



FAQs

Proposed Amendments to Pompano Beach's *Land Usage Code* on Community Residences and Recovery Communities for People With Disabilities

These FAQs seek to answer questions you might have regarding the extensive and complex amendments proposed for Pompano Beach's *Land Usage Code* to zone for community residences for people with disabilities, which include recovery residences, and for recovery communities.

The proposed ordinance comprehensively revamps the city's zoning treatment of these land uses in accord with sound zoning and planning principles, the nation's Fair Housing Act, and applicable Florida State Statutes.

You'll learn a whole lot more by reading the 65–page study on which the proposed zoning amendments are based, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities*. You can download it at <http://pompanobeachfl.gov/grouphomes>

While it probably explains more than you'd ever want to know about community residences and how to legally zone for them, it will not cure insomnia. The city's study provides many more details that explain the basis for each of the answers to the questions in these FAQs.

The proposed zoning amendments for recovery residences (also known as “sober homes”) and other community residences for people with disabilities as well as recovery communities, seek to protect people with disabilities including people in recovery, from exploitation, scam operators, fraud, and the many other abuses documented so well in our local newspapers. By protecting people with disabilities, these amendments will also protect Pompano Beach's neighborhoods from the impacts of unscrupulous operators.

The 65-page study proposes a zoning approach for all community residences for people with disabilities similar to those hundreds of cities and counties across the country have adopted during the past 44 years. The additional provisions for recovery *communities* are narrowly tailored and recognize that they are a different use than a recovery *residence*.

The proposed zoning approach evolved in large part from guidelines issued by the American Planning Association, American Bar Association, and settlements of housing discrimination complaints brought by the U.S. Department of Justice. It is intended to, and should, prevent the creation of new concentrations of community residences and/or recovery communities and the intensification of existing concentrations, concentrations that undermine the ability of community residences and recovery communities to achieve normalization and community integration of their residents. It is important to understand that “normalization and community integration” make up the core purposes of community residences and recovery communities.

What types of residences do the proposed zoning amendments regulate?

They cover two different, albeit related, uses with very similar, but significantly different names:

- ◆ ***Community residences for people with disabilities.***

This residential use provides a family–style residence for people with developmental disabilities, mental illness, physical disabilities, the frail elderly, people in recovery from alcohol and/or drug addiction, and others with a disability that severely limits their ability to perform some of the everyday life tasks most of us take for granted. [6] The amendments do *not* apply to vacation rentals which constitute an entirely different land use.

- ◆ ***Recovery communities.***

These are larger aggregations of people in recovery, generally in multifamily structures, that do not emulate a biological family. In terms of their atmosphere and how they operate, they are more akin to institutional uses than residential uses and warrant zoning treatment different than community residences.

The following FAQs address these two types of uses one–by–one.

Community Residences

What are community residences for people with disabilities?

Community residences provide a family-like living arrangement for people with disabilities to enable them to live as “normal” a life as possible by emulating a biological family. The staff (or the officers in the case of a self-governed sober home like Oxford House) function in the parental role doing much the same things as parents do in a biological family. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children. Having so-called “able bodied” neighbors is essential for a community residence to succeed. The neighbors serve as role models for the people living in the community residence. Interaction with neighbors helps to more fully integrate the occupants of a community residence into the community. For more examples of how community residences emulate a biological family (and how differently they function than rooming houses and institutional uses like nursing homes, continuing care facilities, and many assisted living facilities), see the list of “Primary Functions” in Table 1 on page 12 of the study.

The end goal of a community residence is to enable residents to achieve as much independence as they are capable, much like the aspirations we have for our own children as they mature into adulthood.

Community residences include group homes, sober living homes, recovery residences, those assisted living facilities that emulate a biological family, and *small* halfway houses for people with disabilities that emulate a biological family. For regulatory purposes, community residences are divided into two types based on their performance characteristics (which is how all zoning is supposed to work).

What are the two types of community residences and how will they be regulated differently?

Community residences that more closely resemble long-term permanent housing are called “family community residences.” **Family community residences** do *not* limit how long a resident can live in them, either in practice or in their rules. People have lived in family community residences for many years, even decades — providing the relative permanence typical of single-family and other lower-density housing. Group homes as well as many sober living homes and recovery residences like Oxford House tend to function as family community residences.

Transitional community residences place a time limit on residency in terms of weeks or months either in their rules or how they operate. They offer a relatively

temporary living arrangement, more akin to the higher turnover rates of multifamily rental housing. Small halfway houses for people with mental illness or in recovery as well as some sober living homes and recovery residences function as transitional community residences.

In terms of licensing or certification, the proposed amendments place recovery residences on an equal footing with the community residences for people with other types of disabilities. The State of Florida currently requires a license for community residences for people with mental illness, developmental disabilities, and the frail elderly — all vulnerable populations that need protection from those operators or staff who engage in fraud, theft, abuse, or exploitation — or are incompetent or unqualified. People in recovery are also a vulnerable population, even more vulnerable than people with some of the other disabilities. By requiring a license or certification for *all* community residences including those *not* currently licensed by the state and a license or certification for recovery communities, the proposed amendments effectively establish these same protections for people in recovery. There is no basis in law or zoning theory or practice for *local* zoning to treat community residences differently than other community residences based on the nature of their residents' disabilities.

What about halfway houses for prison pre-parolees or sex offenders?

These are not community residences for people with disabilities — consequently their current zoning treatment won't be changed. Even if any of the people in these halfway houses had disabilities, the Fair Housing Act *excludes* from its coverage for people who “constitute a direct threat to the health or safety of others.” 42 U.S.C. §3602(f)(9) (1988). The Florida State Statutes also *exclude* people “whose residency would result in substantial physical damage to the property of others.” *Florida Statutes* §419.001 (10)(2016).

How do community residences affect property values and the neighborhood?

The impacts of community residences have been studied more than any other small land use. The research conclusively shows that as long as community residences are licensed or certified and *not* clustered on a block or in a neighborhood, they have no effect on property values, property turnover rates, or neighborhood safety. We also know that they need to be located in residential

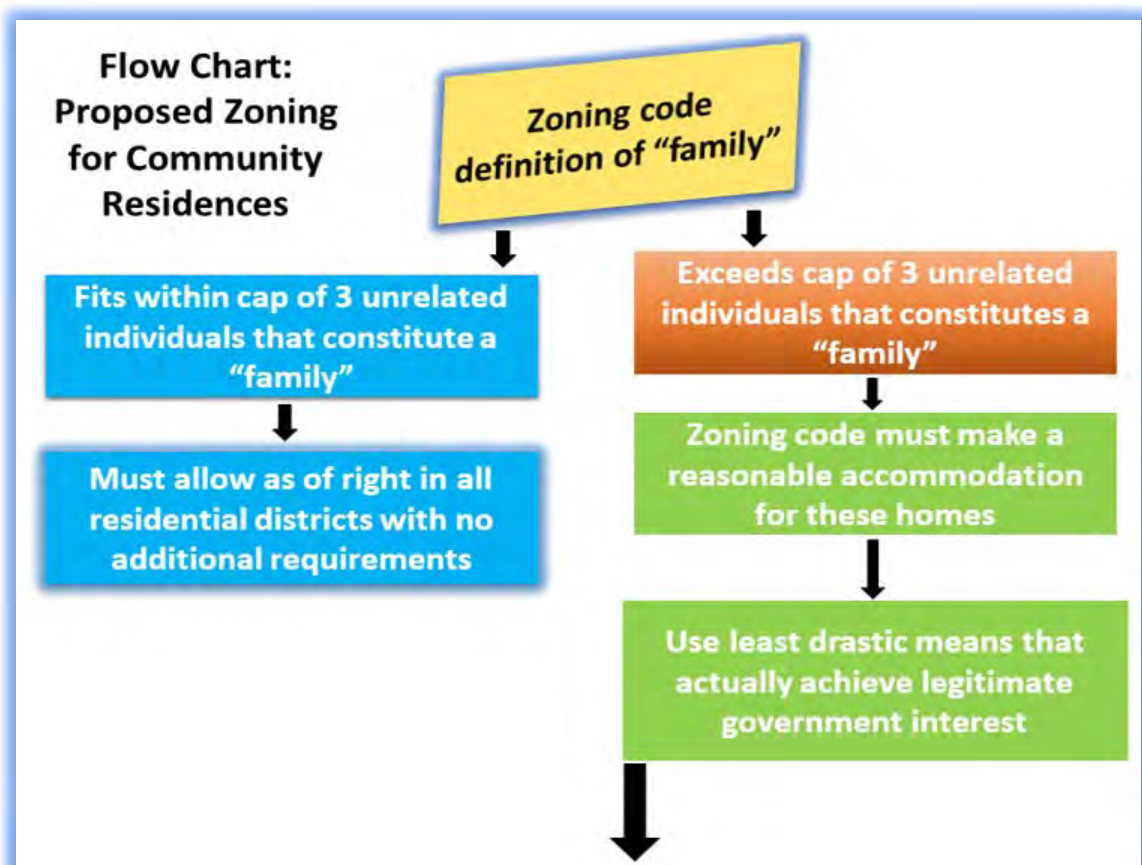
neighborhoods to achieve their essential goals of normalization and integration of their residents into the social fabric of a neighborhood.

We know that clustering community residences on a block or in a neighborhood can impede normalization and community integration and can create a *de facto* social service district which hampers normalization and community integration. We know that licensing and certification of community residences and recovery communities can weed out incompetent and illegitimate operators who can endanger the vulnerable people who live in these homes.

All this research leads to the unavoidable conclusion that zoning needs to prevent concentrations of community residences from developing and that the vulnerable population of people who live in community residences (and recovery communities) need to be protected from illegitimate and incompetent operators.

So, exactly how do the proposed amendments regulate the location of family and transitional community residences for people with disabilities?

Start by looking at the number of unrelated individuals that would live in the proposed community residence.



Up to three residents. As the flow chart above suggests, the threshold question for any proposed community residence is “How many people will live there?” That’s because, in addition to a biological family, the definition of “family” in Pompano Beach’s *Land Usage Code* allows up to three unrelated people living as a single housekeeping unit to be a “family.” There’s nothing unusual about having a cap on the number of unrelated people that constitute a “family” — the vast majority of American cities and counties has a very similar definition of “family” or “household.” The U.S. Supreme Court approved of such definitions back in 1974.

Consequently, courts throughout the nation have consistently ruled that a proposed community residence that fits within this cap on unrelated people in a jurisdiction’s zoning definition of “family” must be treated the same as any other family. In Pompano Beach’s case, that means all groups of up to three unrelated people must be treated the same as a biological family. To impose any requirements on a community residence for three or fewer individuals that do *not* apply to *all* families constitutes housing discrimination on its face, known as “facial discrimination.” Cities and counties have consistently lost court cases when they impose a spacing distance or licensing requirement on a community residence that fits within the cap of unrelated individuals under their definitions of “family.”

More than three residents. This is where the amendments to the nation’s Fair Housing Act adopted under President Reagan require every city and county to make a “reasonable accommodation” in their land use or zoning regulations for the people with disabilities who would live in a proposed community residence.

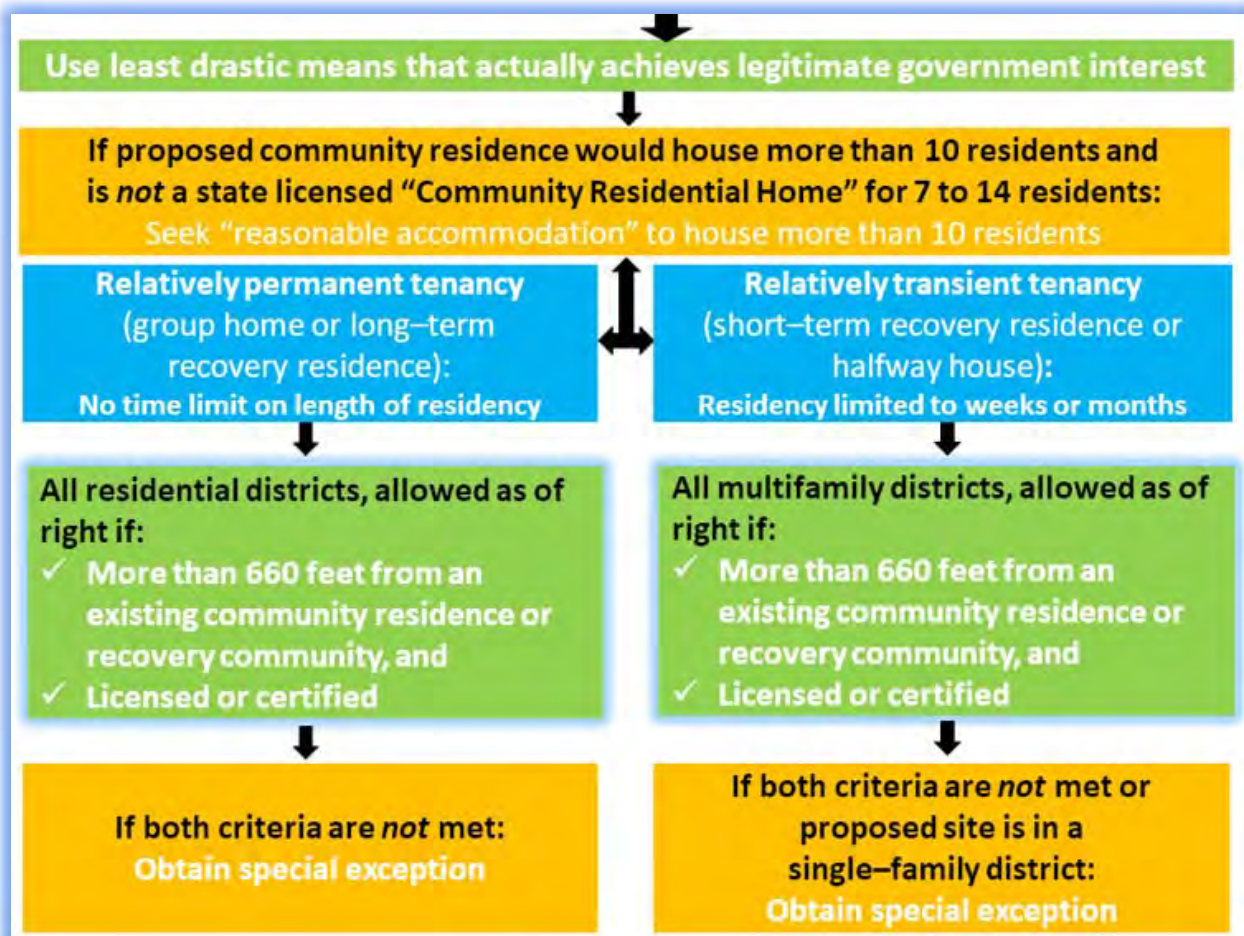
The flow chart below illustrates the decision making process of how a proposed community residence for more than three people with disabilities will be considered under the proposed zoning amendments.

Under the proposed zoning amendments, anybody who wishes to open a new community residence will have to complete and submit a form that gives the city a very clear picture of the nature of the proposed community residence, the general nature of the disability residents will have (no information about any specific resident can be required), the status of licensing or certification, the number of residents, and the size of each bedroom (necessary to determine the maximum number of occupants allowed for all rental uses in Pompano Beach). The answers to the questions will enable city staff to quickly determine whether the proposed community residence is allowed as a permitted use, requires a special exception, needs to apply for a reasonable accommodation, or is prohibited.

If a proposed family community residence would house more than ten people, the operator will need to seek a reasonable accommodation in which it would have

to demonstrate the therapeutic and/or financial need for more than ten people and that the home would be able to emulate a biological family.

A proposed community residence that has been denied licensing or certification would not be allowed at all.



Single-Family Zoning Districts. Under the proposed zoning amendments, the relatively permanent *family* community residence will be allowed as a permitted use in single-family residential zoning districts as long as the proposed home is at least one typical city block (660 feet) from any existing community residence or recovery community and is licensed or certified by the state (this includes Oxford House which has the functional equivalent of state certification as explained in the study). A special exception will be required for all transitional community residences since they are more akin to the sort of housing for which multifamily districts were designed and warrant a case-by-case review in single-family districts. A proposed family community residence that does not meet both of these objective standards

will also need to obtain a special exception. To receive a special exception, the operator will have to demonstrate that the proposed home would not generate any adverse impacts on any community residence or recovery community and the neighborhood. Section 155.2406 E. of the proposed ordinance details these standards that an applicant must meet to be awarded a special exception.

Multiple–Family Zoning Districts. Under the proposed zoning amendments, *all* community residences will be allowed in the zoning districts in which multiple–family housing is allowed as long as the proposed home is at least one typical city block (660 feet) from any existing community residence or recovery community and is licensed or certified (this includes Oxford House which has the functional equivalent of state certification). A special exception will be required when a proposed community residence does not meet both of those objective standards. To receive a special exception, the operator will have to demonstrate that the proposed home would not generate any adverse impacts on any existing community residence or recovery community and on the neighborhood. Section 155.2406 E. of the proposed ordinance details these standards that a community residence applicant must meet to be awarded a special exception.

Mixed Use Zoning Districts. Under the proposed zoning amendments, community residences are permitted uses in mixed use zoning districts subject to the same two objective criteria stated immediately above and require a special exception when either of those criteria is *not* met. The standards in Section 155.2406 E. of the proposed ordinance provide, in detail, the standards that a community residence applicant must meet to receive a special exception.

A lot of the provisions in the proposed amendments say “except as required by state law.” What is this all about?

Thirty–nine states have some form of statewide zoning for *some, but not all*, community residences for people with *some, but not all*, types of disabilities. States can do that because the power to zone resides with the state. States give localities the power to zone through a state zoning enabling act. Like local zoning, statewide zoning for community residences for people with disabilities must comply with the nation’s Fair Housing Act. Not all statewide zoning complies.

In §419.001 of the state statutes, “Site selection of community residential homes,” the State of Florida sets statewide zoning standards for the community residences *that five state agencies license*. The state statutes establish different zoning standards for community residences housing six or fewer people than those with seven to 14 residents. The state law — for which no rational basis appears to exist — does impose some limits on local zoning for certain licensed community

residences for as many as 14 people. As the study explains in detail, some of the state provisions appear to be contradictory and others run afoul of the nation's Fair Housing Act. Consequently, the language "except as required by state law" is included in the proposed amendments to make it clear that Pompano Beach will make any exceptions to its new zoning provisions required by elements in the state statute that comply with the nation's Fair Housing Act. So under certain circumstances, state law has long required that all cities and counties allow community residences licensed by these five state agencies to house as many as 14 people. **But those *not licensed* by these five agencies — sober living homes are *not licensed* by any of these five agencies — are limited to ten occupants unless they receive a reasonable accommodation from the city.**

Consequently, sober homes and any other type of community residence for which these five state agencies does *not* issue a license, must receive a reasonable accommodation from the city to house more than ten people — and that can be approved only when the dwelling is large enough for more than ten people under the city's *Rental Housing Code* as discussed below. The state's certification of sober homes and recovery communities does not fall within §419.01 of the state statutes.

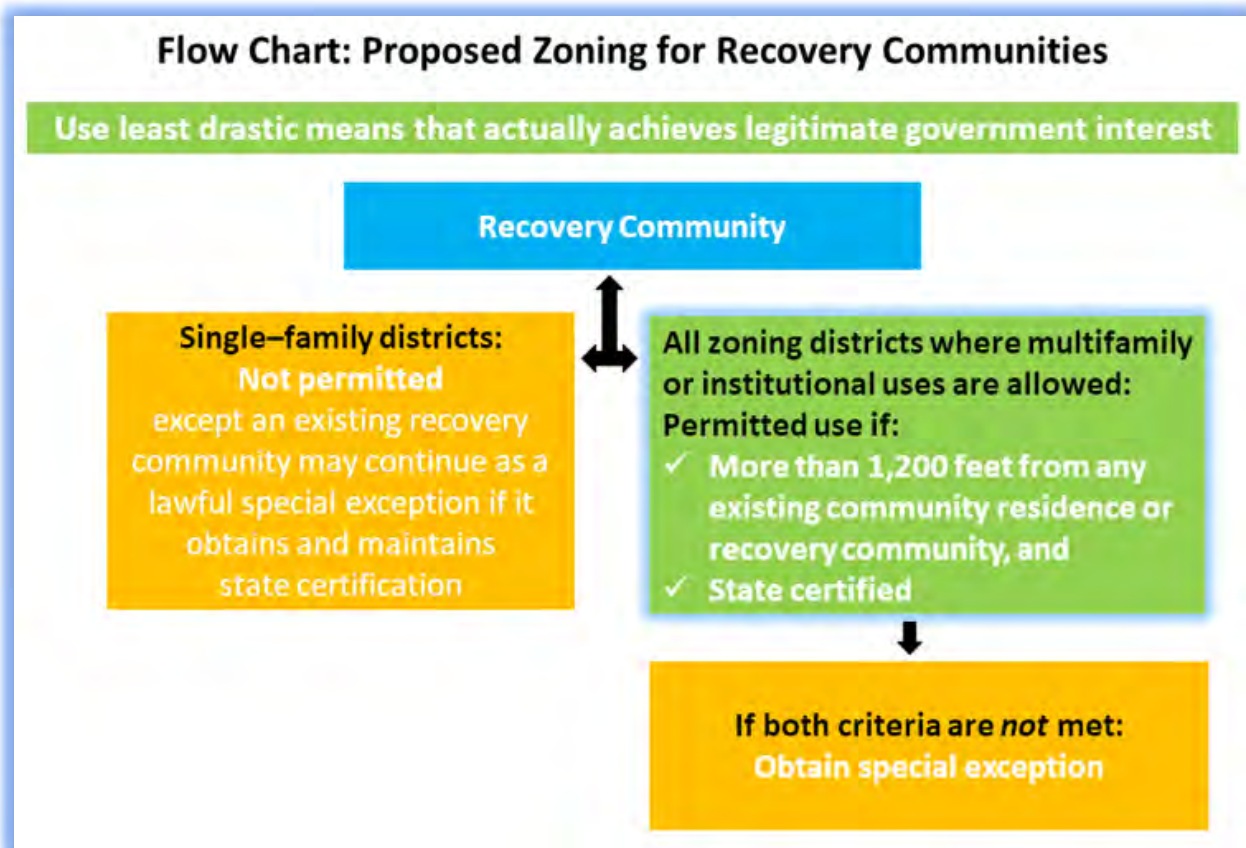
Recovery Communities

Remind me, what is a recovery community?

While a community residence consists of a single housekeeping unit that emulates a family in a residential structure, a recovery community consists of a larger aggregation of people in recovery, generally in multifamily structures, that collectively do not emulate a biological family, but function more like a collective or broad community (hence the label "recovery community"). In terms of their atmosphere and how they operate, they are more akin to institutional uses than residential uses and warrant zoning treatment different than community residences. And unlike community residences, they serve just people in recovery.

So, exactly how do the proposed amendments regulate the location of recovery communities for people recovering from drug and or alcohol addition or abuse?

Under the proposed zoning amendments, anybody who wishes to open a new recovery community will have to complete and submit a form that gives the city a very clear picture of the nature of the proposed recovery community, the nature of the disability residents will have (namely addiction to drugs and/or alcohol), the status of licensing or certification, the number of residents, and the size of each bedroom (necessary to determine the maximum number of occupants allowed for all residential uses in Pompano Beach). The answers to the questions will enable city staff to quickly determine whether the proposed recovery community is allowed as a permitted use, requires a special exception, needs to apply for a reasonable accommodation, or is not allowed.



Under the proposed zoning amendments, recovery communities will be allowed as a permitted use in multifamily residential zoning districts, institutional districts, and mixed use districts as long as the proposed recovery community is certified by the state and is at least 1,200 feet (a bit less than two blocks) from any existing recovery

community or community residence. A proposed recovery community that does not meet both of those objective standards will need to obtain a special exception. To receive a special exception, the operator will have to demonstrate that the proposed recovery community would not generate any adverse impacts on any existing community residence or recovery community, or on the surrounding neighborhood. Section 155.2406 F. of the proposed ordinance details these standards that an applicant must meet to be awarded a special exception.

The proposed amendments establish a spacing distance of almost two blocks rather than a one block spacing distance for proposed community residences because a recovery community which can consist of dozens or scores of people, is a much more intense and dense use than a community residence. As the study explains, each neighborhood has a limited capacity to absorb service-dependent people into its social structure. For example, locating a recovery community just 660 feet from an existing community residence would pose a far greater challenge to absorbing service-dependent people into the neighborhood's social structure than would another community residence. It would also be more likely to interfere with the ability to achieve normalization of the occupants of existing community residence, especially if the existing community residence houses people in recovery. Consequently, adding a half block to the spacing distance for these uses to be allowed as of right offers a least drastic means needed to actually achieve the legitimate government interests of fostering normalization and community integration needed for community residences to function successfully.

The following FAQs address both community residences and recovery communities.

What effect will the proposed amendments have on existing community residences and recovery communities that are *not* licensed or certified by the State of Florida?

Five Florida agencies license different types of community residences for people with disabilities. But not all disabilities are covered by the state. The most glaring omission is sober homes for people in recovery from drug or alcohol addiction. The state also does not license recovery communities. The State of Florida has, however, established a voluntary certification program for the operators of such recovery residences and recovery communities.

By requiring licensing or certification, the proposed zoning amendments effectively require operators of unlicensed recovery communities and sober homes

for people in recovery from drug or alcohol addiction to obtain certification to locate in Pompano Beach.

Existing recovery residences and recovery communities that have been allowed under the city's current zoning process will need to obtain state certification by a March 1, 2019. Failure to prove licensing or certification will result in revocation of the existing zoning approval and trigger a reasonable 60-day period to close down and relocate occupants to a proper residential or institutional setting.

Will these amendments change the zoning of my property?

No. The proposed amendments do not change the boundaries of any zoning district. The city's zoning correctly recognizes that a community residence for people with disabilities is functionally and legally a residential use, not a commercial use. It does not change the zoning of your home in any way. Like any single-family house, duplex, or multifamily building, community residences must comply with all zoning and building code requirements. Similarly recovery communities must comply with all zoning and building code requirements for the type of structure in which they are located.

What is the absolute maximum number of people that can live in a community residence or recovery community?

While the proposed amendments allow for up to ten occupants in a community residence, that maximum is tempered by the same maximum allowed in all rental residential dwellings. Pompano Beach's *Rental Housing Code* (which is applicable to community residences since their occupants pay rent) establishes a very common formula to prevent overcrowding. The key provision requires a minimum of 70 square feet of floor area when one person occupies a room for sleeping purposes. When two or more people occupy a sleeping area, there must be at least 50 square feet for each bedroom occupant. These standards apply to recovery communities as well.

Consequently, even if a community residence is proposed to house ten people and this formula in the *Rental Housing Code* would allow just seven occupants, only seven people can live there. As the U.S. Supreme Court ruled in 1995, this is one of the local code requirements that applies to all rental uses equally and the Fair Housing Act does not require a city to waive this limit to prevent overcrowding.

Off-Street Parking Requirements

The off-street parking requirements in Table 155.5102.D.1: Minimum Number of Off-Street Parking Spaces of the proposed amendments are tailored to the actual

parking demand generated by each specific community residence by requiring a space for every resident who maintains a motor vehicle on the premises.

More questions? Need more information?

Please call or email Assistant Director of Development Services Jennifer Gomez at Jennifer.Gomez@copbfl.com or 954-786-4640 weekdays between 9 a.m. and 5 p.m.