



INTEROFFICE MEMORANDUM FROM THE ECONOMIC DEVELOPMENT DEPARTMENT

Date: April 27, 2017

To: Planning and Zoning Board Members

Thru: Douglas R. Gonzales, City Attorney *DRG*

From: Benjamin J. Ziskal, AICP, CECD, Director of Economic Development *Bjz*

Re: Group Home Ordinance Legal Questions

As you are aware, at its April 4th meeting, the Planning and Zoning Board had a number of questions related to the proposed ordinance revising the City's Code to comply with Florida Statutes for siting placement and distance separation requirements for Community Residential Facilities, Group Homes, Recovery Residences and Detoxification Facilities.

The questions and City Attorney responses are as follows:

Question: Can a recommendation be made to extend the radius within which to allow a facility to beyond 1,000 feet for recovery centers?

Answer: The City is bound by the current distance separation in the ordinance. However, the Board may recommend to the City Commission that the separation requirement be greater than that provided, and the Commission may consider such request. However, the City may not treat recovery facilities any differently than other facilities because there are disabled persons receiving treatment there. Any disclosure of information pertaining to a person's disability may violate the American's With Disabilities Act and set forth a very costly process.

Question: How are fire rescue fees paid in the example of a single family resident with eight people living there that do not have insurance? Does the Fire Department absorb those costs?

Answer: The fire assessment is the same regardless of the number of individuals living in a home and regardless whether they have any insurance.

Question: Do these types of facilities pay a higher fire assessment fee than a residential home?

Answer: The City determines how to classify properties in the City. Often, depending on how such properties are zoned, they pay a commercial, per foot rate that would exceed that paid for residential properties.

Question: Will the City be informed of whom the residents of these facilities are and does the City have a right to know who they are?

Answer: No. The residents and these facilities are often quite transient and there is no requirement that they register with the City. You may always determine the ownership of the property by accessing the Broward Property Appraiser's website, but tenants or temporary residents are not listed.

Question: Does the City have the right to require periodic inspections by the Margate Police Department? Can the City obtain a list of the residents and solicit feedback on the facilities by knocking on neighbors doors to ask whether there are any issues or complaints? Can the City charge facilities for these periodic inspections?

Answer: We must remain mindful that people have a right to privacy in their homes. The Fire Department is statutorily permitted to conduct annual inspections of properties for the benefit of the City as a whole...fire spreads, and thus, inspections may help to prevent conditions that would promote the spread of fire. Police / law enforcement activity is viewed by the law quite differently. Although it would likely not be improper for police to knock on doors and attempt to discuss area concerns with residents, there is no way the City can require the homeowner to comply or to open the door. In addition, the police department is very tight on personnel and would very likely not have the resources to conduct such activities.

Question: If the Fire Department conducts annual inspections on these types of facilities, why can't the Police Department perform the same service within their area of responsibility and be proactive to make sure facilities are being run correctly?

Answer: As discussed above, the police department would not be in a position to conduct inspections. However, if the various state oversight agencies were to alert the police that they believe a violation is occurring at a property, police would then have cause to conduct a knock and greet, and to verify whether a violation of law is taking place.

Question: Can we get the names of the residents of these facilities, not their medical records, in order to find out if there are people with serious violent criminal backgrounds, sexual predators, etc. living there?

Answer: No. There is no mechanism available to require a property owner to disclose the names of individuals residing there.

Question: What is the City's responsibility for informing people that a recovery residence might be moving into their neighborhood?

Answer: When a facility desires to open, the neighboring residents are notified through a posting that an action with regard to the property is being heard by the City Commission, including the date(s) and time(s) of those hearings. Residents are encouraged to come to the meetings and let their feelings about proposed facilities be

known. However, please note that the City may not treat one facility any differently than another if the two facilities are for the same purpose and are to operate within the same size. In other words, the City Commission may not consider “not in my back yard” arguments to deny an application. Rather, they are limited to the information and evidence provided to them and will grant or deny such applications on that evidence and information.

Question: Can the City notify residents when a facility is moving into their neighborhood? Can the City disclose the type of facility it is?

Answer: See answer immediately above.

Question: Can residents legally petition against a facility coming into their neighborhood?

Answer: See answer two questions above.

cc: City Manager, Senior Planner, Associate Planner