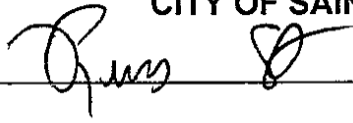


ORDINANCE
CITY OF SAINT PAUL, MINNESOTA

Presented by



28

An ordinance amending the Legislative Code Chapter 65 by creating a new § 65.160, entitled "sober house," which defines and permits this residential use with associated zoning standards; amending § 63.207, Parking requirements by use, by adding a line with a parking requirement for *sober house*; and amending use tables in §§ 66.221, 66.321, 66.421, and 66.531 adding *sober house* as a permitted use in certain zoning districts.

PUBLISHED
AUG 04 2008

THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN

Section 1

That Legislative Code Chapter 65 is hereby amended by adding a new §65.160 entitled "sober house," as follows:

Sec. 65.160. Sober house.

A dwelling unit occupied by more than four (4) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988, that provides a non-institutional residential environment in which the residents willingly subject themselves to written rules and conditions, including prohibition of alcohol and drug use (except for prescription medications obtained and used under medical supervision), intended to encourage and sustain their recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses are financially self-supporting. This definition does not include facilities that receive operating revenue from governmental sources. Sober houses do not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

Standards and conditions:

A request for reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988 by providing an exception to the maximum number of unrelated persons living together in a dwelling unit shall automatically be granted if the following standards and conditions are met. This does not limit the city from granting additional reasonable accommodation for this use under the general provisions of this code.

- (a) The operator shall submit a request for reasonable accommodation to the zoning administrator on a form provided by the city, specify the number of residents, and provide information necessary to assure the use meets applicable zoning standards. The maximum total number of residents permitted in the sober house shall be specified by the Fire Certificate of Occupancy.
- (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall submit a written parking plan that demonstrates sufficient parking for the use.
- (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- (d) For a structure serving 17 or more sober house residents, a conditional use permit is required. This use shall be exempt from section 61.501 conditional use permit general standards (a), (c), and (d).
- (e) Property containing one or more sober house units shall be a minimum distance of three hundred thirty (330) feet from any other property containing a sober house.

08-640

That Legislative Code Sec. 63.207, Parking requirements by use, in the "Residential Uses" section of the table, is hereby amended as follows:

Sec. 63.207. Parking requirements by use.

The minimum number of off-street parking spaces by type of use shall be determined in accordance with the following schedule:

Land Use	Minimum Number of Parking Spaces
Residential Uses	
Dwelling	1.5 spaces per unit
Dwelling in RL zone	2.0 spaces per unit
Housing on Irvine Avenue	2.0 spaces per unit plus one (1) guest parking area per unit (see section 63.312)
Housing for the elderly	0 33 spaces per unit
Community residential facility, emergency housing facility, shelter for battered persons, transitional housing facility	1 space per every 2 adult facility residents
Mission	1 space per employee
Sober house	1.5 spaces per every 4 residents
Rooming house	1 space per 3 occupancy units
Boarding care home	1 space per 2 beds and 1 space per day shift employee or full-time equivalent
Nursing home	1 space per 3 beds and 1 space per each 2-day shift employees or full-time equivalent
Dormitory	1 for every 3 beds
Fraternity, sorority	1 for every 5 active members or 1 for every 2 beds, whichever is greater

Section 3

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.221, Principal Uses in Residential Districts, is hereby amended as follows:

Table 66.221. Principal Uses in Residential Districts

Use	RL	RI-R4	RT 1	RT 2	RM1	RM2	RM3	Development Standards
Residential Uses								

Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	
Community residential facility, licensed human service	P	P	P	P/C	P/C	P/C	P/C	✓
Community residential facility, licensed correctional					C	C	C	✓
Community residential facility, health department licensed					C	C	C	✓
Emergency housing facility					C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓

08-640

Sober house	P	P	P/C	P/C	P/C	P/C	P/C	✓
Roominghouse, boarding house					C	C	C	✓
Nursing home, boarding care home, assisted living						C	P	✓
Hospice	P	P	P	P	P	P/C	P	✓
Dormitory	P	P	P/C	P/C	P/C	P/C	P/C	✓
Fraternity, sorority	P	P	P/C	P/C	P/C	P/C	P/C	✓

Section 4

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.321, Principal Uses in Traditional Neighborhood Districts, is hereby amended as follows:

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Residential Uses				

Congregate Living				
Foster home, freestanding foster care home	P	P	P	
Community residential facility, licensed human service	P	P	P	✓
Community residential facility, licensed correctional	C	C	C	✓
Community residential facility, health department licensed	C	C	C	✓
Emergency housing facility	C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	✓
Sober house	P/C	P/C	P/C	✓
Roominghouse, boardinghouse	C	P	C	✓
Nursing home, boarding care home, assisted living	P	P	P	✓
Hospice	P	P	P	✓
Dormitory	P/C	P	P	✓
Fraternity, sorority	P/C	P	P	✓

Section 5

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.421, Principal Uses in Business Districts, is hereby amended as follows:

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Residential Uses								

Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	✓
Community residential facility, licensed human service	P	P	P	P	P	P	P	✓
Community residential facility, licensed correctional			C	C	C	C	C	✓
Community residential facility, health department licensed			C	C	C	C	C	✓
Emergency housing facility			C	C	C	C	C	✓
Overnight shelter							C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P	P	P	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P	P	P	✓

08-040

Sober house	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓
Roominghouse, boardinghouse			C					✓
Nursing home, boarding care home, assisted living			C					✓
Hospice	C	C	P/C	C	P	P	P	✓
Dormitory			P/C					✓
Fraternity, sorority			P/C					✓

Section 6

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.521, Principal Uses in Industrial Districts, is hereby amended as follows:

Table 66.521. Principal Uses in Industrial Districts

Use	IR	II	I2	I3	Development Standards
Residential Uses					

Congregate Living					
Foster home, freestanding foster care home	P	P	P		✓
Community residential facility, licensed human service	P	P	P		✓
Community residential facility, licensed correctional		C	C		✓
Community residential facility, health department licensed		C	C		✓
Correctional facility		C	P	C	
Emergency housing facility		C	C		✓
Overnight shelter		C	C		✓
Shelter for battered persons	P	P	P		✓
Transitional housing facility	P	P	P		✓
<u>Sober house</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>		<u>✓</u>
Hospice	P	P	P		✓

Section 7

This ordinance shall become effective thirty (30) days after its passage, approval and publication.

	Yeas	Nays	Absent
Benav <u>Stark</u>	✓		
Bostrom	✓		
Harris	✓		
Helgen	✓		
Lantry	✓		
Montgomery <u>Carter</u>	✓		
Thune	✓		
	7	0	0

Adopted by Council: July 9, 2008

Date:

Adoption Certified by Council Secretary:

By: Nancy Erickson

Approved by Mayor

Date: Returned Unsigned by Mayor

Requested by Department of:

Planning and Economic Development

By: _____

Form Approved by City Attorney

By: P.W. Warren 8-25-08

Form Approved by Mayor for Submission to Council

By: _____

PUBLISHED
AUG 04 2008

PUBLISHED
AUG 04 2008

08-640

Green Sheet NO: 3054835

Department/office/council: PE -Planning & Economic Development	Date initiated: 30-MAY-08	Green Sheet NO: 3054835			
Contact Person & Phone: Luis Pereira 266-6591	 Assign Number For Routing Order	Department	Sent To Person	Initial/Date	
Must Be on Council Agenda by (Date): 18-JUN-08		0	Planning & Economic Development	Luis Pereira	LP 5/30/08
Doc. Type: ORDINANCE		1	Planning & Economic Development	Director - Cecile Bedor	CB 6-7-08
E-Document Required: N Document Contact: Contact Phone:		2	City Attorney	Peter Warner	
		3	Mayor's Office	Mayor/Assistant	
		4	Council		
		5	City Clerk	City Clerk	

RECEIVED

JUN 02 2008

CITY ATTORNEY

Total # of Signature Pages 38 (Clip All Locations for Signature)

Action Requested:
 Review and adopt ordinance pertaining to zoning code regulations for sober houses.

Recommendations: Approve (A) or Reject (R):
☐ Planning Commission
☐ CIB Committee
☐ Civil Service Commission

☐ _____
☐ _____
☐ _____

Personal Service Contracts Must Answer the Following Questions:
 1. Has this person/firm ever worked under a contract for this department?
 Yes No
 2. Has this person/firm ever been a city employee?
 Yes No
 3. Does this person/firm possess a skill not normally possessed by any current city employee?
 Yes No
Explain all yes answers on separate sheet and attach to green sheet

Initiating Problem, Issues, Opportunity (Who, What, When, Where, Why):
 The Sober House Zoning Study was initiated by City Council Resolution 05-462 to study and recommend regulations for sober houses in keeping with the reasonable accommodation requirement of the Federal Fair Housing Act. On October 10, 2007, the City Council passed interim ordinance 07-887 preserving the status quo regarding sober houses, which expires on September 12, 2008. The Planning Commission will hold a public hearing on the draft ordinance on June 13, 2008, and make its recommendations on June 27, 2008.

Advantages If Approved:
 Ordinance will provide a clear definition and standards for sober houses in keeping with the reasonable accommodation requirements of the Federal Fair Housing Act.

Disadvantages If Approved:
 None.

Disadvantages If Not Approved:
 Saint Paul will continue to have relatively unclear standards for defining and providing reasonable accommodation for sober houses.

Total Amount of Transaction:
Funding Source:
Financial Information:
 (Explain)

Cost/Revenue Budgeted: N
Activity Number:



08-640

CITY OF SAINT PAUL
OFFICE OF THE MAYOR

CHRISTOPHER B. COLEMAN
Mayor

July 18, 2008

Council President Kathy Lantry
and City Councilmembers
310 City Hall
Saint Paul, Minnesota 55102

Dear Council President Lantry and City Councilmembers:

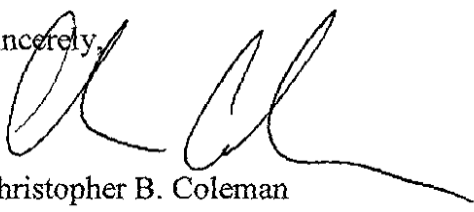
As you know, you recently sent me Council File 08-640 pertaining to zoning code regulations for sober houses.

While we share the same goal of promoting livability throughout the City of Saint Paul, I need to express my serious concerns about the language in Council File 08-640. I agree that a clear definition of sober houses is necessary to ensure both that reasonable accommodations are made for those living with addiction, and that the integrity of our neighborhoods is protected. I also agree that sober house operators should be required to provide information to the city that is necessary to ensure that a house meets applicable zoning standards. Moreover, I agree that sober houses must be subject to specific parking requirements so that sober house residents and their neighbors have an equal opportunity to park their cars near their homes.

I am concerned, however, about the departure from the planning commission and legal counsel recommendations regarding the 330-foot separation requirement for sober houses. As the staff report noted, with assistance of legal counsel, this separation requirement may not meet the common legal test for handicapped people articulated by the Federal Courts of Appeal. As always, I am concerned about putting the city at risk of lengthy and costly litigation.

That being said, I am acutely aware of the reality of a 7-0 vote, and know that a veto-proof council majority limits my options going forward. Therefore, I am returning this ordinance unsigned.

Sincerely,



Christopher B. Coleman
Mayor



08-640



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6655
Facsimile: 651-228-3314

May 30, 2008

Mayor Chris Coleman
City Council President Kathy Lantry and Councilmembers
Third Floor – City Hall
Saint Paul, MN 55102

RE: Draft Sober House Zoning Amendments for City Council Review and Action

Dear Mayor Coleman, Council President Lantry, and Council Members:

Attached are zoning amendments relating to sober houses for City Council review and action, along with background material and supporting information in the Sober House Zoning Study requested by the City Council. On May 16, 2008, the Planning Commission voted to release the attached draft sober house ordinance for public review, and to set a Planning Commission public hearing on the draft ordinance for June 13.

The Commission also voted to transmit the draft ordinance to the City Council at this time, prior to the Planning Commission public hearing and recommendation, so the City Council can begin its review process and have more time to review and adopt the ordinance prior to expiration of the sober house interim ordinance on September 12, 2008. A schedule for review and adoption of the sober house ordinance is also attached. The Planning Commission will transmit its recommendations to the Mayor and City council on June 27.

Sincerely,

A handwritten signature in dark ink, appearing to read "Luis Pereira".

Luis Pereira
Planner, PED

Cc: Brian Alton
Wendy Lane
Allan Torstenson
Peter Warner

08-640



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

*25 West Fourth Street
Saint Paul, MN 55102*

*Telephone: 651-266-6700
Facsimile: 651-228-3220*

DATE: 4/23/08

TO: Neighborhood Planning Committee
Planning Commission
City Council offices
Peter Warner
Wendy Lane
Cecile Bedor

FROM: Allan Torstenson, Luis Pereira

RE: Sober House Zoning Study Timeline

Schedule to Meet Interim Ordinance Deadline

Planning Commission Review		City Council Adoption	
5/7/08	Neighborhood Committee approves public hearing draft		
5/16/07	Planning Commission sets public hearing date	5/21/08	Submit ordinance public hearing draft and greensheet to City Council
6/13/08	Planning Commission holds public hearing	6/18/08	First reading on proposed ordinance
6/18/08	Neighborhood Committee considers public hearing testimony	6/25/08	Second reading
6/27/08	Planning Commission makes recommendation	6/27/08	Transmit Planning Commission recommendation to Mayor and City Council
		7/2/08	Council's public hearing
		7/9/08, 7/16/08, or 7/23/08	Final adoption
		By 8/4/08	Send ordinance to Legal Ledger
		By 8/7/08	Publication in Legal Ledger
		By 9/8/08	Effective date of ordinance
		9/12/08	Interim Ordinance Expires

SAINT PAUL SOBER HOUSE ZONING STUDY

08-640

Planning Commission Public Hearing Draft

City Council Request

City Council Resolution 05-462, adopted on May 25, 2005, directed PED to do a study of “sober houses”, after the Council was informed that the number of sober houses locating in the City was on the rise. A sober house has been commonly referred to as a private residence for individuals in recovery from chemical dependency. People recovering from chemical dependency are considered “disabled” by the Federal Fair Housing Act, a federal law that prohibits discrimination against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.¹ The Supreme Court has ruled that individuals in recovery from chemical dependency living in congregate facilities cannot be excluded from zoning districts under family composition rules, which limit the number of unrelated persons living together in a single family dwelling.

The City’s Zoning Code currently lacks a definition of a sober house, and does not contain clear regulations that apply to them. The City Council resolution directed PED to identify the current law regarding sober house regulations, determine the limitations of municipal regulations of sober houses, and update the Zoning Code to comply with federal law. In addition, the resolution directed PED to determine if neighborhood notification about sober houses could be implemented, and to explore the feasibility of adopting other city regulations. The City Zoning Code’s definition of “family,” provision about “reasonable accommodation,” and the appropriateness of the sober house land use within single family zones are all relevant issues that merit study.

Authority for the Study

Amendments to the Zoning Code follow the procedures in §64.400 of the Code and Minnesota Statutes §462.357. Either the City Council or the Planning Commission can initiate citywide amendments. Public hearings with required notice are held at both the Planning Commission and the City Council.

¹ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm. “Handicap” has the same legal meaning as the term “disability” which is used in other federal civil rights laws.

Existing Regulations

08-640

The Federal Fair Housing Act (FFHA)

As discussed above, the FFHA defines chemically dependent individuals as members of a protected class of people ("disabled"), prohibiting discrimination against them. The fundamental local implication of the FFHA is that it prohibits discrimination "against any person . . . because of a handicap" in the sale or rental of housing. 42 U.S.C. 3604(f)(2).

As applied to municipalities, the FFHA prohibits a municipality from refusing "to make reasonable accommodations in rules, policies, practices or services" when those are necessary to permit handicapped persons "to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). An example might be an accommodation that would allow a higher number of unrelated residents to live in a single family house than normally allowed by the municipal definition of "family" or the single family zoning.

Apart from the FFHA, municipalities still have the authority to protect safety and health, as long as the applicable regulations do not restrict the ability of disabled individuals to live in communities. This is true as long as the building/fire codes (safety and health regulations) are required, applied, and enforced *in the same way* on families and groups of similar size of other unrelated people, not just those individuals residing within sober houses.²

State of Minnesota statute

State statute §462.357 governs municipal zoning ordinances within Minnesota. Subd. 7 and 8 discuss when a licensed residential facility shall be considered equivalent to a permitted single family use, or a permitted multifamily use.³

Subd. 7. Permitted single family use.

A **state licensed** residential facility or a housing with services establishment registered under chapter 144D **serving six or fewer persons** . . . shall be considered a **permitted single family residential use** of property for the purposes of zoning...."

Subd. 8. Permitted multifamily use.

Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a **state licensed** residential facility **serving from 7 through 16 persons** . . . shall be considered a **permitted multifamily residential use** of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the

² Leamon, Elizabeth A.L. "The Zoning of Group Homes for the Disabled... Zeroing in on a Reasonable Accommodation." University of Connecticut Law Journal, p. 10.

³ "Handicapped," under the state statute, includes adults who are chemically dependent or abuse chemicals.

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residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

The State statutes clearly define any state-licensed community residential facility (CRF) as a single family use if it serves six or fewer residents. The City Zoning Code has different occupant thresholds for different congregate living facilities and group homes. The statute does not explicitly define the equivalent of a permitted single family or multifamily use for a group home that is not licensed by the state (including a typical sober house in the City of Saint Paul).

Municipal Code

Building Code and Inspection, Leg. Ch. 33, and Uniform Fire Code, Leg. Ch. 55

The Municipal Building Code is based on the State Building Code, and is enforced by City building inspectors in the Department of Safety and Inspections (DSI). The Municipal Fire Code is based on the State Fire Code, and is enforced by City fire inspectors, also in DSI. The Municipal Building Code applies to new buildings that are constructed, whereas the Municipal Fire Code is applied to existing buildings that are already constructed. These two codes are considered “companion codes”, and are therefore consistent.

The Departments of Justice (DOJ) and Housing and Urban Development (HUD) assert that group homes for persons with disabilities are “subject to state regulations intended to protect the health and safety of their residents”, and find such regulations to be “necessary and appropriate.”⁴ This suggests that is necessary and appropriate to apply the Fire and Building codes to sober houses, just as they are applied to other similar residential uses. On the other hand, the DOJ and HUD do caution that it would be inappropriate to apply health and safety measures that go beyond those normally imposed on similar congregate residential uses.

Zoning Code, Leg. Ch 60-69

While there is no explicit definition of a sober house use in the City Zoning Code, the use shares some characteristics with community residential facilities (CRFs), transitional housing, and roominghouses. They are like CRFs in terms of being occupied by people in recovery from chemical dependency. They are like transitional housing in that they serve residents for a temporary period of time in between living in a more formalized residential institution and living independently. They are like some roominghouses that function as a single room occupancy, which includes bedrooms with internal locks on the doors, accompanied by common living areas. Here are the three definitions discussed above (with bold text emphasizing similarities to sober housing):

§65.153. Community residential facility, licensed human service.

One (1) main building, or portion thereof, on one (1) zoning lot where one (1) or more children or **persons with** mental retardation or related conditions, mental illness,

⁴ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm.

08-640

chemical dependency or physical handicaps reside on a 24-hour-per-day basis under the auspices of a program licensed by the state department of human services to provide lodging in conjunction with monitoring, supervision, treatment, rehabilitation, habilitation, education or training of the residents of the facility.

This definition does not include:

- (1) Foster homes or freestanding foster homes as defined in this code;
- (2) Residential treatment programs physically located on hospital grounds;
- (3) Regional treatment centers operated by the commissioner of human services;
- (4) Licensed semi-independent living services for persons with mental retardation or related conditions or mental illness, if the license holder is not providing, in any manner, direct or indirect, the housing used by persons receiving the service.

§65.159. Transitional housing facility.

One (1) main building, or portion thereof, on one (1) zoning lot where **persons who may or may not have access to traditional or permanent housing but are capable of living independently** within a reasonable period of time, generally about eighteen (18) months, reside on a 24-hour-per-day basis for at least thirty (30) days and participate in appropriate program activities designed to facilitate independent living.

§65.171. Roominghouse.

- (1) Any residential structure or dwelling unit, supervised or not, which provides living and sleeping arrangements for more than four (4) unrelated individuals for periods of one (1) week or longer; or
- (2) Any residential structure or dwelling unit which provides **single room occupancy (SRO)** housing as defined in CFR section 882.102 to more than four (4) unrelated individuals; or
- (3) Any building housing more than four (4) unrelated individuals which has any of the following characteristics shall be considered and regulated as a roominghouse:
 - a. Rental arrangements are by the rooming unit rather than the dwelling unit.
 - b. Rooming unit doors are equipped with outer door locks or chains which require different keys to gain entrance.**
 - c. Kitchen facilities may be provided for joint or common use by the occupants of more than one (1) rooming unit.**
 - d. Rooming units are equipped with telephones having exclusive phone numbers.
 - e. Rooming units are equipped with individual intercom security devices.
 - f. Each rooming unit has a separate assigned mailbox or mailbox compartment for receipt of U.S. mail.

A previous effort for outlining a process of distinguishing between various types of similar congregate living uses included the following illustrative decision tree (figure 1).⁵ It might be noted that a "sober house" best falls within the "something else" category in the last box on bottom right.

⁵ Homans, Nancy. PED.

08-640

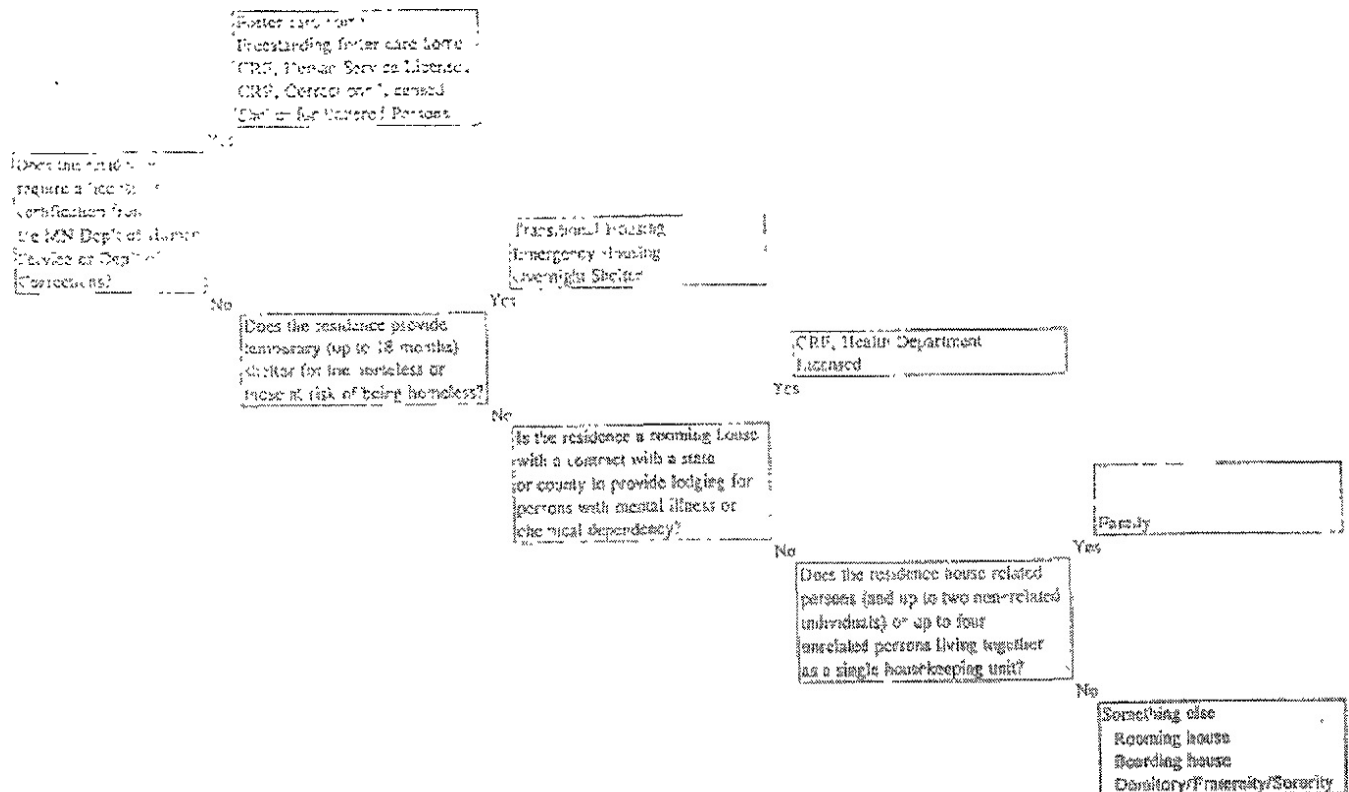


Fig. 1. Illustrative Decision Tree for Determining the Type of Congregate Residential Facility or Group Home

Trends in Sober Housing

The number of sober houses appears to be growing in Saint Paul. Within the last year, several applications were submitted to DSI requesting the establishment of new sober houses. While the City maintains a tally of sober houses that City staff knows about, it has been compiled on the basis of operators who have chosen to self-identify themselves and cooperate with City inspectors in order to receive the proper Certificates of Occupancy for the buildings they operate. Because of this process of self-identification, the list is likely incomplete. Until recently, the City had no explicit way to evaluate proposed *new* sober houses, beyond inspecting for Building and Fire Code compliance, and the subsequent issuance of a Certificate of Occupancy. Most of the sober houses on the City's list are either single family or duplex structures.

City fire inspectors have found that some sober houses in Saint Paul are connected informally to a treatment program such as Hazelden or Fairview Hospital, and receive resident referrals from them. Some sober house operators refer residents to other sober houses in Saint Paul, or back to residential facilities with more services. While it was previously suggested at a City Council meeting that the City might require all sober houses to be affiliated with a treatment program or center, the City Attorney's Office believes that the City likely cannot require this.

There is a widely-acknowledged therapeutic benefit for individuals recovering from chemical dependency to live in a supportive residential environment with others recovering from similar

08-640

problems. Sober houses are a form of supportive housing that allows individuals to make a transition from chemical dependency to recovery, and eventual re-establishment into society. As such, it is important to integrate this type of housing into residential neighborhoods, and ensure that Saint Paul is an inclusive city.

Key Goals: Equal Access, Neighborhood Integration, and Structural Life Safety

As discussed above, group homes for persons with disabilities are subject to regulations intended to protect the health and safety of their residents, including the application of State of Minnesota Fire and Building codes. The codes apply to sober houses, just as they are applied to other similar residential uses. It is the City's responsibility to apply and enforce these regulations to ensure the sober house structures provide for the safety of their residents.

While the City must ensure that disabled individuals have the opportunity to use and enjoy a given dwelling (sober house), it should also ensure that the conditions exist for this dwelling to be well-integrated into the surrounding residential neighborhood. The goal to integrate sober houses within neighborhoods is motivated both by a concern for the residents of a sober house, as well by a concern about the livability of that neighborhood for other residents.

It is unclear how the exact concentration of sober houses in a neighborhood affects the goal to integrate them well within a neighborhood. However, there is a perception in Saint Paul that sober houses are becoming overly concentrated in certain neighborhoods. Concentration is a concern to sober housing operators and residents, as the intent of sober housing identified by some operators is to provide a residential, *non-institutional* environment that has therapeutic benefit to sober house residents. Concentration of sober housing appears to be a larger concern to residents in some neighborhoods that their neighborhoods are receiving more than their fair share of housing that departs from a traditional single family occupancy. The City has multiple goals. While it must provide for housing opportunities for disabled individuals, it should also seek to integrate such housing into residential neighborhoods, and is also expected to protect the character of existing residential neighborhoods.

A high concentration of larger sober houses in one area can lead to a "fundamental alteration in a local government's land use and zoning system," specifically if a high proportion of them do not comply with the applicable occupancy and single family zoning regulations. The DOJ and HUD assert that:

"especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods."⁶

Concentration standards currently apply to other congregate residential uses in Saint Paul such as community residential facilities, emergency housing facilities, overnight shelters, shelters for battered persons, and transitional housing facilities (see figure 2 below). These uses must be

⁶ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm.

08-1640

separate from similar uses by $\frac{1}{4}$ of a mile (1,320 feet). In addition to this, the concentration of these uses is also governed by a "population cap." The purpose of concentration standards is to limit the extent to which such "institutional" congregate residential uses, many of which are licensed by the State and/or County, can be concentrated in any particular area of the city.

Current Concentration Standard for Other Group Homes / Congregate Residential Facilities

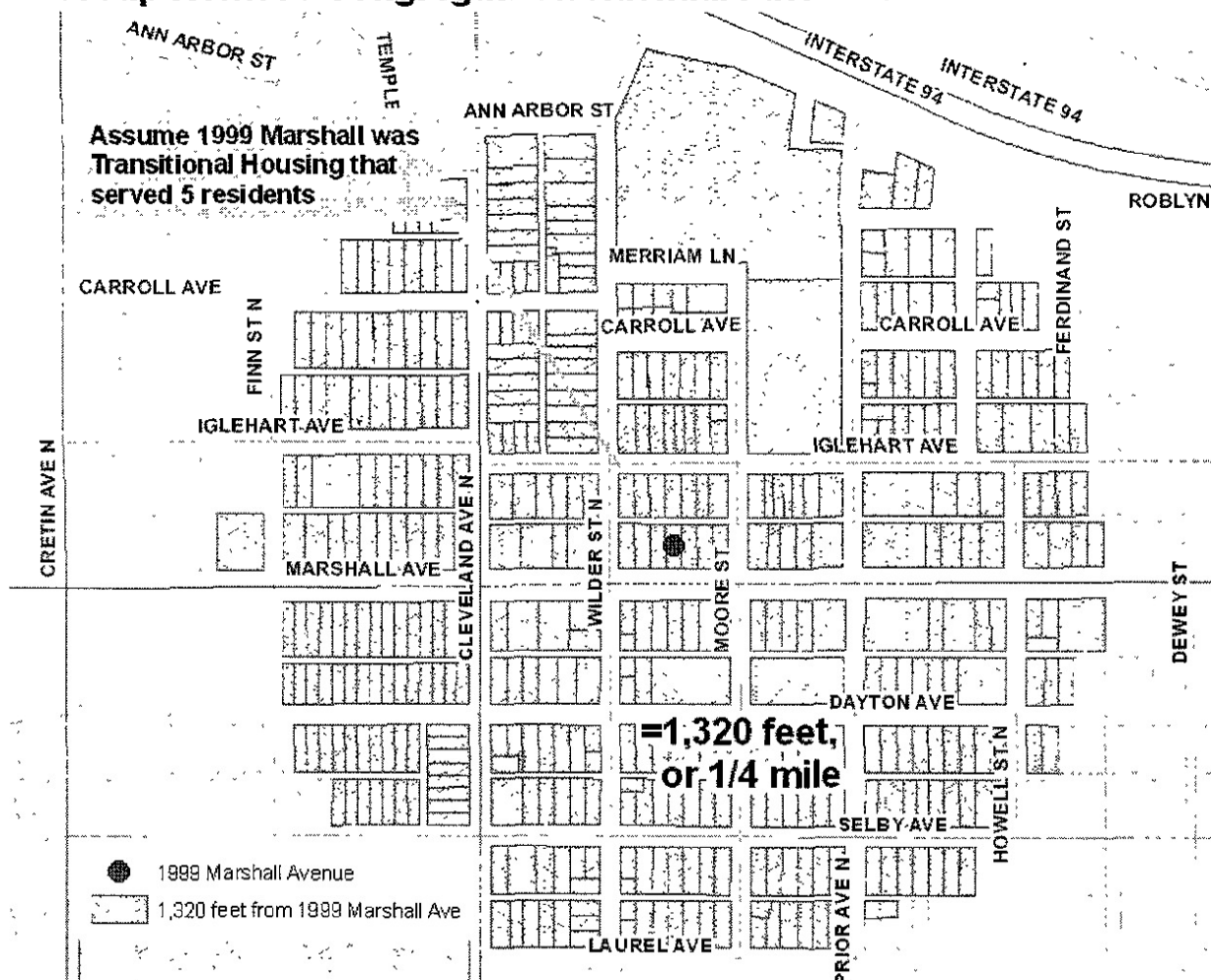


Fig. 2. According to §65.159(b), in RL-RT2 residential districts, a transitional housing facility serving more than 4 adult residents shall be a minimum of 1,320 feet from any other transitional housing facility with more than 4 adult facility residents, licensed community residential facility, emergency housing facility, shelter for battered persons with more than four adult facility residents, or overnight shelter. **No new facilities of the types listed here would be permitted on any of the properties highlighted above.**

How Sober Houses Differ from Licensed Residential Facilities (Group Homes)

While a typical sober house serves residents with disabilities - similar to residents served at the licensed, service-intensive congregate residential uses listed above - it is **unlike** these uses in that it is most commonly smaller-scale and found in a one- or two-family house. While sober houses in Saint Paul typically have 6-12 adult residents - which does not conform with the City's definition of "family" (up to 4 unrelated adults) - sober house operators and residents emphasize that the residents in each house function like a single family. Residents in sober houses share

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kitchens, bathrooms, living rooms and other common areas of the house, and sometimes bedrooms. Remaining sober is a condition of living in the house, and residents support one another to move forward toward independent living and away from chemical dependency. Sober houses do not provide any treatment services onsite, only providing informational referrals, which is also unlike the state-licensed facilities that serve residents with chemical dependency. Because sober houses do not provide onsite services, their residents are not considered to be a “service-dependent” population like the residents in licensed group homes.

Why the Number of Residents per Sober House Matters At the Neighborhood Level

Residents of a particular sober house may function like a single family unit, irrespective of the number of residents in the house. Municipal definitions of family composition (occupancy) have been struck down by the Supreme Court when used as a basis for denying a permit for a group home that is proposed to house more unrelated people than allowed by the occupancy limit. However, scale matters in examining the external land use impacts of sober houses on neighborhoods that are predominantly zoned for single-family uses.

At what point does a particular sober house become less like a “single family use”, for purposes of zoning (not occupancy), and more like a “service-intensive” housing facility, such as a licensed community residential facility? Determining the tipping point is a rather subjective exercise.⁷ The Saint Paul Zoning Code definition of “family” is no more than 4 unrelated adults. The Building Code’s definition of a single family occupancy is 1-5 people. State statute §462.357 (above), which governs municipal zoning ordinances within Minnesota, in Subd. 7 states that a state-licensed residential facility which serves six or fewer persons shall be considered a permitted single family residential use of property for the purposes of zoning. Another guideline would be that of Oxford House, an internationally-established network of sober houses, which has a model that requires at least six residents in each house (but may range up to 15 residents). According to the City’s unofficial tally of known sober houses, 11 of 13 existing sober houses in single family houses have over six people in them.

If the City were take some guidance from the State statutes that govern licensed residential facilities to help define and regulate sober houses, sober houses with six or fewer residents would be considered a “single family” use, while houses with 7-16 residents would be considered a multifamily use. Under this standard, most existing sober houses in Saint Paul would be considered a multifamily use, as:

- 68% of sober houses that the City has on record are either in single family houses or duplexes, and
- 85% of sober houses in single family houses and 55% of sober houses in duplexes have six or more residents.

Sober house operators might argue that a block zoned for and predominantly developed with single family homes would be unlikely to convert entirely from traditional single family

⁷ Another guideline would be that of the Oxford House, an internationally-established network of sober houses, which has a model that requires at least 6 residents in each house (but may range up to 15 residents). Finally, according to the City’s unofficial tally of known sober houses, 11 of 13 existing single family sober houses have over 6 people in them.

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occupancies to sober houses of more than 4 four residents (this has not happened, even in the absence of regulations). Even if this were to happen, the same sober house operators might argue that a block zoned for and predominantly developed with single family homes were to convert entirely from traditional single family occupancies to sober houses of six or fewer residents, the neighborhood land use impacts of such a conversion – particularly on-street parking availability – could be negligible because many of the residents do not have driver's licenses or own/operate vehicles. However, such an assertion might not hold up as conditions change - sober house residents might acquire jobs as they recover, and thus need to also acquire a car to get to their jobs. In addition, even if only half of the single family homes on such a block were to convert to sober houses from traditional single family occupancies, at some point, there is a "tipping point", and the land use impacts of several sober houses occupied by a large number of residents becomes significant – whether because of noise, on-street parking availability, etc. For example, if half the homes on a block with 5,000 square foot lots are converted to sober houses with 7+ residents each, it might even be argued that the street has the land use impacts of a "service-intensive" or "institutional" housing facility, given the concentration of residents with disabilities in a small geographic area. In either case (a block consisting entirely of sober houses with six or fewer residents, or half of a block consisting of sober houses with 7 or more residents), parking management is a key concern. Because of this, any sober house should be asked to demonstrate sufficient parking for the use (based on the number of residents, any other relevant factors).

To conclude, a concentration of sober houses with larger numbers of residents has a greater potential for significant land use impacts than a concentration of sober houses occupied by less residents. The latter have land use impacts more comparable to traditional "families." Because of this, there is a stronger case for a concentration standard for larger sober houses (similar to the way the City currently regulates the concentration of other larger congregate residential facilities).

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Possible Zoning Approach

1. Land Use Definition

Based on information gathered from the tally of existing sober houses in Saint Paul, as well as input from sober house operators, sober houses are a distinct land use from single family homes, licensed, community residential facilities serving people with disabilities, transitional housing, and roominghouses. The following is proposed as a land use definition for sober houses which reflects these distinctions:

Sober house.

A dwelling unit occupied by more than four (4) persons in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988 that provides a non-institutional residential environment in which the residents willingly subject themselves to rules and conditions intended to encourage and sustain their recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses are financially self-supporting. This definition does not include facilities that receive operating revenue from governmental sources. Sober houses do not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

The intent of the definition above is to distinguish between sober houses and more service-intensive, government-licensed housing facilities occupied by residents with a higher level of dependence, and to reduce the existing lack of clarity about what constitutes a "legitimate" sober house. This definition would not include dwelling units occupied by four or less residents (which are covered by the standard definition of family).

2. Application Process

Currently, when a new sober house wishes to begin operating (or when City staff find out about a pre-existing sober house already in operation), the Department of Safety and Inspections issues a questionnaire to the operator inquiring about how the house functions. The operator is asked to submit written answers to this questionnaire that specify the number of residents and bedrooms, and other building and site data. This questionnaire was devised jointly by staff in DSI and the City Attorney's Office (the latter providing information on what has been deemed by courts to be within the acceptable range of inquiry for municipalities when dealing with sober houses or group homes for the disabled).

While several sober house operators have submitted answers to the questionnaire developed by City staff, and City staff has accordingly made administrative decisions on whether to grant reasonable accommodation to various City codes (Housing and Zoning Codes), this questionnaire is being improved and standardized as a part of this study.

The City Attorney's Office has said that based on rulings from other jurisdictions, the City may not prevail in requiring a Conditional Use Permit⁸ or a license for all sober houses, or a public hearing process to decide whether or not a permit for a sober house should be granted.

3. Zoning Standards

If the City adopts a distinct land use definition for sober housing, the following set of associated zoning standards are proposed (akin to the standards specified for many defined land uses in the Zoning Code).

Standards for Application and Parking

To account for #1 and #2 (above), the following standard for sober houses is proposed:

The following standards and conditions are intended to provide reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988:

- (a) The operator shall submit written answers to a questionnaire provided by the zoning administrator that specify the number of residents, the number of bedrooms, and other building and site data. The maximum total number of residents permitted in the sober house will be specified by the Fire Certificate of Occupancy.

Standards by Zoning District

As discussed in the section entitled "Why the Number of Residents per Sober House Matters At the Neighborhood Level" above, defining sober houses like the way the State statutes define licensed residential facilities (as being either a permitted single family or multifamily use) is one possible approach. However, given that many of the existing sober houses within single family homes in Saint Paul have over six residents, using a modified approach would likely accommodate more of the existing sober houses in Saint Paul, and be more reasonable. The following zoning standards are proposed:

- (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- (d) A conditional use permit is required for any structure serving 17 or more sober house residents. This use shall be exempt from §61.501 conditional use permit general standards (a), (c), and (d).

Standard (c) modifies the idea behind State statute §462.357 Subd. 7, which defines state-licensed residential facilities of six or fewer residents as a permitted single family use. Allowing sober houses to be occupied by up to 10 residents in single family residential districts would accommodate more of the existing sober houses in single family houses. Restricting single family districts to sober houses occupied by up to six or eight residents would accommodate far fewer of the 11 existing single family-zoned sober houses.

Standard (d) reflects §462.357 Subd. 8, which requires state-licensed residential facilities occupied by seven through 16 residents to be a permitted multifamily use. Multifamily uses are permitted in RT2 Townhouse and RM1-RM3 Multifamily Residential zones, all Traditional

⁸ Outlined below is a proposed exception to this – for structures serving 17 or more sober house residents.

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Neighborhood zones, and all Business zones (in some districts as mixed residential/commercial uses). The Zoning Code currently mirrors this state statute by specifying over 16 residents as the point at which certain residential facilities must meet additional standards. For example, for community residential facilities licensed by the State Department of Human Services, any facility occupied by 17 or more residents must have a minimum lot area of 5,000 square feet plus 1,000 square feet for each guest room in excess of two guest rooms. A conditional use permit for sober houses occupied by 17 or greater residents is justifiable because state law treats licensed residential facilities of this size differently – given the potential neighborhood impacts of such a large-scale residential land use. A CUP would allow the Planning Commission to review and require reasonable conditions to mitigate the impacts of this use. While CUPs should not otherwise be part of the City approach to regulating sober houses, the City Attorney's Office believes that they are justifiable at this larger scale.

Lot Area Standard

Many sober houses in Saint Paul are located on lots of about 5,000 square feet in size and some of these are occupied by as many as 14 residents. However, a minimum lot size standard for houses occupied by a higher number of residents would help to mitigate parking and other effects of larger sober houses on the surrounding property. The following standard is recommended:

- (e) The minimum per unit lot area as applicable in the zoning district plus eight hundred (800) square feet for each resident in excess of six (6) residents.

4. Zoning Districts

If the above land use definition and zoning standards are adopted, it would logically follow that sober houses would be permitted in all residential, traditional neighborhood, business, and IR-12 industrial zoning districts, subject to all of the standards for sober houses. Permitting sober houses in all districts where residential uses are permitted is consistent with the City's goal of ensuring that sober houses are integrated into their surrounding neighborhoods.

5. Parking Plan

Given that the current requirement for a residential use is 1.5 parking spaces/dwelling unit, and a sober house may be occupied by more residents with cars than a unit occupied by municipally-recognized "family" (a biological family or 4 unrelated adults), the following parking standard is proposed for sober houses (to be located in §63.207 of the Zoning Code):

Land Use	Minimum Number of Parking Spaces
Sober house	1.5 spaces per every 4 residents

Examples of this parking standard are below:

- 5 residents X (1.5/4) = 1.88, rounded up to 2 spaces
- 6 residents X (1.5/4) = 2.25, rounded down to 2 spaces
- 7 residents X (1.5/4) = 2.63, rounded up to 3 spaces
- 8 residents X (1.5/4) = 3 spaces
- 9 residents X (1.5/4) = 3.38, rounded down to 3 spaces

10 residents X (1.5/4) = 3.75, rounded up to 4 spaces
 11 residents X (1.5/4) = 4.13, rounded down to 4 spaces
 12 residents X (1.5/4) = 4.5, rounded down to 4 spaces
 Etc.

Because a sober house may not meet be able to meet the parking requirement in §63.207, the following zoning standard is proposed:

- (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall submit a written parking plan that demonstrates sufficient parking for the use.

The written “alternative parking plan” would have to show off-street parking spaces, the location of on-street parking spaces that are normally available, and the anticipated number of cars to be kept by residents of the house. Other elements of the parking plan to potentially include might be the sober house’s proximity to transit, the number of residents with driver’s licenses, written house rules that restrict the total number of cars to be parked at the house, and/or any written shared parking agreements that the operator has secured for parking on nearby property located within 300 feet of the property occupied by the sober house (as per §63.303, *Parking Location, Residential*).⁹ If a sober house has regular “AA” or other house meetings that result in a large number of non-resident participants that drive cars to the house, the parking plan should also show adequate parking for such visitors. Requiring a parking plan for individual sober houses is consistent with the City’s goal of ensuring that sober houses are well-integrated into their surrounding neighborhoods.

6. Concentration Standard

With the rights of individuals seeking the benefit of living in a sober house to find such options across the city, balanced with goals to integrate sober houses into neighborhoods and protect neighborhood character in mind, the City should consider adopting a modest concentration standard. This standard might only apply to sober houses with seven or more residents, i.e. a “multifamily use” by State statute §462.357 Subd. 8, given that units with a higher number of residents are more likely to have significant neighborhood land use impacts (such as a reduced availability of on-street parking), as discussed above.

Again, the Department of Justice and Department of Housing and Urban Development have said that

“...density restrictions are generally inconsistent with the Fair Housing Act. . . .”
 and

“...it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.”¹⁰

⁹ The existing requirements for shared parking are specified in §63.206(d) or (g) of the Zoning Code.

¹⁰ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm, p. 5.

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A small limit on concentration would not preclude sober houses from locating in an entire neighborhood, but rather would spread them out across a given neighborhood. One option, for example, might require that any sober house with seven or more residents be located at least 330 feet from any other sober house with seven or more residents (see **figure 3a** below).

Another option, reflected in the following standard (f), is a two-pronged concentration standard that distinguishes between sober houses of 5-6 residents, and those with 7 or more residents (see **figure 3b** below):

- (f) A sober house shall be a minimum distance of three hundred thirty (330) feet from any other sober house, and a sober house occupied by seven (7) or more residents shall be a minimum distance of six hundred sixty (660) feet from any other sober house, measured from property line to property line.

As with any of the above proposed regulations, if adopted, any sober house operator would have the right to request a reasonable accommodation from the concentration standard (#7 below).

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Fig. 3a. Option A

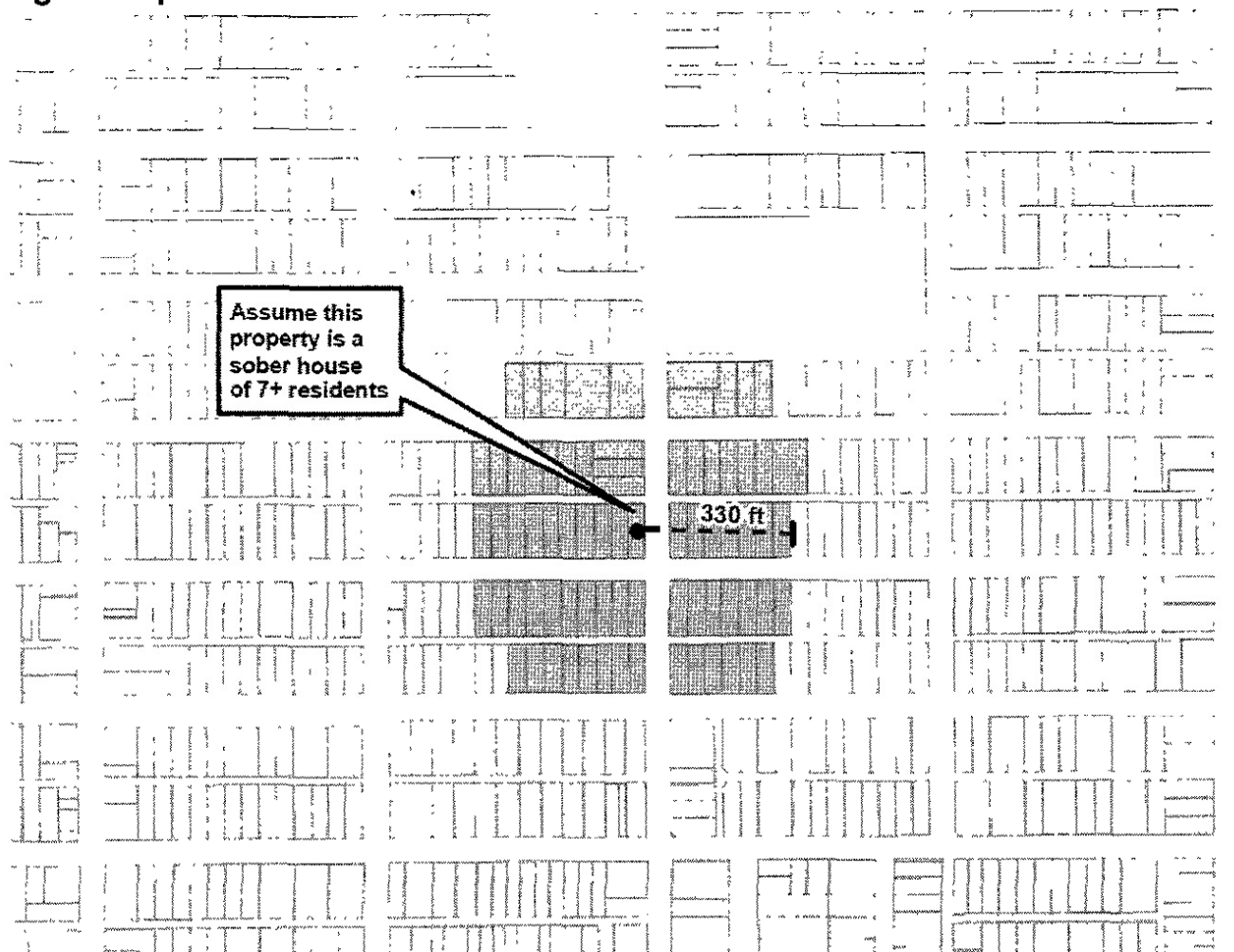


Fig. 3a. According to Option A outlined above, any sober house serving seven or more residents shall be a minimum of 330 feet from any other sober house serving seven or more residents. **Under this option, no new sober houses serving seven or more residents would be permitted on any of the properties highlighted above.**

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Fig. 3b. Option B

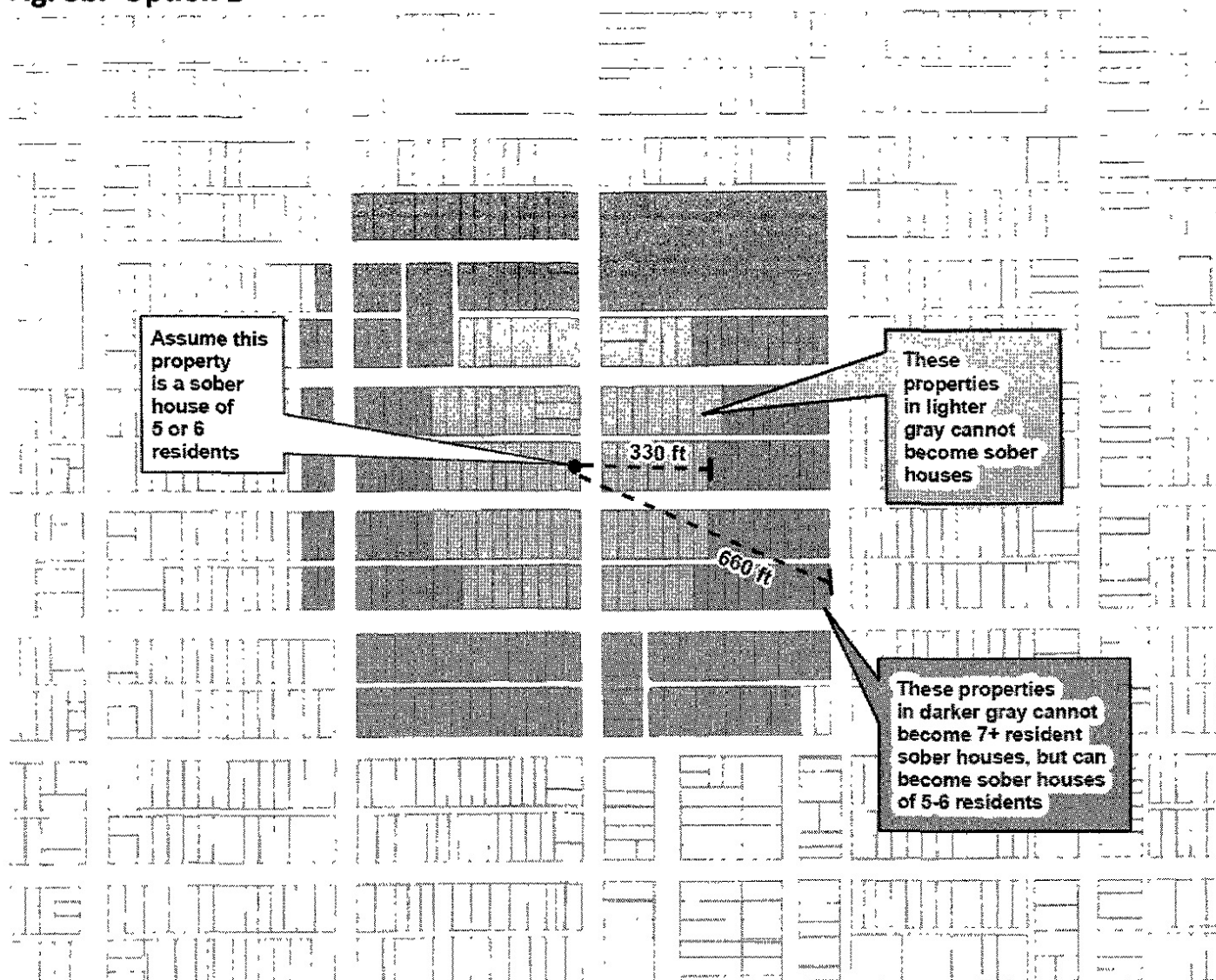


Fig. 3b. According to Option B (standard (f) above), any sober house must be a minimum of 330 feet from any other sober house; and any sober house of seven or more residents must be a minimum of 660 feet from any other sober house. **Under this two-tiered concentration standard, the exact separation required is a function of the number of residents in a sober house.**

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7. **Reasonable Accommodation procedures**

As per §60.110 of the Zoning Code, the City must make reasonable accommodations in its official controls in order to allow group housing for individuals in recovery from chemical dependency as required by the Federal Fair Housing Act Amendments of 1988. Requests for reasonable accommodation must be balanced with the City's legitimate interest in protecting, through its building, housing, and zoning codes, the character of residential neighborhoods, and the health and safety of the community:

Sec. 60.110. Reasonable accommodation. The city has a legitimate interest in preserving the character of residential neighborhoods by adopting regulations relating to the number and type of structures and uses, the number of persons who may occupy a dwelling or structure, and off-street parking, in order to control population density, noise, disturbance and traffic congestion. However, these regulations shall not be applied so as to prevent the city from making reasonable accommodation as required by the Federal Fair Housing Act Amendments of 1988.

A request for reasonable accommodation, beyond what is allowed under building, housing, and zoning codes, must be made to the City in writing, specifically requesting a reasonable accommodation from the particular regulation(s) (as per §60.110 of the Zoning Code), and include supporting documentation that shows how the proposed facility is internally structured, physically and programmatically, to serve its occupants. This is the current practice that DSI has been using for new sober house applications. Once received, the request for a reasonable accommodation is jointly considered, case-by-case, by the zoning administrator, building official, and fire inspector (DSI staff). Currently, their decisions are based on the responses to the sober house questionnaire, the written request for reasonable accommodation, and other information that may be requested by City staff. Provided that the dwelling unit and structure meet certain minimum building, fire safety, and housing code requirements necessary to protect life and property, the zoning administrator may grant such request for reasonable accommodation and issue a Certificate of Occupancy certifying code compliance for a sober house. The decision of the zoning administrator may be appealed pursuant to Legislative Code §61.701.

Additional Procedural Steps for Determining Which Accommodations are Reasonable

If the City chooses to adopt a distinct land use definition and zoning standards for sober houses such as those outlined above, any new proposed sober house would be measured against such standards. As the ones outlined will accommodate the right of new sober houses to locate in residential neighborhoods (through zoning), they will not, by right, accommodate everything a new sober house would request. Upon determining that a proposed sober house meets all of the City-adopted standards, the zoning administrator shall put the determination in writing, noting that the house is granted a reasonable accommodation to exist as a sober house. The letter shall specify any relevant standards and conditions that the house shall follow, including the maximum number of residents, any applicable parking plan, and other relevant information from the questionnaire.

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Upon determining that a proposed sober house does not meet one or more of the City-adopted standards, the zoning administrator shall inform the applicant. The applicant will have the opportunity to submit a written request for reasonable accommodation, along with any supporting information about **why such accommodation is necessary in order to meet the particular needs of the residents, or why the accommodation is of therapeutic benefit to the residents.** Upon receiving a written request for reasonable accommodation, the zoning administrator shall consult with any relevant DSI and other City staff, including zoning, building, and fire inspection staff to determine whether such an accommodation:

1. Imposes an undue burden or expense on the local government
2. Creates a fundamental alteration in the zoning scheme

A request will be considered “reasonable” only if the answers to both of these questions is “no.” The DOJ and HUD state that what is considered “reasonable” in one circumstance (neighborhood context) may not be “reasonable” in another.¹¹ They give the examples of a four-person home for adults with mental retardation in a single-family zoned neighborhood as being “reasonable”, while a 50-bed nursing home in a single-family zoned neighborhood as not being “reasonable.” The DOJ and HUD state that the “scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors” that should be taken into account in making the determination.

If the request is determined to “pass” both of the above two questions, i.e. it is reasonable, the zoning administrator shall put the determination in writing, noting that the sober house is granted a reasonable accommodation from one or more of the applicable standards to exist as a sober house. The letter shall specify any relevant standards and conditions that the house shall follow, including the maximum number of residents, the parking plan, and other relevant information from the questionnaire.

Ongoing Operations & Enforcement

Legitimate concerns may arise about sober houses that do not follow the specifications as outlined by the zoning administrator in the written determination of reasonable accommodation. If the sober house is not operated in compliance with a reasonable accommodation, the City will follow the process for revoking the reasonable accommodation as provided for in §61.108 of the Zoning Code:

Sec. 61.108. Conditions violated, permit revocation.

The zoning administrator shall notify the planning commission when a development covered by a permit or other matter is not in compliance with any of the conditions imposed upon such use permit. The commission may, at a public hearing, following notice to the owner of subject property and other adjacent property owners as specified in section 61.303(c), and upon determination that the conditions imposed by such approval are not being complied with, revoke the authorization for such approval and require that such use be discontinued.

¹¹ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm, p. 4.

The commission, in lieu of revoking the permission, may impose additional conditions, modify existing conditions, or delete conditions which are deemed by the commission to be unnecessary, unreasonable or impossible of compliance.

Neighbors or occupants of a problematic sober house can also make use of Saint Paul's Information & Complaints Office for problems such as garbage management, tall grass or weeds, unsafe or unsanitary conditions in a house, and neighborhood disturbances such as noise. For more serious problems with a property, neighbors might consider following procedures for shutting down a problem property, as specified by DSI.¹² Below are some definitions used by DSI:

A routine code enforcement case is simply any housing code violation regarding a single-family residential unit or duplex, either owner occupied or rental, including the exterior property area, garages, sheds, fences, and the structure itself, both interior and exterior. Code enforcement is also responsible for maintaining the City's right-of-way free and clear of obstructions and garbage.

A problem property is best defined by simply saying: If you live next door to a problem property you know it! Constant calls to get rid of the junk, intolerable behavior by occupants and guests, etc. A problem property can be a rental property or an owner occupied property; it can be a commercial property or a residential property; it can be a single-family unit, a duplex or an apartment building.

Possible strategies used by the City for stopping the nuisance activities at a problem property include code enforcement orders to correct or abate, condemnation/vacant building registration, criminal charges or charges for excessive consumption, nuisance abatement orders, or revocations of the property's fire certificate of occupancy.

Neighborhood Notification

The resolution for this Zoning Study directed PED to determine if neighborhood notification about sober houses could be implemented. The City Attorney's Office has said that this cannot be done. According to the US Department of Justice and HUD, a local government violates the FFHA if it blocks a group home for people with disabilities or denies a requested reasonable accommodation in response to neighbors' fears or discriminatory concerns about people with disabilities. According to the City Attorney's Office,

"A zoning ordinance that requires only sober house uses to obtain a conditional use permit is a form of actionable discrimination under the FFHA and the US and Minnesota Constitutions. The only way that a condition use permit could be required is if the City required all groups of more than four unrelated adults to apply for and obtain a conditional use permit. We do not currently do that."

¹² See report a problem property, see <http://mn-stpaul.civicplus.com/forms.asp?FID=65>. Procedures for shutting down a problem property are located at <http://www.ci.stpaul.mn.us/index.asp?NID=1704>.

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In addition to this, the City Attorney's Office has said that the City should not license sober houses.

Alternative Regulatory Approaches

There are three basic alternatives approaches for regulating sober houses – continuing current DSI practices (status quo); adopting reasonable accommodation standards for sober houses that are clear; or adopting reasonable accommodation standards for sober houses that are clear, but more restrictive.

1. Reasonable Accommodation Without Clear Standards (Status Quo). No new special regulations proposed for sober houses because they are protected by the Federal Fair Housing Act and because most municipalities who have attempted to enforce regular occupancy standards or restrictive single family zoning regulations have seen their regulations struck down in courts as discriminatory. The City might be on the safest legal grounds with this approach.

With this approach, there would be no special regulations for sober houses, including land use definitions, zoning standards, or concentration standards (separation requirements). Continue to use the questionnaire and grant reasonable accommodations when requirements for this are met as outlined in #7 above. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy.

OR

2. Reasonable Accommodation With Clear Standards. Adopt some special regulations for sober houses that are clear and reasonable, given that legal precedents show that the range within which municipalities can regulate sober houses is relatively narrow. This approach would chart new territory by avoiding common legal pitfalls which municipalities have faced in attempting to regulate sober houses too tightly in the past.

With this approach, the City would adopt a sober house land use definition and new zoning standards (those outlined above) that would allow for new sober houses in Saint Paul, including a small concentration standard. Formalize, standardize, and continue to use the questionnaire, and grant reasonable accommodations. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy.

Based on research done to date, the "Reasonable Accommodation With Clear Standards" is the recommended approach for four reasons:

1. It supports the integration of sober houses into neighborhoods
2. It reduces the existing lack of clarity about sober houses
3. It provides clear guidance for the location of sober houses
4. It avoids the common legal pitfalls which municipalities have faced in attempting to regulate sober houses too tightly in the past

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OR

3. **More Restrictive.** Treat sober houses no differently than traditional single family homes by enforcing existing zoning and occupancy codes *or* adopt new special regulations for sober houses that are more restrictive. This approach puts the City on the most tenuous legal grounds.

With this approach, the City would fully enforce existing occupancy standards and single family zoning regulations on sober houses; **or**, adopt the land use definition, *stricter* new zoning standards for single family residential districts, and a *larger* concentration standard for sober houses. Formalize, standardize, and continue to use the questionnaire, and grant reasonable accommodations. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy. The zoning standards outlined above might be replaced with standards such as the following:

- (c) In RL-R4 Residential Districts, the sober house shall serve six (6) or fewer residents.
- (f) A sober house shall be a minimum distance of one thousand, three hundred and twenty (1,320) feet from any other sober house, measured from property line to property line.

The idea behind (c) above directly parallels §462.357 Subd. 7 of Minnesota state statute, *without* modification to accommodate more of the existing single family sober houses. The larger concentration standard of 1,320 feet between sober houses is the same as existing City concentration standards for some licensed residential facilities.

The “More Restrictive” approach is not recommended because it does not support the integration of sober houses into neighborhoods, and it does not avoid the common legal pitfalls that municipalities have faced in attempting to regulate sober houses too tightly in the past.

Luis Pereira - Relevant reading for Wed. mtg regarding sober houses

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From: Luis Pereira
To: Neighborhood & Current Planning Committee
Date: 4/7/2008 3:56 PM
Subject: Relevant reading for Wed. mtg regarding sober houses
CC: Torstenson, Allan

Hello Neighborhood Planning Committee members,

I recently came across the following **two documents (attached)**. After reviewing these, City staff believe they represent balanced perspectives on the regulation of housing for people with disabilities. They also include good discussions of Fair Housing Act (FHA) issues.

Please note that these readings discuss housing for people with disabilities more **broadly** - including community residential facilities, halfway houses and other housing facilities serving service-dependent populations ("group homes"). Sober houses differ from such "group homes" because the residents in sober houses are not "service-dependent," because no services are provided in a sober house, and because the individuals in a sober house have independently chosen to live there and abide by house rules.

1) "The Siting of Group Homes for the Disabled and Children - Local Officials Guide"

This guide was put together by two groups that agree on some things and disagree on others. The National League of Cities (NLC) on one hand, and "the Coalition to Preserve the Fair Housing Act" (Coalition) on the other. The Coalition represents more than fifty civil rights, disability, fair housing and human services advocacy organizations. The guide was the product of a dialogue between the two groups, spurred by some legislative efforts in the late 1990s to amend the Fair Housing Act to make it clearer for localities wishing to regulate group homes. The NLC supported the effort to amend the FHA, while the Coalition did not. While the legislative efforts to amend the FHA failed, this document is a great summary of the issues, including the points of agreement and disagreement between them.

Some key highlights to check out:

- pp. 6-7 - the section entitled "How FHA protection applies to group homes" discusses how the way a municipality defines a "family" and occupancy limits can be subject to Fair Housing scrutiny. In a famous case, the Supreme Court held that a zoning ordinance may violate the FHA if it defines family units or maximum occupancy limits differently for related and unrelated people. Note especially the examples on page 7. You will see at the bottom of page 7 that the NLC and the Coalition disagree on these sample definitions of "family," in terms of their compliance with the FHA.
- pp. 8-11 discuss "reasonable accommodation" requirements and procedures. Note the sample language on p. 11.
- pp. 15-18 discuss "spacing restrictions." The NLC and the Coalition disagree about the extent to which governments can justify such spacing restrictions. While the box on page 15 is a good overview, the text on pages 16-18 gives more detail on why they disagree.

2) "Policy Guide on Community Residences"

The American Planning Association board of directors composed and ratified this policy guide in 1997. It uses the term "community residence" to refer to a range of housing types for people with disabilities. It is good summary of the issues, and includes some definitions (group home, halfway house, etc.). Again, note that a sober house is **unlike** a "group home" as they define it here (p. 1), given the presence of support staff and services in a group home (i.e. residents are "service-dependent" people, unlike in a sober house).

Key highlights include:

- pp. 4-9 - the "Findings" section that starts on the bottom of page 4. Note particularly finding #5 on page 5, which discusses "normalization" and "community integration" in regard to the number of group homes that can be absorbed into a neighborhood's "social structure."

- Starting on page 6, the "Policy Positions" section, noting in particular, Policy #2.

I encourage you to review this material when you have a chance - I will draw upon it on Wednesday afternoon's meeting. On Wednesday, we will go through staff's research on your suggestions from the 3/26 meeting, and present a draft approach on some of the issues.

Thanks,

Luis

Luis Pereira
City Planner, Department of Planning and Economic Development
25 West Fourth Street, Suite #1100
Saint Paul, MN 55102
Tel: 651.266.6591
Fax: 651.228.3314
luis.pereira@ci.stpaul.mn.us

**LOCAL
OFFICIALS
GUIDE**

08.640

Enclosed:

LP
excerpts
from full
guide

4/3/08

FAIR HOUSING



The Siting of Group Homes for the Disabled and Children

by
Cameron Whitman
and
Susan Parnas

Full guide available at:
http://www.bazelon.org/issues/housing/cpfha/1group_homes.pdf

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acknowledge the contributions of all the members of the Community and Economic Development Committee who provided NLC with their city ordinances addressing the siting of group homes.

The Coalition wishes to acknowledge the important contributions of Professor Chai Feldblum of the Georgetown Federal Legislation Clinic and Katie Corrigan, formerly the Clinic's Teaching Fellow. Law students Dan Losen, Dana Singiser, Adam Walker, Amy Weiss, Brad Rubin and George Hazel contributed substantial research and writing. Bazelon Center intern Sarah Lawskey (Yale Law School '01) improved the paper's organizational structure and edited and produced this final version.

Publication of this paper is not the last step, but the first in a longer process. We pledge ourselves and our organizations to continuing dialogue on these issues, during which we will seek greater consensus and clarity in enforcement of the FHA.

Donald Borut, *Executive Director*
NATIONAL LEAGUE OF CITIES

Michael Allen, *Convener*
COALITION TO PRESERVE THE FAIR HOUSING ACT

THE FOLLOWING DEFINITION OF FAMILY IS NOT EXEMPT UNDER THE FHA BECAUSE IT DOES NOT MERELY CAP THE NUMBER OF RESIDENTS IN A DWELLING BUT RATHER DIRECTS THAT DWELLINGS MAY HOUSE ONLY FAMILIES. IT RESTRICTS THE NUMBER OF UNRELATED PEOPLE WHO MAY LIVE TOGETHER BUT NOT THE NUMBER OF RELATED PEOPLE. THEREFORE, IT IS GOVERNED BY THE PROVISIONS OF THE FHA AND MAY TRIGGER LITIGATION IF YOUR DEFINITION IS DISCRIMINATORY.

Definition of "Family" That Triggers FHA Scrutiny

Family means an individual or two or more persons related by genetics, adoption or marriage, or a group of five (5) or fewer persons who are not related by genetics, adoption or marriage.

THE FOLLOWING DEFINITIONS ARE SIMILAR TO THOSE USED IN MANY LOCAL ZONING ORDINANCES. NLC BELIEVES THEM TO BE CONSISTENT WITH THE FHA.*

Sample Definition of "Family"

Family means one (1) or more persons who are related by blood or marriage, and including any foster children or a group of not more than five (5) persons living together as a housekeeping unit by joint agreement on a non-profit cost sharing basis, or a combination of persons related by blood or marriage along with no more than two (2) unrelated adults to a maximum number of five (5) persons living together and occupying a single housekeeping unit with a single kitchen facility. In addition, up to eight persons, including six or fewer persons with a disability or handicap and not to exceed two staff residents residing in a dwelling shall be considered to be a family.

Sample Definitions of "Family Living Arrangements"

- One or more persons related by blood, marriage, adoption, or guardianship living as a single housekeeping unit, in all districts.
- Four persons plus their offspring living as a single housekeeping unit, in all districts.
- Six persons living as a single housekeeping unit in R4 districts.
- A functional family living as a single housekeeping unit which has received a special exemption use permit.
- In this section, offspring means descendants, including natural offspring, adopted children, foster children and legal wards.
- In this section, functional family means a group of people plus their offspring, with a relationship which is functionally equivalent to a family. The relationship must be of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit. Functional family does not include any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary.

*THE COALITION IS UNABLE TO ENDORSE THESE DEFINITIONS BECAUSE IT BELIEVES THEM TO BE INCONSISTENT WITH THE FHA AND FHAA.

It's important to note, however, that municipalities must have fair, nondiscriminatory procedures for determining reasonable accommodation. In a Pennsylvania case, the court concluded that a municipality had failed to make a reasonable accommodation because the process of obtaining one was lengthy, costly, and burdensome.⁴⁵ Conversely, the reasonable accommodation procedures of Lubbock, Texas, were not held to be unduly burdensome because they were relatively rapid and flexible.⁴⁶

In addition, zoning procedures are unfairly applied if "the result of such procedures is foredoomed." They must not be "manifestly futile."⁴⁷ If, for example, a municipality consistently denies reasonable accommodations to group homes because of local opposition, that procedure may be deemed futile.⁴⁸ By contrast, the special use procedure employed in Palatine, Illinois, was not considered futile because the municipality had granted numerous zoning exceptions to group homes in the face of community opposition.⁴⁹

2. Group Homes Must Show That the Accommodation Is Necessary

The burden is on the group home provider to show that the requested accommodation is necessary. In determining whether a requested accommodation is necessary, courts look for a link between the requested accommodation and the "equal opportunity" that would be provided.⁵⁰ People with disabilities must demonstrate that without the accommodations, they would be denied the opportunity to enjoy housing of their choice in the community of their choice.

Group home operators have generally been successful in making these arguments. For example, some operators have demonstrated "necessity" by arguing that group homes provide the only means by which people with disabilities can continue to live in residential neighborhoods.⁵¹ In a case in New York, group home residents requested that the town modify its definition of "family" so that people in recovery from alcohol and drug use could continue living as a group in a residential area. The court emphasized that people in recovery require a group living arrangement for psychological and emotional support. The plaintiffs demonstrated that without the requested modification, they would be deprived of the same opportunity to rent a house as people without disabilities.⁵²

3. To Reject the Accommodation, Municipalities Must Show the Accommodation Constitutes a "Fundamental Alteration" or an "Undue Burden"

If a municipality wishes to deny the requested accommodation, the municipality must show that the accommodation is unreasonable.⁵³ In determining the "reasonableness" of a proposed accommodation, a court will consider whether the accommodation would:

- fundamentally alter the nature of the ordinance, neighborhood, or local zoning procedures;
- undermine the legitimate purposes and effects of existing zoning regulations; or
- impose undue financial and administrative burdens on the municipality.

Given these standards, it makes sense that the municipality would have to be the one to show that a proposed accommodation is unreasonable. The municipality is in a much better position to supply information about, for example, the nature or purpose of a zoning ordinance or how an accommodation would affect the municipality.

Myths, fears, and stereotypes are not sufficient to demonstrate a "fundamental alteration" in the neighborhood. For example, a municipality cannot deny a reasonable accommodation to a group home for recovering alcoholics out of fear that the home's residents might relapse into alcoholism and cause property damage

NLC OFFERS THE FOLLOWING SAMPLE PROCEDURE BY WHICH REQUESTS FOR
REASONABLE ACCOMMODATIONS CAN BE HANDLED.

Sample Reasonable Accommodation Guidelines

It is the policy of the city of _____ to provide fair access to housing for persons with disabilities and all other FHA-protected persons, including providing reasonable accommodation in the application of its zoning laws pursuant to federal and state law and under the procedures of section _____ of the Code.

In making a determination as to whether a requested accommodation is reasonable, it is necessary to consider whether the accommodation:

- Would impose an undue financial or administrative burden on the City; or
- Would require a fundamental alteration in the nature of a City program.

The reasonable accommodation provisions of the _____ Code cite the following factors as part of the consideration:

- Special needs created by the disability;
- Potential benefit that can be accomplished by the requested modification;
- Potential impact on surrounding uses;
- Physical attributes of the property and structures;
- Alternative accommodations which may provide an equivalent level of benefit;
- In the case of a determination involving a single family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

These factors are designed to elicit the factual information necessary to balance a city's interests with the need for the housing. It is legitimate for a city to consider the type of neighborhood expressed in its zoning and Comprehensive Plan designations (irrespective of the type of structure involved or the actual surrounding uses). These considerations will vary depending on whether the request is being made in a single family, multifamily, or commercial zoning district and can only be based on physical impacts of the proposed use, not the type of resident.

The programs should be considered for requests for reasonable accommodation:

- Health and Public Safety
- Occupancy standards (# of people per square feet of sleeping area)
- Exiting
- Building permits (house must meet building code standards)
- Residential neighborhood or zoning district
- Residential character of a house (interior and exterior should be consistent with single family use with sufficient common areas, kitchens and bathrooms)
- Parking (access to public transportation, off-site parking, nature of disability with respect to likelihood of driving, development of alternative parking plan).

Many localities have attempted to limit the location of group homes by enacting and enforcing spacing and density restrictions. Spacing restrictions are land-use laws that require a minimum distance between group homes and other community fixtures, including schools, shelters, and residences. A typical restriction prohibits a group home from locating within 1500 feet of a school or another group home.

Density restrictions, by contrast, limit the percentage of a community's population that may consist of group home residents. For example, if a proposed home's residents would push the total number of group home residents in the community past a certain percentage of the overall population – say, 0.5% – that home would be prohibited from locating there.

NLC and the Coalition agree that in unusual circumstances, when group homes are so densely clustered as to recreate an institutional environment in the community, spacing restrictions are permissible. One such circumstance was presented in the case of *Familystyle, Inc. v. City of St. Paul*,⁶⁴ in which a spacing restriction prevented a group home operator from adding three homes to a one-and-a-half block area that already contained eighteen group homes and more than 100 group home residents. In such a case, a court should allow a locality to enforce a reasonable spacing restriction that is designed to promote greater integration of group homes throughout the entire community.

NLC and the Coalition disagree, however, about the extent to which other governmental interests can justify such restrictions. The diverging points of view are presented below.

In some communities, group homes are located principally in low- and moderate-income neighborhoods and few if any in the more affluent sections. This over-concentration may occur because group home operators are unable to afford homes in higher-income neighborhoods or because those neighborhoods present strongly organized resistance. City and community leaders should educate everyone about the importance of group homes and the responsibility all neighborhoods share to accept their fair share.

Additionally, providers in some neighborhoods have clustered group homes within individual blocks, changing the perceived character of these areas from residential to institutional. Since clustering is often confined to low- to moderate-income neighborhoods, clustering defeats efforts to reintegrate group home residents with their communities. In states where non-profit group homes pay no taxes, clustering them in one area can deplete that area's tax base. Multiple clusters of group homes for children can also strain the local school system. In New Jersey, for instance, townships that lack their own schools must send children to schools in neighboring townships. This carries a price tag of \$10,000 per child.

Communities have responded to the overconcentration problem by enacting blanket spacing or dispersal requirements that prohibit group homes from locating within a certain distance of each other or limiting the number of homes by population percentage. Some courts have held that dispersal requirements do violate the Fair Housing Act if the local government does not make a reasonable accommodation or an exception to the dispersal requirements. Such an "exception" would be allowing group home providers to apply for a special use permit if they wanted to locate within the spacing distance. Courts have defined the term reasonable accommodation to be "one which does not impose undue financial or administrative burden on the entity (the local government) making the accommodation or undermines the purpose which the requirement seeks to achieve."⁶⁵

measure their progress against that need, not against some predetermined quota.

In defending spacing and density restrictions, localities frequently express concerns that group home residents will raise crime rates, decrease the value of neighboring property, or alter the residential character of the community. More than 100 studies have shown, however, that group homes for children or people with disabilities have no appreciable negative effects on the surrounding communities.⁶⁶

Applying the basic tenets of the FHA – that people should have maximum opportunity to choose where they will live – courts have almost universally struck down spacing and density restrictions, most often because there was no evidence of significant clustering in the first place.⁶⁷ In determining whether a particular restriction violates the Fair Housing Act, courts have generally looked at whether the city or state has:

- imposed a law that applies only to people with disabilities and places harmful restrictions on them (“facial discrimination”);
- enacted a law that applies to the entire community but has a particularly negative impact on people with disabilities (“discriminatory effect”); or
- failed to make a “reasonable accommodation” for people with disabilities by refusing to grant relief from an onerous, but legal, zoning restriction.

Courts have generally agreed that spacing and density restrictions discriminate facially against people with disabilities and cannot be cured by the willingness of a locality to make a “reasonable accommodation,” i.e., by granting an exception to the spacing or density restriction. In other words, the spacing or density restriction needs to be justified on its own grounds. If the locality can justify its restriction – as, for example the City of St. Paul was able to do in the *Familystyle* case – the court will hold that the spacing restriction is not illegal, even though it facially discriminates against people with disabilities.

The Coalition agrees with NLC that additional guidance from courts and federal agencies is important in this area, primarily because there is some uncertainty about the level of justification required to sustain a spacing or density restriction. The emerging standard is that articulated by the Federal Courts of Appeal for the Sixth and Tenth Circuits, and adopted by other federal district courts which have held that locality can justify a facially discriminatory spacing or density restriction only if the restriction is either:

- “warranted by the unique and specific needs and abilities” of the persons to whom the regulations apply; or
- actually benefits, rather than discriminates against, the individual(s) affected.⁷⁰

In *Larkin v. Michigan Department of Social Services*,⁷¹ the state of Michigan argued that its spacing restriction helped integrate people with disabilities into the community and “serve[d] the goal of deinstitutionalization by preventing a cluster of [group homes for people with disabilities] from recreating an institutional environment in the community.”⁷² The court, however, held that the state failed to show how the special needs of people with disabilities warranted this intervention. Specifically, the court noted the lack of any evidence suggesting that clustering would occur without government intervention. The state failed to show that its spacing restriction would actually further the possibly legitimate goal of deinstitutionalization.

The *Larkin* standard allows localities to enforce facially discriminatory spacing and density restrictions if the localities can show those restrictions are warranted for particular group homes and group home residents. While this approach requires localities to produce substantial, particularized evidence to justify its restrictions, it does not assume these restrictions are always invalid. The *Larkin* court noted that, in the rare instances when group homes are indeed becoming so concentrated as to recreate an institutional setting, then a spacing restriction might serve the goal of deinstitutionalization.⁷³



08-640



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6655
Facsimile: 651-228-3314

To: Neighborhood Committee
From: Luis Pereira, PED
Date: May 7, 2007
Re: Sober House Zoning Study – staff response to 4/9 NC comments and proposed public hearing draft

A. New Revisions to Study and Ordinance:

1. Parking

At the 4/9 Neighborhood Committee meeting, the committee agreed with the revised parking standard as proposed by staff, with a minor revision. Per §63.206(b) of the Zoning Code, if the computed parking space requirement includes a fractional space and up through a half of a space (0.5), the number rounds down. Otherwise, if the computed number > 0.5, it rounds up. The proposal was as follows (and is reflected in the attached revised ordinance):

Amend the Chapter 63 parking tables to create a separate parking standard for sober houses. Given that the ordinary requirement for a residential use is 1.5 parking spaces/unit, and a sober house may be occupied by more residents with cars than a unit occupied by municipally-defined "family" (a biological family or 4 unrelated adults), staff proposes the following:

- For every 4 sober house residents, 1.5 off-street parking spaces shall be provided:
 - 4 residents X (1.5/4) = 1.5, rounded down to 1 space
 - 5 residents X (1.5/4) = 1.88, rounded up to 2 spaces
 - 6 residents X (1.5/4) = 2.25, rounded down to 2 spaces
 - 7 residents X (1.5/4) = 2.63, rounded up to 3 spaces
 - 8 residents X (1.5/4) = 3 spaces
 - 9 residents X (1.5/4) = 3.38, rounded down to 3 spaces
 - 10 residents X (1.5/4) = 3.75, rounded up to 4 spaces
 - 11 residents X (1.5/4) = 4.13, rounded down to 4 spaces
 - 12 residents X (1.5/4) = 4.5, rounded down to 4 spaces
 - Etc.
- Shared parking agreements – Sober houses could partially or entirely meet the parking standard above by following the existing requirements for shared parking, as per §63.206(d) or (g) of the Zoning Code
- **Alternative parking plan** - If the sober house cannot meet the parking standard with off-street spaces and/or shared parking agreement(s), it could submit a written "alternative parking plan." Such a plan would have to show any off-street parking spaces, the location of on-street parking spaces that are typically available during the day/at night, and the anticipated number of cars to be kept by residents of the house. Other elements of the parking plan that might be included are the sober house's proximity to transit, the number of residents without driver's licenses, and/or written house rules that restrict the total number of cars to be parked at the house.

2. Questionnaire

The Neighborhood Committee did not comment on the revised questionnaire, but it had been streamlined by staff. Staff will continue to update this questionnaire, administratively, by the Zoning Administrator, in consultation with staff from PED and the City Attorney's Office. In addition, while the City is already required to make reasonable accommodations by the Federal Fair Housing Act and noted in §60.110 of the Zoning Code, the process for doing so is a procedure that is not an explicit part of the ordinance and is not specific to sober houses.

The Neighborhood Committee agreed with keeping the requirement to submit a floor plan with the questionnaire, given that it would help city staff figure out the upper range on the number of occupants allowable in a given sober house (useful to the Fire Marshal as well). The Neighborhood Committee also agreed with including a required affidavit for each house (not each resident), and staff will continue refining this.

B. Questions from the Neighborhood Committee, and staff responses:

a. "Sober houses are not different from group homes", i.e. the argument that a lack of services/staffing in sober houses does not matter from a neighborhood perspective

Based on research reviewed by staff and previous litigation from around the country, unlicensed homes such as sober houses are distinct from licensed "group homes." Group homes house a "service-dependent" population and often include staff that live onsite with the residents whereas sober house residents are independent adults who do not require any treatment or supervision from a staffperson. Group homes are typically licensed by the State of Minnesota, and many receive financial support via contracts with the state or county government, making them more akin to an institution. Literature that staff has found on the Fair Housing Act distinguishes between licensed facilities – which often must comply with state-level regulations in order to receive funding – and unlicensed facilities, which operate independently of governmental assistance. An analysis by the city attorney of Vancouver, Washington reviews the likelihood that a municipal dispersal requirement for group homes could be upheld, in terms of court decisions such as *Familystyle of St. Paul, Inc. v. City of St. Paul*, on one hand, and *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, on the other.¹:

...there seems to be a significant difference between when a State enacts a broad policy against clustering and "ghettoization" of group homes in order to further the legitimate interests of integration, and when a municipality enacts a local ordinance without a supporting state policy. Second, even if a municipality could enact a dispersal ordinance without such a state policy or statute, it cannot do so without having legitimate public health and safety objectives in mind at the outset when drafting such an ordinance. It must show a sincere desire to further the policy of integration, and not merely assert apparent neutrality while actually acting upon the fears and NIMBY attitudes of its non-handicapped citizens....

...There seems to be less scrutiny of statewide policies, since states regulate "institutions" rather than "individuals." As was stated in Familystyle, because the state did not have any individuals in mind when enacting its dispersal regulation, it could not have violated the FHAA which prohibits discrimination against handicapped individuals. Another way to rationalize the holding of Horizon House in light of

Familystyle is that the municipality there acted, not only without state regulatory guidance, but also without asserting legitimate government interests in defending its exclusionary zoning practices.

Where a municipality acts without authorization or guidance from the State, its motives are more likely to be viewed as suspect and potentially discriminatory. Additionally, the thrust of the holding in Familystyle was that States do not regulate individuals when enacting policy regulations, but instead, monitor institutions in the interest of public health, welfare, and safety. When a municipality enacts spacing requirements, however, eventually only a finite number of group homes will be able to locate within its boundaries. Therefore, dispersal zoning comes closer to regulating individuals, rather than group homes as "institutions," by eventually limiting the housing choices available to the handicapped.

Fair Housing Act literature is clear that governments *can* use incentives such as funding to influence where a residential facility chooses to locate. Human services facilities that are licensed by and receive funding from the State of Minnesota are also regulated by state statute §245A, which mandates minimum separation requirements. While this statute was successfully defended in the *Familystyle* case, it is not clear that local governments can apply the same statute for residential facilities that are completely independent of governmental assistance or licensing (the outcome of the *Horizon House* case).

b. "Why are we basing our ordinance on some parts of State law, but not on others?"

There are important reasons why the City should not seek to extend all State regulations for licensed residential facilities equally to sober houses. While state law does hold that licensed residential uses of six or fewer people must be treated as a permitted single family use, it is silent on the question of how to view unlicensed facilities in terms of being single- or multifamily. The State of California has weighed in on this issue and the implication of its statutes is that licensed and unlicensed residential facilities are treated similarly in many cities in terms of the number of people that can occupy them and still be considered a single family use. However, the California State government does treat some licensed residential facilities *differently* – some, such as care facilities for the developmentally disabled – are required to be separated from similar facilities by 300 feet², while others – such as licensed facilities for the elderly, drug and alcohol treatment facilities – have no such separation requirements.

While there is little dispute that the Fair Housing Act has been interpreted to mean that a local government can adopt and enforce an occupancy cap as long as it is applied equally to all homes occupied by related and unrelated people (i.e. group homes and sober houses are treated similarly in terms of a maximum number of residents per house), the law is not clear that separation requirements for unlicensed residential homes will pass FHA scrutiny.

c. "Why has staff proposed a two-tiered Reasonable Accommodation approach (5-6 residents vs. 7+ resident houses)?"

Staff supports keeping the two-tiered reasonable accommodation approach in place. According to one sober house operator, many existing sober houses in Saint Paul have 4-6 residents. On the other hand, according to the City's unofficial tally of known sober houses, 11 of 13 existing single family sober houses have over 6 people in them. New sober houses would be regulated under the proposed zoning standards to ensure that neighborhoods with smaller lots zoned predominantly single family would not be impacted by larger sober houses (unless there is a large lot with the required off-street parking available).³ For example, the proposed lot area standard would require that each new sober house meet the lot area required in the base zoning district for up to six residents, as well as an additional 800 square feet per each

² California Health & Safety Code 1267.9.

³ This is well-illustrated by the W. 7th Street neighborhood map that was distributed to the Neighborhood Committee on 3/26/08 (map dated 3/19/08).

resident above six. Applied to the 34 existing sober houses in town, only five of the 34 would comply (i.e. 29 would become non-conforming). More simply, this standard means that single family lots that just meet the lot area required in R4, R3, R2, and R1 districts (5,000; 6,000; 7,200; and 9,600 square feet, respectively) would only be allowed up to 6 people (assuming all other zoning standards are met).

Another reason staff supports keeping the two-tiered approach to reasonable accommodation is that the most highly-profiled/successful example of sober living housing in the United States is Oxford House, a model that is said to need six residents at a minimum. By greatly restricting a "sober house" with 5-6 unrelated residents in them, the City would be ignoring its own data about the typical number of residents in existing sober houses, as well as publicly-available information on the Oxford House model. This approach would disregard important characteristics about sober houses in Saint Paul and elsewhere, making it hard for the City to claim that the integration of sober houses into neighborhoods is a key goal of the ordinance.

An additional reason for keeping the two-tiered approach to reasonable accommodation is that once controlled for traffic and parking impacts (via a specific parking standard for sober houses), no real distinction has been made between sober houses occupied by four versus six residents, in terms of significant adverse impacts. The lack of identifiable adverse impacts thus begs the question of why additional restrictions are needed beyond those that control for neighborhood-level traffic and parking impacts of houses with more residents.

C. Legal questions from the Neighborhood Committee, and City Attorney's Office responses:

Following the April 9, 2008, Neighborhood Committee meeting, Mr. Warner of the City Attorney's Office was asked to provide an opinion about two questions. The questions and Mr. Warner's answers are set forth below in #1 and #2 below:

1. Do disabled residents have maximum freedom to choose to live in any particular house under the Federal Fair Housing Act? Answer: YES.

By way of background, which is applicable to both questions asked, it is necessary to set out a brief recitation of the evolution of the Federal Fair Housing Act (FFHA) which was first enacted by Congress as Title VIII of the Civil Rights Act of 1968. See, Fair Housing Act of 1968, 42 U.S.C. § 3591 et seq. Initially, the FFHA prohibited housing discrimination on the basis of "race, color, religion, or national origin." In 1974, Congress amended the FFHA to prohibit housing discrimination based on "gender." See Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, 729 (1974). To strengthen enforcement and expand the coverage of the FFHA, Congress enacted the Fair Housing Amendments Act of 1988 (FHAA). See, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (current version at 42 U.S.C. §§ 3601-3631) (2008). The FHAA expanded the FFHA's coverage to prohibit housing discrimination against "handicap" persons. 42 U.S.C. § 3604(f)(1). In addition, the FHAA made it unlawful to refuse to make "reasonable accommodations" to facilitate occupancy by handicap persons. 42 U.S.C. § 3604(f)(3)(B). The FHAA is thus the primary federal statutory remedy for discrimination in housing by generally making it unlawful to refuse to sell, rent, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, handicap, or national origin. See, 42 U.S.C. § 3604(a-f).

My answer above is specifically based upon the language of 42 U.S.C. § 3602(f)(1) which provides that it shall be unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of," (emphasis added) and 42 U.S.C. § 3602(f)(3)(B) which further provides for that subsection that "discrimination includes: a refusal to

make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." (emphasis added). I was unable to locate any case or legal treatise that indicated that the FHAA limited where a person who was protected by the FHAA could live. Obviously, the FHAA does not give a person who is protected by it the right to live in a dwelling that the person cannot afford to buy or rent. However, the overwhelming number of cases that have been reviewed for this zoning study clearly demonstrate that people protected by the FHAA have used the provisions cited above in order to have the opportunity to live in a particular dwelling of their choice (my emphasis) that had been made unavailable or denied to them based upon their race, color, religion, sex, familial status, handicap, or national origin.

2. Does a physical v. mental handicap make a difference in terms of concentration standards? Answer: NO.

In my review of cases and treatises for this zoning study, I was unable to locate any materials which indicated that the FHAA contemplated a concentration differential based upon mental or physical handicap. I was, however, able to locate several cases where it was held that concentration standards regarding dwellings for the handicapped were discriminatory under the FHAA. See, Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775 (7th Cir. 2002), United States v. City of Chicago Heights, 161 F. Supp.2d 819 (N.D. Ill. East. Div. 2001), Larkin v. Michigan Dept. of Soc. Services, 89 F.3d 285 (6th Cir. 1996); See also, Citizens for a Balanced City v. Plymouth Congregational Church, 672 N.W.2d 13 (Minn. App. 2003).

D. City staff recommendation:

1. Possible change A (Staff supports):

- a. Change the concentration standard to 330' for houses with 7 or more residents, consistent with other parts of the Zoning Code

(g) A sober house occupied by seven (7) or more residents shall be a minimum distance of three hundred thirty (330) feet from any other sober house with seven (7) or more residents, measured from property line to property line.

And recommend the draft ordinance (attached) for a public hearing at the Planning Commission.

- OR -

2. Possible change B (Staff does not support):

- b. Change the concentration standard to 600' for houses with 7 or more residents, consistent with other parts of the Zoning Code

(g) A sober house occupied by seven (7) or more residents shall be a minimum distance of six hundred (600) feet from any other sober house with seven (7) or more residents, measured from property line to property line.

And recommend draft ordinance (attached) for a public hearing at the Planning Commission, with a revision to include possible change B.

An Affirmative Action Equal Opportunity Employer

Policy Guide on Community Residences

Adopted by Special Delegate Assembly, September 21, 1997

Ratified by Board of Directors, September 22, 1997

Municipalities and counties throughout the nation continue to use zoning to exclude community residences from the single-family residential districts despite 25 years of planning standards⁽¹⁾ and the vast majority of court decisions⁽²⁾ that recognize community residences for people with disabilities as a residential use. Misconceptions about their nature and impacts abound although there is a wealth of scientific evidence that community residences for people with disabilities generate no adverse impacts on the surrounding community and function as residential uses. More recently the Fair Housing Amendments Act of 1988⁽³⁾ prohibited zoning regulations of community residences that are based on unfounded myths and fears about the residents, and appeared to explicitly disallow the use of special use permits as the primary means of regulating community residences. Yet this misclassification and exclusion continues unabated throughout most of the nation.

During the 1970s and 1980s, every state, as well as the federal government, started to reshape its policies toward people with severe disabilities. States recognized that warehousing people with disabilities in institutions was not only extremely costly, but also ineffective. A large proportion of those who were institutionalized could live in much less restrictive environments such as a familylike environment in a house or apartment surrounded by other residential uses. They did not require the high level of care furnished by an institution. Overwhelming evidence showed that allowing individuals with disabilities to live in a familylike setting in the community in a community residence was not only much less expensive than consigning them to institutions, but also substantially more effective. In a familylike setting, people with disabilities could learn the life skills we teach our own children on a daily basis. Living in a community residence, namely a group home or halfway house, fosters normalization in which these individuals learn to lead as normal a life as possible. As the courts have noted time and again, community residences are the very opposite of an institution in terms of how they function and perform, and in terms of how they use the land. To achieve a familylike setting, these community residences need to be located in the same residential zoning districts as dwellings occupied by biological families.

Definitions

Because there is so much misunderstanding of this subject, it is essential to first define several terms.

Group Home

A dwelling unit occupied as a single housekeeping unit in a familylike environment by up to approximately 12 to 15 persons with disabilities plus support staff. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents. A group home is owned or operated under the auspices of a nonprofit association, private care provider, government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians. Interrelationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years.

The group home constitutes a *family*, a *single housekeeping unit* where residents share responsibilities, meals, and recreational activities as in any family. The intention is for group home residents, like members of a biological family, to develop ties in the community. Like people without disabilities, these individuals attend schools, work, and may receive other support services in the community. The group home staff is specially trained to help the residents achieve the goals of independence, productivity, and integration into the community. Together, the staff and residents constitute a *functional family*.⁽⁴⁾ The group home's staff teaches the residents with disabilities the same life activities taught in conventional homes. They learn personal hygiene; shopping cleaning, laundry, and recreational skills; how to handle money; how to take public transportation; how to use community facilities. They learn how to live as a family. *The group home fosters the very same family values our most exclusive residential zoning districts advance.*

The primary purpose of the group home is to provide a familylike setting with ongoing supervision and support for persons unable to live independently in the community. It is *not a clinic where treatment is the principal or essential service provided*. A treatment regime may be incorporated into the daily routine of persons with disabilities wherever they may live, whether with their families, in an institution, or in a group home. So, just like the person with a disability who lives with her family, the group home resident may have a daily habilitation regime to follow. *Any treatment received at home is incidental to the group home's primary purpose.*⁽⁵⁾

Residency in a group home is long term relatively permanent and measured in years, not months or weeks. There is no

maximum level of zoning regulation permissible for community residences for people with disabilities in accord with sound planning principles, the Fair Housing Amendments Act of 1988 (FHAA), and case law. These policy guidelines do not suggest that any community or state with less restrictive zoning provisions should make their zoning provisions more restrictive.

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Exclusionary zoning practices

Limiting the number of unrelated individuals who can dwell together has been one of the most commonly used zoning techniques to exclude community residences from singlefamily districts.

The definition of family in most zoning codes allow no more than three, four, or five unrelated individuals to occupy a dwelling unit. Some allow no unrelated people to live together, even as roommates.⁽¹⁰⁾ The U.S. Supreme Court upheld these restrictive definitions in *Village of Belle Terre v. Boraas*⁽¹¹⁾. Since most community residences need six or more residents to succeed therapeutically and financially, this restriction has effectively blocked most community residences from locating in the residential areas in which they need to locate.

Another common technique has been to require a special use permit for a community residence to locate in a residential district.⁽¹²⁾ At a public hearing, an applicant must demonstrate that its proposed land use meets the criteria for granting a special use permit. In the case of community residences, neighbors commonly claim that the proposed community residence will reduce property values and introduce crime and congestion to the neighborhood. Many opponents assert that the community residence is a business rather than a dwelling. In many allwhite communities, opposition is driven by a fear of racial integration, namely that group home residents and staff may be of African ancestry. All of these objections reflect false impressions of community residences and their occupants.

City officials quite often yield to objections by neighbors and reject the application of the community residence even when the applicant demonstrates it meets the criteria for awarding the special use permit. This was the scenario that led to the U.S. Supreme Courts 1985 decision in *City of Cleburne v. Cleburne Living Center* where the Court ruled the city had illegally denied the group homes special use permit based on the neighbors unfounded fears and myths about the group home and its residents.⁽¹³⁾

This technique is extremely effective at limiting the housing opportunities for people with disabilities who need a community residence to live in. When a special use permit is required, the buyer usually seeks to purchase the property with a clause that makes the sale contingent on receiving the special use permit. That sort of provision is quite common in the sale of commercial property, but extremely rare in the sale of owneroccupied residential property. Few homeowners can afford to sell their houses subject such a contingency clause. Most homeowners need the proceeds from the sale of their current house to buy a new one. Consequently, few homeowners are willing to sell to a group home operator who insists on this kind of contingency clause and few group home operators can afford to take the risk that their special use permit application will be denied and they'll be stuck with a house they cannot use as a group home.

In 1974 the American Society of Planning Officials (one of APAs predecessor organizations) surveyed 400 U.S. cities and found that the zoning ordinances of fewer than 25 percent provided specifically for community residences. Of those that mentioned group homes or halfway houses, the vast majority either prohibited them from singlefamily districts or required them to obtain a special use permit to locate in such residential zones.⁽¹⁴⁾

Ten years later, the zoning picture for community residences was still grim. The General Accounting Office found that 65.5 percent of the time local zoning ordinances or practices prevented or made it difficult for group homes for people with developmental disabilities to locate in the singlefamily districts their operators preferred.⁽¹⁵⁾ Subsequent recent research prior to adoption of the Fair Housing Amendments Act of 1988 found that little had changed.⁽¹⁶⁾

Role of the Fair Housing Amendments Act of 1988

Rather than simply add people with disabilities to the list of protected classes under the Fair Housing Act, Congress added a new section to the act that declared discrimination includes:

a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.⁽¹⁷⁾

Much of the FHAA litigation has revolved around the issue of reasonable accommodation. Given this statutory language, it is hard to see how anybody can contend that the FHAA requires that community residences be treated the *exactly the same* as singlefamily residences. The statute requires only that a reasonable accommodation be made in a citys zoning ordinance to give people with disabilities an equal opportunity to use and enjoy a dwelling. This does not mean that they have a right to dwellings they cannot afford to buy or rent. It does not mean that a city must change its zoning to allow communes, boarding houses, or fraternities in its most exclusive singlefamily districts.

For zoning purposes, community residences are much closer in terms of land use to a residence ordinarily occupied by a conventional family than any other land use. The majority of courts have ruled that a community residence is the opposite of an institution, boarding house, or a commercial use.

2 Community residences have no effect on the value of neighboring properties.

More than 50 studies have examined their impact on property values probably more than for any other small land use. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do not affect property values of even the house next door. They have no effect on how long it takes to sell neighboring property, including the house next door. They have learned that community residences are often the best maintained properties on the block. And they have ascertained that community residences function so much like a conventional family that most neighbors within one to two blocks of the home don't even know there is a group home or halfway house nearby.⁽²⁴⁾

3 Community residences have no effect on neighborhood safety.

A handful of studies have also looked at whether community residences compromise neighborhood safety. The most thorough study, conducted for the State of Illinois, concluded that the residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois. It revealed a crime rate of 18 per 1,000 people living in group homes compared to 112 per 1,000 for the general population.⁽²⁵⁾

4 Community residences do not generate adverse impacts on the surrounding community.

Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.⁽²⁶⁾

5 Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block.

For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents' normalization would be compromised. Such clustering would create a *de facto* social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood.

Normalization and community integration require that persons with disabilities be absorbed into the neighborhood's social structure. The existing social structure of a neighborhood can accommodate no more than one or two group homes on a single block. Neighborhoods seem to have a limited absorption capacity for servicedependent people that should not be exceeded.⁽²⁷⁾ Social scientists note that this level exists, but they can't quite determine a precise level. Writing about servicedependent populations in general, Jennifer Wolch notes, At some level of concentration, a community may become saturated by services and populations and evolve into a servicedependent ghetto.⁽²⁸⁾

According to one leading 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 [group homes]. Overconcentration is not a constant but varies according to a community's population density, socioeconomic level, quantity and quality of municipal services and other characteristics. There are no universally accepted criteria for determining how many group homes are appropriate for a given area.⁽²⁹⁾

Nobody knows the precise absorption levels of different neighborhoods. However, the research strongly suggests that as the density of a neighborhood increases, so does its capacity to absorb people with disabilities into its social structure. Higher density neighborhoods presumably have a higher absorption level that could permit group homes to locate closer to one another than in lower density neighborhoods that have a lower absorption level.⁽³⁰⁾

This research demonstrates there is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their *raison d'être*.

6 Community residences should be licensed or certified to protect the welfare of their residents.

The individuals who occupy a community residence constitute a vulnerable population unable to fully care for themselves. Licensing helps ensure that the operator is qualified to furnish the requisite care and support services the group home

POLICY 3: When a proposed halfway house for persons with disabilities does not comply with the jurisdiction's definition of family, then the jurisdiction is required to make a reasonable accommodation in its zoning code to allow halfway houses for people with disabilities as of right in all multiplefamily residential districts if the proposed halfway house meets these two requirements:

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1. That a rationally based spacing requirement be provided to avoid an undue concentration of community residences and
2. When the proposed group home or its operator must be licensed or certified by the appropriate state, national, regional, or local licensing or certification body.

If a proposed group home fails to meet both tests, then a zoning ordinance should allow the operator to apply for a special use permit.

From a zoning perspective, halfway houses perform more like multiplefamily housing than singlefamily housing. They don't emulate a family quite as closely as a group home does. They billet many more people. They place a limit on length of residency, unlike a group home which is a more permanent living arrangement akin to singlefamily housing.

POLICY 4: Halfway houses should be allowed in all singlefamily zones by special use permit due to their multiplefamily characteristics that warrant the extra scrutiny provided by the special use permit or comparable review process when locating in a singlefamily district.

On many occasions the operator of a halfway house may prefer to locate it in a singlefamily district. Halfway houses are not, per se, incompatible with singlefamily homes. However, the heightened scrutiny of a conditional use permit hearing is warranted to assure that a proposed halfway house will be compatible with the other land uses in a singlefamily district. The standards to apply are the same ones used for other special uses.

POLICY 5: Local planners should, on an informal basis, seek to facilitate communication between the operators of proposed community residences and the surrounding community to help foster full integration of the residents of a community residence into the community. Planners should help neighbors learn how each proposed community residence emulates a family and how it serves as a residence that is properly located in a residential zone, not an institutional use that belongs outside residential districts. They should disseminate to neighbors and public officials the findings of the extensive research on the absence of adverse impacts of community residences on the surrounding community.

Authority

1. See M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (American Planning Association Planning Advisory Service Report No. 397 (1986); D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* (American Society of Planning Officials PAS Rep. No. 300, 1974); and N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).

2. See N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).

3. Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(1) et. seq.

4. Gailey at 9798.

5. H. R. Turnbull, III, *CommunityBased Residences for Mentally Handicapped People* 12 (1980). Some courts have found this distinction to be crucial when determining that group homes function as families and are residential uses allowable in residential zoning districts.

6. Oxford House, which has been the subject of so much FHAA litigation falls somewhere between the group home and halfway house. Unlike the halfway house, Oxford House places no limit on the length of stay. Unlike a group home, or even halfway house, Oxford House has no staff. The residence is run by its officers who are elected periodically from among its residents. Unlike a group home, Oxford House needs 10 to 15 residents to function successfully, both therapeutically and financially. The courts have generally construed Oxford House to be a group home.

7. See D. Braddock, R. Hemp, L. Bachelder, G. Fujiura, *The State of the States in Developmental Disabilities* 8 (4th ed. 1994); Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et. seq.

8. Id. at 12.

9. This policy guideline focuses solely on the zoning treatment for group homes and halfway houses for people with disabilities, the two most common types of community residences. Other types of community residences may warrant zoning treatment different from that recommended here.

Goes the Neighborhood: A Summary of Studies Addressing the Most Often Expressed Fears About the Effects of Group Homes on Neighborhoods in Which They Are Placed (CPL Bibliography No. 259, April 1990); M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (Am. Plan. A. Plan. Advisory Serv. Rep. No. 397 (1986). See e.g., City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (monograph 1976) (found no negative impacts on selling price of houses near or adjacent to halfway houses for people with alcohol addictions, adult exoffenders, juvenile exoffenders).

25. Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities*, 15 Illinois Planning Council on Developmental Disabilities (1986).

26. Daniel Lauber, *Zoning for Family and Group Care Facilities* at 10.

27. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

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

29. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber, *Zoning for Family and Group Care Facilities* at 25.

30. Lauber, *Zoning for Family and Group Care Homes* at 25.

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ORDINANCE
CITY OF SAINT PAUL, MINNESOTA

Presented by

Kathy Party

An ordinance amending the Legislative Code Chapter 65 by creating a new § 65.160, entitled “sober house,” which defines and permits this residential use with associated zoning standards; amending § 63.207, Parking requirements by use, by adding a line with a parking requirement for *sober house*; and amending use tables in §§ 66.221, 66.321, 66.421, and 66.531 adding *sober house* as a permitted use in certain zoning districts.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN

Section 1

That Legislative Code Chapter 65 is hereby amended by adding a new §65.160 entitled “sober house,” as follows:

Sec. 65.160. Sober house.

A dwelling unit occupied by more than four (4) persons in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988 that provides a non-institutional residential environment in which the residents willingly subject themselves to rules and conditions intended to encourage and sustain their recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses are financially self-supporting. This definition does not include facilities that receive operating revenue from governmental sources. Sober houses do not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

Standards and conditions:

The following standards and conditions are intended to provide reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988:

- (a) The operator shall submit written answers to a questionnaire provided by the zoning administrator that specify the number of residents, the number of bedrooms, and other building and site data. The maximum total number of residents permitted in the sober house will be specified by the Fire Certificate of Occupancy.
- (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall submit a written parking plan that demonstrates sufficient parking for the use.
- (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- (d) A conditional use permit is required for any structure serving 17 or more sober house residents. This use shall be exempt from section 61.501 conditional use permit general standards (a), (c), and (d).
- (e) The minimum per unit lot area as applicable in the zoning district plus eight hundred (800) square feet for each resident in excess of six (6) residents.
- (f) A sober house shall be a minimum distance of three hundred thirty (330) feet from any other sober house, and a sober house occupied by seven (7) or more residents shall be a minimum distance of six hundred sixty (660) feet from any other sober house, measured from property line to property line.

Section 2

That Legislative Code Sec. 63.207, Parking requirements by use, in the “Residential Uses” section of the

table, is hereby amended as follows:

Sec. 63.207. Parking requirements by use.

The minimum number of off-street parking spaces by type of use shall be determined in accordance with the following schedule:

Land Use	Minimum Number of Parking Spaces
<i>Residential Uses</i>	
Dwelling	1.5 spaces per unit
Dwelling in RL zone	2.0 spaces per unit
Housing on Irvine Avenue	2.0 spaces per unit plus one (1) guest parking area per unit (see section 63.312)
Housing for the elderly	0.33 spaces per unit
Community residential facility, emergency housing facility, shelter for battered persons, transitional housing facility	1 space per every 2 adult facility residents
Mission	1 space per employee
<u>Sober house</u>	<u>1.5 spaces per every 4 residents</u>
Rooming house	1 space per 3 occupancy units
Boarding care home	1 space per 2 beds and 1 space per day shift employee or full-time equivalent
Nursing home	1 space per 3 beds and 1 space per each 2-day shift employees or full-time equivalent
Dormitory	1 for every 3 beds
Fraternity, sorority	1 for every 5 active members or 1 for every 2 beds, whichever is greater

Section 3

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.221, Principal Uses in Residential Districts, is hereby amended as follows:

Table 66.221. Principal Uses in Residential Districts

Use	RL	R1-R4	RT 1	RT 2	RM1	RM2	RM3	Development Standards
Residential Uses								
Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	
Community residential facility, licensed human service	P	P	P	P/C	P/C	P/C	P/C	✓
Community residential facility, licensed correctional					C	C	C	✓
Community residential facility, health department licensed					C	C	C	✓
Emergency housing facility					C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓
<u>Sober house</u>	<u>P</u>	<u>P</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>✓</u>

Roominghouse, boarding house					C	C	C	✓
Nursing home, boarding care home, assisted living						C	P	✓
Hospice	P	P	P	P	P	P/C	P	✓
Dormitory	P	P	P/C	P/C	P/C	P/C	P/C	✓
Fraternity, sorority	P	P	P/C	P/C	P/C	P/C	P/C	✓

Section 4

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.321, Principal Uses in Traditional Neighborhood Districts, is hereby amended as follows:

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Residential Uses				

Congregate Living				
Foster home, freestanding foster care home	P	P	P	
Community residential facility, licensed human service	P	P	P	✓
Community residential facility, licensed correctional	C	C	C	✓
Community residential facility, health department licensed	C	C	C	✓
Emergency housing facility	C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	✓
<u>Sober house</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>✓</u>
Roominghouse, boardinghouse	C	P	C	✓
Nursing home, boarding care home, assisted living	P	P	P	✓
Hospice	P	P	P	✓
Dormitory	P/C	P	P	✓
Fraternity, sorority	P/C	P	P	✓

Section 5

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.421, Principal Uses in Business Districts, is hereby amended as follows:

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Residential Uses								

Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	✓
Community residential facility, licensed human service	P	P	P	P	P	P	P	✓
Community residential facility, licensed correctional			C	C	C	C	C	✓
Community residential facility, health department licensed			C	C	C	C	C	✓
Emergency housing facility			C	C	C	C	C	✓
Overnight shelter							C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P	P	P	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P	P	P	✓
<u>Sober house</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>✓</u>
Roominghouse, boardinghouse			C					✓

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Nursing home, boarding care home, assisted living			C					✓
Hospice	C	C	P/C	C	P	P	P	✓
Dormitory			P/C					✓
Fraternity, sorority			P/C					✓

Section 6

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.521, Principal Uses in Industrial Districts, is hereby amended as follows:

Table 66.521. Principal Uses in Industrial Districts

Use	IR	I1	I2	I3	Development Standards
Residential Uses					
Congregate Living					
Foster home, freestanding foster care home	P	P	P		✓
Community residential facility, licensed human service	P	P	P		✓
Community residential facility, licensed correctional		C	C		✓
Community residential facility, health department licensed		C	C		✓
Correctional facility		C	P	C	
Emergency housing facility		C	C		✓
Overnight shelter		C	C		✓
Shelter for battered persons	P	P	P		✓
Transitional housing facility	P	P	P		✓
Sober house	P/C	P/C	P/C		✓
Hospice	P	P	P		✓

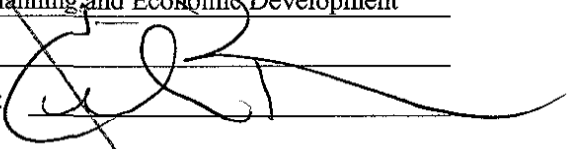
Section 7

This ordinance shall become effective thirty (30) days after its passage, approval and publication.

	Yeas	Nays	Absent
Bostrom			
Carter			
Harris			
Helgen			
Lantry			
Stark			
Thune			

Requested by Department of:

Planning and Economic Development

By: 

Form Approved by City Attorney

By: P.W. Warner 6-3-08

Adopted by Council: _____

Date: _____

Adoption Certified by Council Secretary:

By: _____

Approved by Mayor

Date: _____

Form Approved by Mayor for Submission to Council

By: 