



FAQS

Amendments to Palm Beach County's *Unified Land Development Code* for Community Residences for People With Disabilities and for Recovery Communities

These FAQs seek to answer questions you might have regarding the extensive and complex amendments proposed for Palm Beach County's *Unified Land Development Code* to regulate community residences for people with disabilities, which include sober homes, and for larger recovery communities. The amendments also establish more precise and a different zoning treatment for congregate living facilities.

The proposed amendments comprehensively revamp the county's regulatory treatment of these land uses in accord with sound planning and land use regulatory principles, the nation's Fair Housing Act, and applicable Florida State Statutes.

You'll learn a whole lot more by reading the 83–page study, *Zoning Analysis and Framework for Community Residences for People With Disabilities and for Recovery Communities in Palm Beach County, Florida*. This study provides the basis for the proposed amendments to the county's *Unified Land Development Code*. You can download it under "Key Topics of Interest" at: <http://discover.pbcgov.org/pzb/zoning/Pages/default.aspx> It's the item called "Community Residential Housing Study and FAQs."

The proposed amendments to the *Unified Land Development Code* will apply to all community residences for people with disabilities including sober homes, as well as to the larger recovery communities. The amendments seek to protect people with disabilities, including people in recovery, from exploitation, mistreatment, abuse, scam operators, incompetent operators, fraud, lack of care, financial theft, and the many

other abuses documented so well in our local newspapers over the past few years. By protecting people with disabilities, these amendments also protect Palm Beach County’s neighborhoods from the impacts of unscrupulous and incompetent operators.

The 83–page study proposes a regulatory framework for all community residences for people with disabilities, very similar to zoning that hundreds of cities and counties across the country have adopted since 1974. The provisions, however, are substantially refined from those written even five or six years ago. The additional provisions for recovery *communities* are narrowly tailored and recognize that they are a different use than a sober home (also sometimes called a “recovery residence”).

The proposed amendments to the *Unified Land Development Code* have evolved over the decades in part from guidelines issued by the American Planning Association, American Bar Association, settlements of housing discrimination complaints brought by the U.S. Department of Justice, and court decisions.

In addition to protecting the residents of these homes, the proposed land use regulations are intended to, and should preclude the creation of new clusters and concentrations of community residences and/or recovery communities and prevent existing clusters and concentrations from intensifying. Concentrations and clustering of community residences and recovery communities undermine their ability to achieve normalization and community integration of their residents. It is important to understand that “normalization and community integration” are among the essential core purposes of community residences and recovery communities.

The amendments also clearly distinguish community residences for people with disabilities and recovery communities from other types of congregate living arrangements which do not comport with the definitions of community residences or recovery communities in large part because their structure does not emulate a family or they do not serve people with disabilities.

What types of residences do the proposed code amendments regulate?

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

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

This residential use, usually located in a single–family house or a townhome, provides a family–like living environment for people with developmental disabilities, mental illness, physical disabilities, the frail elderly, people in recovery from substance use disorder (commonly known as “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. The

amendments will *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 not nearly as residential in nature as a community residence and warrant different land-use regulations.

The proposed amendments also regulate more clearly than the current zoning a third type of living arrangement that is neither a community residence nor a recovery community. The proposed amendments establish stricter regulations for congregate living arrangements such as continuing care facilities, skilled nursing homes, larger assisted living facilities that do not emulate a family, intermediate care facilities, shelters for victims of domestic abuse, detoxification facilities, hospice facilities, convalescent facilities, and residential treatment facilities.

The following FAQs address community residences and recovery communities 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 many of the same things 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 and helps them learn or re-learn the everyday behavioral skills we take for granted. 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 assisted living facilities too large to emulate a family), see the list of “Primary Functions” in Table 1 on pages 16–17 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 how they perform in real life (which is how all land–use regulations are 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 generally do *not* limit how long a resident can live in the residence, either in practice or in their rules. People with disabilities 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 homes like Oxford House tend to function as family community residences.

In terms of licensing or certification, the proposed amendments place sober living homes on an equal footing with 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 and from operators or staff who are incompetent or unqualified.

People in recovery from substance use disorder 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 for more than four occupants including those *not* currently licensed by the state and a license or certification for recovery communities, the proposed amendments effectively provide these same protections for people in recovery. There is no basis in law or zoning theory or practice for *local* zoning to treat some community residences differently than other community residences based on the nature of their residents’ disabilities.

Transitional community residences place a time limit on residency of weeks or months either in their rules or how they actually operate. They provide 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 tend to function as transitional community residences.

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

These are not community residences for people *with disabilities* — consequently their current land-use regulations will remain more restrictive than those for community residences. Even if any of the people in these halfway houses had disabilities, the Fair Housing Act *excludes* from its coverage 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 State Statutes* §419.001 (10)(2020).

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. Decades of research conclusively shows that as long as community residences are licensed or certified and *not* clustered on a block or concentrated in a neighborhood, they have no effect on property values, property turnover rates, or neighborhood safety. There is an annotated bibliography of many of these reports on pages 75–77 of Palm Beach County’s study cited on the first page of these FAQs. 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.

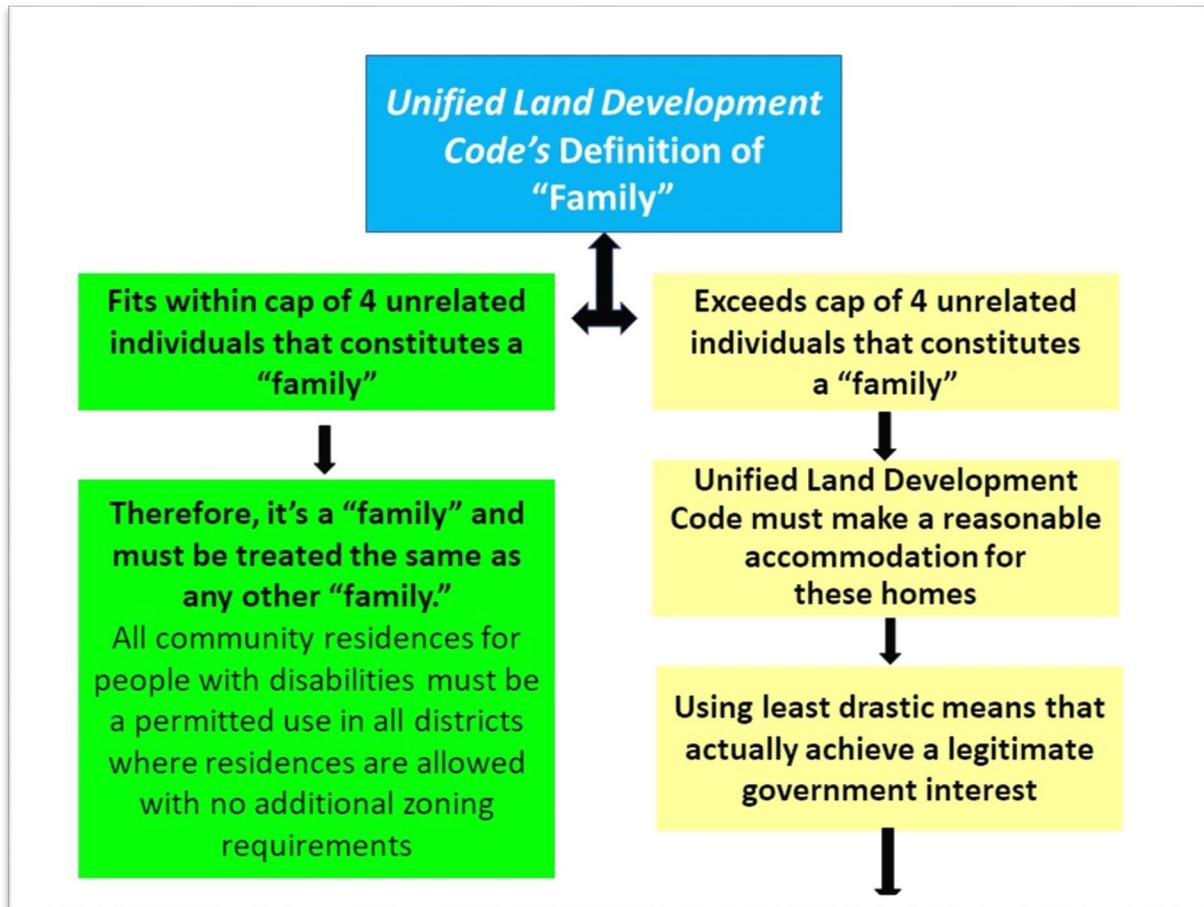
We know that clustering community residences on a block or concentrating them in a neighborhood can impede normalization and community integration and can create a *de facto* social service district that hampers normalization and community integration. For details, see pages 24–25 of the study.

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. For details, see pages 28–30 of the study.

All this research leads to the inevitable conclusion that land-use regulations need to prevent clusters and 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 will 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 as in the figure below.



Up to four 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 Palm Beach County’s *Unified Land Development Code* allows up to four 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 constitutes 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 this kind of definition 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 land–use regulations definition of “family” must be treated the same as any other

family. In Palm Beach County's case that means all groups of two to four unrelated people must be treated the same as a biological family. To impose any requirements on a community residence for up to four unrelated 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."

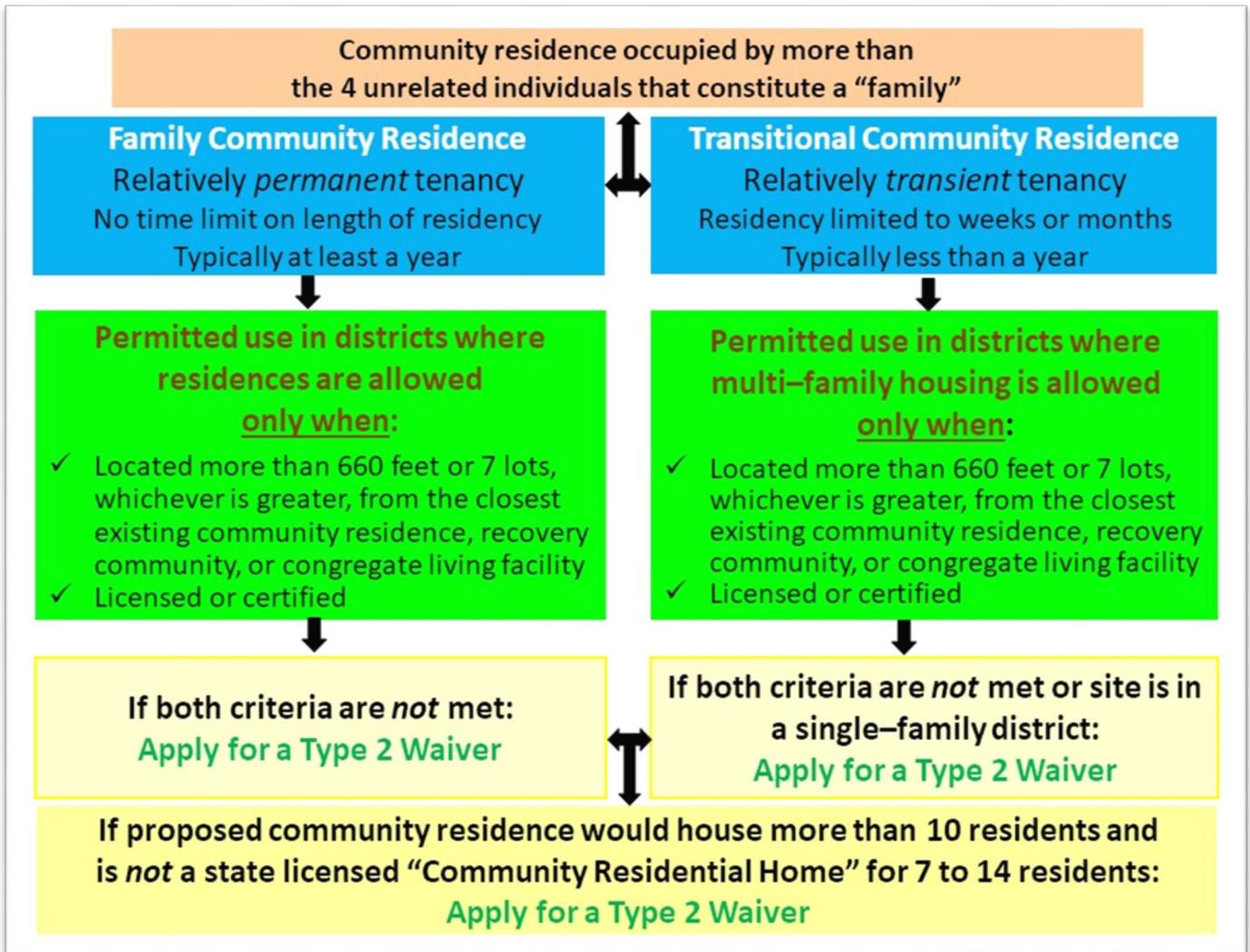
More than four residents. This is where the amendments to the nation's Fair Housing Act signed by President Reagan require every county and city to make a "reasonable accommodation" in their land-use regulations for the people with disabilities who would live in a proposed community residence.

The flow chart on the next page illustrates the decision-making process of how a proposed community residence for more than four people with disabilities would be considered under the proposed amendments to the county's *Unified Land Development Code*.

Under the proposed amendments, anybody who wishes to open a new community residence will have to complete and submit a form that gives the county a very clear picture of the nature of the proposed community residence, the general nature of the disabilities residents will have (no information about any specific resident can be required), the status of licensing or certification, the number of residents, the size of each bedroom (necessary to determine the maximum number of occupants allowed in any residential use in Palm Beach County), and number of vehicles maintained on the premises. The answers to these questions will enable county staff to quickly determine whether the proposed community residence is a permitted use, requires the heightened scrutiny of a Type 2 Waiver, or is prohibited.

If a proposed family community residence would house more than ten people, the operator will need to seek a Type 2 Waiver where 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. See pages 49–54 of the study for details.

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



Single-Family Zoning Districts. Under the proposed amendments to the county’s *Unified Land Development Code*, the relatively permanent *family* community residence will be allowed as a permitted use in single-family residential districts only when the proposed home is at least 660 feet (a typical block in most cities and towns) or seven lots, whichever is greater, from the closest existing community residence, recovery community, or congregate living facility, and is licensed or certified by the State of Florida (this includes Oxford House operating under the Oxford House Charter which serves as the functional equivalent of state certification as explained in the study). In single-family districts, the heightened scrutiny of a Type 2 Waiver will be required for all transitional community residences since they are more akin in terms of

performance to the sort of housing for which multifamily districts were designed and, therefore warrant a case-by-case review in single-family districts. (It would be illegal to forbid transitional community residences in single-family districts.) A proposed family community residence that does not meet both of these objective standards will need to obtain a Type 2 Waiver. To receive a Type 2 Waiver, the operator will have to demonstrate that the proposed home would not generate any adverse impacts on the closest existing community residence or recovery community or on the neighborhood. The proposed ordinance details these narrowly tailored standards that an applicant must meet to be granted a Type 2 Waiver.

Multiple-Family Zoning Districts. Under the proposed amendments to the *Unified Land Development Code*, all community residences will be allowed in the districts in which multiple-family housing is allowed as long as the proposed home is at least 660 feet (a typical block in most cities and towns) or seven lots (whichever is greater) from the closest community residence, recovery community, or congregate living facility and is licensed or certified. A Type 2 Waiver is required when a proposed community residence does not meet both of those objective standards. To receive a Type 2 Waiver, the operator will have to demonstrate that the proposed home would not generate adverse impacts on the closest existing community residence, existing recovery community, or on the neighborhood. The proposed ordinance details these narrowly-drawn standards that a community residence applicant must meet to be awarded a Type 2 Waiver.

Mixed Use Zoning Districts. Under the proposed amendments, community residences will be permitted uses in mixed use districts subject to the same two objective criteria stated immediately above and will require a Type 2 Waiver when either of those criteria is *not* met. The proposed ordinance provides, in detail, the standards that a community residence applicant must meet to receive a Type 2 Waiver.

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

Florida is among the 39 states that have adopted some form of statewide land-use controls for *some, but not all*, community residences for people with *some, but not all*, types of disabilities. States can do that because the ultimate power to regulate land uses resides with each state. Every one of the 50 states grants counties and cities the power to regulate land uses through a land use or zoning enabling act. Like local land use regulations, statewide land use regulations for community residences for people with disabilities must comply with the nation’s Fair Housing Act. Not all statewide land use regulation provisions comply.

In §419.001, the state statute dubbed “Site selection of community residential homes,” sets statewide land use regulation standards for the community residences *that five state agencies license*, but *not* for sober homes or recovery communities. The state statutes establish different standards for these licensed community residences that house six or fewer people and for those with seven to 14 residents. The state law — for which no rational basis appears to exist — does impose some limits on local land–use regulations for certain licensed community residences for as many as 14 people. As explained in detail on pages 66–71 of the study, some 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 Palm Beach County will make any exceptions to its new land–use regulations required by those provisions in the state statute that *comply* with the nation’s Fair Housing Act.

Under certain circumstances, Florida 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 — such as sober living homes which are *not licensed* by any of these five agencies and not covered by §419.001— are limited to ten occupants unless the county awards them a Type 2 Waiver.**

Accordingly, the county can require a Type 2 Waiver for sober homes and any other type of community residence *not* licensed under §419.001 by any of these five state agencies to house more than ten people — and that can be approved only when the dwelling is large enough for more than ten people under Palm Beach County’s *Housing Code* as explained further below.

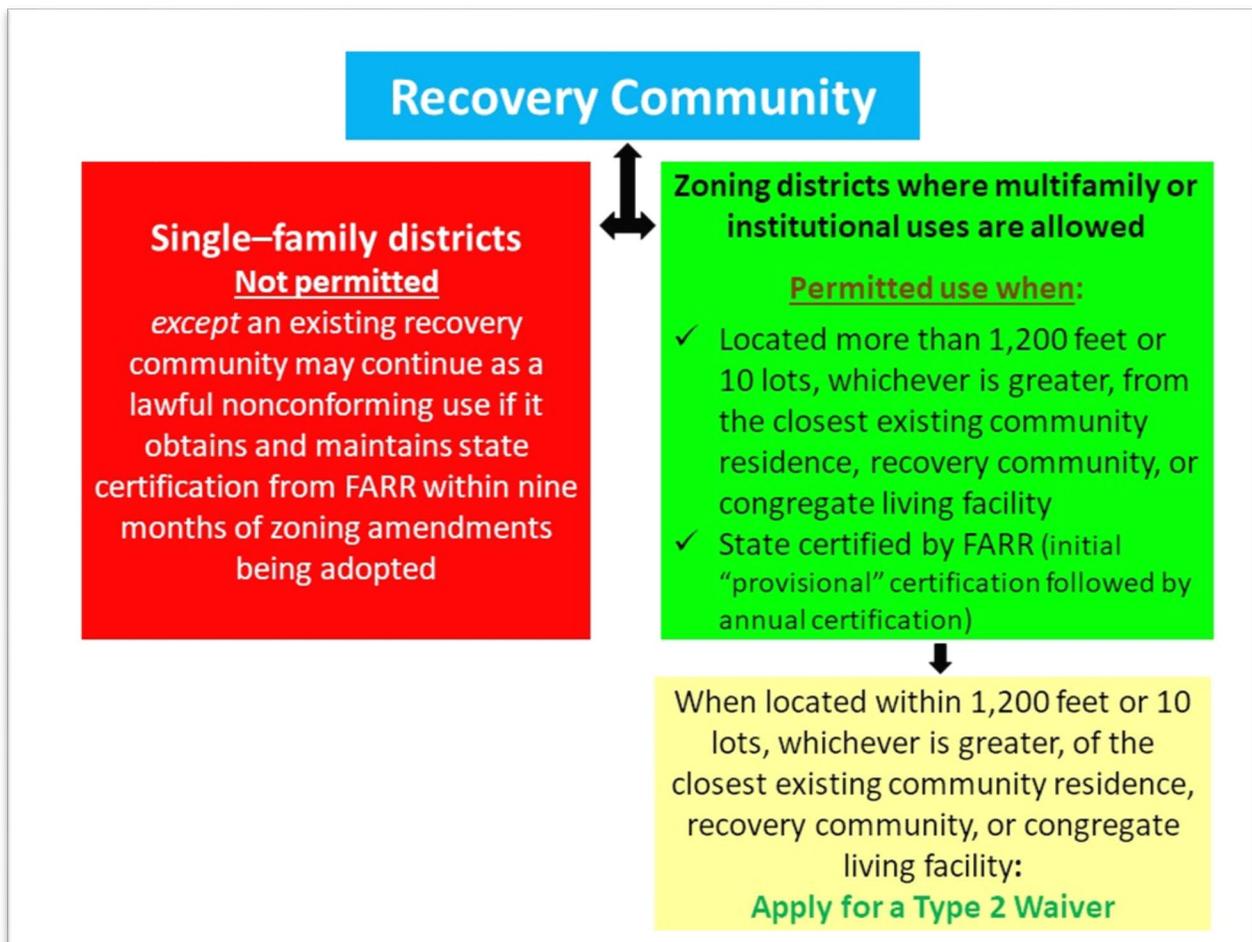
Recovery Communities

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 but also in townhomes and a series of detached single–family homes, that collectively do *not* emulate a biological family, but function more like a collective or broad community (hence the moniker “recovery community”). In terms of their atmosphere and how they operate, they are more akin to institutional uses (although *not* fully institutional) than residential uses and warrant land–use regulations different than those for community residences. And unlike community residences, they house *only* people in recovery from substance use disorder.

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

Under the proposed amendments to the county's *Unified Land Development Code*, anybody who wishes to open a new recovery community will have to complete and submit a form that gives the county a very clear picture of the nature of the proposed recovery community, the type of the disability residents will have (namely addiction to drugs and/or alcohol), the status of its state certification from the Florida Association of Recovery Residences (FARR), the number of residents, the size of each bedroom (necessary to determine the maximum number of occupants allowed for all residential uses in Palm Beach County), and number of vehicles maintained on the premises. The answers to the questions will enable county staff to quickly determine whether the proposed recovery community is allowed as a permitted use, requires a Type 2 Waiver, or is not allowed.



Under the proposed amendments, recovery communities will be allowed as a permitted use in districts where multifamily residential uses are allowed as long as the

proposed recovery community is certified by the state and is at least 1,200 feet or ten lots, whichever is greater, from the closest recovery community, community residence, or congregate living facility. A proposed recovery community that does not meet both of these objective standards will need to obtain a Type 2 Waiver approval from the Board of County Commission (BCC). To be issued a Type 2 Waiver, the operator will have to demonstrate that the proposed recovery community would not generate any adverse impacts on the closest community residence or recovery community and on the surrounding neighborhood. The proposed ordinance details the narrowly-crafted standards that an applicant must meet in order to be approved for a Type 2 Waiver.

The proposed amendments establish this 1,200 foot or ten lots spacing distance for a proposed recovery community because a recovery community can consist of dozens or scores of people and 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 details, see the discussion beginning on page 24 of the study.) For example, locating a recovery community just a typical block 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 and community integration of the occupants of existing community residences, especially if the existing community residence houses people in recovery. Consequently, adding a bit less than another block to the spacing distance for these uses to be allowed as of right is the least drastic means needed to actually achieve the legitimate government interests of fostering normalization and community integration that community residences require to function successfully.

See pages 54–60 for a detailed explanation of the proposed regulation of recovery communities.

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* certified or licensed by the State of Florida?

Five Florida agencies license different types of community residences for people with disabilities. However, not all disabilities are covered by the state's licensing. The most glaring omissions are sober homes and recovery communities for people in recovery from substance use disorder. The State of Florida has, however, established a voluntary certification program for the operators of these sober houses and recovery communities.

By requiring certification (or a license should the state establish licensing in the future), the proposed amendments to the Unified Land Development Code effectively require operators of existing unlicensed recovery communities and sober homes for people in recovery from substance use disorder to obtain certification to remain in Palm Beach County.

To remain open, existing recovery residences and recovery communities that have been allowed under the county's current land-use regulations will need to obtain state certification within nine months of the adoption of the proposed amendments. Failure to provide evidence of certification will result in revocation of the existing regulatory approval and trigger a reasonable 60-day period to close down and safely and humanely relocate occupants to an appropriate residential or institutional setting rather than leaving them on the street homeless.

Will these amendments change the land-use regulations of my property?

No. The proposed amendments do *not* change the boundaries of any land-use district. The proposed amendments to the county's *Unified Land Development Code* correctly recognize that a community residence for people with disabilities is functionally and legally a residential use, not a commercial use. It does not change the land-use regulation of your home in any way. Like any single-family house, duplex, or multifamily building, community residences must comply with all land use and building code requirements for the type of structure in which they are located. Similarly, recovery communities must comply with all land use 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 as of right, that maximum is tempered by the same maximum applicable to *all* residential dwellings. Palm Beach County's *Housing Code*, which is applied to *all* residential uses, 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 more than one person occupies a sleeping area, there must be at least 50 square feet for each bedroom occupant. These standards apply to recovery communities as well. For details, see pages 63–64 of the study.

Consequently, when a community residence is proposed to house ten people and this formula in the *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* residential uses equally and the Fair Housing Act does

not require a county to waive this limit designed to prevent overcrowding in residential uses.

Off-Street Parking Requirements

The off-street parking requirements of the proposed amendments are the same as for other similar single family residences s. See Table 6.B.1.B near the end of the proposed amendments.

Congregate Living Facilities

What are congregate living facilities?

The term “congregate living facilities” encompasses aggregate living arrangements that are either too large to emulate a family *or* do not house people with disabilities. These include continuing care facilities, assisted living facilities too large to function as a family, intermediate care facilities, shelters for victims of domestic abuse, hospice facilities, and convalescent facilities.

Where will congregate living facilities be allowed?

Under the proposed amendments, congregate living facilities will be allowed in the RM district and some Planned Unit Development districts only if granted a Class A conditional use permit. They will be not be allowed in other residential districts. Existing congregate living facilities in other districts will, as required by law, become legal conforming uses, but new ones will not be permitted.

Under the proposed zoning, skilled nursing and residential treatment facilities are classified as institutional uses (see Table 4.B.4.A. in the proposed amendments). The only residential districts in which they will be allowed are the RS and RM as well as some Planning Unit Development districts, but only with a Class A conditional use permit. They will be allowed in nonresidential districts with either a Class A conditional use permit or through approval by the Development Review Officer.

More questions? Need more information?

Please contact Zoning at 561-233-5200; or Wendy N. Hernandez at 561-233-5218 or email at wnhernan@pbcgov.org.