

**ORDINANCE NO: 2019-025**

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, REPEALING AND REPLACING ORDINANCE 2018-023 CONCERNING RESIDENTIAL CARE AND TREATMENT FACILITIES; AMENDING CHAPTER 98, ENTITLED "ZONING", ARTICLE VI, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS", DIVISION 5 ENTITLED "USES", SUBDIVISION IX ENTITLED "RESIDENTIAL CARE AND TREATMENT FACILITIES" OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the adoption of zoning and land use planning is a fundamental function of local government; and

**WHEREAS**, the purpose of this Ordinance is to promote the public health, safety, and welfare; and

**WHEREAS**, the Fair Housing Act as amended (42 U.S.C § 3601) provides protections for person with disabilities; and

**WHEREAS**, the legislative history of the Fair Housing Act of 1988 cautions that local zoning regulations are prohibited that result "from false or over-protective assumptions about the needs of handicapped people, as well as unfounded fear of difficulties about the problem that their tendencies may pose." H.R. Rep. No. 711, 100<sup>th</sup> Cong. 2D Session, Reprinted in 1988 U.S.C.C.A.N 2173, 2192 (1988); and

**WHEREAS**, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment or enforcement of zoning regulations as long as the zoning regulations are consistent with the state and federal laws, including the Fair Housing Act as amended; and

**WHEREAS**, clustering of community residences for people with disabilities on a block or in a neighborhood undermines the ability of community residences to achieve normalization and community integration for their residents, which is one of the essential purposes of a community residence for people with disabilities; and

**WHEREAS**, a reasonable accommodation may be necessary under the Fair Housing Act by allowing the relatively permanent living arrangement of a family community residence for

people with disabilities as a permitted use in residential districts, subject to a rationally based spacing distance requirement, and a licensing or certification requirement for the operator or the home itself; and

**WHEREAS**, § 419.001, Florida Statutes, allows for community residences for people with disabilities in residential districts; and

**WHEREAS**, to ensure that a proposed community residence will not interfere with normalization or community integration of the occupants of any nearby existing community residences nor contribute to creating a de facto social service district that thwarts the purposes and successful functioning of community residences, and results in segregation of people with disabilities; and

**WHEREAS**, to ensure care and treatment facilities are sited in the most compatible zoning districts; and

**WHEREAS**, Ordinance No. 2018-023 passed on second reading without the changes from first to second reading; and

**WHEREAS**, to ensure the public health, safety, and welfare; and

**WHEREAS**, the Planning and Zoning Board at its meeting of February 13, 2019 recommended approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1.:** Ordinance No. 2018-023 of the code of ordinances is hereby repealed and replaced, and Chapter 98, entitled "Zoning", Article VI, entitled "Supplementary District Regulations", Division 5 entitled "Uses", Subdivision IX entitled "Residential Care and Treatment Facilities", is amended as follows:

**Chapter 98**

**ZONING**

\* \* \*

**ARTICLE VI. SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

**DIVISION 5. - USES**

\* \* \*

**SUBDIVISION IX. RESIDENTIAL CARE AND TREATMENT FACILITIES**

**Sec. 98-1986. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant.* The sponsor, which through ownership or management, applies in the City for a *Residential Care and Treatment Facility, or facilities/facility.*

*Disability* means a physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include individuals who are currently using alcohol, illegal drugs, or using legal drugs to which they are addicted or individuals who constitute a direct threat to the health and safety of others.

*Distance requirements.* Distance requirements as measured from the nearest point of the proposed location to the nearest point of an existing facility, and identified on an accompanying radius map prepared by a State of Florida Registered Land Surveyor shading the proposed location and tracing a radius to the applicable distances identifying existing facilities within the jurisdictional limits of the city using the most recently published data compiled from licensing entities, as applicable, indicating the distances.

*Inpatient Treatment.* Supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents in a facility, such as medical professionals, mental health counselors, therapists or other professionals on a recurring basis, including nursing and dental services beyond the provision of mere personal services.

Residential Care and Treatment Facility means any institution, building, dwelling, residence, private home, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide housing and personal services, for a period exceeding 24 hours, to three or more people not related to the owner or administrator by blood or marriage, who require such services, which may or may not be licensed by the State to include the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, or the Florida Department of Children and Families. Personal services shall not be construed to mean the provision of inpatient treatment.

The definition of residential care and treatment facility shall not include a community residential home, as provided by state law, F.S. § 419.001, namely, a dwelling unit licensed as defined in F.S. § 419.001 that serves residents as defined therein who are clients of these agencies, which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents, licensed by the aforementioned agencies, as well as, the clients of the Florida Department of Juvenile Justice. A community residential home of six or less residents that otherwise meets the definition of a community residential home as provided in F.S. § 419.001, shall also be excluded from the definition of residential care and treatment facilities or facility.

Facilities that make sober living arrangements also known as recovery residences, shall be certified by the state's designated credentialing entity established under Section 397.487 of the Florida Statutes, and shall be regulated as a residential care and treatment facility as provided in §§ 98-1987 through 98-1988, and §§ 98-1990 through 1992. If the required license or credentialing has been denied to a proposed facility, it is ineligible for a permit.

Facilities offering the services described in this definition for fewer than three people is within the meaning of this definition if it formally or informally advertises or solicits the public for residents or referrals and holds itself out to the public as an establishment, which regularly provides such services.

This definition does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders.

Supervisory residential care and treatment facilities A residential care and treatment facility that combines inpatient treatment with housing.

**Sec. 98-1987. – Residential care and treatment facilities.**

(a) Of six residents or less. Residential care and treatment facilities that are comprised of six residents or less, shall be permitted in low density residential districts (R-1, R-2, R-4 and RZ) or medium and high density residential districts (R-3, R-3-1, R-3-2, R-3-3, R-3-4 and R-3-5).

The applicant shall provide a current survey of the property, and copies of any previously approved plans (microfilms) obtained from the building department, and request a building and zoning inspection by completing an application and paying the corresponding fee. The purpose of the inspection is to verify that the property complies with this subdivision, and has not undergone modifications or improvements that were built without permits. The inspection fee is \$500 and a re-inspection fee is \$150, for each re-inspection.

(b) Of more than six residents. Residential care and treatment facilities, having more than six residents, shall be prohibited in areas zoned RO, R-1, R-2, R-4, R-Z and RDD and are allowed in R-3, R-3-1, R-3-2, R-3-3, R-3-4 and R-3-5.

The applicant shall provide a current survey of the property, and copies of any previously approved plans (microfilms) obtained from the building department, and request a building and zoning inspection by completing an application and paying the corresponding fee. The purpose of the inspection is to verify that the property complies with this subdivision, and has not undergone modifications or improvements that were built without permits. The inspection fee is \$500 and a re-inspection fee is \$150, for each re-inspection.

**Sec. 98-1988. - Supervisory residential care and treatment facilities.**

Supervisory residential care and treatment facilities are permitted as follows:

(a) Of six residents or less. Supervisory residential care and treatment facilities shall be permitted in low density residential districts (R-1, R-2, R-4 and RZ) or medium and high density residential districts (R-3, R-3-1, R-3-2, R-3-3, R-3-4 and R-3-5) by conditional use permit granted in accordance with division 6 of article II of this chapter, and shall provide in the application:

- i. The name of the sponsoring agency, if any;
- ii. The name of the operator of the facility;
- iii. The street address of the facility;
- iv. A description of programs to be provided or offered by the facility;
- v. The maximum number of persons or clients who will reside at the facility;
- vi. Status of all applicable federal, state and county licenses and authorization or certification;
- vii. Specifications as to how the proposed facility meets applicable licensing criteria for the safe care and supervision of the clients in the facility;
- viii. A description of the inpatient treatment and housing to be provided in the same premises;
- ix. The number of employees, shifts, and duties of each;
- x. The license issued by the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, or the Florida Department of Children and Families or the certification from the state's designated credentialing entity established under Section 397.487 of the Florida Statutes.
- xi. Applicants shall be subject to these distance requirements: 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing supervisory

residential care and treatment facility of 7 or more.

(b) Of more than six residents. Supervisory residential care and treatment facilities shall be permitted in districts or areas zoned (R-3, R-3-1, R-3-2, R-3-3, R-3-4 and R-3-5, and in C-1, C-2, CBD and CR, only by conditional use permit granted in accordance with division 6 of article II of this chapter and shall provide in the application the same information required under subsection (a)(i)-(x).

(c) Prior to the advertised public hearing before the planning and zoning board, the planning and zoning official shall consult with the water and sewer department, police department, fire department, and streets department, and shall submit a written report and recommendation evaluating the relevant zoning regulations and the following factors:

- i. Compatibility with surrounding community, to include: 1) a consistent maintenance schedule of the home inside and out, 2) the upkeep and grooming of the contiguous yards, 3) off-street parking, 4) the proper handling of trash;
- ii. Prevention of overconcentration by requiring a distance separation of 1,200 feet of another existing supervisory residential home of 7 or more residents, and a radius of 500 feet of a single-family home.
- iii. Strain on public safety services;
- iv. Proximity to a network of supportive public and private services; and
- v. The specifications as to how the facility meets the applicable licensing or certification criteria for the safe care and supervision of the clients and residents in the facility.

**Sec. 98-1989. – Community Residential Homes.**

(a) Six or fewer occupants. For a community residential home of six or less persons as defined in F.S. § 419.001 in a residential district, the applicant is subject to:

- (i) The zoning letter for the applicant to pursue it licensing

with the State.

(b) Prior to occupancy, the applicant shall provide the zoning official, in writing:

(1) Verification of the distance requirements as provided in § 419.001(2) are satisfied;

(2) the applicant must also provide the home's location, the residential district, the number of residents, and include a statement indicating the need for, and the licensing status of the proposed home and specifying how the home intends to function; and

(3) its license and status as issued by the state of Florida or from the appropriate licensing agency.

(c) *Seven to fourteen occupants.* A community residential home as defined in F.S. § 419.001(a) of seven to fourteen persons shall be permitted to site in a multifamily zoning district, with the exception of the Residential Development District, provided the applicant establishes the following:

(1) the applicable licensing criteria established and determined by the appropriate licensing entity are met;

(2) it shall house no more than fourteen residents, and conforms to existing zoning regulations applicable to other multifamily uses in the area;

(3) provide the specific address of the proposed site, and a written statement that explains how the home shall assure the safe care and supervision of its clients in the home; and

(4) provide the zoning official with verification of the distance requirements as provided in F.S. § 419.001(3)(c)(3) in order to show that a concentration of community residential homes in the area in proximity to the site selected would not result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered.

(5) Once the applicant satisfies the foregoing subsections,

the city shall review the application, and deemed permitted, if the city fails to review and respond to an application within 60 days of submission.

**Sec. 98-1990 - Reasonable Accommodation.**

(a) A conditional use permit otherwise required may be issued based on a reasonable accommodation only if a proposed facility cannot be located within the distance requirements of an existing facility, and:

1. The applicant demonstrates that the proposed facility will not interfere with the normalization and community integration of the residents of any existing facility, and that the presence of other facilities will not interfere with the normalization and community integration of the residents of the proposed facility;

2. The applicant demonstrates that the proposed facility in combination with any existing facility will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a de facto social service district by concentrating facilities on a block or in neighborhood;

3. The applicant demonstrates that the proposed facility will be compatible with the residential uses allowed as of right on the zoning district;

4. When the proposed facility would be located in a single-family zoning district, the applicant demonstrates that the proposed facility will not alter the residential stability of the single-family zoning district;

5. The applicant demonstrates that the applicant or the proposed facility has been granted certification by the State of Florida or license required by the State of Florida;

6. When the State of Florida does not offer certification or require a license for the proposed facility and the population it would serve, the application must demonstrate that the proposed facility will be operated in a manner effectively similar to that of a license or certified facility, that staff will be

adequately trained, that the facility will emulate a biological family and be operated to achieve normalization and community integration, and that the rules and practices governing how the facility is run will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medication;

7. The primary function of the proposed facility is residential as any treatment is merely incidental to the residential use of the property;

8. The applicant demonstrates that it will ensure that the proposed facility emulates a biological family and operated as a functional family, rather than as an institution, roominghouses, boardinghouses and lodgings, dormitories, fraternity houses, sorority houses, hospitals, apartment hotels, nursing homes, sanitariums, convalescent homes, nursing home, short term vacation rentals, continuing care facility, motels, hotels, inpatient treatment centers that are not residential care and treatment facilities, rehabilitation centers, and other similar facilities, or a nonresidential use; and

9. The applicant demonstrates that the requested number of residents in the proposed facility will not interfere with the normalization and community integration of the occupants of any existing facility.

(b) Reasonable accommodation shall be decided by either the City Council or a Special Magistrate appointed by the City, subject to the approval of the City Council.

(c) The application fee of \$300.00 is paid.

**Sec. 98-1991- Emergency Power**

Supervisory Residential Care and Treatment Facilities, and community residential homes of seven persons or more shall provide an adequate fully operational emergency power source, and a supply of fuel sufficient to sustain the emergency power source for at least 5 days during a power outage, to power the facility to:

1. Power life safety equipment used or needed by the residents;

2. Consistently maintain an ambient air temperature of 81° F. or less within one or more areas of the facility having enough space to safely hold all of the facility's residents; and

3. Allow for the refrigeration and heating for preparation of food and beverages that are served by the facility to its residents, and for the storage of ice.

**Sec. 98-1992 – No Use Variances.**

No use variances shall be permitted for residential care and treatment facilities, nor for community residential homes in F.S. § 419.001 or that otherwise meets the definition of a community residential home as provided therein.

\* \* \*

**Section 2: Repeal of Ordinances in Conflict.**

Ordinance No. 2018-023, and all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 5: Inclusion in Code.**

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 6: Effective Date.** This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

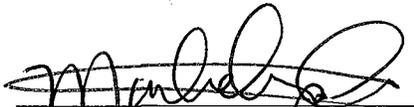
PASSED and ADOPTED this 26 day of March, 2019.

THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Vivian Casals-Muñoz  
Council President

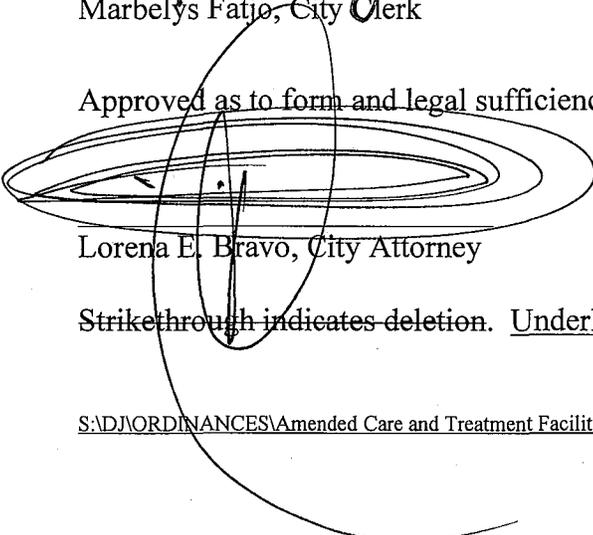
Attest:

Approved on this 3 day of April, 2019.

  
Marbelys Fatjo, City Clerk

  
Carlos Hernandez, Mayor

Approved as to form and legal sufficiency:



Lorena E. Bravo, City Attorney

Ordinance was adopted by a 7-0 vote with Councilmembers, Caragol, Zogby, Lozano, Casáls-Munoz, Hernandez, Garcia-Martinez and Cue-Fuente voting "Yes".

~~Strikethrough indicates deletion.~~ Underline indicates addition.

S:\ADJ\ORDINANCES\Amended Care and Treatment Facilities and repealing existing v2.docx