

..Number

041402

..Version

PROPOSED SUBSTITUTE B

..Reference

..Sponsor

ALD. D'AMATO

..Title

A substitute ordinance relating to zoning regulations for certain types of group living facilities.

..Sections

200-42.5 cr

295-201-144 cr

295-311-2-i-2 rc

295-503-2-f-1 am

295-503-2-f-2-a am

295-503-2-g am

295-503-2-h-1 am

295-503-2-h-3 rp

295-503-2-h-4 rn

295-503-2-h-4 rc

295-503-2-h-5 rn

295-603-2-b-1 am

295-603-2-b-2-a am

295-603-2-c am

295-603-2-d-1 am

295-603-2-d-3 rp

295-603-2-d-4 rn

295-603-2-d-4 rc

295-603-2-d-5 rn

295-703-2-c-1 am

295-703-2-c-2-a am

295-703-2-d am

295-703-2-e-1 am

295-703-2-e-3 rp

295-703-2-e-4 rn

295-703-2-e-4 rc

295-703-2-e-5 rn

295-803-2-a-1 am

295-803-2-a-2-a am

295-803-2-b am

295-803-2-c-1 am

295-803-2-c-3 rp

295-803-2-c-4 rn

295-803-2-c-5 rc

295-803-2-c-5 rn  
295-905-2-b-1-a am  
295-905-2-b-1-c rc  
295-905-2-b-2-a am  
295-905-2-b-3-a am  
295-905-2-b-3-d am

..Analysis

Currently, the zoning code requires adult family homes, small group shelter care facilities, small foster homes, group homes, group foster homes and community living arrangements to be located at least 2,500 feet apart from one another and from other types of group living facilities. If one of these facilities cannot meet this standard, it is classified as a special use and must be approved by the board of zoning appeals.

This ordinance eliminates the 2,500-foot distance requirement for these facilities provided all residents of a facility (other than the operator or care provider or the operator or care provider's immediate family) are disabled, as indicated by the required state license application. If any residents of a facility are not disabled, the facility will still be subject to the 2,500-foot rule. In conjunction with the creation of the exception for facilities with disabled residents, this ordinance creates a zoning code definition of "disabled person".

Another change made by this ordinance with respect to group living facility regulations is the designation of the local common council member, or the council member's designee, as the local government representative on the community advisory committee which any applicant for licensure of a group home or community living arrangement is required by state law to make a good-faith effort to establish. Previously, the local government representative was not specified.

This ordinance also eliminates a limited use standard for group homes, group foster homes and community living arrangements that requires that the use not be determined by the common council to be a nuisance, pursuant to the provisions of s. 62.23(7)(i), Wis. Stats.

Finally, this ordinance provides that whenever the commissioner of city development issues a certificate of occupancy for an adult family home, group home, group foster home, community living arrangement, small group shelter care facility or large group shelter care facility, the commissioner shall send, by first class mail, notice of such issuance to each owner of property within 200 feet of the facility for which the certificate was issued. The notice shall state the type of facility, the number and type or types of clients the facility will be licensed to serve, and the name, address and telephone number of the state agency which licenses the facility and to which the property owner may submit any comments, questions or complaints regarding the facility.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-42.5 of the code is created to read:

**200-42.5. Notice Following Issuance of Certificate of Occupancy for Group Living Facility.** Whenever the commissioner of city development issues a certificate of occupancy for an adult family home, group home, group foster home, community living arrangement, small group shelter care facility or large group shelter care facility, the commissioner shall send, by first class mail, notice of such issuance to each owner of property within 200 feet of the facility for which the certificate was issued. The notice shall state the type of facility, the number and type or types of clients the facility will be licensed to serve, and the name, address and telephone number of the state agency which licenses the facility and to which the property owner may submit any comments, questions or complaints regarding the facility.

Part 2. Section 295-201-144 of the code is created to read:

**295-201. Definitions.**

**144.** DISABLED PERSON means a person who is or will be housed in a community living arrangement or other group living facility required to be licensed by the state of Wisconsin and who falls into one or more of the following client groups:

- a. Advanced age.
- b. Irreversible dementia/Alzheimer's disease.
- c. Developmental disability.
- d. Emotionally disturbed/mental illness.
- e. Physical disability.
- f. Terminal illness.
- g. Traumatic brain injury.
- h. Acquired immunodeficiency syndrome (AIDS).
- i. Alcohol or other drug abuse.
- j. Any other physical or mental impairment which substantially limits one or more of such person's major life activities, or a record of having such an impairment, provided the impairment is not related to current, illegal use of, or an addiction to, a controlled substance.

Part 3. Section 295-311-2-i-2 of the code is repealed and recreated to read:

## **295-311. Appeals.**

### **2. SPECIAL USE PERMITS.**

i. Additional Findings for a Group Home, Group Foster Home, Community Living Arrangement, Small Group Shelter Care Facility or Large Group Shelter Care Facility.

i-2. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee. This provision shall not apply to an applicant for a special use permit for a small or large group shelter care facility.

Part 4. Section 295-503-2-f-1 of the code is amended to read:

### **295-503. Uses.**

#### **2. LIMITED USE STANDARDS.**

f. Adult Family Home or Small Group Shelter Care Facility.

f-1. Adult Family Home. >> All residents of the adult family home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the<< ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, small foster home, group home or group foster home, or another adult family home.

Part 5. Section 295-503-2-f-2-a of the code is amended to read:

f-2. Small Group Shelter Care Facility.

f-2-a. >> All residents of the small group shelter care facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the<< ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, adult family home, small foster home, group home or group foster home, large group shelter care facility or another small group shelter care facility.

Part 6. Section 295-503-2-g of the code is amended to read:

g. Small Foster Home. > > All residents of the small foster home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, group home or group foster home, or another small foster home.

Part 7. Section 295-503-2-h-1 of the code is amended to read:

h. Group Home, Group Foster Home or Community Living Arrangement.

h-1. > > All residents of the facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home or another group home, group foster home or community living arrangement.

Part 8. Section 295-503-2-h-3 of the code is repealed.

(Note: The provision being repealed reads as follows:

h-3. The use has not been determined by the common council to be a nuisance under s. 62.23(7)(i), Wis. Stats.)

Part 9. Section 295-503-2-h-4 and 5 is renumbered 295-503-2-h-3 and 4.

Part 10. Section 295-503-2-h-4 of the code is repealed and recreated to read:

h-4. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee.

Part 11. Section 295-603-2-b-1 of the code is amended to read:

### **295-603. Uses.**

#### **2. LIMITED USE STANDARDS.**

b. Adult Family Home or Small Group Shelter Care Facility.

b-1. Adult Family Home. > > All residents of the adult family home, other than the operator or care provider and the operator and care provider's immediate family, shall

be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, small foster home, group home or group foster home, or another adult family home.

Part 12. Section 295-603-2-b-2-a of the code is amended to read:

b-2. Small Group Shelter Care Facility.

b-2-a. > > All residents of the small group shelter care facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, adult family home, small foster home, group home or group foster home, large group shelter care facility or another small group shelter care facility.

Part 13. Section 295-603-2-c of the code is amended to read:

c. Small Foster Home. > > All residents of the small foster home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, group home or group foster home, or another small foster home.

Part 14. Section 295-603-2-d-1 of the code is amended to read:

d. Group Home, Group Foster Home or Community Living Arrangement.

d-1. > > All residents of the facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home or another group home, group foster home or community living arrangement.

Part 15. Section 295-603-2-d-3 of the code is repealed.

(Note: The provision being repealed reads as follows:

d-3. The use has not been determined by the common council to be a nuisance under s. 62.23(7)(i), Wis. Stats.)

Part 16. Section 295-603-2-d-4 and 5 of the code is renumbered 295-603-2-d-3 and 4.

Part 17. Section 295-603-2-d-4 of the code is repealed and recreated to read:

d-4. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee.

Part 18. Section 295-703-2-c-1 of the code is amended to read:

**295-703. Uses.**

**2. LIMITED USE STANDARDS.**

c. Adult Family Home or Small Group Shelter Care Facility.

c-1. Adult Family Home. > > All residents of the adult family home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, small foster home, group home or group foster home, or another adult family home.

Part 19. Section 295-703-2-c-2-a of the code is amended to read:

c-2. Small Group Shelter Care Facility.

c-2-a. > > All residents of the small group shelter care facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, adult family home, small foster home, group home or group foster home, large group shelter care facility or another small group shelter care facility.

Part 20. Section 295-703-2-d of the code is amended to read:

d. Small Foster Home. > > All residents of the small foster home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, group home or group foster home, or another small foster home.

Part 21. Section 295-703-2-e-1 of the code is amended to read:

e. Group Home, Group Foster Home or Community Living Arrangement.

e-1. > > All residents of the facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the < < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home or another group home, group foster home or community living arrangement.

Part 22. Section 295-703-2-e-3 of the code is repealed.

(Note: The provision being repealed reads as follows:

e-3. The use has not been determined by the common council to be a nuisance under s. 62.23(7)(i), Wis. Stats.)

Part 23. Section 295-703-2-e-4 and 5 of the code is renumbered 295-703-2-e-3 and 4.

Part 24. Section 295-703-2-e-4 of the code is repealed and recreated to read:

e-4. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee.

Part 25. Section 295-803-2-a-1 of the code is amended to read:

## **295-803. Uses.**

### **2. LIMITED USE STANDARDS.**

a. Adult Family Home or Small Group Shelter Care Facility.

a-1. Adult Family Home. > > All residents of the adult family home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the < < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, small foster home, group home or group foster home, or another adult family home.

Part 26. Section 295-803-2-a-2-a of the code is amended to read:



a-2. Small Group Shelter Care Facility.

a-2-a. > > All residents of the small group shelter care facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, adult family home, small foster home, group home or group foster home, large group shelter care facility or another small group shelter care facility.

Part 27. Section 295-803-2-b of the code is amended to read:

b. Small Foster Home. > > All residents of the small foster home, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a community living arrangement, group home or group foster home, or another small foster home.

Part 28. Section 295-803-2-c-1 of the code is amended to read:

c. Group Home, Group Foster Home or Community Living Arrangement.

c-1. > > All residents of the facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home or another group home, group foster home or community living arrangement.

Part 29. Section 295-803-2-c-3 of the code is repealed.

(Note: The provision being repealed reads as follows:

c-3. The use has not been determined by the common council to be a nuisance under s. 62.23(7)(i), Wis. Stats.)

Part 30. Section 295-803-2-c-4 and 5 of the code is renumbered 295-803-2-c-3 and 4.

Part 31. Section 295-803-2-c-4 of the code is repealed and recreated to read:

c-4. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis.

Stats., as applicable, with the local government representative being the local common council member or the council member's designee.

Part 32. Section 295-905-2-b-1-a of the code is amended to read:

**295-905. Institutional District (TL).**

**2. USES.**

b. Limited Use Standards.

b-1. Group Home or Group Foster Home.

b-1-a. > > All residents of the facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home, community living arrangement or another > > group home or< < group foster home.

Part 33. Section 295-905-2-b-1-c of the code is repealed and recreated to read:

b-1-c. Prior to initial licensure of the group home or group foster home by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home or group foster home, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4), Wis. Stats., with the local government representative being the local common council member or the council member's designee.

Part 34. Section 295-905-2-b-2-a of the code is amended to read:

b-2. Small Group Shelter Care Facility.

b-2-a. > > All residents of the small group shelter care facility, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of an adult family home, community living arrangement, small foster home, group home or group foster home, large group shelter care facility or another small group shelter care facility.

Part 35. Section 295-905-2-b-3-a of the code is amended to read:

b-3. Community Living Arrangement.

b-3-a. > > All residents of the community living arrangement, other than the operator or care provider and the operator or care provider's immediate family, shall be disabled persons, as indicated by the required state license application. If this standard is not met, the< < ~~[[The]]~~ use shall not be located within 2,500 feet of a small foster home, group home, group foster home or community living arrangement.

Part 36. Section 295-905-2-b-3-d of the code is amended to read:

b-3-d. Prior to initial licensure of the community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee.

..LRB

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date:\_\_\_\_\_

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date:\_\_\_\_\_

..Requestor

..Drafter  
LRB05030-3B  
JDO  
02/17/2006