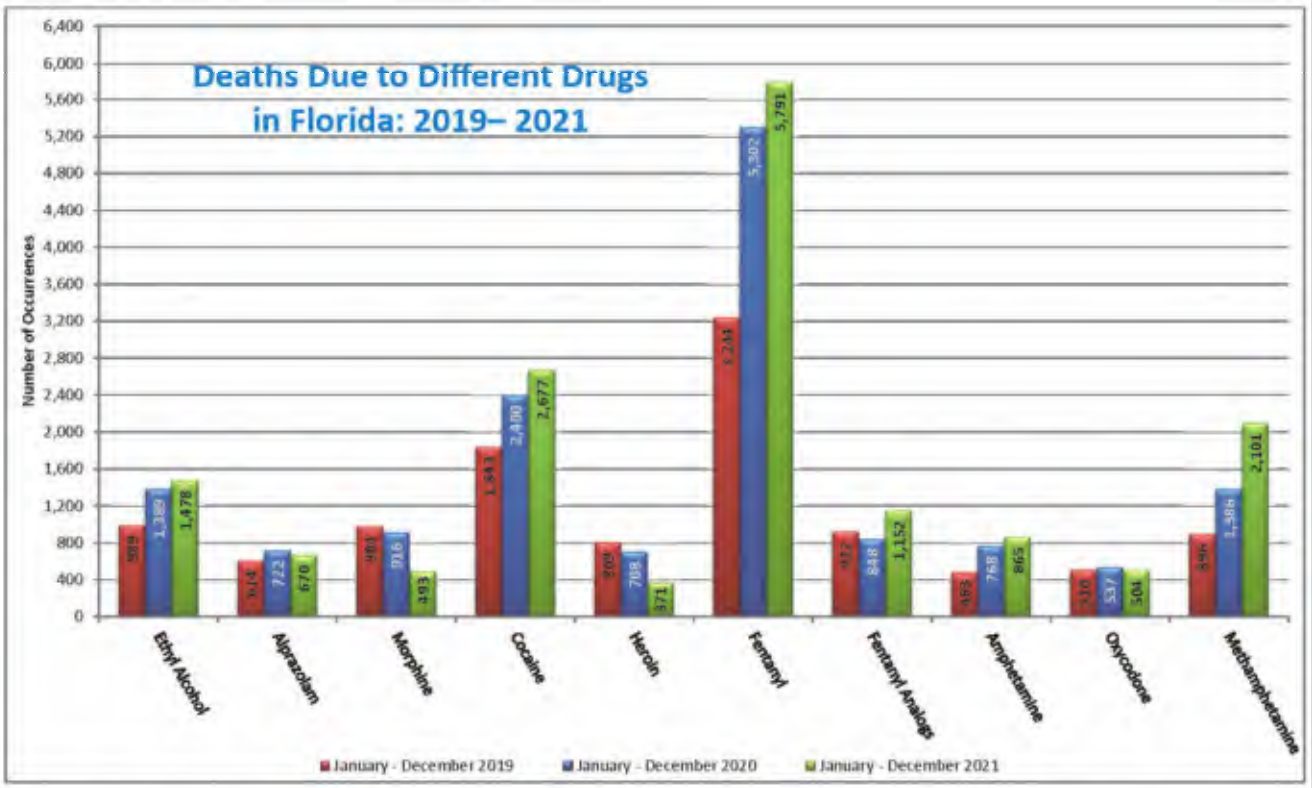
Source: Complied by staff supervised by Al Johnson, Chief Assistant State Attorney, Palm Beach County State Attorney from Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners Annual Reports,* 2021 through 2022.

And as revealed in Figure 5 below, fentanyl has accounted for most of the increases in opioid–induced death rates. Fentanyl has clearly displaced cocaine and even ethanol 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 percent).[6] Of all opioids reported, the most frequently reported was fentanyl (52.2 percent) with Oxycodone (9.1 percent) a very distant second.[7]

Institute on Drug Abuse, "Fentanyl DrugFacts," Feb. 2019. *See* https://nida.nih.gov/publications/drugfacts/fentanyl.

5. 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.
6. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2022 Interim Report* (July 2023) 7.
7. Ibid. 4.

Figure 5: Deaths Due to Different Drugs in Florida: 2019–2021



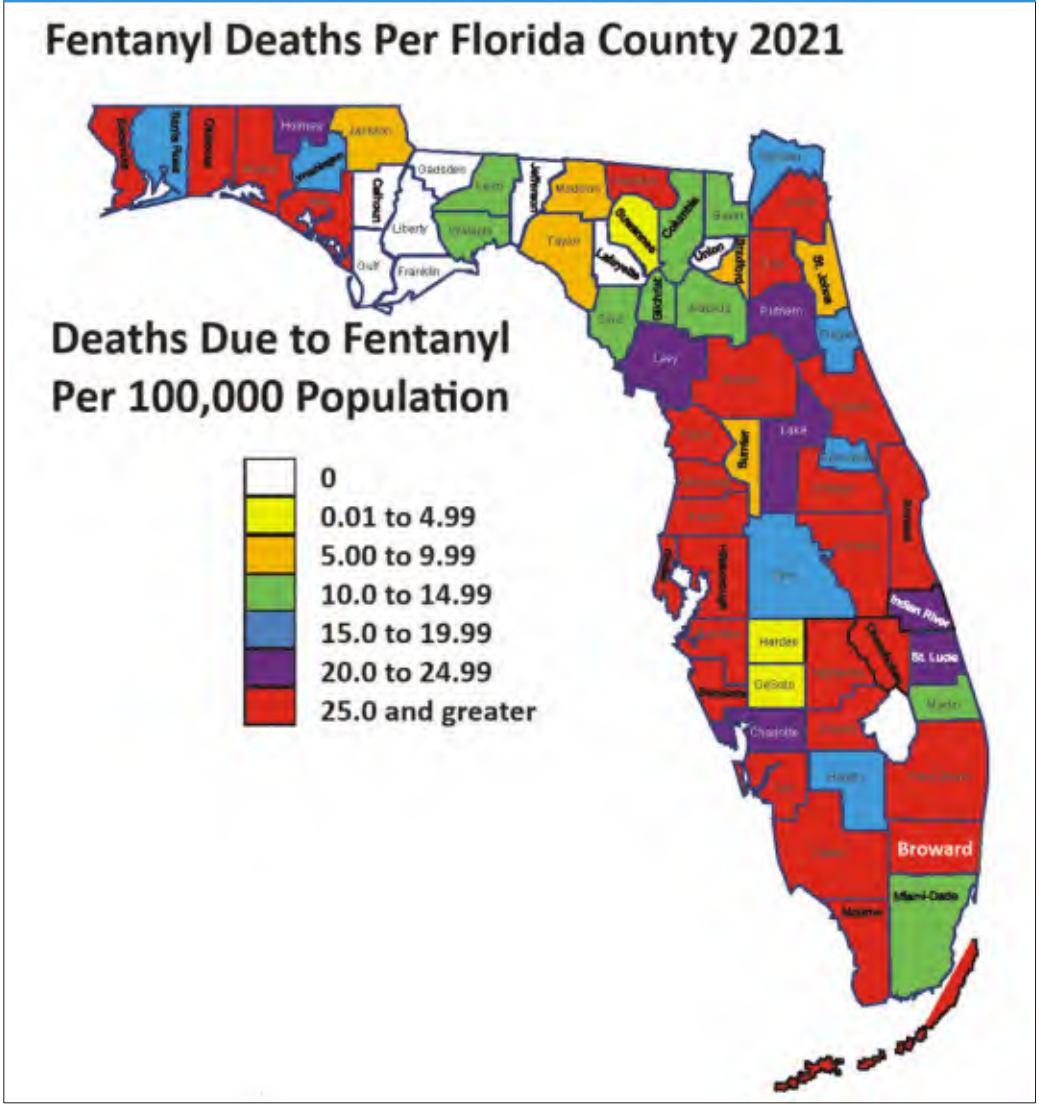
Source: Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2021 Annual Report* (Dec. 2022) 7.

In 2013, fentanyl use barely registered, occuring in just 1.8 percent of decedents due to drug use.[8] 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.[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, including Pinellas County, were experiencing 20 or more fentanyl deaths per 100,000 population, the highest rates in the state, as shown below in Figure 6. By 2021, 33 counties fell into the highest death rate categories. The death rate due to fentanyl has been in the highest category in Pinellas County where Clearwater is located.

8. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2013 Report* (Oct. 2014) 4.
9. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2021 Annual Report* (Oct. 2014) ii.

Figure 6: Fentanyl Death Rates By Florida County: 2021



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

Consequences extend beyond people with substance use disorder

But the damage done by substance use disorder in Pinellas County and Clearwater reaches far beyond the people with substance use disorder. Excessive consumption of alcoholic beverages continues to generate deadly effects even though the percentage of Florida adults who engage in excessive drinking declined in 2020 to 15.5 percent from a steady rate of 17 to 19 percent from 2011 through 2019.[10]

10. 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

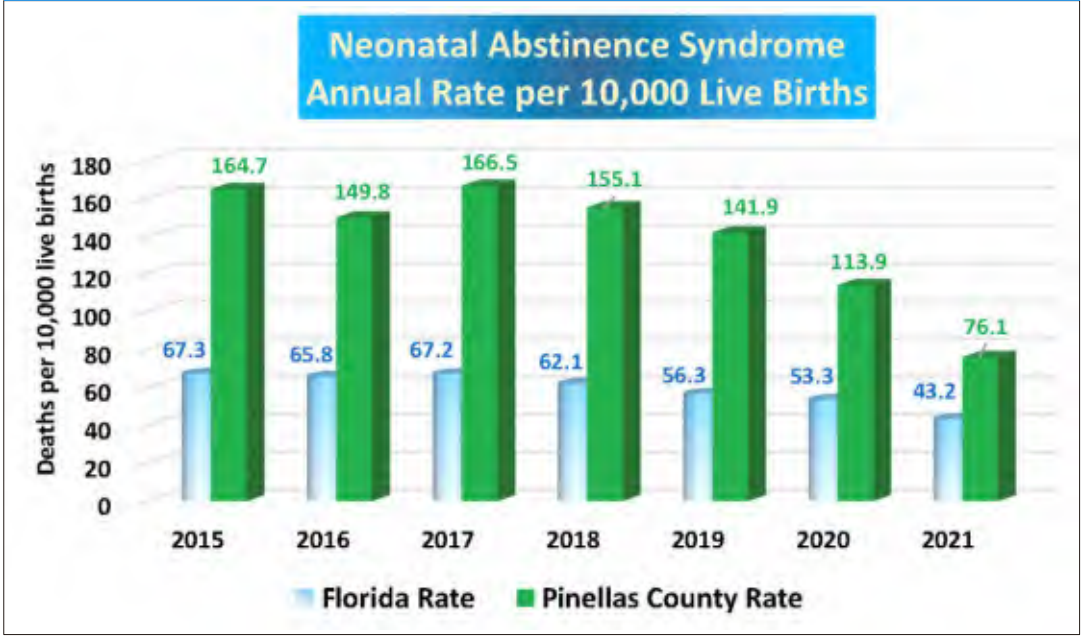
Steven Farnsworth, former Executive Director of the Florida Association of Recovery Residences, explains that while the opioid epidemic has been getting all the attention, alcohol–related deaths have remained fairly consistent. He notes that there are no reports of improvements in treatment of alcohol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

In 2021, alcohol alone caused 411 motor vehicle crashes in Pinellas County with 20 fatalities and 228 injuries. Drugs alone led to 69 crashes, 16 fatalities, and 45 injuries while a combination of drugs and alcohol resulted in 30 crashes, 17 deaths, and 14 injuries.[11]

Sober living homes and recovery communities are essential tools to reduce these consequences of substance use disorder.

But the damage from substance use disorder extends even further, even to newborns. Except for 2021, the rate of neonatal abstinence syndrome among live births in Pinellas County since 2015 has been more than double that of the state as a whole, ranging from 176 percent higher in 2021 to 252 percent greater in 2019 as shown in Figure 6 below.

Figure 7: Neonatal Abstinence Syndrome Annual Rates in Pinellas County and Florida: 2015–2021



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.

(drinks per week: women: eight or more, men 15 or more). *See* https://www.americashealthrankings.org/explore/annual/measure/ExcessDrink/population/ExcessDrink_Hispanic/state/FL.

11. *See* https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Consequences. Select the jurisdiction and year.

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.[12]

With rates of neonatal abstinence syndrome so much higher in Pinellas County than the rest of the State of Florida, 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."[13]

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

Pinellas County and Clearwater

In Florida, data on substance use disorder and its consequences are available almost exclusively at the county level. However, some data are available just for the City of Clearwater.

Table 2: Clearwater Overdoses Reported and Overdose Deaths: 2019–2023

Clearwater Overdoses Reported and Overdose Deaths: 2019–2023						
	2019	2020	2021	2022	2023	Total 2019–2023
Total Overdose Reports*	291	279	342	301	242	1,455
Overdose Deaths	41	45	54	65	47	252
* = "Total Overdose Reports" includes overdose deaths.						

Source: Clearwater Police Department, Crime Analysis Unit, *Overdose Data Report 2019–2023* (Jan 2024), 1.

12. *See* https://ncsacw.samhsa.gov/topics/neonatal-abstinence-syndrome.aspx.
13. Ibid.

While overdoses in Clearwater peaked in 2021, overdose deaths topped out in 2022. Both declined in 2023.

Table 3 below provides some context and perspective for the figures shown in Table 2 above. While employing different measures, both tables show significant increases in overdoses during the time periods they both cover. Table 2 shows a decline in Clearwater during 2022 and 2023. (Data for those years were not available for Table 3.)

Table 3: Suspected Overdoses in Clearwater and Pinellas County: Fiscal Year 2015–2016 through Fiscal Year 2020–2021

9–1–1 Transports of Suspected Overdoses: Fiscal Years 2015–2016 Through 2020–2021											
Jurisdiction	Fiscal Year 2015–2016	Fiscal Year 2016–2017		Fiscal Year 2017–2018		Fiscal Year 2018–2019		Fiscal Year 2019–2020		Fiscal Year 2020–2021	
	Number	Number	Percent Increase from Previous Fiscal Year	Number	Percent Increase from Previous Fiscal Year	Number	Percent Increase from Previous Fiscal Year	Number	Percent Increase from Previous Fiscal Year	Number	Percent Increase from Previous Fiscal Year
Clearwater	173	305	76.3%	364	19.3%	665	82.7%	871	31.0%	926	6.3%
Pinellas County	1,513	2,343	54.9%	2,905	24.0%	5,082	74.9%	6,528	28.5%	6,997	7.2%
Clearwater Proportion	11.4%	13.0%	N/A	12.5%	N/A	13.1%	N/A	13.3%	N/A	13.2%	N/A

Sources: Pinellas County Emergency Medical Services 9-1-1 Transports of Suspected Overdoses Comparison of FY15/16 through FY19/20, and Pinellas County Emergency Medical Services 9-1-1 Transports of Suspected Overdoses Comparison of FY16/17 through FY20/21.

Clearwater constituted 11.7 percent of the population in Pinellas County in 2010 and 12.2 percent in 2020. Table 3 shows that the proportion of suspected overdoses in Clearwater remains roughly proportional to the rest of the county which strongly suggests that substanec use disorder is a countywide issue, not just a Clearwater concern.

A well–informed word of caution. The state data on opiod overdoses may very well *understate* the extent of opioid abuse according to Steven Farnsworth, former Executive Director of the Florida Association of Recovery Residences, the state's certification entity. He reports that an unknown but substantial number of nonfatal opioid overdoses are *not* being reported. Narcan® (naloxone HCl) Nasal Spray, the only FDA–approved nasal form of naloxone for the emergency treatment of an opioid overdose, is now widely distributed in Florida and saving the lives of many who overdose.

Even though most reasonable people would agree that emergency responders should be summoned when there is a suspected opioid overdose, Mr. Farnsworth notes that there are strong incentives *not* to call 911 when administering Narcan® succeeds. Calling 911 triggers a pretty massive response — ambulance, fire engine, police — with lights flashing and sirens roaring. Many

sober home operators do not want that kind of attention which, candidly, can irritate and alienate their neighbors.

In addition, emergency room visits often result in bills as high as $6,000 which few uninsured individuals who overdose can afford. After a few hours, the patient is usually released back into the same environment where she overdosed. To avoid these costs and the attention an emergency response brings, many sober home providers do not see much of a benefit from calling 911 when the Narcan® works, which skews lower the reported number of overdoses.

Consequently, while the number of reported deaths due to opioid overdoses and other drugs and alcohol had declined in some areas of the state prior to 2020, Farnsworth concludes that it should not be assumed that drug and alcohol abuse is diminishing. While reported deaths are down substantially, use may very well be continuing upward.

Farnsworth explains that the decline in reported deaths is often presented in an inaccurate narrative, minimizing the effect of the widespread availability of Narcan®. He is concerned that professionals of all kinds, including medical personnel, and particularly those who are financially driven, are desperate to prove positive outcomes to enhance their personal agendas. As a result, they almost always minimize the effect that Narcan® has had. Some of their efforts, particularly the intense and aggressive push of Medication Assisted Treatment (MAT), have likely resulted in a decline in deaths. However, Farnsworth notes, there is a plausible argument that it has also caused an increase in deaths when not appropriately monitored and may have a net–zero effect.[14]

Lessons from the epicenter: Southeast Florida

Sober homes and recovery communities are essential to enable recovery from substance use disorder.

Sober living homes and recovery communities are crucial components for attaining long–term recovery and sobriety. The experience of southeast Florida illustrates how wrong things can go in the absence of adequate government safeguards to protect the occupants of sober living homes and recovery communities from scam and incompetent operators. It offers significant lessons for Clearwater, Pinellas County, and the rest of Florida's Gulf Coast.

In Florida, sober living homes and recovery communities are highly concentrated in the southeast corner of the state, in Broward and Palm Beach counties where a disproportionately high 73.2 percent of Florida's state–certified sober

14. Telephone Interview with Steven Farnsworth, Executive Director, Florida Association of Recovery Residences (Dec. 12, 2019) and email to Daniel Lauber (Dec 13, 2019, 11:12 am. CST) (on file with the Law Office of Daniel Lauber). These concerns are not limited to Florida. *See* "This Carroll County drug user got sober, as overdoses declined in 2019. But officials aren't celebrating yet," *Baltimore Sun,* Jan. 24, 2020. Available online at http://www.baltimoresun.com/maryland/carroll/news/cc-carroll-overdose-trends-20200124-.

living dwellings and 68.7 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 (786 with 3,532 beds, 43 and 39.4 percent of the entire state) than any other county in the state, Broward County ranks second with 553 state–certified sober living dwelling units and 2,627 beds (30.2 and 29.3 percent of the whole state). Third is Hillsborough County with 93 of state–certified sober living dwellings and 471 beds. *Pinellas County, home to Clearwater, continues to be home to the fourth highest numbers with 59 state–certified sober living dwelling units and 226 beds.*[15]

Statewide, the number of beds in certified sober living homes 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 9,001 in 1,840 dwelllings at the beginning of 2024.[16]

The number of the self–governed recovery homes chartered by Oxford House (explained in detail beginning on page 25) and number of residents has grown exponentially since January 2020 when there were 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 the end of 2023, there were 1,492 people in recovery living in 164 Oxford Houses. Just one Oxford House is located in Clearwater.[17]

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, is the epicenter of the country's largest and most vibrant recovery community, with scores of halfway houses, more than 5,000 people at 12–step meetings each week, recovery radio shows, a recovery motorcycle club and a coffeehouse that boasts its own therapy group.…"[18] But as we've seen throughout Florida, this epidemic does not respect municipal nor county boundaries.

Since the early 2000s, operators of sober living homes 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 sober homes and recovery communities in these four counties has led, in many cities, to clustering on a block of community residences, especially sober living homes. 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 envi-

15. Florida Association of Recovery Residences data provided to the State Attorney Addiction Recovery Task Force October 16, 2023, 1–2.
16. Ibid. 1, 2.
17. Data collected each year from https://oxfordhouse.org/directory_listing.php. Data for the end of 2023 provided by Oxford House, Inc. (on file at the Law Office of Daneil Lauber).
18. 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

ronment, 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 southeast Florida media have been reporting on ongoing criminal investigations of sober living operators in the metropolitan area. These investigations have found so–called sober homes that kept residents on illegal drugs, patient brokering, kickbacks, bribery, and other abuses, and in one case, enslavement of residents into prostitution.[19]

These illegitimate "sober homes" almost certainly do not comply with the minimum "Quality Standards" that the National Alliance of Recovery Residences has promulgated or the certification standards the Florida Association of Recovery Residences administers. The greatest concentrations of these illegitimate "sober homes" 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 clustering of community residences in much of southeast Florida may help explain the inability of so many sober living homes 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 country of residents of certified sober living homes 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.[20]

The failure to comply with minimal standards was a focus of a grand jury convened 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

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

20. 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 25 explains that, unlike the sober living homes so prevelent in througout Florida and the rest of the country, each Oxford House is a self–run and self–governed sober home completely independent from any treatment center.

to that one county. They occur in other Florida counties, including Pinellas, as well as in Palm Beach County.

The grand jury reported:[21]

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

The grand jury reported 484 overdose deaths in nearby Delray Beach in 2016, up from 195 in 2015.[22] It recommended certification and licensure for "commercial recovery housing."[23] For full details on the grand jury's findings and recommendations, readers should see the grand jury's report.[24]

Patient brokering and sober homes have migrated to other counties in Florida like Pinellas in large part to the crackdown by Palm Beach County on patient brokering and other illegal practices characteristic of illegitimate predator sober homes. It is believed that illicit operators are leaving jurisdictions

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21. 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.
22. Ibid. 99–101.
23. 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.
24. The grand jury's report is available online at: http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf.

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 sober living homes and recovery communities to obtain certification from the Florida Association 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 sober homes 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."[25]

This could be purely coincidental, but as more Florida cities and counties adopt the sort of zoning framework suggested by this study, some 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[26] which the U.S. Department of Justice recently nicknamed the new epicenter of addiction fraud.[27] Massive fraud and patient brokering has been uncovered in the Phoenix, Arizona metropolitan region.[28]

The basis of the proffered zoning framework

This report examines and presents the basis for a framework upon which to base text amendments to Clearwater's *Community Development Code* 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. Any future amendments based on this study will

25. Email from John Lehman, past CEO and current 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).
26. 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).
27. "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.
28. *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 sober living home 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.

make the reasonable accommodation for community residences for people with disabilities and recovery communities mandated to achieve full compliance with national law. The framework for the zoning approach this study recommends is based upon a careful review of:

- The functions and needs of community residences and the people with 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
- Sound urban planning and zoning principles and policies
- The Fair Housing Amendments Act of 1988 (FHAA) and amended Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–3619 (1982)
- Report No. 100–711 of the House Judiciary Committee interpreting the Fair Housing Amendments Act of 1988 amendments (the act's sole 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)[29]
- 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) (2019)
- Florida state statute establishing voluntary certification of sober living homes: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2019)
- The actual Florida certification standards for sober living homes as promulgated and administered by the certifying entity, the Florida Association of Recovery Residences, based on standards established by the National Alliance of Recovery Residences
- The existing provisions of Clearwater's *Community Development Code*.

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

Community residences

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* rather than the institutional nature of a nursing home or hospital, or the non–family nature of a boarding or rooming house. Their primary use is as a residence or a home like yours and mine, not a treatment center, an institution, nor a lodging house.

One of the core elements of community residences is that they seek to function as much as possible as a family does whether they have staff or are self–governed like Oxford House. The staff (or officers elected from among the residents in the case of a self–governed Oxford House which is discussed in depth beginning on page 25) 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" 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 association, for–profit private care provider, or a government entity.

Recovery communities

As explained beginning on page 60, a "recovery community" serves people in recovery from substance use disorder, popularly known as addiction to drugs and/or alcohol. It is a different land use than a community residence with dissimilar characteristics that warrant a somewhat different zoning approach.

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.[30] Like other local jurisdictions across the nation, Clearwater needs to adjust its land use regulations to enable community residences for peo-

30. While the trend for people with developmental disabilities is toward smaller group home households, valid therapeutic and financial reasons lead to community residences for people with mental illness 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, all

ple with disabilities to locate in all 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, sober living home, small halfway house, assisted living facility small enough to emulate a family) in order to live in the community in a family–like environment rather than being forced into an inappropriate and unnecessarily restrictive institutional setting.

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, 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 28.*

Consequently, the nation's Fair Housing Act requires all cities, counties, and states to allow for community residences for people with disabilities by making some exceptions in their land–use regulations that place a cap or limit on how many unrelated people can live together in a dwelling unit.

To enable community residences for people with disabilities to locate in the residential zoning districts where they rightfully belong, the nation's Fair Housing Act has, since 1989, required all cities, counties, and states to make a "reasonable accommodation" in their zoning when the number of residents exceeds the local zoning code's cap on the number of unrelated people that can live together in a dwelling.[31] **The zoning approach recommended in this study constitutes this rea-**

community residences must comply with minimum floor area requirements that prevent overcrowding like any other residence. If the local building code or property maintenance code would allow only six people in a house, then six is the maximum number of people that can live in the house whether it's a community residence for people with disabilities or a biological family. *City of Edmonds v. Oxford House* 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995). This legal principle is discussed at length later in this study.

31. As explained in this study, "family community residences" should be allowed as a permitted use in all zoning districts where dwellings are allowed when located outside a rational spacing distance from the nearest existing community residence and if licensed or certified. "Transitional community residences" should be allowed as of right in districts where multiple family dwellings are permitted uses (subject to spacing and licensing) and as a Flexible Use process in other residential districts. A Flexible Use 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. "Flexible Use" is Cleawater's equivalent of a special exception, conditional use, or special use, all of which can be used to

sonable 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 study.

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

> "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."[32]

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

> "Another method of making housing unavailable has been the application or enforcement of otherwise neutral rules and regulations on health, safety, and land–use in a manner which 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."[33]

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.[34]

It is well settled that for zoning purposes, a community residence is a residential use, not a business use. The Fair Housing Amendments Act of 1988 specifically invalidates restrictive covenants that would exclude community residences from a residential area. The Fair Housing Act renders these restrictive covenants invalid as applied to community residences for people with disabilities.[35]

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make additional reasonable accommodations the Fair Housing Act requires. *For the sake of simplicity — and because Clearwater uses this phrase — this study will use the term "Flexible Use" throughout.*

32. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.
33. Ibid.
34. 42 U.S.C. §3604(f)(B) (1988).
35. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2184. The overwhelming majority of federal and state courts that have addressesd the question have concluded that the restrictive covenants of a subdivision and the by–laws of a homeowner

Types of community residences

Based on their performance characteristics, there are two categories of community residences that warrant slightly different zoning treatments tailored to these different characteristics:[36]

- **Family community residences** include uses commonly known as group homes and sober living homes, both of which offer a relatively permanent living environment of at least six months that emulates a biological family.
- **Transitional community residences** include uses commonly known as small halfway houses and sober living homes that offer a relatively temporary living environment that ranges from weeks to no more than six months. Both, however, emulate a biological family like all community residences do.[37]

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 performance characteristics of each community residence.

In addition, interaction with neighbors without severe disabilities is an essential component to community residences and one of the reasons city planners and the courts long ago recognized the need for them to be located in residential neighborhoods. Neighbors serve as role models, helping to foster the normalization and community integration at the core of community residences.

Table 4 below 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 the city's *Community Development Code* to treat community residences for people with disabilities differently than rooming houses, nursing homes, and other institutional land uses.

As was realized 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, live as independently as possible, and integrate into community life.

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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.

36. Recovery communities are significantly different in nature than community residences and are examined in detail beginning on page 38.
37. The term "halfway house" is also often used to describe congregate living arrangements with dozens or even hundreds of occupants that are institutional in nature and do not emulate a family. The study does not examine those large halfway houses that do not emulate a family. They constitute a different land use than a transitional community residence and they warrant signficantly different zoning treatment.

For example, filling an apartment building with people in recovery — a "recovery community" (discussed at length beginning on page 60 — tends to segregate them away with other people in recovery as their neighbors, minimizing any interaction they might have with clean and sober neighbors. It's this interaction with clean and sober neighbors that helps foster normalization and community integration. Functionally, placing people in recovery in a series of adjacent single–family homes or townhouses is the same as filling an apartment building and, for all practical purposes, also constitutes a recovery community. While these arrangements 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 ones are likely to function more like mini–institutions than the biological family a community residence is supposed to, by definition, emulate.

Table 4: 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 4: ***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

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 an association, corporation, other legal entities, or the parents or legal guardians of the residents with disabilities. Some sober living homes for people in recovery from substance use disorder, like Oxford House, are self–governing.[38]

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 little as six months.* Family community residences are most often used to house people with intellectual disabilities (mental retardation, autism, etc., formerly referred to as "developmental disabilities"), 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."[39]

Family community residences are often called *group homes* and, in the case of people with substance use disorder, sober living homes, recovery residences, or *sober homes.*[40] *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.

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38. 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 study 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).
39. Consequently, residents of the scam sober homes who continue to use and where abstinence is not required are not covered by the Fair Housing Act.
40. For example, those "sober living homes" that limit occupants to a few weeks or months are most accurately characterized as "transitional community residences." *It is crucial that a jurisdiction evaluates each proposed community residence on how it operates and not on how its operator labels it.*

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 inmates 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 sober living homes, 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.

Sober living homes 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. Some sober living homes house residents for six months or even years, while others limit tenancy to just a few weeks or months (these are transitional community residences).

The sober living home concept is an outgrowth of the supportive living arrangement that Oxford House pioneered in 1975. In most community residences, including the typical "structured" sober living home, the live–in or shift staff function in the supervisory parental role. On the other hand, each Oxford House has no staff and is 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.[41]

Each Oxford House is subject to the demanding requirements of the Oxford House Charter which requires submitting to Oxford House International a monthly financial accounting, 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

41. *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.

Oxford House Charter constitutes the functional equivalent of licensing and for the purposes of land–use control ordinances, can serve as a proxy for formal licensing or certification.

The Oxford House organization recognizes the important 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) and men with their children occupied threee Oxford Houses (29 beds).[42]

The most recent annual survey of the Florida Oxford Houses found that the average length of sobriety was 333 days. It reported an average of 7.2 attempts to get clean or sober — reflecting how challenging achieving soberiety is and further emphasizing the critical need for sober living homes like Oxford House to address the epidemic. Residents averaged going to detox without continuing to treatment an average of almost three times — illustrating how important sober homes are to achieving a clean and sober life. Each week, Oxford House residents attend an average of 4.5 12–Step meetings and 40.4 percent also receive counseling.

Overdoses are rare among Oxford House residents. There had been just one (non–fatal) in the State of Florida since the last monthly meeting.[43]

In each Oxford House and in each community residence for people with disabilities, interaction between the people who live in the community residence is essential to achieving normalization. The relationship of a community residence'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.

As shown in Table 5 below, the number of occupants of each Oxford House ranges from six to 14. Eighty 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.

42. Oxford House, Inc., "Florida State Oxford Houses (Dec. 2023), 1. (on file at the Law Office of Daniel Lauber.

43. Ibid. 3.

Table 5: Oxford Houses in Florida By Number of Residents 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.

As the courts have consistently concluded, community residences foster the same family values that even the most restrictive residential zoning districts promote. Family community residences comply with the purposes of Clearwater 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 concluded that family community residences for people with disabilities must 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, a municipality or county can require (1) a rationally–based spacing distance between community residences and (2) a license or certification for community residences allowed as permitted uses 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."

Transitional community residences

In contrast to the group homes and sober living homes 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 sober living home 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 less than six months on how long someone can live there exhibits the performance charac-

teristics of a transitional community residence, much like the better known *small* halfway house.[44]

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

"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.

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.

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44. As used in this study, the term "halfway house" refers to the original halfway house concept that is small enough to emulate a biological family. The term does *not* refer to large halfway houses occupied by 20, 50, or 100+ people. Nor does term here refer to detoxification facilities that do not emulate a family. 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 be located in commerical, medical, or institutional zoning districts. A residential neighborhood is *not* essential for the larger halfway houses that do not emulate a biological family to function successfully.

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 relatively 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 zoning districts where multifamily housing is allowed (subject to the two objective standards explained later in this report).

However, it is important to remember that a Flexible Use cannot be denied on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed transitional community residence.[45]

Rational bases for regulating community residences

The impacts, or lack thereof, of community residences for people with disabilities have probably been studied more than any other small land use. To understand the rationale for the guidelines to regulate community residences this study proffers, it is vital to review what is known about community residences, including their appropriate location, number of residents needed to be both therapeutically and financially viable, means of protecting their vulnerable populations from mistreatment or neglect as well as excluding dangerous individuals from living in them, and their impacts, if any, on the surrounding community. Most of the principles discussed in this section apply to both community residences and their cousins, recovery communities.

Relative location of community residences. For at least 40 years, researchers have found that numerous community residence operators will locate their community residences close to other community residences, especially when zoning does not allow community residences for people with disabilities 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.[46] In every jurisdiction for which

45. Note that the proposed definitions of "community residence," "family community residence," and "transitional commmunity 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." The city's current zoning treatment of these large facilities may also require revision.

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

Planning/Communications has conducted an Analysis of Impediments to Fair Housing Choice, there was clustering or concentrations of community residences when the zoning did *not* require a rationally–based spacing distance between community residences allowed as of right.[47]

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 — two of 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 (unless they 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 close to a community residence (and recovery community) to serve as role models to the occupants of a community residence (and recovery community) — 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 doors 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.

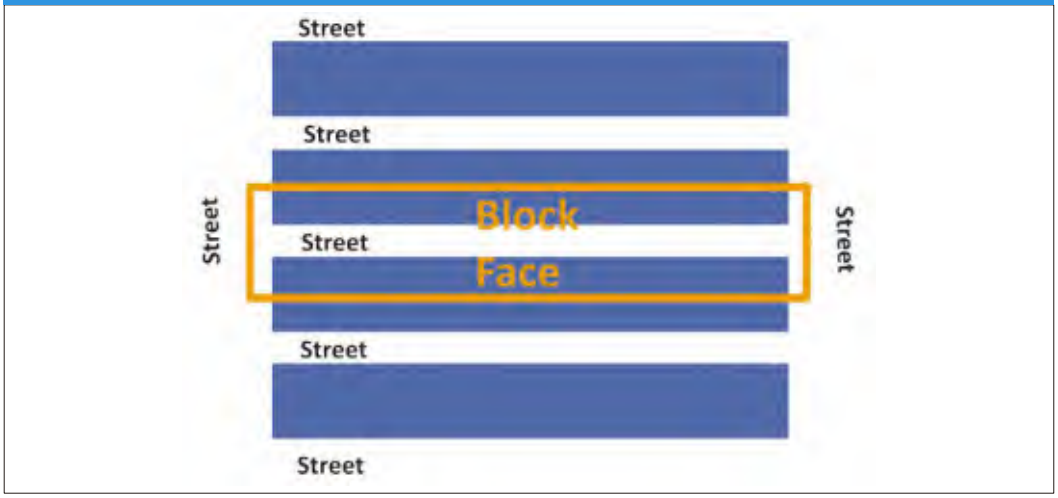
The known evidence shows that we can be quite confident that one or two nonadjacent community residences for people with disabilities on an average American block of 660 feet, or ten or 11 lots apart,[48] are not likely to alter the residential character of a neighborhood or interfere with the goals of community residences.[49] The author has not been able to find any similar studies of recovery communities. One 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 resi-

47. For example, *see* Daniel Lauber, *Naperville Housing Needs and Market Analysis 2009* (River Forest, IL: Planning/Communications, Dec. 2007) 47–49.
48. When calculating the number of lots, streets and bodies of water should be counted as one or more lots depending on their size.
49. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 27 (August 17, 1983).

dences 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 use of neighbors without disabilities as role models.

Figure 8: Example of a Block Face



The area within the orange rectangle is a conventional "block face." In Clearwater, much of the residential blocks do not adhere to this rectangular shape and are curved instead.

However, residential lot widths in Clearwater do not adhere to the typical 60 to 65 foot minimum lot size. While the *Community Development Code* establishes minimum lot sizes ranging from 50 to 100 feet,[50] the reality is that the width of a substantial number of residential lots in Clearwater is greater than 100 feet, often significantly greater.[51] So, under the approach described above, community residences could locate as of right just four or five lots apart in a neighborhood

50. *Minimum* lot widths in residential districts specified in the city's *Community Development Code* range from 50 to 100 feet for detached dwellings in the LDR Distrct (Table 2–103), 100 feet for attached dwellings (Table 2–204), 50 feet for detached dwellings in the LMDR District, 100 feet for attached dwellings and 50 feet for detached dwellings in the LMDR District (Tables 2–203), and 50 feet for detached dwellings in the MHP District (Table 2–602).

51. This conclusion is based on the author's observations of lot widths while analyzing the locations of existing community residences and recovery communities as well as city data on actual lot sizes. Of the roughly 38,050 residential lots in Clearwater, about 19,867 are larger than 10,000 square feet. Thirty–eight percent of the city's 21,465 single family parcels are larger than 10,000 square feet with 3,620 parcels *at least* 100 feet wide. Email from Jayme Lopko, City of Clearwater Long Range Planning Manager to Daniel Lauber, Law Office of Daniel Lauber (Jan. 3, 2024, 6:32 a.m. CST) (on file with the Law Office of Daniel Lauber).

where parcels are, for example, 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.

Clearwater's residential neighborhoods consist of a mix of rectilinear and curvilinear blocks. Applying a rigid 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 of right to facilitate normalization, community integration, and the use of neighbors without disabilities as role models.

The zoning approach needs some flexibility to allow for these larger minimum lot widths and the curvilinear streets in many Clearwater residential neighborhoods.[52] Consequently, this study recommends that when community residences (and recovery communities) are allowed as of right, the spacing distance between community residences (and recovery communities) should be a specific distance *or* a specific number of lots, *whichever is greater*. 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, a city 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 routinely treating these as permitted uses when the applicable spacing distance is met (and two other objective standards are complied with).

Locating within the 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 (or of a congregate living facility).

It is critical that application of a spacing distance *must* 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 study recommends using Clearwater's Flexible Use process to enable exceptions to the spacing distance when narrowly–crafted standards are met. **It cannot be emphasized enough that there are many circumstances where a city should allow a proposed use to locate within the applica-**

52. 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.

ble spacing distance for permitted uses in order to make the reasonable accommodation that the Fair Housing Act requires. These situations are examined in some detail beginning on page 33.

Measuring spacing distances for a permitted use. While spacing distances are measured from the nearest lot line to 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 for measuring 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 with an existing community residence. This is the more appropriate and pragmatic approach to use in Clearwater and elsewhere when determining the spacing distance to located as a *permitted use.*

"Pedestrian right of way" method. Another school 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. It would be very difficult for a prospective housing provider (and for city staff) to identify potential locations that meet the applicable spacing distance.

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 when a jurisdiction contains "superblocks," namely blocks that are substantially lengthier than the average American urban block of 660 feet. The greater length of a superblock — twice that of a typical block — 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 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 should be used when determining whether to grant a Flexible Use when the city conducts a case–by–case review of an application to locate *within* the applicable spacing distance.

Spacing distances in case–by–case–reviews. When an applicant seeks to locate within an applicable spacing distance through the case–by–case review of a Flexible Use, the "pedestrian right of way" method should be among the 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.

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 sober living home 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 will be detailed in a memorandum written after amendments to the *Community Development Code* are adopted.

Consequently this study recommends a case–by–case review when a community residence or recovery community (or congregate living facility) is proposed for a site within the applicable spacing distance from the closest existing community residence or recovery community (or congregate living facility).

And it recommends that the spacing distance to be allowed as a permitted use be measured using the "radius" method and that the "pedestrian right of way" method be applied when determining whether to allow a community residence or recovery community via a Flexible Use process.

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). This study recommends a zoning approach that allows for this individual review via a Level 1 or Level 2 Flexible Use "backup" with standards narrowly based on the reasons why the Flexible Use is being required. It is critical that this option be included in any zoning treatment of community residences and recovery communities designed to provide the reasonable accommodation the Fair Housing Act requires.

The bottom line on spacing distances

The spacing distances Clearwater chooses are *not* intended to be inflexible nor rigidly applied.

While the research shows that we can be quite confident that adhering to the chosen spacing distances will not interfere with the ability of occupants of community residences to attain normalization and community integration and 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, local zoning needs to provide a mechanism to reasonably accomodate, on a case–by–case basis, proposals to locate a community residence (or recovery community) within the applicable spacing distance for a permitted use. These proposals should be *objectively* evaluated individually according to narrowly–crafted standards based upon the reasons for having 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 the spacing distance.

Every jurisdiction that adopts the zoning approach recommended herein 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 city staff to fairly quickly determine the proper zoning treatment of the proposed use.

In addition, the city should maintain a current accounting of the number of applications and how each one is resolved. Congregate living facilities should also be included. A sample speadsheet will be provided to the city for this purpose.

The city should also maintain a confidential database and map[53] of the locations of all existing community residences and recovery communities so it can apply the spacing distance to any proposed community residence or recovery community.[54]

This database and map need to be kept current so that a proposed community residence or recovery community (or congregate living facility) is not subjected to a spacing distance from a community residence or recovery community (or congregate living facility) 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.

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.[55]

Social scientists note that while this capacity level exists, an absolute, pre-

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53. Confidentiality is recommended because it is possible that releasing the actual addresses of community residences and recovery communities *could* violate privacy laws. City 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 on state–operated websites. The proposed zoning approach, however, *cannot* be implemented without maintaining the recommended database and map.
54. 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 Clearwater revises its definition of "family" to establish a cap of four on the number of unrelated individuals that constitutes a "family," community residences for four or fewer would be treated the same as any other family. Such homes *cannot* be used to calculate spacing distances for *zoning* purposes because they are "families" by definition. 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).
55. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

cise 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."[56]

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 characteristics." There are no universally accepted criteria for determining how many community residences are appropriate for a given area.[57]

This research strongly suggests that there is a legitimate government interest to ensure that community residences do not cluster together on a block or 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 purposes.

Limitations on the number of unrelated residents. The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is 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.[58]

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

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

57. 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.

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

of unrelated persons living together as a single housekeeping unit.[59] *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 "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.…"[60] Unlike the six sociology 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.

One of the first community residence court decisions to distinguish *Belle Terre* clearly explained the difference between community residences and other group living arrangements like boarding houses. In *City of White Plains v. Ferraioli,*[61] New York's highest court refused to enforce the city's definition of "family" against a community residence for abandoned and neglected children. The city's definition limited occupancy of single–family dwellings to related individuals. The court found that it "is significant that the group home is structured as a single housekeeping unit and is, to all outward appearances, a relatively normal, stable, and permanent family unit.…" [62]

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.'"*[63]

59. *Belle Terre v. Borass*, 416 U.S. 1 (1974).
60. Ibid. at 7–9.
61. 313 N.E.2d 756 (N.Y. 1974).
62. Ibid. at 758–759.
63. Ibid. at 758 [citation omitted]. *Emphasis added.*

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."[64]

In *Moore v. City of East Cleveland,*[65] 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."[66]

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."[67]

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

The definition of "family" in the *Clearwater Community Development Code* must be read in conjunction with the code's definition of "housekeeping unit."

> *Family* means persons who jointly occupy and have equal access to areas of a residence and who function as a housekeeping unit.[68]
>
> *Housekeeping unit* means a group of individuals, whether or not related by blood, marriage, or civil union, who reside together as a family. Existence of one or more of the following shall create a rebuttable presumption that the group is not a bona fide housekeeping unit:
>
> i. Interior doors that contain padlocks or keyed doorknobs, which limits tenants' use and access;

64. Ibid.
65. 431 U.S. 494 (1977) at 517 n. 9.
66. Ibid. *Emphasis added.*
67. *City of White Plains v. Ferraioli,* 313 N.E. 2d at 758.
68. *Clearwater, Florida, Community Development Code,* Article 8, Section 8–102.

ii. Members of the group have separate leases or sub leases and/or make separate payments to the landlord;

iii. The group significantly reforms over the course of a twelve (12) month period or during the lease term by losing and/or gaining two or more members. Additions can be made with landlord approval if member(s) abandon(s) property, tenants and landlords should verify rights under Florida Landlord Tenant Laws.

iv. Residentially zoned property which provides living, sleeping and at least one meal to four or more unrelated individuals for periods of one week or longer, typically referred to as a boarding house. Such individuals do not have a lease agreement with the landlord for that property. Such individuals only obtain a license to use their rooms while landlord maintains right of access, and are typically referred to as boarders. Such uses are prohibited by this code.

v. Residentially zoned property that provides living and sleeping for more than four unrelated individuals for periods of one week or longer, typically referred to as rooming house. Such individuals do not have a lease agreement with landlord for property. Such individuals only obtain a license to use their rooms while landlord maintains right of access, and are typically referred to as boarders. Such uses are prohibited by this code.

vi. Members of this group do not engage in group living activities such as shopping, cooking, eating, and socializing.[69]

This complicated set of definitions should, for a variety of reasons, be replaced 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." The city is free to continue its current prohibition on rooming and boarding houses.

69. Ibid.

And the city is certainly free to set a cap other than four on the number of 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 on those within the cap.*

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 the city 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 for the city's *Community Development Code* constitutes this requisite reasonable accommodation for community residences occupied by more than four unrelated individuals with disabilities.[70] 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 any dwelling would be a provision added to Clearwater's adopted version of the* International Property Maintenance Code 2018[71] *to prevent overcrowding that applies to* all *dwellings.*[72] *The U.S. Supreme Court has made it clear that if the formula under this universal provision would allow, for example, just four people to live in a dwelling, then no more than four can live there whether or not related including 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.*[73] 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.[74] Zoning ordinance restrictions that focus on the "composition of households rather than on the total number of occupants living quarters can contain" are subject to the Fair Housing Act.[75]

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70. Like all cities and counties, Clearwater is 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 *Community Development Code* must treat any community residence that fits within the chosen cap the same as any other "family."
71. Sections 404.4 and 404.5.
72. See discussion beginning on page 73.
73. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).
74. Ibid. at 1781*[emphasis added]*. See the discussion of minimum floor area requirements beginning on page 73.
75. Ibid. at 1782.

As the discussion above implies, classifying community residences on the basis of the number of residents lacks a rational basis. A more appropriate, rational, and legal approach is proffered beginning on page 56 of this report.

Protecting the residents. People with disabilities who live in community residences constitute a vulnerable population that needs protection from possible abuse and exploitation. Community residences for these vulnerable individuals need to be regulated to assure that their residents receive adequate care and supervision.

Licensing and certification are the regulatory vehicles used to assure adequate care and supervision.[76] 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 28, 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.[77]

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 city 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.

The State of Florida does not *require* licensing or certification of many sober living homes or recovery communities. Instead, the state established *voluntary certif-*

76. 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.

77. 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.

ication for sober living homes and recovery communities in 2015.[78] The state statute required the Florida Department of Children and Family Services to approve at least one credentialing entity by December 1, 2015.[79] 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 staff.[80]

As the state statute requires, the operator of a proposed sober living home (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.[81] Each certified sober living home (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 after the home has been inspected and current and former residents and staff interviewed after the home has been operated for at least three months. Because so many jurisdictions run afoul of the Fair Housing Act regarding community residences for people with disabilities and recovery communities, the certification process does *not* inquire into whether or not the jurisdiction in which the sober home or recovery community would be located has issued zoning approval.

The requirements of Florida's voluntary certification process and standards for sober living homes (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. The impacts of community residences have been studied more than those of any small land use. Taken together, more than 50 statistically–rigorous studies have found that licensed community residences *not clustered* on a block face do not generate adverse impacts in the surrounding neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to them. They do not affect neighborhood safety nor neighborhood character — *as long as they are licensed and not clustered on a block face.* They do not create excessive demand on public utilities, sewer sys-

78. *Florida State Statutes,* §397.487 (2019).
79. Ibid. at §397.487(2).
80. 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 sober living homes, recovery residences, and recovery communities.
81. Ibid. at §397.487(3).

tems, water supply, street capacity, or parking. They do not produce any more noise than a conventional family of the same size. All told, *licensed or certified, unclustered* group homes, sober living homes, and halfway houses and assisted living facilities small enough to emulate a family have consistently been found to be good neighbors just like traditional families.

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

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

Unfortunately a similar body of research does *not* exist on the impacts of recovery communities.

Locations of community residences and recovery communities in Clearwater

As of November 2023, there were 47 known community residences and/or recovery communities. The following sources provided this information:

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

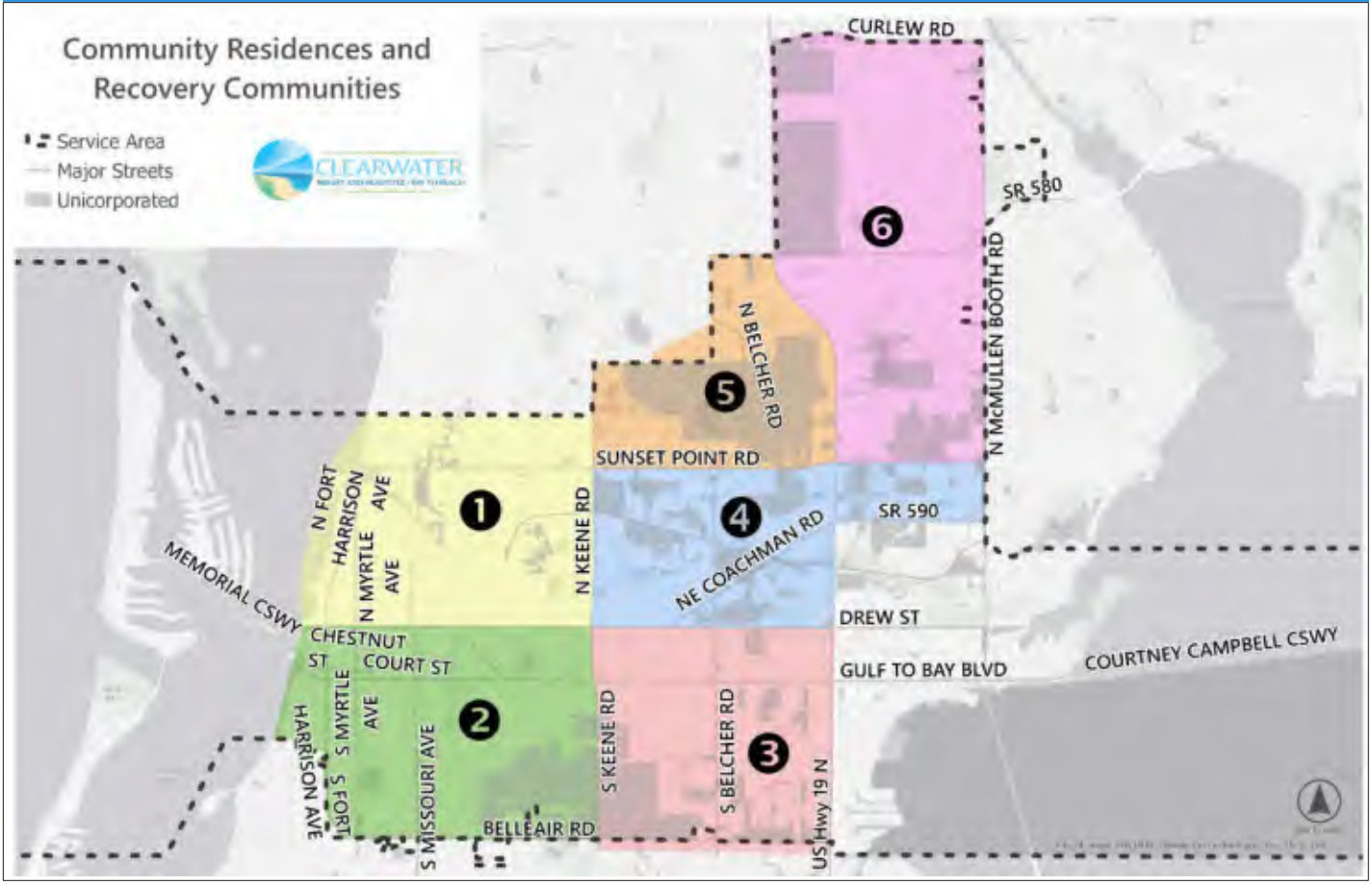
As explained in this study, clustering on adjacent blocks and concentrations in

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 without 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 Clearwater necessarily focuses on whether any community residences (and/or recovery communities) are currently located in a way that would hinder achieving these three core characteristics through clustering on a block or concentrations in a neighborhood.

City staff divided the city into six subareas to enable analysis and show the *relative* locations of community residences and recovery communities on the pages that follow. The map below shows each of the six subareas.

The six subareas constitute the City of Clearwater. The "Service Area" outside the city's boundaries is *not* subject to the city's *Community Development Code*.

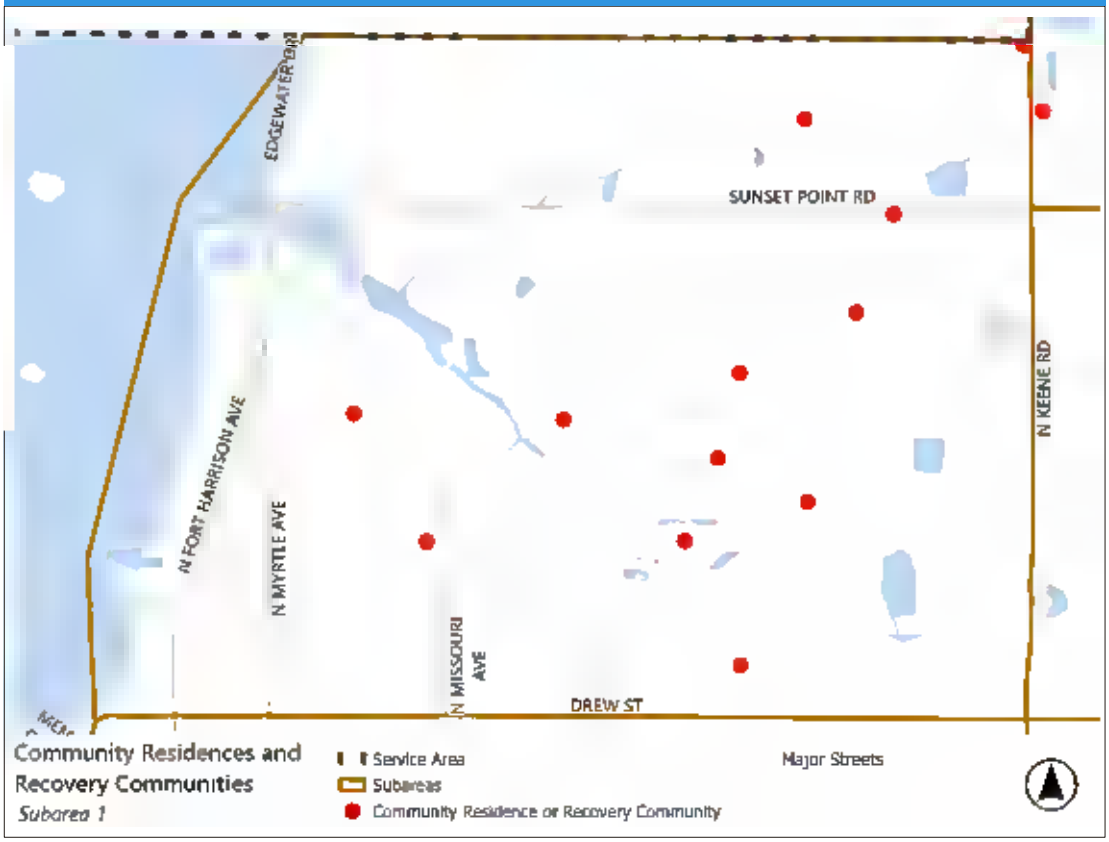
Figure 9: Clearwater Subareas



Source: City of Clearwater, Florida, December 2023.

Subarea 1

Figure 10: Relative Locations of Known Community Residences and Recovery Communities in Subarea 1



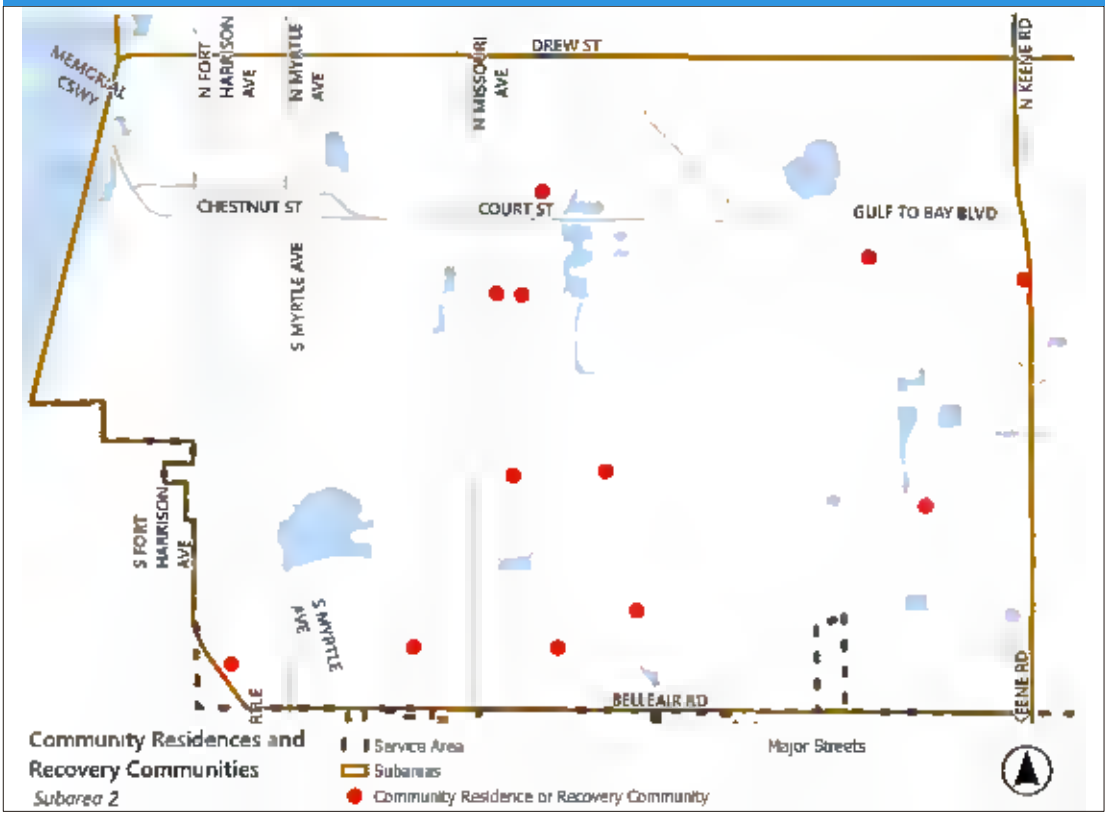
Source: City of Clearwater, Florida, December 2023.

With one exception, none of the 12 community residences or recovery communities in Subarea 1 is anywhere close to another one. In the upper northeast corner near Union Street and North Keene Road a site in Subarea 5 sits 935 feet or about 11 lots and one major road away from the closest site in Subarea 1. Solely within Subarea 1, the closest sites are in the center where one home is 1,217 feet or 12 lots and four streets from another northeast of it, 1,229 feet or six lots, two streets, and two bodies of water from another southwest of it, and 1,305 feet or 12 lots, three streets, and one body of water to its south east. These are sufficiently far apart not to constitute a cluster or concentration. All of these distances are great enough to avoid interfering with another home's efforts to attain normalization, community integration, or the ability to use neighbors as role models — and there is plenty of room for additional homes without generating negative impacts on the existing homes.

All of the other sites are at least 1,500 feet from any other site, with most located more than 2,000 feet from another community residence or recovery community. The southernmost site in Subarea 1 is 3,989 and 4,287 feet from the two closest sites in Subarea 2 south of Subarea 1.

Subarea 2

Figure 11: Relative Locations of Known Community Residences and Recovery Communities in Subarea 2



Source: City of Clearwater, Florida, December 2023.

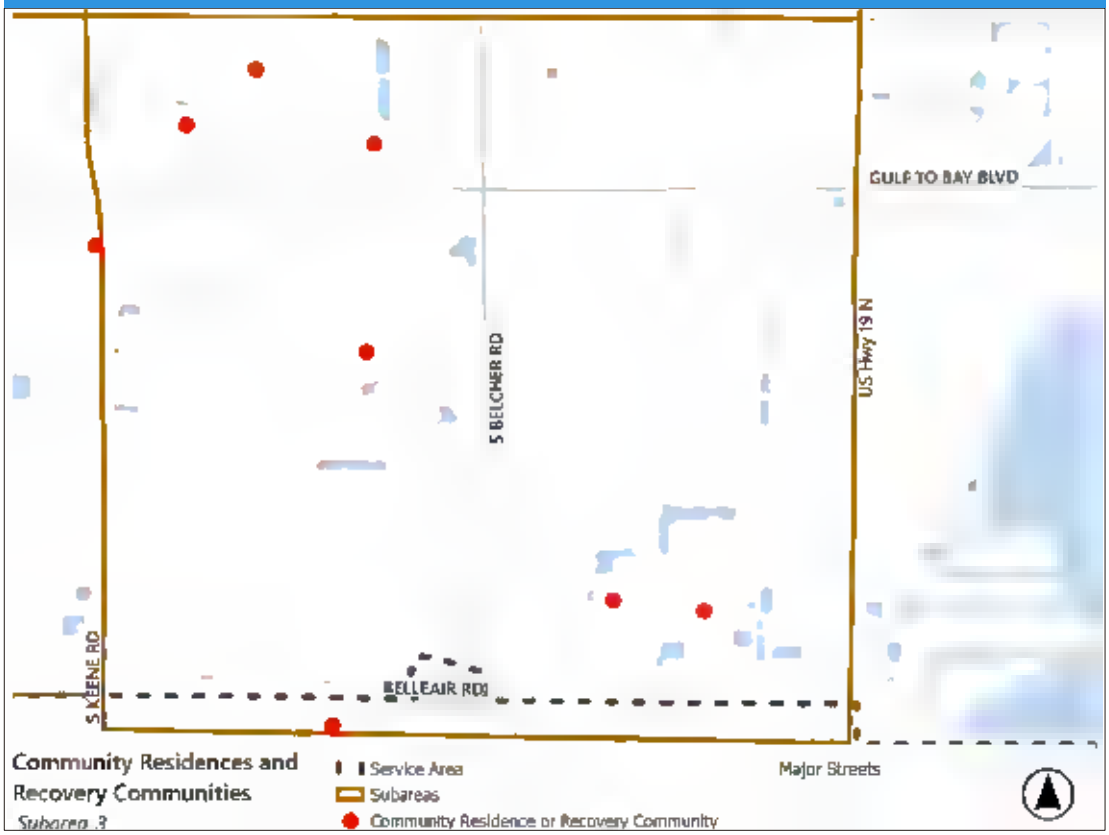
With two exceptions, all of the community residences and/or recovery communities are well scattered throughout the eastern two–thirds of Subarea 2. While there are two sites just under 300 feet apart, they serve very different populations — a six person home for the frail elderly and a 16 person recovery community. They are separated by a street, a parking lot, and three lots. Since their populations are so very different in nature, the chances of the residents of either site interferring with achieving the core goals of the other are slim to none. The odds are very strong that the residents of the two homes do not even know the other home exists.

Of the other ten sites, one pair is a bit less than 1,200 feet apart, a second pair is just over 1,200 feet apart, a third is a bit less than 1,600 feet while a fourth pair is separated by about 1,650 feet. The distances between all of the others range from 1,979 to 4,832 feet.

With the exception of that first pair within 300 feet of each other, all of these distances are more than enough to avoid any interference with normalization, community integration, or the ability to use neighbors as role models. There remains plenty of room for additional community residences and/or recovery communities without hindering achievement of their core goals.

Subarea 3

Figure 12: Relative Locations of Known Community Residences and Recovery Communities in Subarea 3



Source: City of Clearwater, Florida, December 2023.

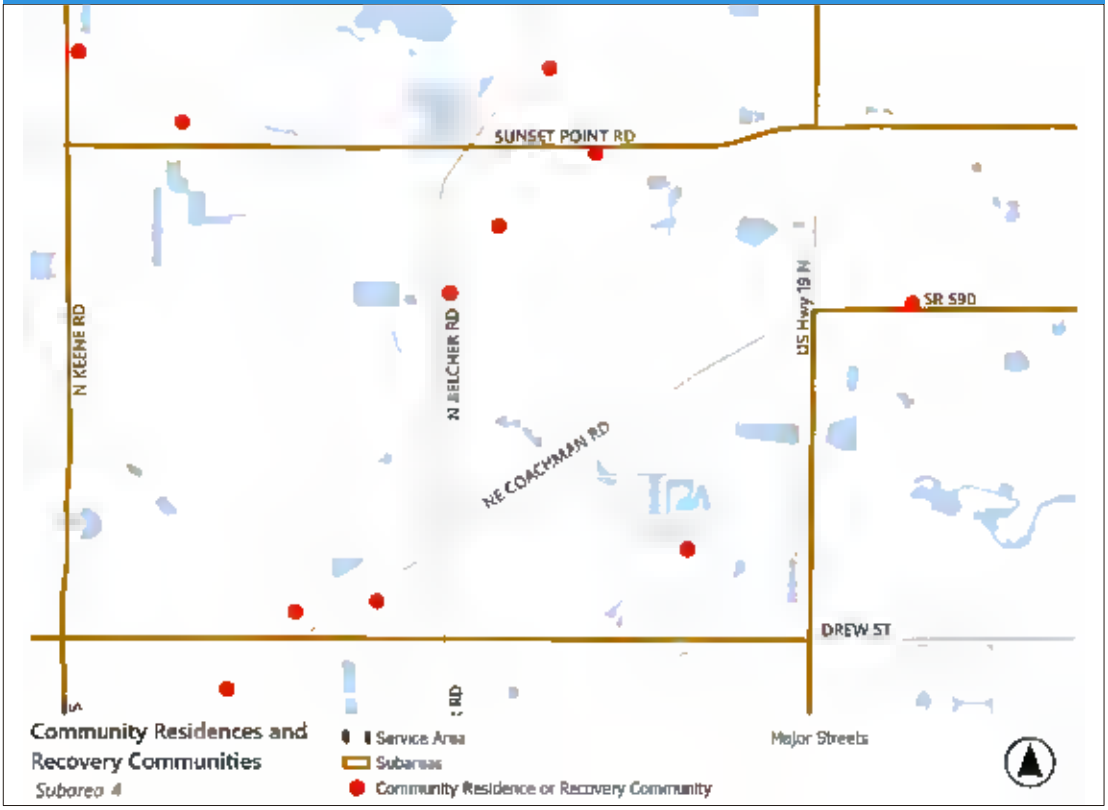
The seven community residences or recovery communities in Subarea 3 are well scattered. Only two pairs — one in the northwest corner and the other in the southeast corner — are less than 1,200 feet apart. The first pair is separated by eight lots and four streets. The second pair is separated by three streets and eight lots.

No site in Subarea 3 is located so close to another to affect normalization, community integration, or the ability to use neighbors as role models at another community residence or recovery community.

There is more than sufficient room in Subarea 3 to accommodate additional sites without impeding the ability of any existing community residences and recovery communities to attain their core aims.

Subarea 4

Figure 13: Relative Locations of Known Community Residences and Recovery Communities in Subarea 4



Source: City of Clearwater, Florida, December 2023.

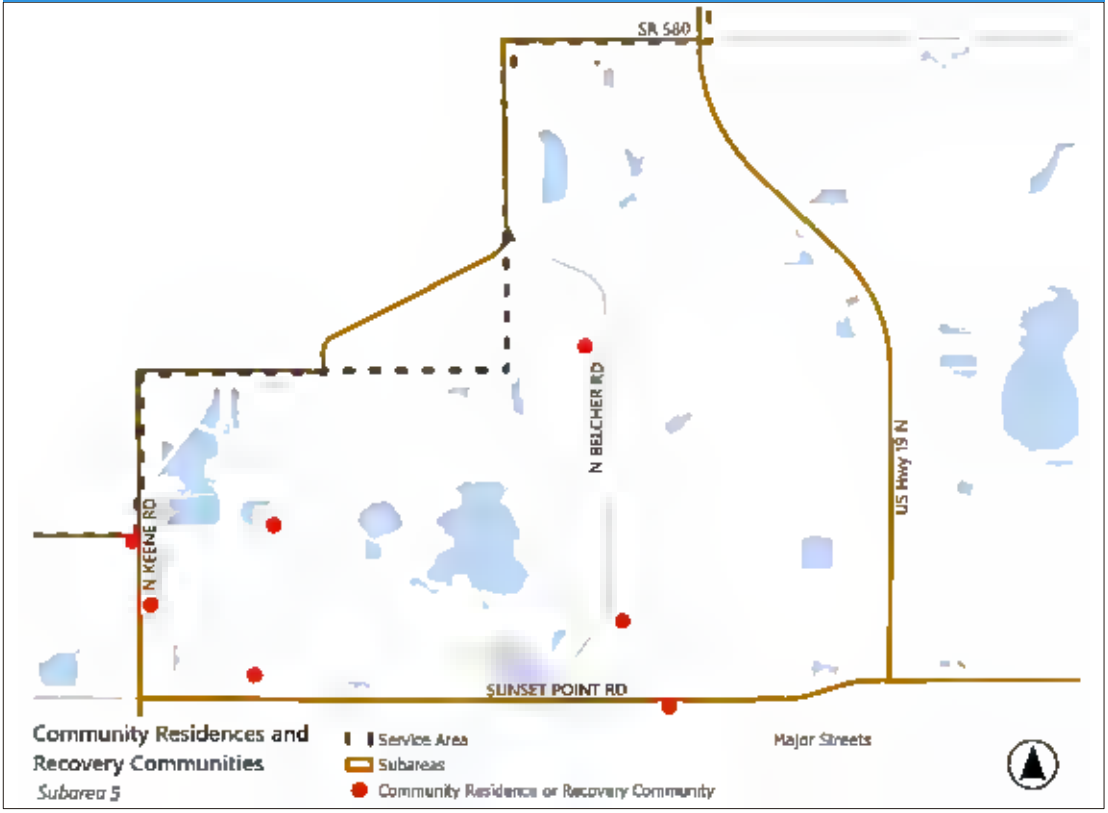
Distances between the seven community residences and recovery communities in Subarea 4 range from 1,035 to 6,547 feet. There are 12 lots and three streets between the two that are 1,035 feet apart. Three streets and 13 lots separate the two separated by 1,135 feet.

Most of the sites are at least 4,390 feet away from each other. No sites in Subarea 4 are close enough to hinder normalization, community integration, or the ability to use neighbors as role models at another community residence or recovery community in Subarea 4 or adjacent subareas 3 and 5.

There is more than enough space in Subarea 4 to accommodate additional sites without impeding the ability of any current community residences and recovery communities to achieve their core purposes.

Subarea 5

Figure 14: Relative Locations of Known Community Residences and Recovery Communities in Subarea 5



Source: City of Clearwater, Florida, December 2023.

The five community residences and/or recovery communities are well scattered in the southwest part of Subarea 5. The closest one comes to another is a sober living home 935 feet from senior group home that is in adjacent Subarea 1. They are separated by two steets and 12 lots. Given their different populations, it is unlikely that the occupants of either home knows the other exists — unless residents of the sober home volunteer to help at the senior group home.

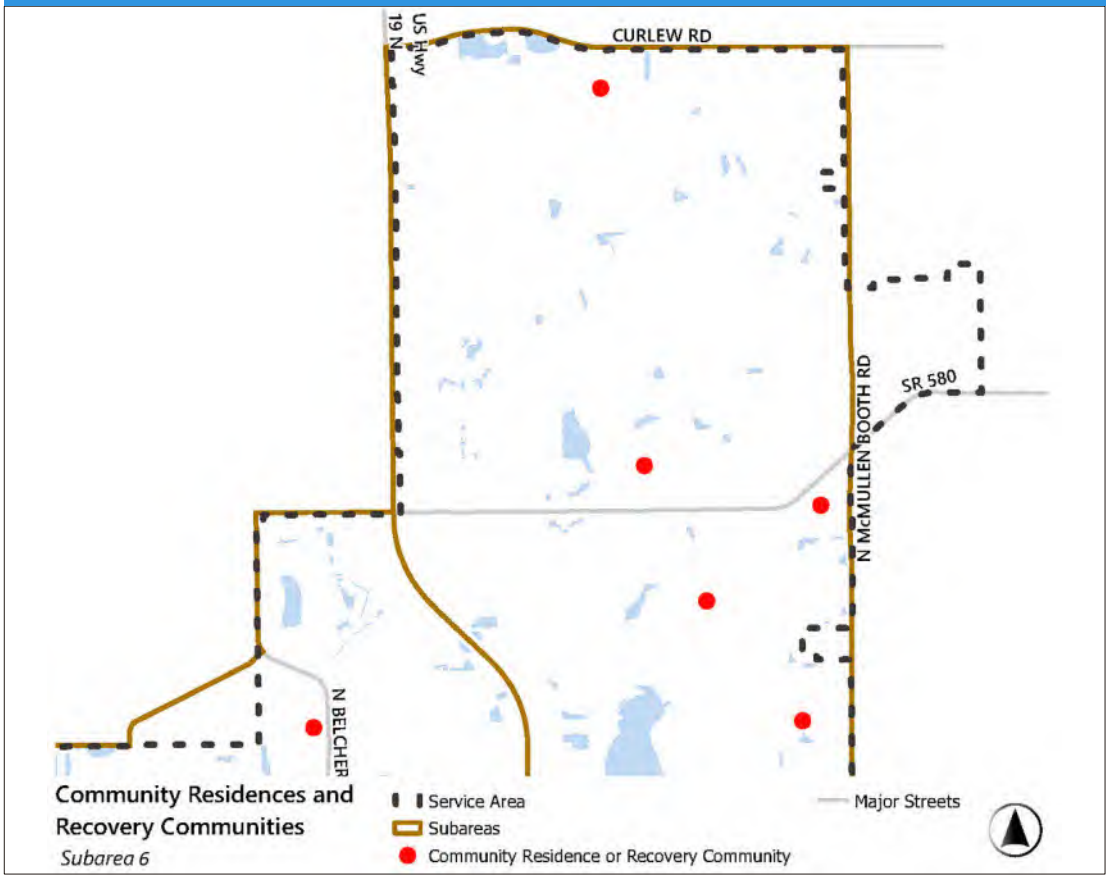
A four person group home in Subarea 4 sits 1,388 feet from a site in Subarea 5 with four streets and 17 lots between them.

No community residence or recovery community in Subarea 5 is so close to another that it would hinder normalization, community integration, or the ability to use neighbors as role models at another community residence or recovery community in Subarea 5 or adjacent subareas 1 and 4.

There is more than sufficient room in Subarea 5 to easily have room for additional sites without impeding the ability of any existing community residences and recovery communities to attain their core aims.

Subarea 6

Figure 15: Relative Locations of Known Community Residences and Recovery Communities in Subarea 6



Source: City of Clearwater, Florida, December 2023.

Each of the five community residences or recovery communities in Subarea 6 are separated by at least 3,088 feet. The northernmost is more than 1.6 miles from the nearest one. That one is more than 3,250 and 3,571 feet from the two closest to it — and separated by State Route 580. The site in Subarea 5 west of North Belcher Road is nearly two miles from the closest site in Subarea 6.

Additional community residences and recovery communities can easily be accommodated throughout Subarea 6 without generating any clustering or concentrations.

No community residence or recovery community in Subarea 6 is close enough to another that it would hinder normalization, community integration, or the ability to use neighbors as role models at another community residence or recovery community.

Observations

The City of Clearwater is very well–situated to prevent clustering on a block or adjacent blocks and to prevent concentrations in neighborhoods from developing. As of this writing, only one potentially nascent cluster is known to exist. Given that one of the two sites in Subarea 2 is a six–person senior group home and a 16–resident recovery community, it is highly unlikely that either one impedes achieving the core goals of the other.

The extremely intense concentrations and clustering of community residences and recovery communities that have formed in many other Florida jurisdictions simply have *not* developed in Clearwater. By adopting the zoning approach this study recommends, Clearwater can greatly reduce the chances that clustering and concentration will develop. With this zoning approach, Clearwater should be able to prevent the creation of any *de facto* social service districts that alter the character of residential neighborhoods.

Overall, Clearwater is well–positioned to employ the recommended rational zoning regulations in accord with the nation's Fair Housing Act that enable community residences and recovery communities to locate without clustering on blocks or concentrating in neighborhoods which undermine their ability to foster normalization, community integration, and use neighbors without disabilities as role models.

Recommended zoning framework

The 1988 amendments to the nation's Fair Housing Act require all government jurisdictions to make a "reasonable accommodation" in their zoning codes and other rules and regulations to enable group homes and other community residences for people with disabilities (as well as recovery communities) to locate in the residential districts essential to their success. The amendments that will be suggested for Clearwater's *Community Development Code* make this reasonable accommodation that the Fair Housing Amendments Act of 1988 requires for those people with disabilities who wish to live in a community residence (or recovery community).

The legislative history of the Fair Housing Amendments Act of 1988 makes it clear that jurisdictions *cannot* require a case–by–case review (usually a conditional use permit, special exception, or a special use permit — but in Clearwater's case, a Flexible Use) as the *initial* means of regulating family community residences for people with disabilities in residential districts. It does *not,* however, prohibit using case–by–case review and approval in single–family districts for transitional community residences. Nor does the Fair Housing Amendments Act of 1988 require a local jurisdiction to allow in residential districts those community residences occupied by persons who do *not* have disabilities since they do not constitute a protected class under the Fair Housing Act.

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 the city's *Community Development Code* as explained beginning on page 60.

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

Like any other dwelling, when a community residence for people with disabilities — whether it be "family" or "transitional" — fits within the cap of four unrelated persons as recommended for the definition of "family" in the city's *Community Development Code,* it must be allowed as of right in all residential districts the same as any other family.[82]

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 up to four unrelated people to constitute a "family," the zoning ordinance cannot require certification, licensing, or a spacing distance around a community residence with as many as four occupants with disabilities***.[83]

As explained beginning on page 39, the definition of "family" recommended for Clearwater's *Community Development Code* would allow 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 beginning on page 17 and on page 55.**

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 the city to make a "reasonable accommoda-

82. 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 imposing 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 regulate community residences for people with disabilities — and very likely recovery communities as well — through zoning.

83. 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 sober living homes. 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.

tion" for community residences that would house more than the recommended four unrelated people with disabilities so they 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 city'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) *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. In Clearwater, this backup process would be a "flexible use."

General principles for making the zoning reasonable accommodation

Taken as a whole, the case law suggests that any reasonable accommodation must 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."[84]

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

The suggested amendments to Clearwater's *Community Development Code* take into account both federal fair housing law and those provisions in the Florida statutes that governing local zoning that are legal under the nation's Fair Housing Act.[85]

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84. 46 F.3d 1491 (10th Cir. 1995) 1504.
85. Our review suggests that there is a need to coordinate the state statutes and revise them to eliminate their weaknesses and facilitate more rational zoning treatment of community residences for people with disabilities throughout the State of Florida. Current state statutes contain provisions that likely do not fully comply with the nation's Fair Housing Act as explained beginning on page 76.

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 17, 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.* It is classified as a "family" under zoning and must be treated as a "family." To do otherwise would constitute housing discrimination on its face.

So if Clearwater adopts the recommended zoning definition of "family" that 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" for zoning purposes and no spacing distance for community residences or recovery communities is measured from it or to it.

While the *Community Development Code* cannot require a license or certification for a community residence that fits within the zoning definition of "family," the *State of Florida* can require a license or certification no matter how many people live in a community residence and no matter how a city or county defines "family."

Zoning amendments 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. The amendments 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.[86]

The courts, however, recognize that the preservation of the residential character of neighborhoods is also a legitimate government interest. 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 resi-

86. The proposed zoning provisions for recovery communities seek to achieve largely similar goals.

dential neighborhoods in a meaningful way which takes in mind their need for a group living substance free environment."[87] And this is exactly what the zoning based on the recommended framework will seek 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 the community residence — at least as much as the legal provisions of Florida's statutes allow.

Remember: Community residences for people with disabilities (both family and transitional) that house no more than the recommended cap of four unrelated residents in a single housekeeping unit should be treated the same as any other family and cannot be included when calculating spacing distances between community residences for people with disabilities.

Voluntary Certification of Sober Homes and Recovery Communities. The Florida Association of Recovery Residences (FARR) is the state's certification entity as explained beginning on page 42. FARR uses a demanding certification process that determines whether a sober living home (or recovery community) is actually operated in accord with its certification standards rather than depending on a prospective operator's promises of how she will operate the home. The six steps required to achieve certification are available at http://farronline.org/certification/apply-for-certification. Detailed certification and compliance protocols are available to download at https://farronline.org/document-library.

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 at the sober living home or recovery community.

So while an applicant must meet FARR's initial criteria to open a sober living home or recovery community), FARR makes its final determination to grant certification *after* the sober living home (or recovery community) has been operating for at least three months. This enables FARR staff to conduct an inspection after a home has been operating for three months and to interview current and former residents and staff members.[88]

When a jurisdiction requires licensing or certification for community residences and recovery communities, FARR issues initial provisional certification based on the written application until annual certification is issued following the on–site inspection and confirmation of compliance with FARR's standards. FARR's provisional certification will satisfy the certification requirements in

87. *Jeffrey O. v. City of Boca Raton,* 511 F. Supp. 2d 1339 (SD Florida 2007).

88. Emails from John Lehman, past CEO and board member of the Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 17, 2017, 9:34 a.m. CST and Nov. 20, 2017, 11:27 a.m. CST) (on file with the Law Office of Daniel Lauber).

the zoning recommended here for Clearwater. If permanent certification is denied, the sober home or recovery community could not continue to operate in Clearwater under the zoning to be recommended.

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. Clearwater should consider defining community residences as housing no more than 12 people,[89] while allowing for a case–by–case review process for proposed community residences that would house more than 12 people. Standards for granting a Flexible Use 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.

Community residences typically are located in a single dwelling unit like a single–family house. However, there are instances in Florida where all the units of a duplex, triplex, or quadraplex with no more than 12 residences total can constitute a community residence.

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 of right 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 "Flexible Use Backup" provides a regulatory vehicle to make that further necessary reasonable accommodation.[90]

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89. 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.

90. Like nearly all case law involving communty residences under the Fair Housing Act, these decisions 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, the courts agreed that additional residents should be allowed to ensure financial and/or therapeutic viability.
S*ee 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

Recommended zoning framework for "family community residences"

IMPORTANT: Clearwater uses what it calls a "flexible use" to handle case-by-case reviews when a land use is not a permitted use. The flexible use is essentially the same thing as a special use, conditional use, or special exception — just under a different name.

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. In terms of stability, tenancy, and functionality, family community residences for people with disabilities are more akin to the traditional owner–occupied single–family home than are transitional community residences for people with disabilities.

To make this reasonable accommodation for more than four people with disabilities who wish to live in a community residence, the recommended amendments to the *Community Development Code* would make family community residences for five to 12 people[91] with disabilities a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- 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, the voluntary 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;[92] and
- The proposed family community residence is not located within a rationally–based distance of 660 feet or nine lots, whichever is greater, from an existing community residence, recovery community, or congregate living facility 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 via a Flexible Use backup

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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).

91. This assumes that Clearwater amends its definition of "family" to include up to four unrelated individuals living as a single housekeeping unit.
92. There appears to be no legal reason why any local Florida 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.

as explained beginning on page 64.

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.[93] 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 to multiple–family residential uses that exhibit a higher turnover rate typical of rentals than the lower turnover rate typical of single–family dwellings.[94]

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."

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 every municipality and county to make a "reasonable accommodation" for transitional community residences for people with disabilities. This reasonable accommodation can be accomplished via the heightened scrutiny of a case–by–case review (a Flexible Use in Clearwater) when an operator wishes to locate a transitional community residence in a 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[95] 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

93. Time limits typically range from 30 days to 90 days, and as long as six, nine, or 12 months, depending on the nature of the specific transitional community residence and the population it serves. With no time limit, many residents of family community residences live in them for many years, even decades.
94. 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.
95. This assumes that Clearwater amends its definition of "family" to include up to four unrelated individuals living as a single housekeeping unit.

residence by receiving the license that the State of Florida requires, the voluntary 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, recovery community or congregate living facility as measured from the nearest lot lines.

When a proposed transitional community residence does not meet both standards, the operator can apply for a case–by–case evaluation via a Flexible Use as explained beginning on page 64.

Recovery communities

Community residences are not the only housing option available for people in recovery from substance use disorder, also known as drug and/or alcohol addiction or abuse. "Recovery communities" offer a more intensive living arrangement with more people than can emulate a family and a more segregated, slightly institutional–like atmosphere than 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 in a single multifamily structure, a series of townhouses, or a series of single–family detached houses that are *not* available to the general public for rent or occupancy. 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 similiar, zoning treatment.

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

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 recovery communities consist of a single duplex, triplex, or quadraplex 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 more typical large recovery community. Any zoning approach needs to make 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.*:[96]

> …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.[97] *[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 characteristic.

Generally speaking, a recovery community is located in multifamily buildings where the operator places several individuals in each dwelling unit. Other recovery communities may consist of a very large single–family house, or a series of detached or attached (townhomes) single–family residences. Some can occupy all units in a duplex, triplex, or quadraplex. They have been known to cluster together. One of the most extreme situations is a recovery community in Palm Beach County occupied by 152 individuals in recovery with another 100–person recovery community next door. Both are under the same ownership and are shown immediately below.

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96. 527 U.S. 581 (1999).
97. 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 16: Example of Two Adjacent Recovery Communities in Palm Beach County

A total of 252 people in recovery occupy these two adjacent recovery communities, 100 in one and 152 in the other. Both are operated by the same recovery community 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.[98]

The situation is akin to, albeit not precisely the same as, 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."[99]

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 — conflicting with a core characteristic of community residences.

98. 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 *[sic]* in environment." *See* http://farronline.org/standards-ethics/support-levels.

99. *Matter of Oceanview Home for Adults, Inc. V. Zucker*, 215 A.D.3d 140 (2023).

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 a recovery community creates 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 — 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.[100] 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" as recommended for Clearwater, the operator places four people in recovery in each unit in a multifamily building, series of adjacent single family homes, or townhomes — with a total number of residents substantially greater than the 12 in a community residence. The people in recovery, however, 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.

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."[101]

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

101. *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).

That is exactly what has happened in the Broward County cities of Pompano Beach and Oakland Park as well as in neighboring Palm Beach County.[102] In fact, the density of these large mini–institutions has often been greater than in the *Familystyle* case. The operators have recreated an institutional setting in the midst of a residential district. These mini–institutions not only interfere with the core goals of normalization and community integration, but also alter the character of the neighborhood and the city's zoning scheme.

Figure 17: Four Clustered Recovery Communities in Pompano Beach

The four buildings with the reddish roofs in this photo from Google Earth are each occupied by 24 people in recovery, for a total of 96 people in 16 apartment units.

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

102. *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/Communications, 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.

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.

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.

Introducing multiple mini–institutions such as these can and has altered and the residential character of the surrounding neighborhood.[103] In addition, there is no evidence that such arrangements have no effect on 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, including emulating a biological family and utilizing nearby neighbors without disabilities as role models to foster normalization as well as participation in the wider community to achieve community integration.

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 constitute much of the basis of the court rulings that require community residences to be allowed in residential districts — going back to before enactment of the Fair Housing Amendments Act of 1988 which made people with disabilities a protected class.

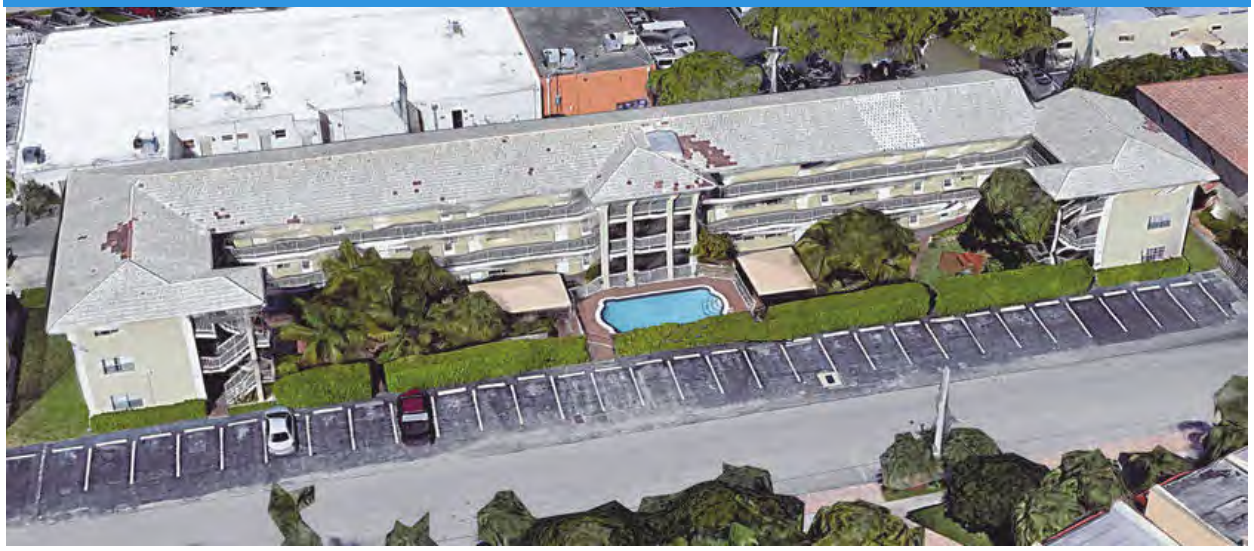
But filling a multifamily building with people in recovery — or filling adjacent houses or townhomes with people in recovery — hardly emulates a biological family in a residential neighborhood. Instead of "clean and sober" people in the surrounding dwellings serving as role models, the folks trying to recover from substance use disorder are surrounded by other people in the same situation. While such living arrangements certainly can be conducive to different 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.

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

103. Lest we forget, the courts agree that cities have a legitimate government interest in preserving the residential character of their neighborhoods as discussed earlier on page 55.

zoning should treat recovery communities as the mini–institutions that they functionally are.[104]

Figure 18: Eighty Person Recovery Community in Palm Beach County



Forty apartments are occupied by 80 people in this Palm Beach County recovery community.

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 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.

As explained beginning on page 36, 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.

104. 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 difficult to imagine that a court would fail to recognize that, for example, placing 20, 30, or more people with disabilities in an multifamily building is an attempt to subvert the definition of "family" and would be anything but an institutional use set in a residential area.

The distance between a proposed recovery community and the nearest community residence, recovery community, or congregate living facility ought to vary based on the number of occupants of a 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 could be the same as the spacing distance between community residences. However, a recovery community housing 100 or more people needs a much larger neighborhood with 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 a community residence, another recovery community, or a congregate living facility, 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.

Under the zoning amendments that will be recommended to Clearwater, an existing recovery community, if any, 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.

Recommended zoning framework for recovery communities

As discussed above, recovery communities range in size from one or two dozen occupants in a duplex, triplex, or quadraplex, to dozens in a series of detached or attached single–family homes, to 100 and more in multifamily housing. But since the recovery communities possess a number of institutional performance characteristics as explained above, they are not compatible with single–family housing and should be not allowed as permitted uses in single–family districts where multifamily housing is not allowed of right. In single–family districts where duplexes and/or triplexes are allowed as of right or as a Flexible Use, the smaller recovery communities roughly comparable in size to a community residence should be allowed in the same manner.

In zoning districts where multifamily housing is *allowed on a case–by–case basis*, recovery communities should be allowed as a Flexible Use subject to the narrowly–crafted criteria.

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

- The specific recovery community or its operator is at least provisionally certified by the Florida Association of Recovery Residences,[105] and
- The appropriate distance between a proposed recovery community and the closest community residence, recovery community, or congregate living facility to be a permitted use varies by the number of occupants in the proposed recovery community. For example, a proposed recovery community for up to 16 occupants should be at least 660 feet or nine lots, whichever is greater, from the closest existing community residence, recovery community, or congregate living facility as measured from the nearest lot lines. 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.[106]

Table 6 below illustrates this tiered approach to spacing distances.

Table 6: Illustrative Tiered Spacing Distances for Recovery Communities

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 is simply an example to illustrate the concept of using tiered spacing distances for a proposed recovery community to be a permitted use . These are not meant to be exact numbers for any jurisdiction to adopt.

Remember, as explained on page 35, that a spacing distance is not intended to be inflexible. Just as with community residences, there will be circumstances where a proposed recovery community should be allowed to locate within the

105. If the State of Florida replaces this certification with a license, then the local zoning should be amended to require the available license. If full certification is denied, the recovery community would not be allowed in Clearwater if the city adopts this recommended approach.

106. The rationales for a longer spacing distance for recovery communities and this "tiered" approach to spacing distances, are explained beginning on page 65.

applicable spacing distance. Those situations warrant a case–by–case evaluation via a Flexible Use as explained earlier beginning on page 64.

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.

"Flexible Use Backup" — Vital element of "reasonable accommodation"

There are situations, explained earlier in this study, where the Fair Housing Act's mandate to make a "reasonable accommodation" for community residences for people with disabilities and for recovery communities warrants making exceptions when the objective standards to be allowed as permitted uses are not met.

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 (or congregate living facility). For some types of community residences, licensing, certification, or accreditation may not even be offered 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 Flexible Use review to:

- Ensure that normalization, community integration, and the availability of neighbors without disabilities to serve as role models would still be facilitated if the request is granted and prevent the creation or intensification of clusters on adjacent blocks and concentrations in neighborhoods, 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 provide.

There are four circumstances under which a Flexible Use could be sought:

(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 city would need to find that allowing the proposed use will not hinder the normalization for residents and community integration at the nearest existing community residence or recovery community and not cumulatively alter the character of the neighborhood. Employing the

Flexible Use process gives the city 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. 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 large enough to minimize or eliminate the chance that residents of either site will even know the other one exists, greatly reducing the odds that the proposed community residence or recovery community would impede normalization, community integration, or the use of nondisabled neighbors as role models at the existing site.

(2) **When local, state, or federal licensing, certification, or accreditation is applicable or available.** If an operator seeks to establish a community residence in Clearwater 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. This provision is needed for community residences but not for recovery communities because the State of Florida offers certification for recovery communities, currently through the Florida Association of Recovery Residences.

(3) **When the operator of a community residence seeks to house more than 12 people** (including live–in staff, if any). 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 financial and/or therapeutic viability. This situation can arise for community residences but not for recovery communities.

(4) **When a transitional community residence is proposed to locate in a single–family district where multifamily housing 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 multi-

family dwellings as a permitted use or at all. The Flexible Use process provides the regulatory vehicle to examine these proposals on a case–by–case basis to allow a transitional community residence in a single–family district when the applicant shows it is compatible with existing land uses.

Licensing, certification, and accreditation

When the required license, certification, or accreditation of a community residence or recovery community has been denied or revoked, that use becomes a illegal under state law and obviously will be ineligible for a Flexible Use and could not be located in Clearwater.

Similarly, under the zoning framework recommended here, sober living homes subject to licensing or certification from the State of Florida or subject to an Oxford House Charter, and recovery communities subject to certification by the Florida Association of Recovery Residences whose certification is denied or revoked would become an illegal use in Clearwater and would be required to close and place its occupants in a safe and secure living environment within a reasonable period of time *before* closing.

Suspension of a license or certification, however, would not invalidate the zoning approval since suspension is intended to give the operator time to correct deficiencies and have its certification or license reinstated.

When evaluating an application for a Flexible Use to locate within the applicable spacing distance, the city *can* consider the cumulative effect of the proposed community residence (or recovery community) because altering the character of the neighborhood or creating a *de facto* social service district interferes with the normalization and community integration and the use of neighbors without disabilities as role models — core characteristics of a community residence. 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 in a neighborhood respectively. It is important, however, to understand that a city cannot just declare there's a cluster or concentration; it needs to prove it.

It is vital to stress that the decision on granting a Flexible Use 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 Flexible Use is required. Locating near a school, for example, is not a valid reason to deny a Flexible Use. 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 a Flexible Use or any other aspect of zoning.

Additional issues to consider

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

The state statute governing local zoning for those community residences for people with disabilities licensed as "community residential homes" allows local governments to adopt zoning that is *less restrictive* than the state statutes.[107] The zoning proposed here is broader in scope than the state statutes — covering *all* types of community residences for *all* types of disabilities as well as recovery communities. Some of the suggested zoning regulations fall within the scope of this statutory provision. The zoning amendments will provide for exceptions to comply with the legally valid aspects of the state statute regarding community residences licensed as "community residential homes."

The state statutes, however, do *not* establish any zoning standards for most sober living homes — sober homes and small halfway houses for people in recovery — or for recovery communities. As discussed earlier, the state statutes do establish voluntary certification for sober living homes 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.

Local zoning provisions for community residences need to also properly provide for the unstructured, self–governed sober living homes called "Oxford House." Congress has recognized Oxford House which has its own internal monitoring system in place to maintain compliance with the Oxford House Charter.[108] The standards and procedures that both Oxford House and the State of Florida's voluntary certification of sober living homes 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 sober living homes and recovery communities by the Florida Association of Recovery Residences be treated as the functional equivalent of state licensing.

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

108. 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.

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 building, housing, or property maintenance 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.

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 multifamily structure are to be treated the same as all other multifamily residences.

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.

Clearwater has adopted the 2018 *International Property Maintenance Code*[109] 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 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.[110]

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

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

109. *Clearwater Community Development Code*, Article 3, Section 3–1502. M.

110. Section 404.4.1, *2018 International Property Maintenance Code.*

square feet, or ten by 15, for example.[111] Keep in mind that these are *minimum* criteria to prevent overcrowding based on health and safety standards. Bedrooms, of course, are often larger than these minimums. This sort of provision is the type that the U.S. Supreme Court has ruled applies to *all* dwelling units including community residences for people with disabilities and to recovery communities. The Court ruled that the Fair Housing Act does *not* require a city or county to grant a reasonable accommodation from this type of code provision.[112]

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"[113] may house as many as 14 people. *But no matter how many people state licensing allows, the number of residents could not 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 seven people under the property maintenance code's formula, then no more than seven 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 city 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.[114] There's not as much confidence that larger aggregations can — which is why the forthcoming ordinance will require a case–by–case review of proposals for more than 12 residents.

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111. 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.

112. *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]*

113. *Florida Statutes,* Title XXX, Social Welfare, Chapter 419, "Community Residential Homes," §419.001.

114. There are circumstances where a community residence might be located in a duplex or triplex rather than a detached single–family house.

Consequently the proposed zoning amendments will cap community residences at 12 occupants and apply the Flexible Use process to allow individual consideration of proposals to house more than 12 individuals 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.

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 the local land–use code to repeat these requirements in its sections dealing with community residences for people with disabilities and for recovery communities.

The state's statute reinforces this basic concept, including that a community residence must comply with the property maintenance code's provisions to prevent overcrowding discussed immediately above:

> A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.[115]

Off–Street Parking. Even within the context of the state statute quoted immediately above, localities can establish off–street parking requirements for community residences for people with disabilities. 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 suggested for Clearwater's 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.

115. *Florida Statutes*, §419.001(8) (2019). However, as discusssed in the next section of this study, Florida's state statutes do allow somewhat different treatment under local land–use laws.

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 operator provides, 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 transportated 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 sober home 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. Clearwater needs to carefully craft off–street parking requirements for community residences for people with disabilities and for recovery communities that vary with the dissimilar needs of people with *different* disabilities.

Visitor parking can be accommodated the same as it is for all residential uses.

Factoring in the Florida state statute on locating community residences

The State of Florida has adopted statewide zoning standards for a mixed bag of what it calls "community residential homes" licensed by the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration.[116] *Some of these homes house people with disabilities while others do not.*[117] This review focuses on community residences occupied by people with disabilities, the class protected under 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

116. *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 (2016).

117. 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 handicap" as defined in §760.22(7)9(a), and "nondangerous person with a mental illness" as defined in §394.455. Two other categories that may or may not include people with disabilities are "child found to be dependent" as defined in §39.01 or §984.03 and "child in need of services" as defined in §984.03 or §985.03. As of this writing, the State of Florida does not require licensing of community residences that serve people in recovery, although it offers voluntary credentialing.

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*.[118]

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.[119]

As will become apparent from the analysis that follows, the state statute is a bit confusing, seems to contradict itself, and contains at least one provision that, if challenged, would very likely be found to run afoul of the nation's Fair Housing Act.

Keep in mind that no state law, including Florida's, provides a "safe harbor" for local zoning. A state statute that regulates local zoning for community residences for people with disabilities *can* run afoul of the nation's Fair Housing Act. For example, the State of Nevada had a state statute that required municipalities and counties to treat certain types of community residences for people with disabilities as residential uses, much like Florida's statute does. In 2008, a federal district court found that several other provisions in the Nevada statute on community residences for people with disabilities violated the Fair Housing Act.[120]

State Statute's Limited Scope

It is vital to remember that limitations on local zoning established by the state statute 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 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).

When sued in 2015 over its zoning treatment of community residences for people with disabilities, Beaumont, Texas claimed that it was merely complying

118. *Florida Statutes,* §419.001(10) (2019). *Emphasis added.*

119. 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."

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

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.[121]

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."[122] 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 residents 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."[123]

Without any stated rational basis, the statute treats homes for up to six residents differently than those for seven to 14 residents. Community residential homes for up to six residents must "be allowed in single–family or multifamily zoning without approval by the local government, provided that such homes are not located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home."[124] Here the phrase "another existing community residential home" *appears* to mean a home for seven to 14 residents.

The smaller homes are not required to comply with the statute's notification provisions 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 home is actually occupied, the sponsoring agency is required to notify

121. *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).

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

123. Ibid. at §419.001(2) (2016).

124. Ibid.

the local government that the requisite license has been issued.[125]

This statute does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.[126] 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."[127]

The state statute departs from the rationality of sound, rational planning and zoning practice when it flips basic concepts on their head and requires a more intensive review of "community residential homes" in multifamily zoning districts than in single–family districts.[128] Unlike in single–family districts, the 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.[129]

125. Ibid. A sponsoring agency is "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home." At §419.001(1)(f) (2016).
126. Ibid.
127. Ibid. At §419.001(9) (2019).
128. Florida's statute is the first time in more than 40 years of monitoring zoning regulations for community residences that the author has seen more heightened scrutiny for locating community residences in multifamily zones than in single –family zones. Normally the greater scrutiny is applied in single–family zones. The information and logic upon which the legislature based this provision is unknown.
129. Ibid. at §419.001(3)(a) (2019).

If a local government fails to render a decision to approve or disapprove the proposed home under its zoning ordinance within 60 days, the sponsoring agency may establish the home at the proposed site.[130]

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.*[131]

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"[132]
- 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"[133]
- 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.***"[134]

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 the state statute needed to single out community residences for people with disabilities.

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

The third set of criteria almost certainly runs afoul of the nation's Fair Housing Act. The statute declares that locating a new community residence within the 1,200 spacing distance constitutes "an overconcentration" of community resi-

130. Ibid. at $419.001(3)(b) (2019).
131. Ibid. at §419.001(2) (2019).
132. Ibid. at $419.001(3)(c)1. (2019).
133. Ibid. at $419.001(3)(c)2. (2019).
134. Ibid. at §419.001(3)(c)3. (2019). *Emphasis added.*

dences "that substantially alters the nature and character of the area."[135]

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 Flexible Use for a community residence that would be located within the spacing distance is to enable a case–by–case examination of the facts to determine whether the proposed home would, indeed, interfere with the ability of any existing community residence to achieve its core functions of normalization and community integration of its residents, 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 *ever* creates an overconcentration or that it *ever* substantially alters the nature and character of any area.[136] As noted earlier in this study, there are many circumstances where locating within 660 feet or even less produces no adverse impacts and certainly does not, by itself, create a concentration or alter the nature and character of the area.

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

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

There is simply no factual basis for the state statute 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."

Similarly, there is no factual basis for declaring that locating a community residential home within 500 feet of single–family zoning "substantially alters the nature and character of the area."

These provisions of the state statute place the state in considerable legal jeopardy.

135. Ibid. at §419.001(3)(c)3 (2019).

136. 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.

neighborhood. The Florida statute effectively prohibits the proper review that the nation's Fair Housing Act mandates.

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

However, as explained beginning on page 76, the state statute allows local jurisdictions to adopt zoning provisions that are less restrictive than the state's — which authorizes cities and counties to ignore these unjustifiable and almost certainly illegal state provisions and avoid exposing themselves to legal liability for housing discrimination. As Beaumont, Texas learned so painfully, complying with an illegal state statute does *not* protect the city from legal liability and paying rather substantial legal damages.

The actual zoning amendments for community residences for people with disabilities will be crafted to abide with those provisions of the state statutes that do comply with the nation's Fair Housing Act.[137] The Florida state statutes do not address recovery communities.

Impact of Florida statute on vacation or short term rentals

In some circles there appears to be confusion over the major differences between vacation or short term rentals and community residences for people with disabilities. These are diametrically different land uses subject to different zoning and licensing or certification treatments.

The Florida legislature adopted a state statute pre–empting home rule and now allows vacation rentals in residential zoning districts throughout the state, with one exception which is applicable to Clearwater.. Local land–use regulation of vacation rentals adopted *before* June 1, 2011 were not pre–empted.[138]

Clearwater's zoning regulation of vacation rentals was in place on that date and, therefore, has been allowed to stand. The city prohibits from its residential districts short term or vacation rentals for fewer than 31 days or one month while allowing them *only* in the Tourist (T) District under the moniker "Dwell-

137. Local governments have learned that state statutes that violate the Fair Housing Act do *not* offer a "safe harbor." Texas and Wisconsin statutes had required a plainly illegal 2,500 foot spacing distance between group homes for people with disabilities. Attempts by cities to justify their 2,500 foot spacing distances based on the state statute failed to shield them from being found in violation of the Fair Housing Act. For example, *see Oconomowoc Residential Programs v. City of Greenfield,* 23.F.Supp.2d 941 (1998).

138. *Florida Statutes,* §509.032(7)(b) (2019).

ings, resort attached" which distinguishes them from hotels or motels.[139]

Clearwater has correctly not treated community residences or recovery communities as short–term or vacation rentals.

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.[140]

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.[141]

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 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 commu-

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139. The definition of "residential use" in Clearwater's *Community Development Code* excludes rentals of "less than 31 days or one calendar month." Article 8."Resort attached dwellings," rentals for any length of time, are allowed only in the Tourist (T) zoning district.

140. *Florida Statutes,* §509.242(1)(c) (2019).

141. *lFlorida State Statutes,* §509.013(4)(a)1 (2019).

nity residences offer a relatively permanent living arrangement that can last for years — far different than a vacation rental. Transitional community residences establish a cap on length of residency that can be as much as six months or close to a year — very different than vacation rentals.

Unlike the guests in a vacation rental unit, the occupants of a community residence for people with disabilities constitute a vulnerable service–dependent population for which each neighborhood has a limited carrying capacity to absorb into its social structure. The occupants of a community residence are seeking to attain normalization and community integration — two core goals absolutely absent from vacation rentals. The occupants of a community residence rely on their so–called "able bodied" neighbors to serve as role models to help foster habilitation or rehabilitation — 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 sober living homes and transient public lodging establishments including vacation rentals.

Recovery communities. Recovery communities 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 score 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.

Summary of recommendations

The zoning approach this study recommends seeks to provide the reasonable accommodation that the Fair Housing Act requires by proffering the least restrictive means needed to actually achieve the legitimate government interests of:

- Protecting people with disabilities from unscrupulous and/or incompetent operators,
- Assuring that health and safety needs of the occupants with disabilities are met,
- Enabling normalization, community integration, and the use of neighbors without disabilities as role models to occur by preventing clustering and concentrations of community residences, recovery communities, and/or congregate living facilities, from developing or

intensifying, and

- Preventing the creation of *de facto* social service districts which undermine the ability of community residences and recovery communities to achieve their core goals of normalization, community integration, and the utilization of neighbors as role models.

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 will help assure that adverse impacts will not be generated. As with all land–use regulations, city staff would enforce compliance with the *Clearwater Community Development Code.*

Community residences

If the city adopts the definition of "family" that this study prescribes, amendments based on this zoning framework would treat community residences within the recommended cap of four unrelated individuals the same as any other family. Any proposed amendments would not impose any additional zoning requirements upon them and they would not be involved in calculating spacing distances.

As a permitted use

However, when the number of unrelated occupants in a proposed community residence *exceeds* the recommended cap of four unrelated individuals in definition of "family," zoning amendments based on this study would make "family community residences" for up to 12 people with disabilities a permitted use in all residential districts when narrowly–tailored objective, rationally–based licensing/certification and spacing standards are met. Transitional community residences housing up to 12 individuals would be permitted as a permitted use in all districts where multifamily housing is allowed subject to these same two criteria and would be allowed in single–family districts via a Flexible Use or other reasonable accommodation process based on narrowly–drawn standards that are as objective as possible to ensure compatibility with the single–family neighborhood.

As a Flexible Use: Case–by–case review

When a proposed community residence for more than four people does not satisfy both the spacing and licensing/certification criteria to be allowed as of right, the heightened scrutiny of a Flexible Use or other reasonable accommodation process would be warranted.

Locating within the applicable spacing distance. For example, a housing provider would have to be granted a Flexible Use to locate her proposed community residence within the spacing distance of 660 feet or nine lots, whichever is greater, from the closest existing community residence for five or more people

with disabilities, recovery community, or congregate living facility.[142] This case–by–case review is where the city should employ the "pedestrian right of way" method to measure the distance between the proposed community residence and the closest existing community residence, recovery community, or congregate living facility — as a major factor in determining whether the proposed community residence would be likely 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.

No license or certification available. An operator would need a Flexible Use when neither the State of Florida nor the federal government offers a license or certification, when no accreditation program is available, or when the proposed home is not eligible for an Oxford House Charter. The burden rests on the operator to show that the proposed home would meet the narrowly–crafted standards, based on this study, for awarding a Flexible Use. 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 in Clearwater.*[143] But when no certification, licensing, accreditation, or Oxford House Charter is even available, the operator of a proposed the community residence would need to seek a Flexible Use under the backup provision this study advises.

More than 12 residents. A community residence proposed to house more than 12 individuals would be required to obtain a Flexible Use. The housing provider would have to show that it meets the standards proposed in this study by showing (1) that more than 12 occupants are necessary to ensure the financial and/or therapeutic viability of the proposed community residence, and (2) that this larger number of occupants will be able to emulate a family.

Recovery communities

Under the recommendations of this study, the city would establish a tiered approach to spacing distances for recovery communities based on the number of occupants in a proposed recovery community.

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142. While this study focuses on community residences for people with disabilities and recovery communities, it is necessary to include congregate living facilities when determining a spacing distance to achieve the legitimate government interests that a spacing distance serves.

143. 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 sober living home or recovery community has been operating. The zoning amendments will revoke zoning approval if the annual certification is denied or not renewed.

As a permitted use

A proposed recovery community would be a permitted use only in districts where multifamily housing is allowed as long as (1) the operator obtains the available state certification or licensing, and (2) the recovery community is located outside the designated spacing distance from the closest community residence, recovery community, or congregate living facility. 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.[144]

As a Flexible Use: Case–by–case review

A recovery community proposed to be located within the applicable spacing distance of an existing community residence, recovery community, or congregate living facility would be subject to the heightened scrutiny of a Flexible Use. This case–by–case review is where the city should employ the "pedestrian right of way" method to measure the distance between the proposed recovery community and the closest existing community residence, recovery community, or congregate living facility — as a key factor in determining whether the proposed recovery community would be likely 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.

Congregate living facilities

The amendments to the *Community Development Code* based on this study's findings would be strictly for recovery communities and community residences for people with disabilities. The zoning treatment of congregate living facilities such as halfway houses for prison pre–parolees or sex offenders, or drug treatment facilities with an on–site residential component would continue to be more restrictive than for community residences for people with disabilities and recovery communities. The city, of course, is free to refine how the *Community Development Code* treats congregate living arrangements for people not subject to the Fair Housing Act's reasonable accommodation mandate. When a spacing distance is discussed in this report, it applies to congregate living facilities as well as community residences and recovery communities.

Implementation

To implement and administer this study's recommendations, the city would need to maintain an internal map and its own internal database of all community residences for people with disabilities, recovery communities, and congre-

144. As noted earlier, these are illustrative numbers. The actual distances will be determined in collaboration with city planning and legal staff professionals.

gate living facilities within Clearwater and within 1,500 feet or 20 lots, whichever is greater, of its borders[145] — otherwise it would be impossible to implement the recommended spacing distances.

To balance the privacy interests of the residents of community residences for people with disabilities, recovery communities, and congregate living facilities with implementing the recommendations to the *Community Development Code,* availability of the map should be limited to city staff and applicants seeking to establish a community residence for people with disabilities, recovery community, or congregate living facility — in accord with federal and state law.

Before renting or purchasing a site for a community residence, recovery community, or congregate living facility, the housing provider needs to know if the proposed location is within any applicable spacing distances of an existing community residence, recovery community, and/or congregate living facility.

Consequently, is is essential that the city provide the following service *at no cost* to operators who wish to establish a community residence, recovery community, or congregate living facility in Clearwater. *This request does not require submission of the sort of application described in Appendix B beginning on page 9* . A simple written or oral request is all that should be necessary. Upon request, the city should provide, *in a timely manner,* to a housing provider either:

- *If outside a spacing distance:* A written statement affirming that the proposed location is *not* within the spacing distance of any existing community residence, recovery community, or congregate living facility, or
- *If within a 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 residence, recovery community, or congregate living facility of which the proposed site is within its spacing distance. The city should also identify the type of use (group home, assisted living, sober home, recovery community, etc.) and 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.

Armed with this information, a housing provider can decide whether or not to proceed and, if within a spacing distance, seek a Flexible Use for her proposed site. If the housing provider decides to locate at a particular site, the

145. Again, these numbers are illustrative only. Since it is possible that community residences for people with disabilities and recovery communities may be located within whatever spacing distance the city chooses to adopt, it is critical that the city be fully aware of any community residences 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 Clearwater' borders. The adverse effects of clusters and concentrations do not respect municipal boundaries.

housing provider will be required to complete and submit the sort of application form described in Appendix B beginning on page 93.

In addition to requiring the application form to be submitted for all proposed recovery communities and congregate living facilities, 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 can determine whether the use is a "family" and therefore exempt from the zoning requirements unique to community residences. When a proposed community residence meets the definition of "family," any application fee should be fully and promptly refunded. The only application and development fees that should be charged to a community residence that complies with the zoning definition of "family" should be those applicable to all residential structures (single family detached, multifamily, etc.).

To enable the city to evaluate the impact and efficacy of the amendments it adopts to the city's *Community Development Code,* the city needs to maintain a current accounting of the number of applications submitted and how each one is resolved. A spreadsheet for this essential record keeping will be provided to the City of Clearwater.

Training. If adopted, the amendments to the city's *Community Development Code* based on this study will establish a principled, but nuanced zoning treatment of community residences, recovery communities, and congregate living facilities. It is critical that city staff and officials who participate in the review process receive training in how to evaluate compliance with the new standards for each circumstance where a Flexible Use 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.

FAQs. This study will be supplemented with a set of answers to "Frequently Asked Questions" that will explain in plain terms, without all the details and technicalities essential for this study, how zoning for community residences for people with disabilities and for recovery communities (as well as congregate living facilities) will work should Clearwater adopt amendments to its *Community Development Code* based on this study's recommendations.

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. You 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).

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 com-

munities; 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 zoning compliance application form

To implement the forthcoming amendments to the city's *Community Development Code* based on this study, Clearwater will need to create a form for applicants wishing to establish a community residence for *any* number of people with disabilities, a recovery community, or congregate living facility. The form will enable city staff to fairly quickly determine whether the proposed community residence, recovery community, or congregate living facility:

- Is a community residence, recovery community, congregate living facility, or a "family" under the city's *Community Development Code* (if a family, the code treats the proposed use exactly the same as any other family)
- Is a permitted use in the zoning district in which it is proposed to be located
- Is required to apply for a Flexible Use because the proposed location is within the spacing distance of an existing community residence, recovery community, or congregate living facility
- Is a community residence required to apply for a Flexible Use because no acceptable license or certification is available
- Is a community residence required to apply for a Flexible Use to house more than 12 individuals
- Meets the minimum floor area requirements to which *all* residences are subject, and
- Provides the required minimum number of 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 Clearwater.

The application fee, if any, should be nominal. If the proposed use is a "family" under the *Community Development Code,* any application fee should be promptly refunded.

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, and exploitation by requiring that the housing provider be properly licensed or certified.

City of Pompano Beach
Department of Development Services

DRAFT

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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Department of Development Services

100 W. Atlantic Blvd Pompano Beach, FL 33060
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Community Residence & Recovery Community Application

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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:**

City of Pompano Beach
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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

100 W. Atlantic Blvd Pompano Beach, FL 33060
Phone: 954.786.4668 **Fax:** 954.786.4666

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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:

_____