Davie, Florida Zoning Framework for Community Residences and Recovery Communities

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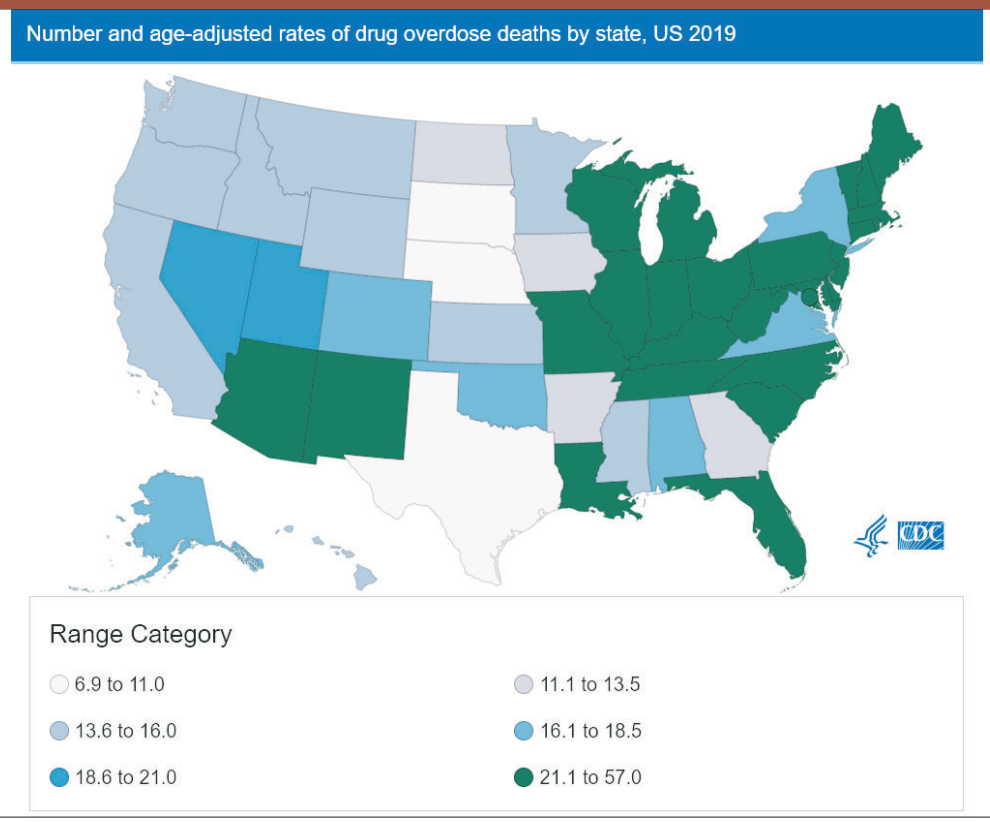
Introduction

It's a nationwide epidemic of unprecedented proportions with the State of Florida front and center as reflected below in Figure 1. We're talking about the deadly rise in the misuse and abuse of opioids (technically known as "substance use disorder") on top of the on–going health crisis created by the misuse and abuse of alcohol and drugs. Provisional data from the National Center for Health Statistics reported an estimated 93,331 drug overdose deaths across the nation in 2020 — a 29.4 percent increase in just one year.[1]

Florida is among the states with the highest range of overdose deaths in 2019, the most recent year for which this map is available. The range represents the range of overdose deaths by county within the state. Since 2016, Florida has been among the states with the highest numbers of overdose deaths.

Figure 1: Number and Age–Adjusted Drug Overdose Deaths by State: 2019



Source: Center for Disease Control and Prevention, "2019 Drug Overdose Death Rates," https://www.cdc.gov/drugoverdose/deaths/2019.html.

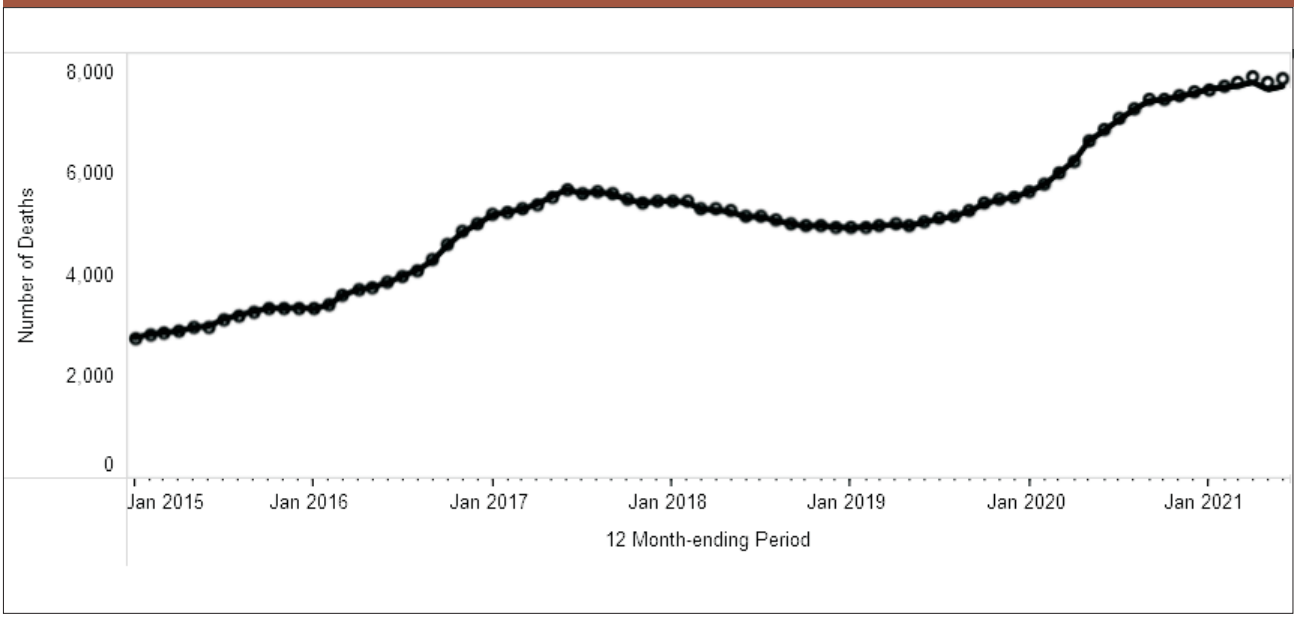
1. Center for Disease Control and Prevention, "Drug Overdose Deaths in the U.S. Up 30% in 2020," https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20210714.htm.

An essential tool to successfully combat substance use disorder by achieving a long–term clean and sober lifestyle has long been the sober living home or recovery residence. 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 attain long–term, permanent sobriety.

This study recommends a framework for land–use regulation of "community residences for people with disabilities" including "sober homes" as well as the related "recovery community" for people in recovery from substance use disorder. It examines the bases for these two land uses, how they function and perform, the research on their impacts, 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 provides the reasonable accommodation that the Fair Housing Act requires land–use codes to make for people with disabilities and provisions that simultaneously protect these vulnerable and often fragile occupants of recovery communities and community residences for people with disabilities from mistreatment, abuse, exploitation, and incompetence while fostering their normalization and community integration which are at the core of community residences for people with disabilities.

The State of Florida

Figure 2: Deaths Due to Drug Use in the State of Florida: 2015 through 2020

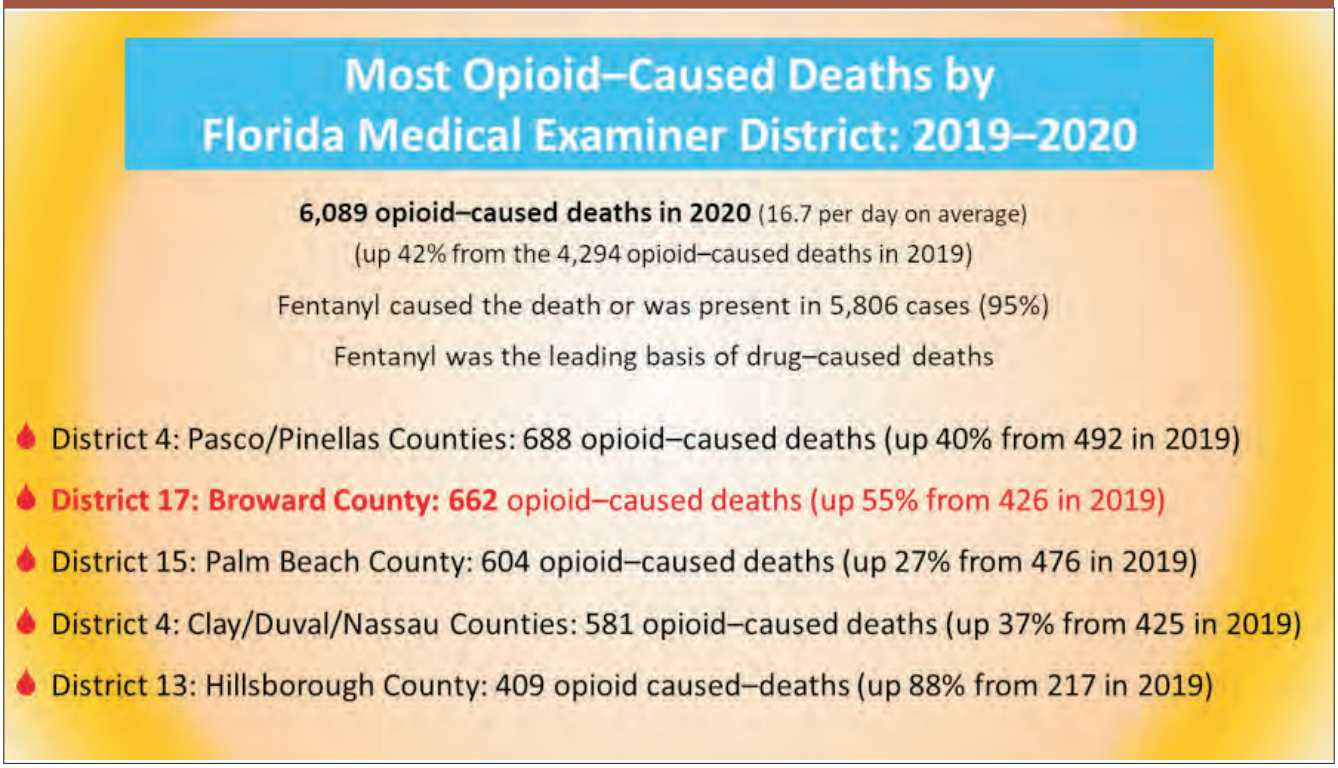


Source: "Provisional Monthly National and State–Level Drug Overdose Death Counts" based on data available for analysis on January 2, 2022, at https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.

Opioids use has fueled the growing drug and alcohol epidemic in Florida and Broward County where the Town of Davie sits. Florida is divided into 25 medi-

cal examiner districts. As reported in Figure 3, Broward County ranks second in terms of deaths caused by opioids with the number of these deaths soaring by more than half from 2019 to 2020.[2]

Figure 3: Medical Examiner Districts With Most Deaths Due To Opioids: 2019–2020

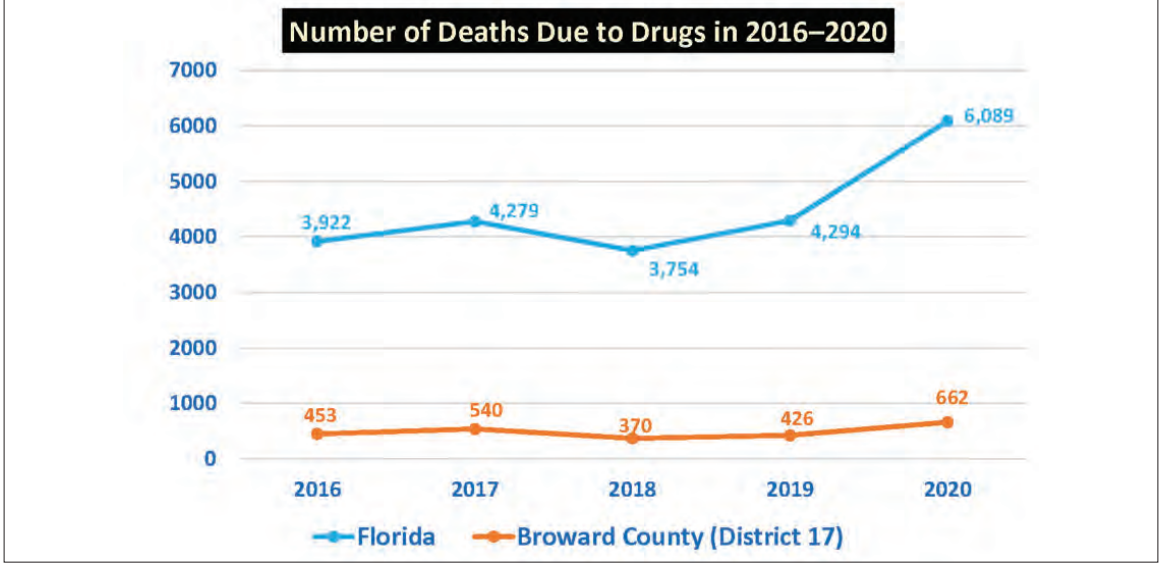


Source: Presentation by Al Johnson to the State Attorney Addiction Recovery Task Force Meeting, January 25, 2022. Data derived from the Annual Drug Raw Data spreadsheets for 2019 and 2020 prepared by Policy and Special Programs, Medical Examiners Commission, Florida Department of Law Enforcement.

As Figure 4 below shows, deaths due to drugs in Broward County and statewide had remained relatively steady until 2019. From 2019 to 2020, the number of deaths in Broward County rose from 426 to 662, a 55 percent increase, substantially greater than the 41 percent increase (4,294 to 6,089) for the entire State of Florida.

2. The State of Florida reports on alcohol and drug use and its consequences by county, but not by individual municipality.

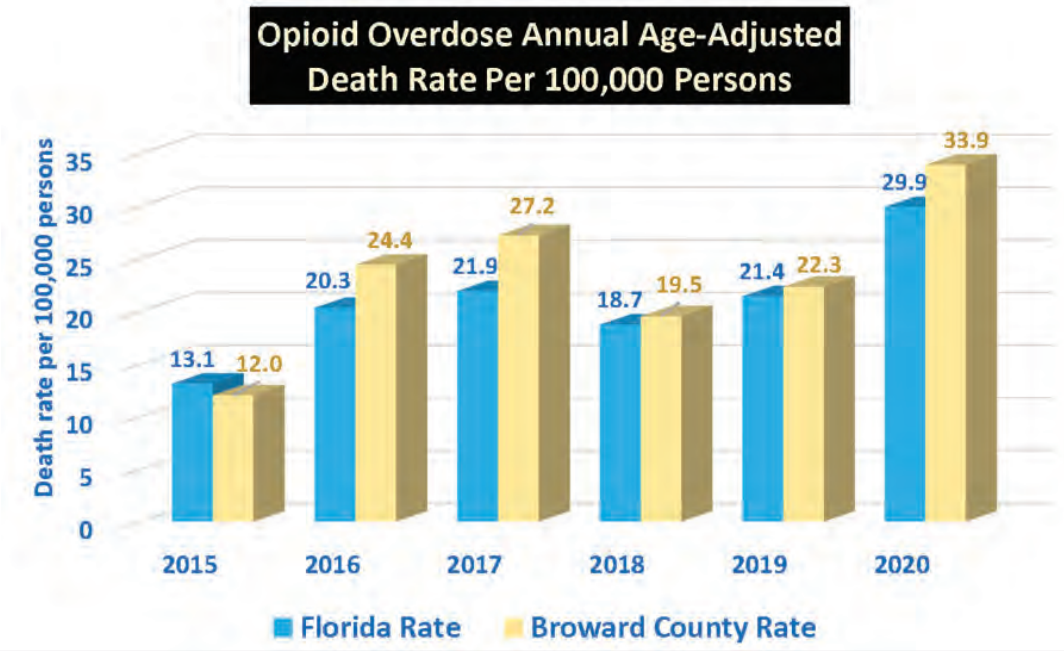
Figure 4: Deaths Due to Drugs in Broward County and State of Florida: 2016–2020



Source: The 2016 through 2020 *Florida Medical Examiners: Annual Report,* published in September or November of each year.

Simultaneously, the annual age–adjusted death rate for opioid overdoses rose by 52 percent in Broward County while it climbed 40 percent statewide as shown below in Figure 5.

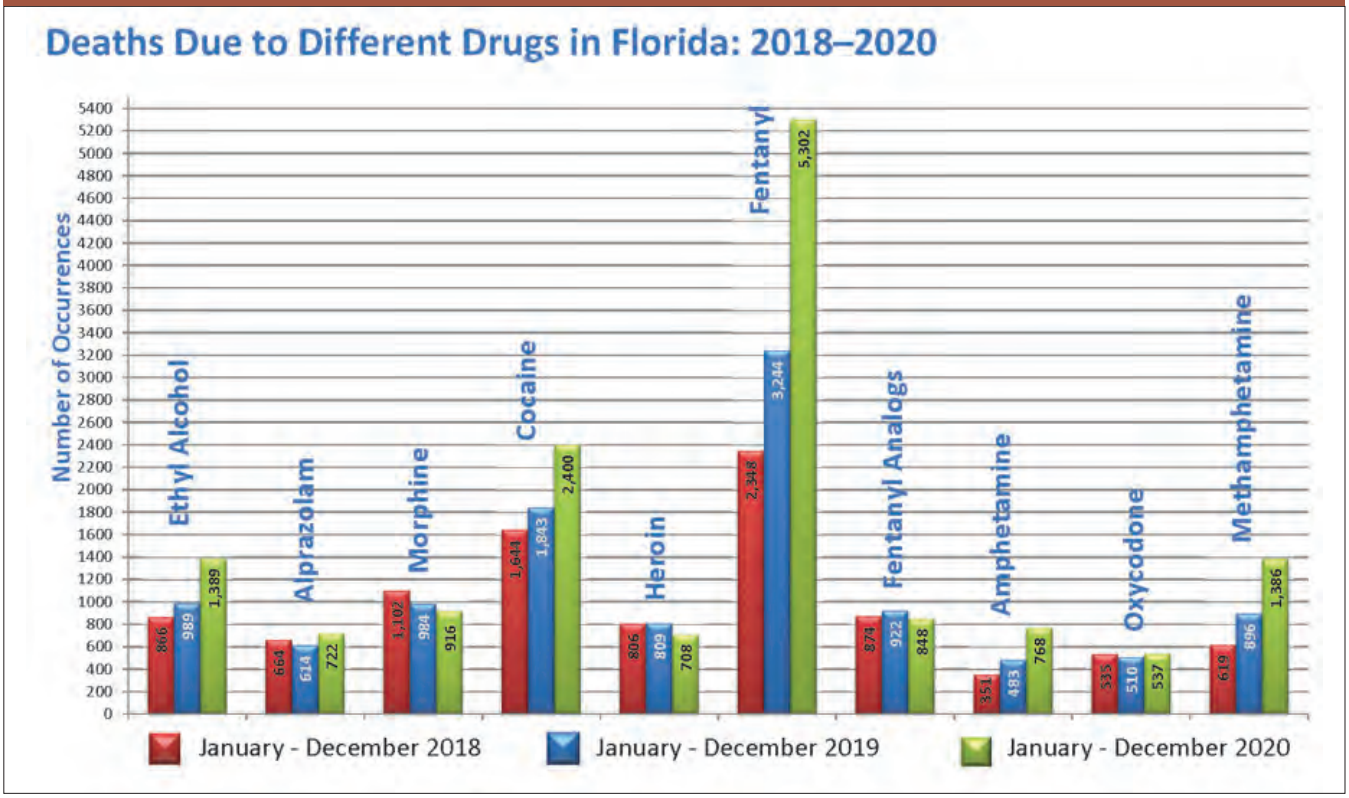
Figure 5: Opioid Overdose Annual Age–Adjusted Death Rates in Broward County and the State of Florida: 2015–2020



Source: "Substance Use Dashboard," Florida Department of Health, Bureau of Community Health Assessment, Division of Public Health Statistics and Performance Management.

As Figure 6 below suggests, it's very likely that the huge spike in deaths due to fentanyl accounts for most of these increases. As you can see, fentanyl has become the leading fatal drug in Florida by a wide margin.

Figure 6: Deaths Due to Different Drugs in Florida: 2018–2020



Source: *Florida Medical Examiners: 2020 Annual Report*, Nov. 2021, 7.

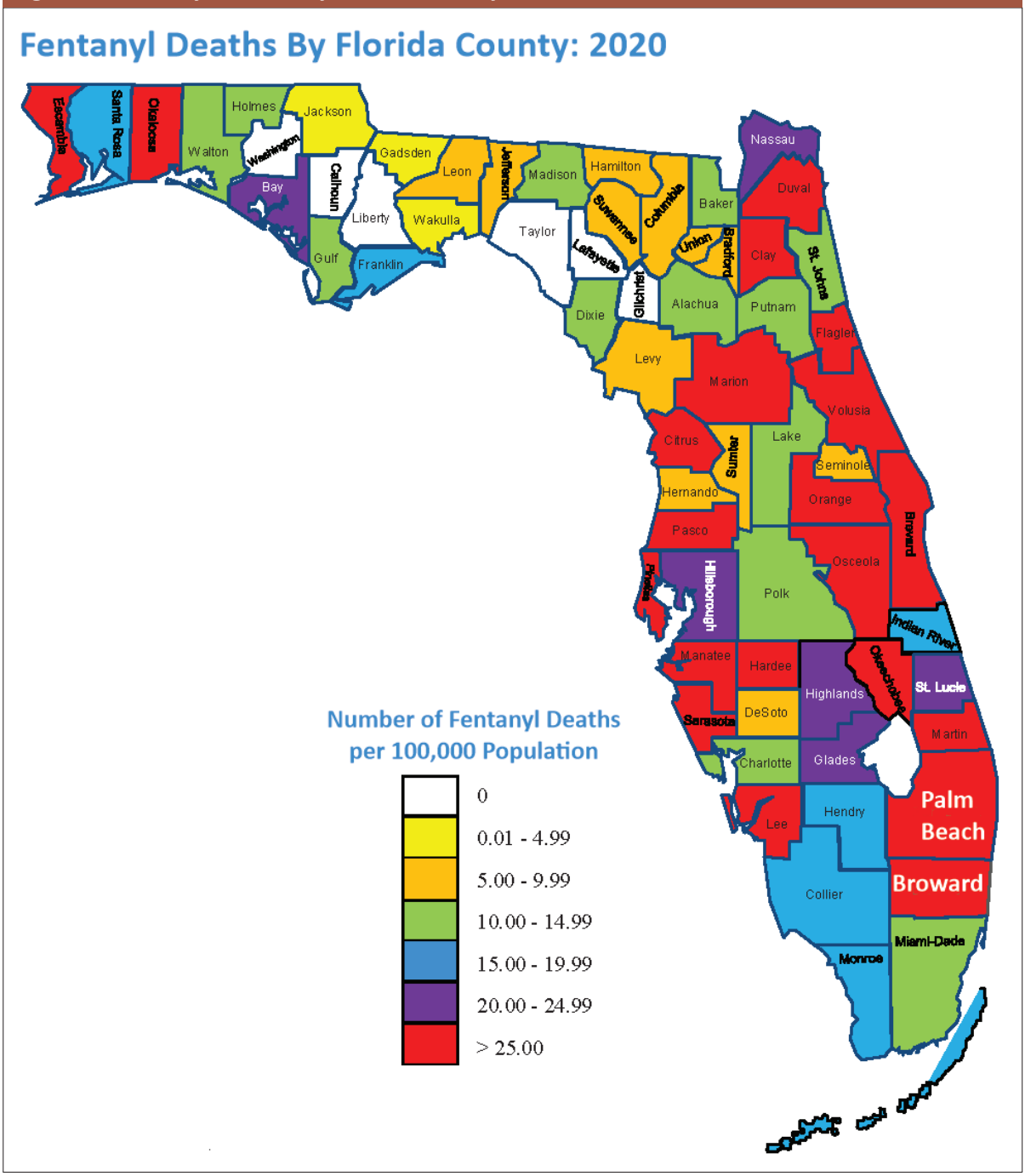
Locally: Broward County

Back in 2014, only one Florida county, Manatee, saw 10 or more deaths from fentanyl per 100,000 population.[3] Since then, fentanyl use exploded throughout the state. By 2016, fentanyl and fentanyl analogs[4] had become the leading cause of drug deaths in Florida.[5]

3. Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2014 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 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.

By 2020, 21 of Florida's 67 counties, including Broward County, were experiencing 25 or more fentanyl deaths per 100,000 population, the highest rate in the state, as shown below in Figure 7.

Figure 7: Fentanyl Deaths By Florida County: 2020



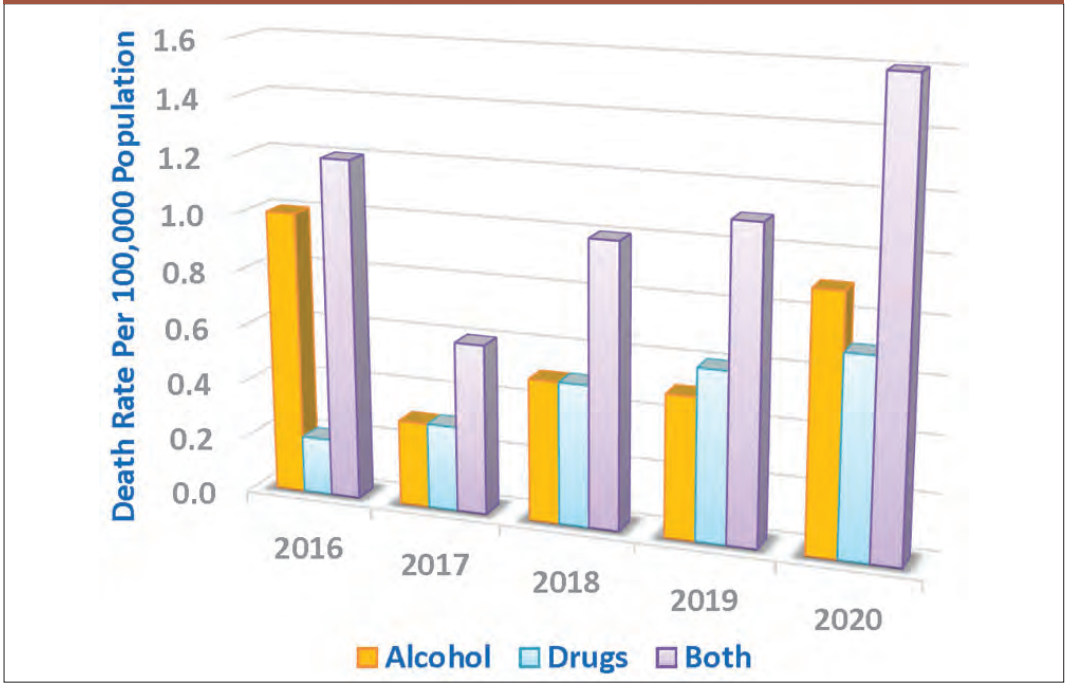
Source: *Florida Medical Examiners: 2020 Annual Report*, Nov. 2021, 32.

It's not just drugs

But more than drugs are fueling this epidemic. 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 about 16 percent from about 19 percent from 2011 through 2019.[6]

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

Figure 8: Death Rates By Cause of Motor Vehicle Crash in Broward County Per 100,000 Population



Source: "Substance Use Dashboard," Florida Department of Health, Bureau of Community Health Assessment, Division of Public Health Statistics and Performance Management.

As Figure 8 shows, after a drop in fatalities due to a combination of drug and alcohol use from 2016 to 2017, that combination has become increasingly deadly with a major spike from 2019 to 2020. And while alcohol alone dwarfed drugs alone in 2016, these two separate causes have been equally pernicious starting in 2017.

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

But it's the combination of drugs and alcohol that has been the deadliest throughout with a large increase from 2019 to 2020.

This substance use epidemic does not respect municipal or county boundaries. The Town of Davie sits within Broward County where the epidemic continues unabated. And adjacent Palm Beach County has seen more deaths due to opioid overdoses than any other county in the state.

Sober living homes and recovery communities are highly concentrated in Broward and Palm Beach counties where 76 percent of Florida's state–certified sober living dwellings and 71 percent of beds are located. Palm Beach County is home to more state–certified sober living dwelling units (621 with 2,661 beds) than any other county in the state, Broward County is second with 492 state–certified sober living dwelling units and 2,212 beds. The next highest number of state–certified sober living dwellings is 60 in Hillsborough County.[7]

A well–informed word of caution. These data on opioid overdoses may very well understate the extent of opioid abuse according to Steven Farnsworth, 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, Executive Director 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, going to the emergency room often results 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 have declined, Executive Director Farnsworth concludes that it should not be assumed that drug and alcohol abuse is diminishing. While reported deaths are down substantially, use very well may be unabated.

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7. Florida Association of Recovery Residences report to the State Attorney Addiction Recovery Task Force, Jan. 25, 2022.

Executive Director 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, Executive Director 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.[8]

Legitimate sober homes and recovery communities are key to achieving a long–term clean and sober life

Sober living homes and recovery communities are crucial components for attaining long–term recovery and sobriety. Just north of Broward County rests Palm Beach County which houses Delray Beach, dubbed "the recovery capital of America" a decade ago by the newspaper of record. 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.…"[9] But as stated earlier, *this epidemic does not respect municipal or county boundaries.*

During the past decade, 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. While 42 percent of the state's certified sober homes and recovery communities are located in Palm Beach County, another 34 percent are in Broward County, home to the Town of Davie. Locating so many sober homes and recovery communities in just these two counties has led to clustering of community residences, especially sober living homes, on a block. It has led to concentrations of them in neighborhoods which reduces their efficacy by interfering with their ability to foster normalization and community integration. For the residents of these homes to achieve long–term sobriety, it is critical to establish regulations and procedures that assure a proper family–like living environment, free of drugs and alcohol, that weed out the incompetent and unethical operators, and protect

8. 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-.
9. 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

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, enslavement of residents into prostitution, kickbacks, bribery, and other abuses.[10]

These illegitimate "sober homes" almost certainly do not comply with the minimum "Quality Standards" that the National Alliance of Recovery Residences has promulgated and 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.

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 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 certification) and the oversight of Oxford House International.[11]

The failure to comply with minimal standards was a focus of a grand jury that the Palm Beach County State Attorney convened to investigate fraud and abuse in the addiction treatment industry. While the grand jury naturally focused on Palm Beach County, the practices it identified are not limited to that one county. They occur in other Florida counties, including Broward, as well as in Palm Beach County.

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10. 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).

11. 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 later discussion of Oxford House will make it clear that, unlike the sober living homes so prevelent in southeast Florida, each Oxford House is a self–run and self–governed sober home completely independent from any treatment center. Also see footnote 12 below.

The grand jury reported:[12]

> 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.[13] It recommended certification and licensure for "commercial recovery housing."[14] For full details on the grand jury's findings and recommendations, readers should see the grand jury's report.[15]

Thanks in large part to the crackdown on patient brokering and other illegal practices of illegitimate predator sober homes in Palm Beach County, it has been noted that there is a migration of patient brokering and of sober homes to other counties in southeast Florida like Broward. Authorities believe that illicit operators are leaving cities like Delray Beach, Pompano Beach, Oakland Park, West Palm Beach, and Fort Lauderdale where the zoning requires existing and proposed sober living homes and recovery communities to obtain certification from

12. 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.
13. Ibid. 99–101.
14. 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.
15. The grand jury's report is available online at: http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf.

the Florida Association of Recovery Residences (FARR) or the appropriate license from the State of Florida.

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."[16]

This may be merely 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 expanding their operations to California. There are reports of patients in recovery from substance use disorder being brokered from Florida to Orange County, California[17] which the U.S. Department of Justice dubs the new epicenter of addiction fraud.[18]

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This report explains the basis for a framework for text amendments to Davie's *Land Development Code* that will regulate community residences for people with disabilities and the related use, recovery communities, in accord with sound zoning and planning principles and the nation's Fair Housing Act. The framework for amendments based on this study makes the reasonable accommodation for community residences for people with disabilities and recovery communities that is needed to achieve full compliance with national law and sound zoning and planning practices and policies. The framework for the recommended zoning approach is based upon a careful review of:

- The functions and needs of community residences and the people with disabilities 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 FHAA amendments (the legislative history)
- The HUD regulations implementing the amendments, 24 C.F.R.

16. 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).
17. 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).
18. "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.

Sections 100–121 (January 23, 1989)

- Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities
- 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)[19]
- 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 the Town of Davie's *Land Development Code.*

Community residences

Community residences are crucial to achieving the adopted goals of the United States and State of Florida to enable people with disabilities to live as normal a life as possible in the least restrictive living environment feasible. 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.

People with substantial disabilities often need a living arrangement where they receive staff support 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*

Recovery communities

As explained beginning on page 40, a "recovery community" serving people in recovery from addiction to drugs and/or alcohol is a different land use than a community residence with dissimilar characteristics that warrant a somewhat different zoning approach.

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

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

One of the core elements of community residences is that they seek to function as much as possible like a family does. The staff (or officers in the case of a self–governed Oxford House) function in the role of parents, doing the same things our parents did for us and we do for our children. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children.

Community residences seek to achieve "normalization" of their residents and incorporate them into the social fabric of the surrounding community, i.e."community integration." 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.

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.[20] Like other local jurisdictions across the nation, the Town of Davie needs to adjust its land use regulations to enable community residences for people with disabilities to locate in all residential zoning districts, subject to objective conditions via the least drastic means needed to actually achieve a legitimate government interest.

Since 1989, the nation's Fair Housing Act has 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 who can live together in a dwelling so that community residences for people with disabilities can locate in all residential zoning districts.[21] The zoning approach recommended in this study constitutes this reasonable accommodation by creating a

20. 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 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 lengther later in this study.

21. 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 special permit in other residential districts. A special permit back–up is needed for proposed community

zoning process that uses the least drastic means needed to actually achieve legitimate government interests.

When President Reagan signed the Fair Housing Amendments Act of 1988 (FHAA), he added people with disabilities to the classes protected by the nation's Fair Housing Act (FHA). The 1988 amendments recognized that many people with disabilities need a community residence (group home, sober living home, small halfway house) in order to live in the community in a family–like environment rather than being forced into an inappropriate institutional setting.

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." The zoning amendments to be based on this study will not allow halfway houses for people who fall into these categories of dangerous people as a permitted use in residential areas.

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 zoning ordinance provisions that, for example, may limit how many unrelated people can live together in a dwelling unit.

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."[22]

While many advocates for people with disabilities suggest that the Fair Housing Amendments Act prohibits all zoning regulation of community residences, the Fair Housing Amendments Act's legislative history suggests 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

residences that would be located within the spacing distance or for which a license or certification is not available.

22. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.

difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited."[23]

Many states, counties, and cities across the nation continue to base their zoning regulations for community residences on these "unfounded fears." The 1988 amendments 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.[24]

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 district. The Fair Housing Act renders these restrictive covenants unenforceable against community residences for people with disabilities.[25]

Types of community residences

Within the broad category of community residences are two types of living arrangements that warrant slightly different zoning treatments tailored to their specific characteristics:[26]

- **Family community residences** which include uses commonly known as group homes and those sober living homes that offer a relatively permanent living environment that emulates a biological family
- **Transitional community residences** which include such uses commonly known as halfway houses as well as those sober living homes that offer a relatively temporary living environment like a halfway house does.

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

Family community residences

A ***family community residence*** offers a relatively permanent living ar-

23. Ibid.
24. 42 U.S.C. §3604(f)(B) (1988).
25. 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 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.
26. Recovery communities are significantly different in nature than community residences and are examined in detail beginning on page 38.

rangement for people with disabilities that emulates a family. They are usually operated under the auspices of an association, corporation, or other legal entity, or the parents or legal guardians of the residents with disabilities. Some, like sober living homes for people in recovery from alcohol and/or drug addiction, are self–governing.

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, there is an expectation that each resident will live there for as long as each resident needs to live there. Tenancy is measured in years, not months.* Family community residences are most often used to house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities including the frail elderly, and individuals in recovery from addiction to alcohol or drugs (legal or illegal) who are *not* currently "using."

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.*[27] *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 a year or longer, not just 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 someone 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.

To achieve normalization and community integration of their occupants, a community residence needs to be located 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.

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.

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27. For example, those "sober living homes" that limit how long occupants may live there 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.*

While sober living homes 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, although for some very long–term alcoholics or drug addicts in recovery, they may be learning some of these life skills for the first time. Some sober living homes have been referred to as *three–quarter houses* because they are more family–like and permanent than the better known *halfway house* which falls under the *transitional community residence* category.

The original sober living home concept popularized by Oxford House does not limit how long somebody can live there. In an Oxford House, the residents periodically elect officers who act in a supervisory role much like parents in a biological family while the other residents are like the siblings in a biological family.[28] In a group home and in structured sober living homes, the staff functions in the supervisory parental role.

Sober living homes are essential for people in recovery for whom a supportive living environment is needed to learn how to maintain sobriety — *before* they can return to their family. Tenancy in a sober living home can last for years in contrast to tenancy in a sober living environment or small halfway house where there is a limit on length of tenancy measured in weeks or months.

Interaction between the people who live in a 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 between the residents of 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, learn from each other, and provide one another with emotional support — family–like relationships not essential for, nor present in lodging houses, boarding houses, fraternities, sororities, nursing homes, other institutional uses, or larger assisted living homes.

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

On the next two pages, Table 1 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 *Land Development Code* to treat these land uses differently than community residences for people with disabilities.

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28. Each Oxford House is subject to the demanding requirements of the Oxford House Charter which includes a monthly financial accounting. This procedure constitutes a functional equivalent of licensing and for the purposes of zoning ordinances, would serve as a proxy for formal licensing or certification.

Table 1: Differences Between Community Residences, Institutional Uses, and Rooming or Boarding 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 in that immediate neighbors are people with the same disability	Not applicable

— Table continued on next page

Table 1 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 Function:	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

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 and live as independently as possible and be integrated into community life.

For example, filling an apartment building with people in recovery — a "recovery community" — segregates them away with other people in recovery as their neighbors, minimizing the interaction, if any, they might have with sober neighbors which 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, they also possess *many* institutional characteristics and function more like mini–institutions than the biological family a community residence is supposed, by definition, to emulate.

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 the Town of Davie zoning districts that allow residential uses, be they single–family or multiple–family.

Even before passage of the 1988 amendments to the Fair Housing Act, most courts 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 conditions are met. Under the Fair Housing Act, a municipality or county can require (1) a 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, *transitional community residences* are a comparatively temporary living arrangement that is more transitory than a group home or sober living home and a bit less family–like. Residency is measured in weeks or months, not years. A sober living residence that imposes a limit on how long someone can live there exhibits the performance characteristics of a transitional community residence, much like the better known small halfway house.[29]

29. 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, *not* 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.

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 until they are capable of living in a relatively permanent long–term sober living home or other 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 are also used for prison pre–parolees. *However, such individuals are not, as a class, people with disabilities.* Zoning can be more restrictive for halfway houses for people *not* covered by the Fair Housing Act. 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 classes that the Fair Housing Act protects.

The community residences for people with disabilities that limit the length of tenancy are residential uses that need to locate in residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a more permanent group home or sober home does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a special permit for them in single–family districts while allowing them as a permitted use in zoning districts where multiple–family housing is allowed subject to the two requisite conditions explained later in this report. *However, it is important to remember that a special per-*

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.

mit 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.[30]

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 proffered in this report, 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 recovery communities.

Relative location of community residences. For at least 40 years, researchers have found that some 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 in all residential districts. They tend to be clustered in a community's lower cost or older neighborhoods and in areas around colleges.[31] In every jurisdiction for which 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.

Why clustering is counterproductive. Placing community residences (and recovery communities) too close to each other can create a *de facto* social service district and can seriously hinder their ability to achieve normalization for their residents — one of the core foundations upon which the concept of community residences is based. In today's society, people tend to get to know nearby neigh-

30. 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 town's current zoning treatment of these large facilities may also require revision.

31. *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) at 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.

bors 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 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 them.

For normalization to occur, it is essential that occupants of community residence have neighbors without disabilities as role models. But if another community residence is opened very close to an existing group home — such as next door or within a few lots of it — the residents of the new home can replace the role models without disabilities with other people with disabilities and quite possibly hamper the normalization efforts of the existing community residence. Clustering three or more community residences on the same block not only undermines normalization but could inadvertently lead to a *de facto* social service district that alters the residential character of the neighborhood. All the evidence recorded to date shows that one or two nonadjacent community residences for people with disabilities on a block do *not* alter the residential character of a neighborhood.[32] The author is unaware of similar studies of recovery communities. One can speculate with some confidence that it is more likely that two or more on a block face will alter the residential character of the block, given the larger size and more institutional nature of recovery communities.

The research very strongly suggests that as long as several community residences are not clustered on the same block face they will not generate these adverse impacts. Consequently, *when community residences are allowed as a permitted use,* it is most reasonable to impose a spacing distance between community residences that keeps them about a block apart, generally about 660 feet in the typical American town with the common 55 to 75 foot minimum lot frontage.[33]

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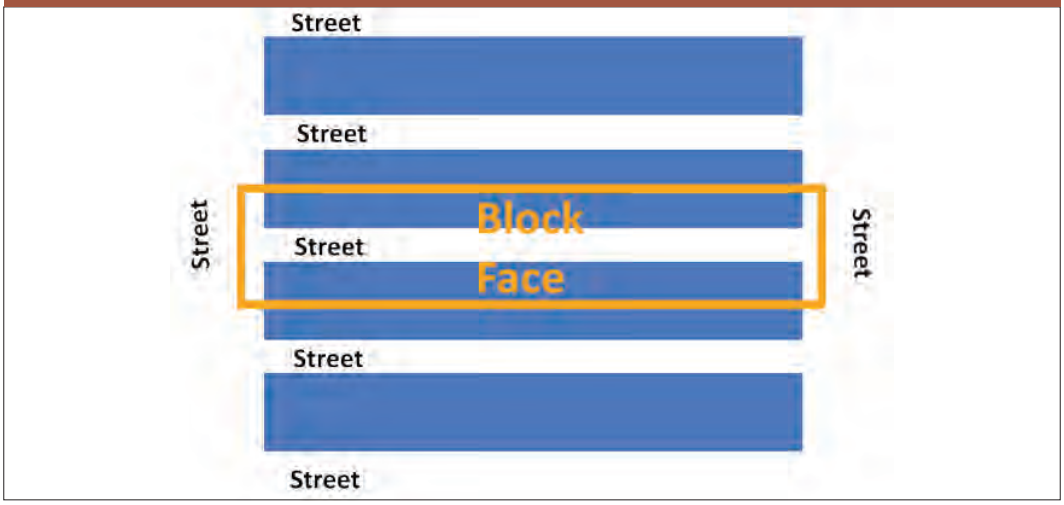
32. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 27 (August 17, 1983).

33. Some cities and counties establish a different spacing distance between community residences allowed as of right based on the density of the zoning district. The denser the district, the shorter the spacing distance. See Peter Natarelli, *Zoning for a New Kind of Family* 17 (Westchester County Department of Planning, Occasional Paper 5, 1976) where spacing distances vary by the number of persons per square mile. Clark County, Nevada reduces its 660–foot spacing distance to 100 feet when there is a street, freeway, or drainage channel wider than 99 feet between community residences. See Table 30.44-1, *Clark County Code*, Section 4. Title 30, Chapter 30.44. Also see *An Ordinance Amending Title 6 of the Village of Lincolnshire Village Code (Community Residential Homes),* Ordinance No. 90–1182–66, adopted December 10, 1990, Lincolnshire, Illinois. This distant Chicago suburb established spacing distances ranging from 500 to 1,500 feet between community residences depending on the zoning district. Some of Lincolnshire's zoning districts have extremely large minimum lot sizes greater than an acre. Possibly due to the complexity involved, very few jurisdictions establish different spacing distances in different zoning districts. *Different spacing distances in zoning districts measured in feet are also close to impossible to administer.* For example, if a proposed community residence is in a different zoning district with a different spacing distance in feet

However, the minimum lot frontage in Davie's zoning districts where residences are allowed range from 50 to 150 feet.[34] The minimum lot frontage in most of the residential districts is at least 100 feet. Consequently, as explained in detail beginning on page 24, this study recommends establishing a flexible spacing distance between community residences of 660 feet or seven lots, whichever is greater, to be allowed as of right as a permitted use.

Figure 9: Example of a Block Face



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

But there are times when locating a community residence within the spacing distance of an existing community residence or recovery community will not interfere with normalization or community integration. Proposals to locate another community residence so close to an existing community residence or recovery community warrant the case–by–case consideration via a special permit to make sure it won't hinder these core aims of the closest existing community residence or recovery community.

The special permit process allows a jurisdiction to evaluate the cumulative effect of locating so close to an existing community residence (or recovery community) and whether the proposed community residence would interfere with normalization and community integration of the occupants living in the existing community residence (or recovery community), discourage the use of nondisabled neighbors as role models, or alter the character of the neighborhood. For example, if there is a geographic feature such as a freeway, drainage channel, or hill between the proposed and existing community residences that acts as a barrier between the two, it is unlikely that allowing the proposed community residence would interfere with normalization and community integra-

than the closest existing community residence, which spacing distance does the town apply? Consequently, nearly all jurisdictions employ the same spacing distance throughout.

34. The mobile home districts MH–1 through MH–10 are excluded since it is rare indeed for licensing or certification to allow a community residence or a recovery community to be located in a mobile home.

tion, discourage the use of nondisabled neighbors as role models, or alter the community's character — and the special permit should be granted.

Similarly, if the proposed community residence houses people with a different disability who are unlikely to interact with the occupants of the closest existing community residence or recovery community, the proposed one is unlikely to interfere with normalization or community integration.

While spacing distances are measured from the lot line nearest the existing community residence that is closest to a proposed community residence, there are several schools of thought on the most appropriate way to measure that spacing distance.

One school of thought calls for measuring along the public or private pedestrian right of way. The idea is to measure the actual distance people would have to walk to go from one community residence to another, as opposed to measuring as the crow flies. Depending on the technology a jurisdiction has, implementing this approach ranges from extremely difficult to next to impossible. It fails to achieve the objectives of spacing distances when a jurisdiction contains "superblocks," namely blocks that are substantially lengthier than the typical 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 back to back or lot corner to lot corner with an existing community residence as of right — one of the scenarios that spacing distances seek to prevent from happening.

The other school of thought holds that the spacing distance should be measured as the crow flies from the closest lot line of the existing community residence and the proposed community residence. This method establishes a predictable radius around existing community residences that can quickly be measured using a jurisdiction's geographic information system. Even with superblocks, this approach would preclude a new community residence from locating back to back or lot corner to lot corner with an existing community residence as of right. This is the more appropriate approach to use in the Town of Davie and elsewhere.

Whichever approach is used, it is necessary for the operator of every proposed community residence and recovery community to complete a "Community Residence and Recovery Community Zoning Application" form that is recommended for the Town of Davie so the town can measure spacing distances from existing community residences and/or recovery communities and implement its zoning provisions for community residences and recovery communities. The town should also maintain a confidential database and map[35] of the locations of all existing community residences and recovery communities so it can apply the spacing distance to any

35. Confidentiality is recommended because it is possible that releasing the actual addresses of community residences and recovery communities *could* violate privacy laws. Town attorneys will need to determine how this concern over privacy interacts with the requirements of Florida's public record laws. The proposed zoning approach, however, *cannot* be implemented without maintaining the recommended database and map.

proposed community residence or recovery community.[36]

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

The technical explanation. This section speaks solely of community residences. The research upon which it is based was conducted before recovery communities came into being.

Normalization and community integration require that persons with disabilities substantial enough to need a supportive living arrangement like a community residence be absorbed 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.[37]

Social scientists note that while this capacity level exists, an absolute, precise level cannot be identified. Writing about service–dependent populations in general, Jennifer Wolch notes, "At some level of concentration, a community may become saturated by services and populations and evolve into a service–dependent ghetto."[38]

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

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36. 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. In the Town of Davie, the cap on unrelated individuals is currently two. 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).
37. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).
38. Jennifer Wolch, "Residential Location of the Service–Dependent Poor," 70 *Annals of the Association of American Geographers,* at 330, 332 (Sept. 1982).

municipal services and other characteristics." There are no universally accepted criteria for determining how many community residences are appropriate for a given area.[39]

This research strongly suggests that there is a legitimate government interest to assure that community residences do not cluster. While the research on the impact of community residences makes it abundantly clear that two community residences — especially those serving different populations — separated by at least several other houses on a block produce no negative impacts, there is very credible 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, after all, their raison d'être.

Limitations on 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 community residences constitute a functional family and that zoning should treat the occupants of a community residence as a "family" even if the community residence does not fit within the definition of "family" in a jurisdiction's zoning or land use code.[40]

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 limited number of unrelated persons living together as a single housekeeping unit. As explained in the paragraphs that follow, the U.S. Supreme Court ruled that a local zoning code's definition of "family" can place this cap on the number of unrelated persons living together as a single housekeeping unit.[41] *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 qualify as a "family" or "household."*

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

39. 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.
40. 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.
41. *Belle Terre v. Borass*, 416 U.S. 1 (1974).

family needs.…"[42] Unlike the six sociology students who rented a house during summer vacation in Belle Terre, Long Island, a community residence emulates a family, is not a home for transients, and is very much the antithesis of an institution. In fact, community residences for people with disabilities foster the same goals that zoning districts 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,*[43] 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.…" [44]

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.'"*[45]

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."[46]

In *Moore v. City of East Cleveland,*[47] Justice Stevens favorably cited *White Plains* in his concurring opinion. He specifically referred to the New York Court of Appeals' language:

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42. Ibid. at 7–9.
43. 313 N.E.2d 756 (N.Y. 1974).
44. Ibid. at 758–759.
45. Ibid. at 758 [citation omitted]. *Emphasis added.*
46. Ibid.
47. 431 U.S. 494 (1977) at 517 n. 9.

> "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."[48]

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."[49]

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 codifies the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

The definition of "family" in the *Town of Davie Land Development Code* allows a single housekeeping unit with no more than two unrelated people to live together. The full, multi–faceted definition reads:

> Family. One (1) or more persons related by blood, marriage or legal adoption, or a group of not more than two (2) such persons not so related occupying a dwelling and living as a single housekeeping unit, doing their own cooking and having their own sanitary facilities on the premises. May also include gratuitous guests and domestic servants.[50]

Under the nation's Fair Housing Act, any community residence in Davie for up to two people with disabilities must be treated the same as any other family. To do otherwise would constitute housing discrimination on its face.

The Fair Housing Act requires the town to make a "reasonable accommodation" for community residences that house more than the two unrelated individuals allowed under the Town of Davie's definition of "family." The zoning approach this study proposes for the town's *Land Development Code* is designed to make this requisite reasonable accommodation for community residences occupied by more than two unrelated individuals with disabilities.[51]

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48. Ibid. *Emphasis added.*
49. *City of White Plains v. Ferraioli,* 313 N.E. 2d at 758.
50. *Town of Davie Land Development Code,* Article XIV, Sec. 12-503. Definitions.
51. The Town of Davie is perfectly free to make the legislative decision to amend its definition of "family" to allow more than two 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. The *Land Development Code* must treat any community residence that fits within the chosen cap must, as noted above, the same as any other "family."

However, as explained below, *no matter what cap a jurisdiction's zoning ordinance places on the number of unrelated individuals that constitutes a "family," any town code provisions applicable to all residential uses determines the maximum number of people that can occupy any type of residence.*

The U.S. Supreme Court brought this point home in its 1995 decision *City of Edmonds v. Oxford House*.[52] 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.[53] 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.[54]

As the discussion above implies, classifying community residences on the basis of the number of residents is inappropriate. A more appropriate and rational approach is put forth beginning on page 36 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.[55] Florida, like many other states, has not established licensing or certification for some populations with disabilities that community residences serve. 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 or certification also tends to exclude from community residences people who pose a danger to others, themselves, or property. As noted earlier, such people are *not* covered by the Fair Housing Act.

Therefore, there is a legitimate government interest in requiring that a community residence or its operator be licensed in order to be allowed as of right as a permitted use. 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.[56] Florida law appears to allow a municipality or county to establish its own licensing requirements for community residences

52. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).
53. Ibid. at 1781*[emphasis added]*. See the discussion of minimum floor area requirements beginning on page 49.
54. Ibid. at 1782.
55. 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.
56. 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

not covered by state licensing. 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 them. In such a situation, the heightened scrutiny of a special permit is warranted so the town can make sure that the residents of a proposed community residence are protected by requiring the applicant to demonstrate that it will operate with the sort of protections for occupants that licensing or certification normally requires.

The State of Florida does not *require* licensing or certification of sober living homes. Instead, in 2015, the state established *voluntary certification* for sober living homes.[57] The state statute required the state's Department of Children and Family Services to approve at least one credentialing entity by December 1, 2015.[58] The department named the Florida Association of Recovery Residences as a credentialing entity. As §397.487 mandates, the association promulgates and administers requirements for certifying sober living homes and established procedures for the application, certification, recertification, and disciplinary processes. It has established a monitoring and inspection compliance process, developed a code of ethics, and provided for training for owners, managers, and staff.[59]

As the state statute requires, the operator of a proposed sober living home must submit 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.[60] Each certified sober living home 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 in actual operation for at least three months.

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.

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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.

57. *Florida State Statutes,* §397.487 (2019).
58. Ibid. at §397.487(2).
59. 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 both sober living homes and recovery communities.
60. Ibid. at §397.487(3).

Impacts of community residences. The impacts of community residences have been studied more than those of any other small land use. Over 50 statistically–rigorous studies have found that licensed community residences *not clustered* on a block face do not generate adverse impacts on 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 systems, 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 small halfway houses have consistently been found to be good neighbors just like biological families.

Clustering community residences only 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 with other service–dependent people living in a nearby community residence rather than conventional households with non–service dependent people who, under the theory and practice that provide the foundation for the community residence concept, are to 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.*

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

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 to locate in the residential districts essential to their success. If zoning ordinance amendments based on the recommendations of this study are proposed for the Town of Davie, they will 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. The legislative history of the Fair Housing Amendments Act of 1988 makes it clear that jurisdictions *cannot* require a special permit (also known in other jurisdictions as a special exception, conditional use, or a special use) as the *primary* means of regulating family community residences for people with disabilities in residential districts. It does *not,* however, disallow requiring a special permit in single–family districts for transitional community residences. Nor does the Fair Housing Amendments Act of 1988 require that a town allow

in residential districts those community residences occupied by persons who do *not* have disabilities.

As explained below, there are two types of community residences: "family community residences" and "transitional community residences." A third community–based congregate living arrangement for people in recovery is called a "recovery community" which does not emulate a family. They do not resemble a community residence in nature and performance, hence warranting different treatment in the town's *Land Development Code* as explained beginning on page 40.

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

Like any other dwelling, when a community residence — whether it be "family" or "transitional" — fits within the cap of two unrelated persons in the *Land Development Code's* definition of "family," it must be allowed as of right in *all* residential districts the same as any other family or single housekeeping unit.[61]

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 unrelateds in the local definition of "family." *Consequently, when a zoning code allows up to two 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 two occupants with disabilities.*[62]

As explained beginning on page 30, the *Town of Davies Land Development Code* allows just two 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 cap 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 36.

So even though the town's definition of "family" does not allow more than

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61. In addition, 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 jurisdictions did impose additional zoning requirements, it would be imposing them solely because the occupants were people with disabilities. But legally 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," zoning cannot legally regulate community residences for people with disabilities — and very likely recovery communities as well — through zoning.
62. 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 ordinance can require licensing or certification of community residences of any number of residents,* including sober living homes, and 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 nearly universal practice by states across the nation.

two unrelated people to live together, the Fair Housing Act requires the town to make a "reasonable accommodation" for community residences that would house more than two unrelated people with disabilities so they can locate in the residential districts in which they need to locate to achieve their purposes. That is when a zoning code can establish a spacing distance and licensing or certification requirement for community residences (and recovery communities) allowed as permitted uses. A town 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 the Town of Davie, this backup process would be a special permit.

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 restriction must be *intended* to achieve a legitimate government purpose.
- The proposed zoning restriction must *actually achieve* that legitimate government purpose.
- The proposed zoning restriction 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."[63]

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 community residences for specific populations with disabilities that are licensed by the state.

Should zoning amendments be proposed based on the recommendations of this study, they will take into account both federal fair housing law and the legal provisions in the Florida statutes that restrict local zoning.[64]

63. 46 F.3d 1491 (10th Cir. 1995) 1504.

64. 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. The state statutes contain provisions that likely do not fully comply with the nation's Fair Housing Act as explained beginning on page 52.

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. 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 limit on unrelated individuals that can constitute a "family" in its zoning 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 in the Town of Davie where the zoning definition of "family" allows just two unrelated individuals to dwell together, a community residence housing two people with disabilities is classified as a "family" for zoning purposes and no spacing distance is measured from it or to it. And as a "family," the zoning code cannot require a license or certification (although the *State of Florida* can require a license or certification no matter how many people live in a community residence).

Any zoning amendments proposed that are based on the recommendations of this study 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 alters the residential character of a neighborhood) and of protecting the residents of the community residences from improper or incompetent care and from abuse. They are 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 constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.[65]

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.

Community residences

As emphasized throughout this report, emulating a biological family is an es-

65. The proposed zoning provisions for recovery communities seek to achieve the same goals.

sential core characteristic of every community residence. It is difficult to imagine how more than ten to 12 individuals can successfully emulate a biological family. (For the sake of simplicity, this report will use ten as the maximum number of occupants in a community residence allowed as of right. But any jurisdiction certainly could choose 11 or 12 with some confidence that it can emulate a family.) Once the number of occupants exceeds ten, the home tends to take on the characteristics of a mini–institution rather than a family or a residential use. The Town of Davie should consider defining community residences as housing no more than ten people,[66] while allowing for a case–by–case review process for proposed community residences housing more than ten people where they need to demonstrate they can and will emulate a family as well as require more than ten residents to assure therapeutic and/or economic viability.[67]

Recommended zoning framework for "family community residences"

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. There is no limit on how long people can live in them. 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 proposed zoning ordinance amendments will make family community residences for three to 10 people with disabilities a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- The specific 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 a self–imposed maintenance and set of criteria that are the

66. The maximum number of residents allowed as of right should be an even number to take into account the established need of assuring all sober living home residents have at least one roommate. Similarly, there are therapuetic reasons that make it desirable for the occupants of a community residence for people with mental illness to have at least one roommate.

67. As explained beginning on page 49, community residences for people with disabilities are subject to building code, housing, or property maintainence provisions that prevent overcrowding which apply to all residential uses. So if a housing code would allow just seven people in a dwelling unit, then seven is the maximum number of people that can live in that dwelling unit whether it is occupied by a biological family, children in foster care, or the functional family of a community residence for people with disabilities.

functional equivalent of certification or licensing (the Oxford House Charter);[68] and

- The proposed family community residence is not located within a rationally–based distance of 660 feet or seven lots, whichever is greater, from an existing community residence or recovery community as measured from the nearest lot lines.

When a proposed family community residence does not meet both standards, the operator can apply for a case–by–case evaluation through a special permit as explained beginning on page 46.

Voluntary Certification of Sober Homes and Recovery Communities in Florida

The Florida Association of Recovery Residences (FARR) is the state's certification entity as explained beginning on page 32. FARR uses a demanding certification process that determines whether a sober living home (or recovery community) is actually operated in accord with 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 http://farronline.org/document-library.

FARR 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).[69]

68. 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.
69. Emails from John Lehman, past CEO and current 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).

So while an applicant must meet FARR's initial criteria to open a sober living home (or recovery community), FARR makes its final determination on certification after the sober living home (or recovery community) has existed for a specified period of time. This enables FARR to conduct an inspection after a home has been operating for three months and to interview current and former residents and staff members.

When a jurisdiction requires licensing or certification for community residences and recovery communities, FARR issues an initial provisional certificate based on the paper 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 the zoning recommended here for the Town of Davie. If permanent certification is denied, the sober home or recovery community could not continue to operate in the Town of Davie should the town adopt amendments to its *Land Development Code* based on this study's recommendations.

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 time limit on how long people can live in them or actually house people for a few months or weeks.[70] Tenancy is measured in months or weeks, not years. This key characteristic makes a transitional community residence more akin to multiple–family residential uses with a higher turnover rate typical of rentals than single–family dwellings with a lower turnover rate typical of single–family ownership housing.

Even though multiple–family uses are not allowed in single–family districts, the Fair Housing Act requires every town 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 special permit when an operator wishes to locate a transitional community residence in a single–family district.

However, in multiple–family districts, a transitional community residence for five or more people with disabilities should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

70. 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, residents of family community residences can live in them for many years, even decades.

- The specific community residence or its operator must receive authorization to operate the proposed transitional community residence by receiving the license that the State of Florida requires, the 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 (the Oxford House Charter); and
- The proposed transitional community residence is not located within a rationally–based distance of 660 feet or seven lots, whichever is greater, from an existing community residence or recovery community 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 through a special permit as explained beginning on page 46.

Recovery communities

Community residences are not the only housing option available for people in recovery from 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, institutional–like atmosphere than a community residence. Due to their fundamental differences, recovery communities warrant somewhat different zoning treatment than community residences.

A recovery community consists of multiple dwelling units in a single multi–family structure 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 it warrants a different zoning treatment.

Unlike a community residence with a maximum of roughly ten occupants whose essence is 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.*:[71]

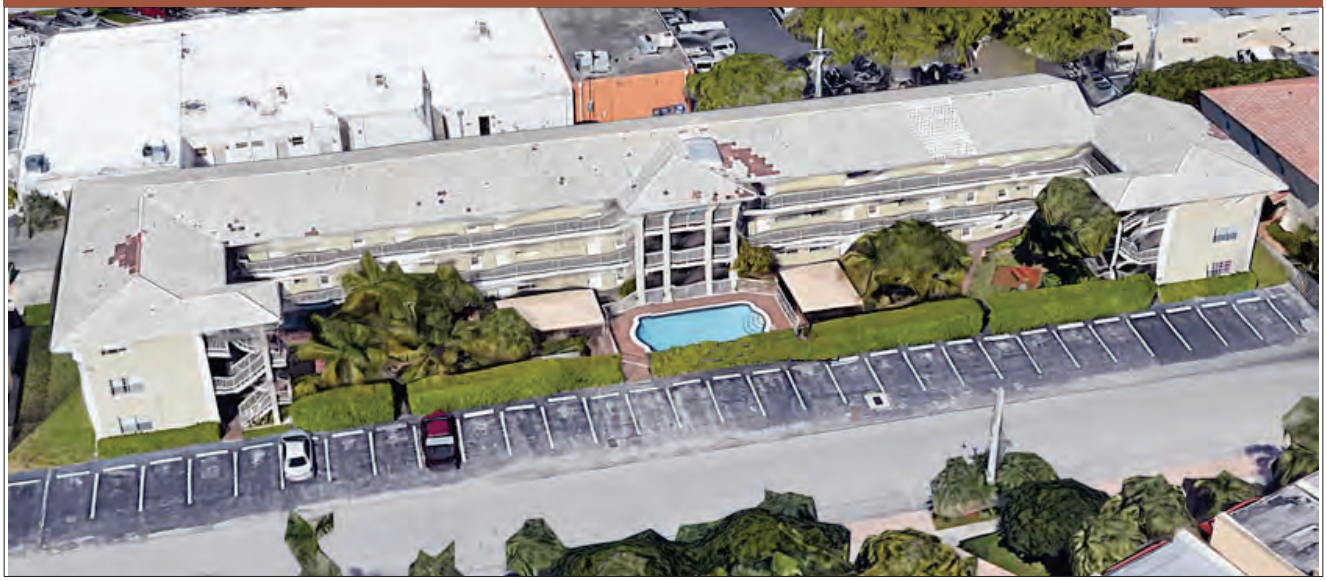
> …ruled that the Americans With Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate

71. 527 U.S. 581 (1999).

> 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.[72] *[Emphasis added]*

As will be explained on the following pages, recovery communities constitute a pretty 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 a fundamental characteristic.

Figure 10: Eighty Person Recovery Community in Broward County



Forty apartments are occupied by 80 people in this Fort Lauderdale recovery community.

Generally speaking, a recovery community is located in a multifamily buildings where the operator places several individuals in each apartment. Some may occupy a large single–family house or a series of detached or attached single–family residences. They have been known to cluster together. The most extreme situation is a recovery community within neighboring Palm Beach County occupied by 152 individuals in recovery with another 100–person recovery community just across the street. Both are under the same ownership and are shown in the figure below.

The reality, however, is that these are functionally segregated mini–institutions that do *not* emulate a family, facilitate the use of non–disabled neighbors

72. 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)

as role models, or foster integration into the surrounding community to the degree that a community residence does.[73]

Operators of recovery communities are known to move residents from one apartment to another — unlike how a family or roommates behave. This sort of arrangement certainly 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 runs counter to core purposes of a community residence: to achieve normalization and community integration with the neighbors without disabilities as role models.

Just a few jurisdictions have adjusted their zoning provisions to account for recovery communities. 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 town has a cap of two unrelated individuals in its definition of "family" like the Town of Davie does, the operator places two people in recovery in each unit in an apartment building and sometimes several nearby buildings. 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 ambulatory and frequently 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."[74]

That is exactly what has happened in the Broward County cities Pompano

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

74. *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).

Beach and Oakland Park as well as in neighboring Palm Beach County.[75] 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 town's zoning scheme.

Figure 11: Cluster of Four Clustered Recovery Communities in Nearby Pompano Beach

Four of the buildings in the center of 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 raison d'être 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 apartment buildings with people in recovery is hardly conducive to achieving these funda-

75. *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.

mental goals. Instead the occupants of the recovery community will almost certainly interact nearly 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. To allow for a recovery community's wider sphere of influence, it is recommended that the Town of Davie adopt a spacing distance for proposed recovery communities of 1,200 feet or ten lots, whichever is greater, from the nearest community residence or recovery community.

Introducing multiple mini–institutions such as these can and has altered and the residential character of the surrounding neighborhood. In addition, there is no evidence that such arrangements affect property values, property turnover rates, or neighborhood safety. The studies of the impacts of community residences examined actual community residences that emulate a family, not these mini–institutions. The *de facto* social service districts that clusters of recovery communities produce fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses, including emulating a biological family and utilizing nearby neighbors without disabilities as role models to foster normalization as well as participation in the nondisabled community to achieve community integration.

It is important to remember that zoning is based on how each land use functions. The original community residence concept is based on the community residence behaving as a "functional family," namely emulating a biological family. Such homes need to be in a residential neighborhood where the so–called "able bodied" neighbors serve as role models. Those are key cornerstones upon which the court rulings that require community residences to be allowed in residential districts rest.

But filling a multifamily building with people in recovery — or filling adjacent houses or town homes with people in recovery — hardly emulates a biological family in a residential neighborhood. Instead of "clean and sober" people in the surrounding dwelling units serving as role models, everybody is surrounded by other people in 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. Such arrangements are like a step back to the segregated institutions in which people with disabilities were placed before deinstitutionalization became the nation's policy more than half a century ago.[76]

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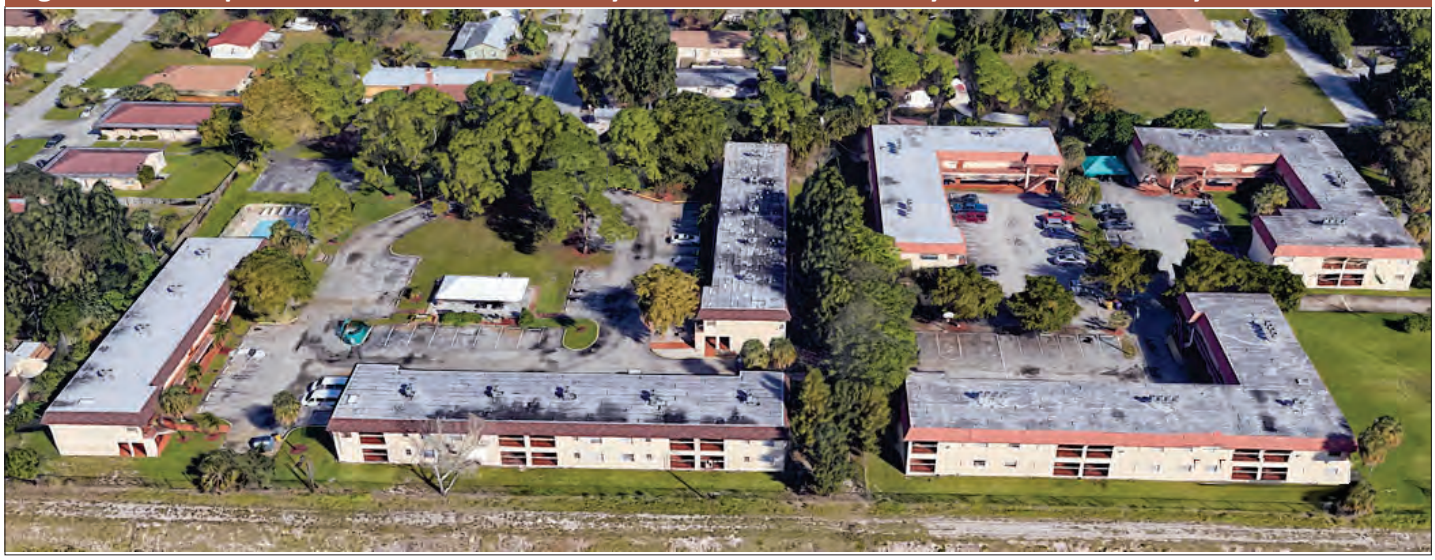
76. The case law that requires *zoning* to treat a community residence that fits within the cap on unrelateds in the definition of "family" is based on fact situations involving actual, individual community residences. The case law under the Fair Housing Act regarding community residences for people with disabilities is very fact specific. It is difficult to imagine that a court would fail to recognize that, for example, placing 20 or more people with disabilities in a building is an attempt to subvert the definition of "family" and would be anything but an institutional use plopped down in a residential area.

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 these are among the reasons why zoning should treat recovery communities as the mini–institutions that they functionally are.

Since recovery communities are appropriately located in multi–family buildings, it makes no sense for a zoning code to allow new recovery communities to be located in single–family districts where new multi–family housing is not permitted. But they should be allowed in zoning districts where multi–family housing is allowed,

Figure 12: Example of Two Clustered Recovery Communities in Nearby 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..

As explained beginning on page 27, the capacity of a neighborhood to absorb service dependent people into its social structure is limited. When two or more recovery communities are clustered on a block or even within a block and a half of each other, they almost certainly exceed this capacity. This situation warrants a substantially greater spacing distance for recovery communities allowed as of right in a zoning district than between community residences allowed as of right, also subject to certification/licensing standards. When a recovery community is proposed to be located within the spacing distance of a community residence or another recovery community, the heightened scrutiny of a special permit 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.

If the Town of Davie adopts zoning amendments based on the findings of this study, an existing recovery community may become a legal nonconforming use as long as it obtains certification or licensing. Such recovery communities, like any other legal nonconforming use, would not be allowed to expand or become a more intense nonconforming use.

There may be two *relatively small* certified recovery communities within the Town of Davie.[77] One possible recovery community for ten people is in a three–unit multifamily building. The other possible recovery community is in what appears to be a large single–family house on a very large lot.

Recommended zoning framework for recovery communities

As discussed above, recovery communities usually consist of multifamily housing although it is conceivable that a provider might string together a series of detached or attached single–family dwellings to create one. But since recovery communities possess some institutional performance characteristics as explained above, they should be not allowed as permitted uses in single–family districts where multifamily housing is not allowed of right. In zoning districts where multifamily housing is *allowed as a special permit*, recovery communities should be allowed as a special permit subject to the narrowly–crafted criteria proffered immediately below.

However, in multiple–family districts and other zoning districts where multifamily housing is *allowed as of right,* a recovery community should be a permitted use 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,[78] and
- The proposed recovery community would be at least 1,200 feet or ten lots, whichever is greater, from the closest existing community residence or recovery community as measured from the nearest lot lines.[79]

When a proposed recovery community does not meet both standards, the operator can apply for a case–by–case evaluation through a special permit as explained immediately below.

Special permit backup

There are situations in which 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 to the standards to be allowed as permitted uses explained earlier in this study.

Sometimes a housing provider will seek to establish a new community residence or recovery community within the spacing distance of an existing community residence or recovery community. For some types of community residences, no license, certification, or accreditation may even be offered by the

77. Based on data the Florida Association of Recovery Residences supplied.
78. If the State of Florida replaces this certification with a license, then the local zoning should be amended to require the available license.
79. The rationale for a longer spacing distance for recovery communities is explained on page 44.

State of Florida or the locality. And sometimes a community residence operator needs to house more than ten 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 a special permit review to protect the occupants of the prospective community residence or recovery community from the same mistreatment, exploitation, incompetence, and abuses from which licensing, certification, accreditation, or recognition from Congress protects them. There are four circumstances under which a special permit could be sought:

(1) **Locating within the spacing distance.** To determine whether a proposed *community residence or recovery community* should be allowed within the specified spacing distance from the closest existing community residence or recovery community, the town would need to consider whether allowing the proposed use will hinder the normalization for residents and community integration in the existing community residence or recovery community and/or whether the proposed use would alter the character of the neighborhood.

(2) **When no local, state, or federal licensing, certification, or accreditation program is applicable.** If an operator seeks to establish a community residence in the Town of Davie 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 operator must show that the proposed community residence will be operated in a manner comparable to typical licensing standards that protect the health, safety, and welfare of its occupants.[80]

(3) **When the operator of a community residence seeks to house more than ten people.** As explained earlier in this study, one can be quite confident that as many as ten people in a *community residence* can emulate a family. That confidence declines as the number of occupants increases. When a housing provider needs more than ten occupants in a community residence to ensure therapeutic and/or financial viability, the operator should have the opportunity to seek approval for more than ten — as long as the operator can also show that the community residence can emulate a biological family with the number of occupants sought.

(4) **When a transitional community residence is proposed to locate in a single–family district where multiple–family housing is not allowed.** As noted earlier, there are times when a

80. This paragraph refers only to community residences, not recovery communities, because the State of Florida offers certification for recovery communities through the Florida Association of Recovery Residences.

transitional community residence may be appropriate in exclusively single–family zoning districts. The special permit process provides the regulatory vehicle to examine these proposals on a case–by–case basis.

When evaluating an application for a special permit, a town *can* consider the cumulative effect of the proposed community residence because altering the character of the neighborhood or creating a *de facto* social service district interferes with the normalization and community integration at the core 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 will 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.

When the required license, certification, or accreditation has been denied, suspended, or revoked, the community residence becomes an illegal use under state law and obviously will be ineligible for a special permit and cannot be located in the a jurisdiction that adopts zoning provisions based on the findings of this study.

Similarly, under the zoning framework recommended here, sober living homes subject to certification by the Florida Association of Recovery Residences or an Oxford House Charter, and recovery communities subject to certification by the Florida Association of Recovery Residences whose certification is denied, suspended, or revoked would become an illegal use in a jurisdiction that adopts zoning provisions based on the findings of this study 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.

It is vital to stress that the decision on a special permit must be based on a record of factual evidence and not on neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities. As explained earlier in this report, restrictive covenants *cannot* exclude a community residence for people with disabilities — and such restrictions are, of course, irrelevant when evaluating an application for the special permit.

Additional issues to consider

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

Note that the state statute governing local zoning for most types of community residences for people with disabilities (called "community residential homes") allows

local governments to adopt zoning that is *less restrictive* than the state statutes.[81] While the zoning proposed here is broader in scope than the state statutes — covering *all* types of community residences for *all* types of disabilities — some of the suggested zoning regulations fall within this statutory provision.

The state statutes, however, do *not* establish any zoning standards for 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 a voluntary credential for sober living homes administered by the Florida Association of Recovery Residences. The credentialing standards and processes are even more demanding than existing licensing laws in some other 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.[82] 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 Oxford Houses and certified sober living homes and recovery communities be treated the same as state certification.

Maximum number of occupants

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, or fraternities and sororities to community residences for people with disabilities. They must be treated as residences like other residential uses.

Under fair housing case law, it is quite clear that *for determining the maximum number of occupants,* community residences established in single–family structures are to be treated the same as all other single–family residences. Those located in a multiple–family structure are to be treated the same as all other multiple–family residences. The maximum number of occupants is typically regulated to prevent overcrowding for health and safety reasons.

The Town of Davies' *Minimum Housing and Property Maintenance Standards Code* establishes minimum occupancy limits to prevent overcrowding:

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81. *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."
82. 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 within the standards of the Oxford House Charter.

> Required space in sleeping rooms. In every dwelling unit of two (2) or more habitable rooms, every room occupied for sleeping purposes by one (1) occupant shall have a minimum gross floor area of at least seventy (70) square feet. Every room occupied for sleeping purposes by more than one (1) occupant shall have a minimum gross floor area of fifty (50) square feet per occupant thereof. In the case of children under six (6) years of age, the requirement shall be thirty-five (35) square feet per child for two (2) or more children.…[83]

These minimum floor area requirements to prevent overcrowding apply to *all* residential uses in the Town of Davie, including community residences for people with disabilities and units in a recovery community.

A room in which just one person at least six years old sleeps could be no smaller than seven feet by ten feet or other dimensions that add up to 70 square feet. A bedroom in which two people at least six years old sleep could be no smaller than 100 square feet, or ten by ten, for example. A bedroom for three such people must be at least 150 square feet, or ten by 15, for example.[84] 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* residences including community residences.[85]

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, some types of community residences can house as many as 14 people. *But no matter how many people state licensing may allow, the number of residents could not exceed the maximum number permissible under the provisions quoted above — which apply to all residences*. For example, if a particular house has enough bedroom space to be occupied by six people under the town's formula, then no more than six people can live there legally whether the residence is occu-

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83. *Code of Ordinances Town of Davie, Florida,* Chapter 6 Code Enforcement Special Magistrate, ARTICLE II. – Minimum Housing and Property Maintenance Standards Code, Sec. 6-34 (d).

84. Obviously these dimensions are simply 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.

85. *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]*

pied by a biological family or a functional family of a community residence — no matter what the state group home licensing allows.

Nonetheless, a town can still establish a cap on the number of individuals that 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. It is likely that ten unrelated individuals in a community residence can emulate a biological family. It is highly doubtful whether significantly larger aggregations can.

Consequently zoning amendments based on the recommendations of this study would cap community residences at ten occupants and establish a process to allow case–by–case consideration of proposals to house more than ten individuals in a community residence. Whether this is accomplished through a special permit or separate reasonable accommodation process, the applicant would have the burden to show the community residence needs more than ten 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 that house more than two unrelated people with disabilities, the same number of unrelated people that constitute a "family" in Davie's *Land Development Code*.

Other zoning regulations for community residences

All regulations of the zoning district apply to a community residence including height, lot size, yards, building coverage, habitable floor area, and signage. There is no need for a land development code to repeat these requirements in its sections dealing with community residences for people with disabilities.

The state's statute reinforces this basic concept:

> 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.[86]

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 zoning requirements on community residences for people

86. *Florida State Statutes*, §419.001(8) (2019).

with disabilities that exceed the cap of two unrelated individuals in Davie's definition of "family." It is recommended 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, etc.).

It's important to craft off–street parking requirements that recognize the different types of community residences which generate very different off–street parking demand. Generally, the occupants of community residences do not drive. People with developmental disabilities and the frail elderly do not drive and will not maintain a motor vehicle on the premises. They will get around town with a vehicle and driver the operator provides, usually a van of some sort. A very small percentage, if any, of people with mental illness might have a driver's license and keep a vehicle on the premises.

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 readily accessible. An essential component of their rehabilitation is relearning how to live on their own in a sober manner. So one of the most common conditions of living 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. Visitor parking can be accommodated the same as it is for all residential uses.

It is, however, rational to require off–street parking for staff, whether it be live–in staff or staff that works on shifts — as well as the occupants who maintain a vehicle at the premises. The town needs to carefully craft off–street parking requirements for community residences for people with disabilities and for recovery communities that allow for the varying needs of people with *different* disabilities.

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.[87] *Some of these homes house people with disabilities while others do not*.[88] This review focuses on community residences occu-

87. *The zoning standards appear in Title XXX, Social Welfare, Chapter 419, "Community Residential Homes," §419.001, "Site selection of community residential homes," Florida State Statutes,* §419.001 (2016).

88. The nature of the residents of these homes are defined in *Florida State 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

pied 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 leeway to craft local zoning provisions:

> 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*.[89]

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.[90]

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's statute on community residences for people with disabilities violated the Fair Housing Act.[91]

When sued in 2015 over its zoning treatment of community residences for people with disabilities, Beaumont, Texas claimed that it was merely complying with a 1987 state law that established a half–mile spacing distance between community residences for people with disabilities. Beaumont was applying that spacing distance to all group homes, including those that fit within its zoning code's definition of "family" which limits to three the number of unrelated people that can constitute a "family." Beaumont settled the case for $475,000 in damages while agreeing to discontinue imposing its

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§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.

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

90. 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."

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

unsupportable half–mile spacing distance as well as its excessive building code requirements.[92]

In Florida, the state statute defines "community residential home" as a dwelling unit licensed by one of the five state agencies listed above 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."[93] 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."[94]

State Statute's Limited Scope

It is vital to remember that limitations on local zoning that the state statute on the location of "community residential homes" establishes apply *only* to the community residences licensed by the five state agencies. Local jurisdictions are perfectly free to establish different rationally–based zoning regulations for community residences *not* licensed by these five state agencies. As explained earlier, most sober living homes and recovery communities are subject to voluntary certification administered for the state by the Florida Association of Recovery Residences (FARR).

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."[95] 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 complied 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

92. *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).
93. *Florida State Statutes,* §419.001(1)(a) (2016).
94. Ibid. at §419.001(2) (2016).
95. Ibid.

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 the local government that the requisite license has been issued.[96]

This statute does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating by July 1, 2016.[97] In addition, the statute states that nothing in the statute "shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate."[98]

The state statute departs from the rationality of sound planning and zoning practices when it flips basic concepts on their head and requires a more intensive review of "community residential homes" in multiple family zoning districts than in single–family districts.[99] 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.[100]

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96. 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).
97. Ibid.
98. Ibid. At §419.001(9) (2019).
99. 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.
100. 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.[101]

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.*[102]

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"[103]
- 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"[104]
- 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.***"[105]

While the first criterion is reasonable, it is also redundant because all residential uses are naturally 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-

101. Ibid. at $419.001(3)(b) (2019).
102. Ibid. at §419.001(2) (2019).
103. Ibid. at $419.001(3)(c)1. (2019).
104. Ibid. at $419.001(3)(c)2. (2019).
105. Ibid. at §419.001(3)(c)3. (2019). *Emphasis added.*

dences "that substantially alters the nature and character of the area."[106]

In more than 40 years working with zoning for community residences for people with disabilities, we have never come upon any factual basis for that conclusion and a *complete ban* on allowing community residences within a spacing distance. The rationale behind this report's recommendation to require a special permit 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. We are unaware of any factual information to suggest that the *mere presence* of another community residence within the spacing distances of an existing community residence *always* creates an overconcentration or that it always substantially alters the nature and character of any area.[107]

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 would actually result in an overconcentration or actually alter the character of the surrounding neighborhood. The Florida statute effectively disallows the proper review.

However, as explained beginning on page 53, 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, following an illegal state statute does *not* protect the town 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 the provisions of the state statutes that do comply with the nation's Fair Housing Act.[108]

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106. Ibid. at §419.001(3)(c)3 (2019).

107. For a thorough discussion of these points, *see* American Planning Association, *Policy Guide on Community Residences* (Chicago: American Planning Association, Sept. 22, 1997) 8, and for more detailed analysis, 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.

108. Local governments have learned that state statutes that violate the Fair Housing Act do *not* offer a "safe harbor." The statutes of the State of Texas had required a plainly illegal 2,500 foot spacing distance between group homes for people with disabilities. Attempts by cities to justify

Impact of Florida statute on vacation rentals

There appears to be confusion over the major differences between vacation 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 has adopted a state statute that pre–empted home rule and now allows vacation rentals in residential zoning districts throughout the state. Local laws regulating vacation rentals that were in place on June 1, 2011 were allowed to stand.[109] The Town of Davie allows short–term and vacation rentals but has correctly not treated community residences or recovery communities as short–term or vacation rentals.[110]

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.[111]

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.[112]

Community residences for people with disabilities constitute a very different

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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.

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

110. Ordinance 2021-014, Vacation Rentals.

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

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

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 by definition is a single housekeeping unit that seeks to emulate a biological family to achieve normalization and community integration of its occupants with disabilities. Family community residences offer a relatively permanent living arrangement that can last for years — far different than a vacation rental. Transitional community residences establish a cap on length of residency that can be as much as six months or 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, nature of their 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.

Summary of recommendations

The zoning framework recommended in this study constitutes the least restrictive means needed to achieve the legitimate government interests of:

- Protecting people with disabilities from unscrupulous operators
- Assuring that health and safety needs of the occupants with disabilities are met
- Enabling normalization and community integration to occur by preventing clustering and concentrations of community residences and/or recovery communities, 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 and community integration.

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 would help assure that adverse impacts will not be generated. As with all zoning issues, town staff would enforce compliance with the *Town of Davie Land Development Code.*

Community residences. Amendments based on this framework would not change the cap of two unrelated individuals functioning as a housekeeping unit in the *Land Development Code's* definition of "family."[113] They would treat community residences that comply with the cap of two unrelated individuals in the town's definition of "family" the same as any other family. Such amendments would not impose any additional zoning requirements upon them.

However, when the number of unrelated occupants in a proposed community residence exceeds the cap of two unrelated individuals in definition of "family," amendments based on this study would make "family community residences" for 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 would be permitted as of right in all districts where multifamily housing is allowed subject to these same two criteria and would be allowed in single–family districts via a special permit based on narrowly–crafted standards that are as objective as possible to ensure compatibility with the single–family neighborhood.

When a proposed community residence for three or more people does not satisfy both the spacing and licensing/certification criteria to be allowed as of right, the heightened scrutiny of a special permit would be warranted. For example, a housing provider would have to be granted a special permit if her proposed community residence would be located within a spacing distance of 660

113. However, the town would be acting completely within its discretion if it chose to increase this figure, keeping in mind how that change would afftect zoning for community residences.

feet or seven lots, whichever is greater, from an existing community residence for three or more people or from a recovery community. An operator would need a special permit 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 does not qualify for an Oxford House Charter. The burden rests on the operator to show that the proposed home would meet the narrowly–crafted standards for awarding a special permit based on this study. Under the zoning framework this study recommends, *a community residence that has not been issued a required license, certification, accreditation, or Oxford House Charter would not be allowed in the Town of Davie at all*. But when no certification, licensing, accreditation, or Oxford House Charter is required or available, the operator of a proposed the community residence would need to seek a special permit under the special permit backup provision recommended in this study.

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

Recovery communities. Under the recommendations of this study, a recovery community would be allowed only in districts where multifamily housing is allowed, as long as it is at least 1,200 feet or ten lots, whichever is greater, from the closest community residence or recovery community and obtains state certification or licensing. A recovery community proposed to be located within the applicable spacing distance of an existing community residence or recovery community would be subject to the heightened scrutiny of a special permit.

No changes for other land uses. Any zoning amendments based on the findings of this study would be strictly for recovery communities and community residences for people with disabilities. The current zoning treatment of halfway houses for prison pre–parolees or sex offenders, or of drug treatment facilities with an on–site residential component would not change.

Implementation. To implement and administer this study's recommendations, the town would need to maintain an internal map and its own internal database of all community residences for people with disabilities and of recovery communities within and around the town[114] — 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 dis-

114. Since it is possible that community residences for people with disabilities and recovery communities may be located within whatever spacing distance the town chooses to adopt, it is critical that the town be fully aware of any community residences and recovery communities outside its borders that are located within the designated spacing distance. The adverse effects of clusters and concentrations do not respect municipal boundaries.

abilities and of recovery communities with implementing the recommendations to the *Land Development Code,* availability of the map should be limited as much as federal and Florida law allow to town staff and verified potential applicants seeking to establish a community residence for people with disabilities or a recovery community.

This study will be supplemented by a set of answers to "Frequently Asked Questions" that will explain in plain terms, without all the technicalities required for this study, how zoning for community residences for people with disabilities and for recovery communities would work should the town adopted amendments to its *Land 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. Few studies have been conducted recently simply because this issue has been examined so exhaustively and the findings of no adverse impacts have been so consistent. Consequently, funding just isn't available to conduct more studies on a topic that has been studied so thoroughly.

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 communities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).

Montgomery County Board of Mental Retardation and Developmental Disabilities, Property Sales Study of the Impact of Group Homes in Montgomery *County* (1981) (property appraiser from Magin Realty Company examined neighborhoods surrounding seven group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, *Effect of Community Residences for the Mentally Retarded on Real–Estate Values in the Neighborhoods in Which They are Located* (State University College at Brockport, N.Y. 1980) (examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

L. Dolan and J. Wolpert, *Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People*, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982) (examined long–term effects on neighborhoods surrounding 32 group homes for five years after the homes were opened and found same results as in Wolpert, *infra*).

Julian Wolpert, *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts* (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978) (most thorough study of all; covered 1570 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, *The Neighbors and the Small Group Homes for the Handicapped: A Survey* (Illinois Association for Retarded Citizens Sept. 1979) (real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, *Impact of Residential Care Facilities in Decatur* (Macon County Community Mental Health Board Dec. 9, 1976) (examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

Suffolk Community Council, Inc., *Impact of Community Residences Upon Neighborhood Property Values* (July 1984) (compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, *Group Homes and Property Values: A Second Look* (Aug. 1980) (Columbus, Ohio) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Tom Goodale and Sherry Wickware, *Group Homes and Property Values in Residential Areas*, 19 Plan Canada 154–163 (June 1979) (group homes for children, prison pre–parolees).

City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (Lansing, Mich. Oct. 1976) (No adverse impacts on property values due to halfway houses and group homes for adult ex–offenders, youth offenders, alcoholics).

Michael Dear and S. Martin Taylor, *Not on Our Street,* 133–144 (1982) (group homes for persons with mental illness have no effect on property values or turnover).

John Boeckh, Michael Dear, and S. Martin Taylor, *Property Values and Mental Health Facilities in Metropolitan Toronto*, 24 The Canadian Geographer 270 (Fall 1980) (residential mental health facilities have no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).

Michael Dear, *Impact of Mental Health Facilities on Property Values*, 13 Community Mental Health Journal 150 (1977) (persons with mental illness; found indeterminate impact on property values).

Stuart Breslow, *The Effect of Siting Group Homes on the Surrounding Environs* (1976) (unpublished) (although data limitations render his results inconclusive, the author suggests that communities can absorb a "limited" number of group homes without measurable effects on property values).

P. Magin, *Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio* (May 1975) (available from County Prosecutors Office, Dayton, Ohio). (found no adverse effects on property values.)

Appendix B: Sample zoning compliance application form

To implement any amendments to the town's *Land Development Code* based on this research, the Town of Davie would need to create a form for applicants wishing to establish a community residence for *any* number of people with disabilities or a recovery community. The form would enable town staff to fairly quickly determine whether the proposed community residence or recovery community:

- Is a permitted use under the definition of "family" in the town's *Land Development Code*
- Is a permitted use in the zoning district in which it is proposed to be located
- Is required to apply for a special permit
- Needs to also obtain a special permit to house more than ten 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 developed illustrates such a form. It could be adapted for use by the Town of Davie.

It would be crucial that the operators of *all* proposed community residences and recovery communities be required to complete this form so the town can identify the applicable spacing distances between community residences/recovery communities and determine appropriate zoning treatment. Completing this form places no burden on people with disabilities while offering them substantial benefits by enabling the town to prevent clustering and concentrations that lessen the ability to achieve the normalization and community integration essential to operate a community residence or recovery community — and assuring they are protected from abuse and exploitation by requiring licensing or certification of the housing provider.

City of Pompano Beach
Department of Development Services

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

License Year _____

Community Residence & Recovery Community Application

Lying or misrepresentation in this application can lead to revocation. (155.8402.B. Revocation of Approval)

PROCEDURE:
Submit this completed application to the Business Tax Receipt Office *or* send the completed application to the Business Tax Receipt Division to the attention of the Chief BTR Inspector. Staff will process the application, and it will be routed to a planner for review.

APPLICATION CHECKLIST: The following documentation shall be submitted with this completed application:

	Submittal Requirement	Contact
☐	A copy of the state license with the State of Florida to operate the proposed community residence ***(when applicable)***	State of Florida Department of Health Address: 4052 Bald Cypress Way Tallahassee, FL 32399 Phone: 850-245-4277 Website: http://www.floridahealth.gov/
☐	A copy of the Oxford House's "Conditional Charter Certificate" or "Permanent Charter Certificate" ***(when applicable)***	Oxford House, Inc. Address: 1010 Wayne Avenue, Suite 300 Silver Spring, MD 20910 Phone: (800) 689-6411 Website: http://www.oxfordhouse.org/userfiles/file/index.php
☐	A copy of the provisional certification to operate the proposed community residence or recovery community ***(when applicable)***	Florida Association of Recovery Residences Address: 326 W Lantana Rd., Suite 1 Lantana, FL 33462 Phone: (561) 299-0405 Website: http://farronline.org/
☐	A copy of the certification or license to operate the proposed community residence or recovery community ***(when applicable)***	Florida Association of Recovery Residences Address: 326 W Lantana Rd., Suite 1 Lantana, FL 33462 Phone: (561) 299-0405 Website: http://farronline.org/
☐	A copy of the certification or license to operate the proposed assisted living facility ***(when applicable)***	Agency for Health Care Administration Address: 2727 Mahan Drive MS #30 Tallahassee, FL 32308 Phone: (850) 412-4304 Website: http://ahca.myflorida.com/
☐	A copy of the standard rental/lease agreement to be used when contracting with occupants.	
☐	Detailed exterior site plan identifying property lines, parking spaces, storage area of garbage receptacles, screening of garbage receptacles, fences, and other similar accessory features.	
☐	Detailed interior floor plan identifying all bedrooms (with dimensions excluding closets), exits and location of fire extinguishers. *(fill in the information required on the table on page 4 of this application)*	
☐	A letter of authorization that is notarized by the property owner or corporate officer (if the property is owned by a partnership, corporation, trust, etc. or the application is being submitted on behalf of the owner by an authorized representative.)	
☐	A copy of the development order, approving a Special Exception, for the proposed use (if applicable).	
☐	A copy of the order, approving Reasonable Accommodations, for the proposed use (if applicable).	

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Family (City Ordinance / Zoning Code / Chapter 155 Article 9 Part 5)
An individual or two or more persons related by blood, marriage, state-approved foster home placement, or court-approved adoption—or up to three unrelated persons—that constitute a single housekeeping unit. A family does not include any society, nursing home, club, boarding or lodging house, dormitory, fraternity, or sorority.

Family Community Residence (City Ordinance / Zoning Code / §155.4202. H.)
A family community residence is a community residence that provides a relatively permanent living arrangement for people with disabilities where, in practice and under its rules, charter, or other governing document, does not limit how long a resident may live there. The intent is for residents to live in a family community residence on a long-term basis, typically a year or longer. Oxford House is an example of a family community residence.

Transitional Community Residence (City Ordinance / Zoning Code / §155.4202. I.)
A transitional community residence community residence is a community residence that provides a temporary living arrangement for four to ten unrelated people with disabilities with a limit on length of tenancy less than a year that is measured in weeks or months as determined either in practice or by the rules, charter, or other governing document of the community residence. A community residence for people engaged in detoxification is an example of a very short-term transitional community residence.

Recovery Community (City Ordinance / Zoning Code / §155.4203. B.)
A recovery community consists of multiple dwelling units in a single multi-family structure that are not held out to the general public for rent or occupancy, that provides a drug-free and alcohol-free living arrangement for people in recovery from drug and/or alcohol addiction, which, taken together, do not emulate a single biological family and are under the auspices of a single entity or group of related entities. Recovery communities include land uses for which the operator is eligible to apply for certification from the State of Florida. When located in a multiple-family structure, a recovery community shall be treated as a multiple family structure under building and fire codes applicable in Pompano Beach.

Licensing and Certification									
☐	**Family Community Residence**	☐	**Transitional Community Residence**	☐	**Recovery Community**	☐	**Assisted Living Facility**	☐	**Other:** _____

☐	**Agency has issued a certification, provisional certificate or license to operate the community residence as a:**	
☐	**FARR Certification Level (if applicable)**	
☐	**Name of State Licensing or Certification Agency:**	
☐	**Statutory number under which license is required:**	

Describe the general nature of the resident's disabilities (developmental disabilities, recovery from addiction, mental illness, physical disability, frail elderly, etc.) *Do not discuss specific individuals:*

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STREET ADDRESS (of the Subject Property):				**FOLIO #:**			
# of Live-in Staff				**Maximum # of Residents (Licensed)**			
Minimum Duration of Residency				**Maximum Duration of Residency**			
Day(s)	**Month(s)**	**Year(s)**	**No Minimum**	**Day(s)**	**Month(s)**	**Year(s)**	**No Maximum**
			☐				☐
# of Bedrooms				**# of Dwelling Units**			
Will the residents be able to maintain a motor vehicle?			**No** ☐				**Yes** ☐
# of Parking Spaces On-Site				**# of Parking Spaces Off-Site** *(if applicable)*			
Has a certification been applied for and a provisional certification been issued?			**No** ☐				**Yes** ☐
Special Exception # *(if applicable)*				**Date Provisional certification was issued** *(if applicable):*			

Property Owner (Please Print)	**Applicant / Agent Information (Complete if the applicant / agent is not the owner of the property)**
Business Name (if applicable):	**Business Name (if applicable):**
Print Name and Title:	**Print Name and Title:**
Mailing Street Address:	**Mailing Street Address:**
Mailing Address City/ State/ Zip:	**Mailing Address City/ State/ Zip:**
Primary Phone Number:	**Primary Phone Number:**
Secondary/ Cell Phone Number:	**Secondary/ Cell Phone Number:**
Email:	**Email:**

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Number of Occupants:

Bedroom	Dimensions of each bedroom (excluding closets) in feet: Width (ft) X Length (ft)		Total Square feet in bedroom (excluding closets) Area (ft^2)	Number of residents (including any live-in staff) to sleep in each bedroom	Total gross floor area of all habitable rooms
1			0		If you're unsure how to measure this, ask City staff for instructions. Print the total gross floor area in the cell below:
2			0		
3			0		
4			0		
5			0		
6			0		
7			0		
8			0		
			Totals	0 Residents	0 Square feet

Please return this completed application to:

Development Services Department
100 West Atlantic Boulevard Room 352
Pompano Beach, FL 33060

Questions? Need assistance?
Call city staff at (954) 786-4679

City of Pompano Beach
Department of Development Services

100 W. Atlantic Blvd Pompano Beach, FL 33060
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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: