

Memorandum



Date: August 22, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Response to Resolution No. R-442-14 – Sober Houses

On May 6, 2014, the Board of County Commissioners (Board) passed Resolution No. R-442-14 directing the Mayor to determine, with input from the Miami-Dade County Addiction Services Board, what local action can be taken by the Board to regulate sober houses to the extent permissible under the Fair Housing Act and the Americans with Disabilities Act. To that end, the attached report has been prepared by the Department of Regulatory and Economic Resources (RER) in consultation with other County departments, the County Attorney's Office and the Miami-Dade Addiction Services Board. The report provides a brief overview of "sober houses" including definitions and the current regulatory framework.

Should you have any questions regarding the attached report, please do not hesitate to contact Jack Osterholt, Deputy Mayor/Director, RER, or Lourdes Gomez, Deputy Director, RER, at 305-375-2886.

Attachment

c: Robert A. Cuevas, Jr., County Attorney
Jack Osterholt, Deputy Mayor/Director, RER
Lourdes Gomez, Deputy Director, RER
Charles Anderson, Commission Auditor

SOBER HOUSES REPORT

July 31, 2014

I. What is a Sober House?

“Sober house” is a recent term used to describe certain residential facilities that cater to individuals recovering from alcoholism and drug addiction. Although the term lacks definition in the Florida Statutes as explained below, internet searches revealed many sources with similar definitions.

In general, a sober house, which is also referred to as a ¾ house, recovery house, or transitional living facility, serves resident individuals recovering from alcoholism and drug addiction with the ultimate purpose of aiding their focus on recovery. Its residents are individuals coming directly from rehabilitation or 12-step programs, halfway houses, or inpatient treatment facilities. They may also be individuals who simply want to have a sober environment to aid them in their transition. If well run, a sober house should provide a valuable method of assisting individuals in their long-term recovery from drug addiction and alcoholism, allowing recovering alcoholics and addicts a sober environment to live a normal life while they continue their recovery. Commonly, the services provided in sober houses are limited to housing, meals, and support-group-type activities, such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA).

II. State of Florida.

Florida law lacks a definition for “sober house,” in contrast to other types of facilities that provide “treatment services” related to substance abuse. For example, in Chapter 65D-30, Florida Administrative Code, the State clearly defines a series of residential-type facilities, ranging from what are commonly known as “group homes” to “residential treatment facilities.” Such facilities addressing substance abuse are subject to a State licensing process based on the provision of what State law defines as “treatment services.” By definition, “treatment services” do not include support-group activities such as AA or NA, which appear to be the only substance abuse services provided at sober houses. In the 2014 legislative session, Florida Senate Bill 582 was introduced to define and provide guidance for the operation and management of “sober house transitional living homes,” but SB 582 died in the Appropriations Committee on May 2, 2014.

In light of this lack of State guidance and oversight, some local governments have come up with their own regulations for these types of facilities. However, some of these local regulations are facing legal challenges primarily from providers (i.e. Delray Beach, Florida and Newport Beach, California).

III. Miami-Dade County Zoning Code.

As discussed below, the County’s Zoning Code provides for three uses which could, in theory, authorize Sober Houses subject to certain conditions. The first use is a “Rooming House.” The second and third

uses, the "Group Home" and the "Community Residential Home," are by definition only for uses licensed by the State of Florida Department of Health and Rehabilitative Services. As Sober Houses are not currently licensed by the State of Florida, a Sober House would generally not be either a "Group Home" or a "Community Residential Home" under the County's Zoning Code. However, because Sober Houses are not precisely defined, an institution that is licensed by the State of Florida to provide Level 5 addiction treatment services could call itself a "Sober House," and such an institution could be authorized as a Group Home or Community Residential Home under the County's Zoning Code. According to the State, Level 5 programs are those that provide only housing and meals to clients; the clients are mandated to receive services at alternate locations in facilities that are owned and operated by the same provider. County staff is not aware of any Sober House that is operating as such.

The definitions section of the Zoning Code (§ 33-1) provides the following:

Rooming house. A residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to less than five (5) transient or permanent guests or tenants and in which less than five (5) and more than three (3) rooms are used for the accommodation of such guests or tenants, but which does not maintain a public dining room or cafe in the same building, nor in any building in connection therewith.

A rooming house is permitted in RU-3 and higher residential zoning districts. Rooming houses must be in accordance with Section 17-29 Minimum Housing Enforcement of Rooming Houses.

Group home. A dwelling unit licensed by the State of Florida Department of Health and Rehabilitative Services which is licensed to serve resident clients and which provides a living environment for not more than six (6) unrelated residents who operate as a functional equivalent of a family. Supervisory and supportive staff as may be necessary to meet the physical, emotional, and social needs of the resident clients shall be excluded in said count.

Group homes are permitted in all RU, EU and AU zoning districts subject to the description below (found in Sections 33-324, 33-325.1, 33-226, 33-230, 33-234, 33-279).

A group home shall be permitted in a dwelling unit provided that:

- (a) The total number of resident clients on the premises not exceed six (6) in number.
- (b) The operation of the facility be licensed by the State of Florida Department of Health and Rehabilitative Services and that said Department or sponsoring agency promptly notify the Director of the Building and Zoning Department of said licensure no later than the time of home occupancy.
- (c) The structure used for a group home shall be located at least one thousand (1,000) feet from another existing, unabandoned legally established group home. The 1,000-foot distance requirement shall be measured by following a straight line from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use.

Community residential home. A dwelling unit licensed to serve clients of the State of Florida Department of Health and Rehabilitative Services, which provides a living environment for seven (7) to fourteen (14) unrelated residents who operate as the functional equivalent of a family. Supervisory and

supportive staff as may be necessary to meet the physical, emotional, and social needs of the resident clients shall be excluded from said count.

Community residential homes are permitted in RU-3 and higher residential zoning districts, subject to the following:

- (a) That the total number of resident clients on the premise not exceed fourteen (14) in number. However, facilities for more than fourteen (14) resident clients may be approved through a public hearing pursuant to Section 33-13;
- (b) That the operation of the community residential home be licensed by the State of Florida Department of Health and Rehabilitative Services;
- (c) That the community residential home not be located within a radius of one thousand two hundred (1,200) feet of another existing, unabandoned legally established community residential home in a multi-family zone. The one thousand two hundred-foot distance requirement shall be measured by following a straight line from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use;
- (d) That the community residential home conform to existing zoning regulations applicable to other multiple family uses permitted by this section;
- (e) That the sponsoring agency of the community residential home notify the Director in writing of its intention to establish such facility. Such notice shall contain the address and legal description of the site, the number of resident clients, as well as a statement from the State of Florida Department of Health and Rehabilitative Services indicating the need for and licensing status of the proposed facility. Absence of this notification and statement shall prohibit the use and occupancy of any structure for use as a community residential home; and
- (f) Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in the substantial physical damage to the property of others.

The following table summarizes this discussion, in general:

Housing Type	Number of residents	Addiction Services offered	State of Florida	Miami-Dade County
Group Home (requires a license from the State of Florida Department of Health and Rehabilitative Services, per the definition of Group Home in the County's Zoning Code)	Six or less individuals	To be eligible for State license, would need to offer Level 5 Residential Treatment	Licensed by the State	Allowed in residential single-family zoning districts subject to the spacing requirement

Community Residential Home (requires a license from the State of Florida Department of Health and Rehabilitative Services, per the definition of Community Residential Home in the County's Zoning Code)	Seven to fourteen individuals	To be eligible for State license, would need to offer Level 5 Residential Treatment	Licensed by the State	Allowed in RU-3 or higher
Rooming House	less than 5 individuals	May provide a range of support and/or services, such as AA or NA	Not licensed by the State	Allowed in RU-3 and higher

IV. Legal Considerations.

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability. According to the County Attorney's Office, in the context of this analysis, both Acts may constrain the regulatory options of local governments. If, for instance, the County passed regulations to allow for sober houses within single family zoning districts, those regulations may need to extend to other potential classes of rooming arrangements throughout the community (for example, recovering gambling addicts).

V. Miami-Dade County Addiction Services Board.

As requested by the Board, RER staff has been in consultation with the County's Addiction Services Board (ASB). RER staff attended the ASB meetings of May 14, 2014 and June 11, 2014. At the May 14 meeting, the ASB members discussed the pros and cons of regulating sober houses, legal considerations, and the intricacies of their operations. During this meeting, RER staff learned that the local Department of Children and Families (DCF) staff receives referrals and inquiries regarding practices at sober houses but find themselves with no jurisdiction for enforcement as these establishments are not offering services licensed by the State. It was also suggested that staff consult with the Miami-Dade Tax

Collector's Office regarding any potential local licensing which might impact sober houses and with RER's Consumer Protection Division as to the potential for regulating the activity in a manner similar to that of pain clinics.

Miami-Dade Tax Collector. Miami-Dade Tax Collector staff has indicated that if a sober house is operated as a rooming house as provided above, it would require compliance with the local business tax subsequent to the issuance of a certificate of use. If a sober house were to be licensed by the State and operated in a manner similar to a "group home" in a residential district, the Tax Collector would deem the activity not to be a business and therefore not subject to local business tax. Tax Collector staff advised that their office does not regulate activities such as this.

RER Office of Consumer Protection. On August 2, 2011, the Board adopted Ordinance No. 11-61 requiring the registration of all pain clinics operating in Miami-Dade County. RER's Consumer Protection staff has indicated that the County's registration process requires pain clinics, among other things, to show proof of various federal, state and local licenses for the clinic and all physicians working with the clinic, including the designation of a licensed physician responsible for the clinic's operations. As such, the required clinic/physician licensing differentiates the pain clinics from a sober house in the context of this report since the County relies on compliance with an external licensing process for pain clinics, which is not available for sober houses.

At the June 11, 2014 ASB meeting, RER presented a series of initial findings including the information above. After some discussion, the ASB members concluded that, in the context of the legal considerations presented by the ADA and FHA, and absent guidance from the State, the County should enforce its current zoning regulations in better coordination with the State to address the proliferation of sober houses in residential single-family districts. RER staff also agreed to meet with DCF staff to facilitate better coordination and communication between agencies to respond to community concerns regarding sober houses. Some ASB members also suggested that the State legislature should be urged to address the issue.

VI. Conclusions.

- As defined in this document, Sober Houses (no treatment services and not licensed by the State) are not allowed in residential, single-family or two-family zoned districts in unincorporated Miami-Dade County. They would be allowed as rooming houses in the residential, multi-family zoning districts (RU-3 and higher).
- Facilities similar to Sober Houses that provide treatment services in conformance with State regulations are defined as "residential treatment facilities" and are licensed by the State (as Level 5 Residential Treatment). At the residential single-family level, these licensed facilities could be approved as "group homes." Once licensed by the State, these facilities are subject to DCF regulation and enforcement efforts.
- The Neighborhood Regulations Division of the Department of Regulatory and Economic Resources (RER) has begun coordination efforts with DCF staff on this matter. The Division which would handle code enforcement complaints pertaining to "sober houses" has provided

territory maps to DCF so they may readily identify properties that are within unincorporated Miami-Dade County and subject to our jurisdiction. The Division Director for Neighborhood Regulations will serve as the liaison and main point of contact for enforcement referrals or requests for joint inspections from DCF to facilitate timely responses to concerns reported in the community. In turn, the Division Director will direct Neighborhood Compliance Officers to advise their respective Supervisors of any complaints reporting a single family residence operating as a “sober house” within their assigned territory. The Division Director will relay this information to DCF to coordinate an initial inspection as warranted. Furthermore, DCF staff will report to the Division Director unlicensed facilities located within residential single-family districts in unincorporated Miami-Dade County. Conversely, County staff will check with DCF staff to verify any licensing requirements as needed.

- On July 11, 2014, RER staff and DCF staff held an informational session with municipal planners to review the subject matter. The purpose of the meeting was to share the County’s findings and to introduce the DCF staff to our municipal counterparts. A contact list with enforcement referral information for each of the municipalities was provided to DCF, so that they may have a point of contact when identifying properties of concern outside of Miami-Dade County’s jurisdiction.