SARASOTA COUNTY GOVERNMENT

Planning and Development Services

TO: Sarasota County Commission

THROUGH: Thomas A. Harmer, County Administrator

FROM: Thomas C. Polk, Director, Planning and Development Services

Brad Bailey, Operational Manager, Planning and Development Services

DATE: August 24, 2015

SUBJECT: **Zoning Ordinance Amendment No. 83 relating to Community Residential Homes**

RECOMMENDED MOTION(S) OR ACTION(S):

(First public hearing) To adopt Ordinance No. 2015-056, approving Zoning Ordinance Amendment No. 83, relating to Community Residential Homes. (Second public hearing scheduled for October 28, 2015.)

BACKGROUND:

Chapter 419.001, Florida Statutes, relates to community residential homes, otherwise known as residential care facilities or "sober houses," and requires local governments to adopt zoning language that is consistent with the statute. Based on this requirement, the Office of the County has drafted proposed Zoning Ordinance language to ensure consistency with Florida Statutes. The proposed changes to the Ordinance will clarify and define the regulation, specifically amending Sections 5.1.2, 512.b and c, 6.5.6, 6.6.5, 7.1.7.b, and 10.2 of the Regulations. The proposed changes include:

- **Removing Separation Distances for Community Residential Homes and Amending the Definition of Family**

  Several courts have found separation distances for residential care facilities or "sober houses" to be discriminatory against handicapped persons and a violation of the Fair Housing Act. Sarasota County was involved with the "Renaissance Manor" or "Tammi House" case, which contested the enforcement of the provisions of the County ordinance that included separation distance and definition of family. Although the settlement agreement between the parties agreed that there was no admission of liability, staff recognizes the need to remove the separation requirement within the code, as well as a revision to the definition of family.

  A new definition for "single housekeeping unit" will also be added to the Zoning Regulations, and will define such as, "One person or two or more individuals living together sharing the entire dwelling unit and household responsibilities and activities, which may include: (1) sharing expenses for food, rent, utilities or other household items; (2) sharing chores; (3) eating meals together; (4) participating in recreational activities together; and (5) having close social, economic, and psychological commitments to each other."

Additionally, the proposed ordinance changes the definition of the term family. It defines a family as "one or more persons living together as a single housekeeping unit." The term includes a community residential home, where the group operates as a single housekeeping unit. The new language in the definition of "family" creates a rebuttable presumption that no family exists if there are more than six persons unrelated by blood, adoption, marriage, or are under a judicial order for foster care living together in the same dwelling unit. However, the presumption may be rebutted by demonstrating the existence of a single housekeeping unit to the Zoning Administrator. Such demonstration may include a lease agreement, utility bills, and affidavits from the occupants.

- **Minimum Living Standards to Prevent Overcrowding**

Historically, local governments have enacted residential occupancy standards in zoning ordinances to limit the number of inhabitants of a dwelling. Generally, these residential occupancy standards are designed to combat overcrowding. Overcrowding creates both health and safety problems (transmission of disease, ability to exit safely in an emergency, psychological stress, etc.) and compatibility problems (excessive noise, parking problems, traffic congestion, etc.). These local laws sometimes require persons to purchase or rent more living space than they feel they need.

Within amendments enacted in 1988, the Fair Housing Act (FHA) now prohibits housing discrimination on the basis of handicap 42 U.S.C. § 3604(f) (1) (2011). The Act also defines discrimination to include "a refusal to make a reasonable accommodation in rules, polices, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f) (3) (B) (2011). The Act applies to zoning decisions. A reasonable accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

The FHA specifically provides to persons whose housing opportunities were negatively impacted by residential occupancy standards a potential claim for housing discrimination against local governments. *See* 42 U.S.C. § 3601 (2014). An exemption exists in the FHA, however, which limits liability for discrimination claims based upon occupancy restrictions. 42 U.S.C. § 3607(b) (1) (2014). The exemption states, "Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." *Id.*

The proposed changes to the Zoning Regulations are designed to prevent overcrowding in residential areas. Our current regulations do not include the best language designed to take advantage of this exemption. The current regulations include a definition of "family" and limit density of dwelling units on a property, but do not include minimum standards for use of space within a residence. Based on the minimum habitable floor area in the Florida Building Code and case law for other communities, the proposed language of the draft ordinance now includes requirements for gross floor area of at least 80 square feet for each board room or sleeping area, and that where more than two persons occupy a boarding room or sleeping area, the required floor area shall be increased at the rate of 60 square feet for each occupant in excess of two.

The deficiency in our current regulations is probably best explained by considering case law governing the FHA exemption that allows for restrictions as to maximum number of occupants. In *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995), the United States Supreme Court considered for the first time the language of this exemption. *Id.* at 728. The sole issue before the Court was whether a provision in the City of Edmonds' zoning code qualified for the exemption. *Id.* The City's zoning provisions defined who may live in single-family dwelling units. *Id.* at 729. Specifically, the occupants of the dwelling units must compose a "family" which was defined as "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage." *Id.*

Section 10.2 of the Zoning Regulations, Appendix A, Sarasota County Code, contains several pertinent definitions to an analysis of the FHA exemption. First, a "dwelling" is defined as "any building, or part thereof, occupied in whole or in part, as the residence or living quarters of one or more persons, permanently or temporarily, continuously or transiently, with cooking and sanitary facilities." SARASOTA COUNTY, FLA., CODE, APP. A., § 10.2 (2014). Further, a "dwelling unit" is defined as "a room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure and containing sleeping and sanitary facilities and one kitchen." *Id.* A "family" is defined as:

> "One or more persons occupying a single dwelling unit, provided that, unless all members are related by law, blood, adoption marriage, or are under a judicial order for foster care, no such family shall contain over four persons, except in the RMF district where no such family shall contain more than six persons. A family consisting of individuals protected by the Fair Housing Act shall not contain over six persons in any district. Domestic servants employed on the premises may be housed on the premises without being counted as a separate or additional family or families. The term "family" shall not be construed to mean a fraternity, sorority, club, monastery or convent, or institutional group."

Id. A "group home" is defined as:

> "A facility licensed to serve clients of the Department of Children and Family Services that provides a living environment for 15 or more unrelated residents, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Resident means any of the following as defined in the Florida Statutes: a frail elder (§ 400.618); a physically disabled or handicapped person (§ 760.22(7)(a)); a developmentally disabled person (§ 393.063(12)); a nondangerous mentally ill person (§ 394.455 (18)); or a child (§ 39.01(14), 984.03(9) or (12) or 985.03(8)) (See also Community Residential Home)."

Id. Turning to the application of these definitions within the Limited and Special Exception Use Standards, Section 5.3.2.c of the Zoning Regulations states:

> c. *Group Living*. Group living is permitted in accordance with the use table in Section 5.1, subject to the following standards:

"1. Each separate room or group of rooms designed or intended for use as a residence by an individual or a family and having kitchen facilities shall be equal to one dwelling unit.

2. Each separate bedroom or bedroom and associated rooms containing two beds, designed or intended for use as a residence and not having kitchen facilities but having access to a common dining area, shall be equal to one-half dwelling unit.

3. Each separate bedroom or bedroom and associated rooms containing only one bed, designed or intended for use as a residence by an individual or a couple and not having kitchen facilities but having access to a common dining area, shall be equal to one-quarter dwelling unit.

4. Where beds are provided for residents in the nature of a hospital or nursing home ward rooms, as opposed to residential dwelling units with three or more beds, each bed shall be equal to one quarter dwelling unit**.**

5. In the OUR and OUE Districts, the maximum density of a group living facility shall be six persons per acre. In all other districts, the maximum district density shall apply.

6. All other State and County regulations in regard to such establishments shall be met.

7. Group living in the GU District shall be permitted where directly associated with an adjacent hospital or similar medical facility."

SARASOTA COUNTY, FLA., CODE, App. A., § 5.3.2.c (2014) (emphasis added).

There is an argument to be made that the occupancy restrictions contained in the Zoning Regulations are both "reasonable" and articulate "the maximum number of occupants permitted to occupy a dwelling." Specifically, under subsections 3 and 4 above, the maximum number of occupants per bed would be one or two, each bed would count as one dwelling unit, and the number of dwelling units is capped at 3.5 dwelling units/acre under the RSF-2 zoning district. However, this may be a difficult argument to win because 42 U.S.C. § 3607(b)(1) only exempts total occupancy limits intended to prevent overcrowding, and not ordinances that are designed to promote the family character of a neighborhood. *Oxford House, Inc. v. City of St. Louis*, 77 F.3d 249, 251 (8th Cir. 1996).

Because the County's current occupancy restrictions for group homes differs from other communities that set a maximum occupancy based on habitable living space per person, or bedroom space per person, it is difficult to predict whether a court will find this occupancy restriction to be "reasonable." Any exemptions contained in the Fair Housing Act are narrowly construed. *Elliot v. City of Athens, Ga.*, 960 F.2d 975, 978-79 (11th Cir. 1992), *abrogated on other grounds by City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). For that reason, there may be some hurdles to overcome to convince a court that these occupancy restrictions are neutrally applied. The *City of Edmonds* case, the

court struck down the zoning provisions because, they did not apply uniformly to *all* residents of *all* dwelling units, but rather only applied to unrelated persons (*City of Edmonds*, 514 U.S. at 733-340. In this instance, the occupancy limitations will apply equally to dormitories, fraternities, sororities, boarding houses, nursing homes, assisted living facilities, and all other group living arrangements. The exception to this is for community residential homes, which serve the clients of the Department of Children and Families. Additionally, the definition of family caps the number of residents at four persons/dwelling unit in the RSF zoning districts, so the residents of the proposed group home are not subject to a more stringent standard than others in an RSF zoning district. However, the occupancy standards change depending on whether the zoning district is RSF or RMF. Further, the occupancy standards vary depending on whether there is a kitchen in the dwelling unit. For these reasons, proving an exemption may be difficult.

By including new minimum living standards to prevent overcrowding, the Zoning Regulations will now be consistent with United States Supreme Court interpretation of the FHA exemption.

- **Group Living**

  The Use Table in Section 5.1.2 of the Zoning Regulations will change to allow all group living to be treated the same and thus try to prevent allegations of discrimination based on disability in violation of the Fair Housing Act. Community Residential Homes (which by definition must operate as a single housekeeping unit) are treated as Household Living. There will now be one row designating the allowed zoning districts for group living under the Zoning Regulations. No distinctions are made based on whether the use is a dormitory, boarding house, group home, or assisted living facility.

  The definitions of "Group Home" and "Group Living" are amended to carry out this change, and to make them consistent with changes to the Florida Statutes. The definition of Boarding House has been updated to include the concept that its occupants do not operate as a single housekeeping unit. Additionally, a definition of Rooming House has been added.

- **Off Street Parking Ratios**

  Although there are no changes proposed to the parking provisions of the Zoning Regulations, County staff and the Office of the County Attorney include it with the draft ordinance because parking may be a concern expressed by some citizens due to of the changes proposed to the Zoning Regulations. A common complaint about community residential homes (which by definition must operate as a single housekeeping unit) involves the number of cars parked outside the residence. However, this same complaint often accompanies other residential uses even by traditional families. Should the Board of County Commissioners desire to change the required parking ratios, it should do so in a manner which does not discriminate based on status of use of property as a community residential home. The basis for the parking ratios should apply standards uniformly to the specific residential use.

- **RSF and RMF Development Intensity**

  The language in Sections 6.5.6 and 6.6.5 of the Zoning Regulations should be corrected to fix an oversight. The current language speaks in terms of "nonresidential development", while these standards should apply to all development. Additionally, the language regarding Waterfront Yard Setbacks has been repaired to distinguish between commercial and residential yards and the required setbacks.

RELEVANT PRIOR BOARD ACTION:

N/A

PROCUREMENT ACTION:

N/A

ANALYSIS/NEXT STEPS:

Two public hearings are required. The second public hearing is scheduled for October 28, 2015.

FUNDING:

N/A

STAFF RECOMMENDATION(S):

Based on the State of Florida requirement for local municipalities to adopt language consistent with Florida Statute, Section 419.001, Staff recommends approval of Zoning Ordinance Amendment No. 83.

ATTACHMENTS:

1. Zoning Ordinance Amendment No. 83 Community Residential Homes
2. Ordinance Impact Statement