



Legislation Details (With Text)

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File created: 2/1/2005 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 2/28/2006

Effective date:

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

Sponsors: ALD. HINES JR., ALD. D'AMATO, ALD. BAUMAN

Indexes: LICENSED DWELLINGS, ROOMING HOUSES, ZONING

Attachments: 1. Proposed Substitute A, 2. Motion for Proposed Substitute A, 3. Proposed Substitute B, 4. Fiscal Note for Proposed Sub.pdf, 5. Proposed Substitute C, 6. Letter from Zoning Technical Committee, 7. CPC letter, 8. Notice Published on 12-22-05 and 12-29-05 for a ZND Mtg. on 1-10-06.PDF, 9. City Attorney's Opinion dated 10/15/03, 10. City Attorney's Opinion dated 1/13/06, 11. Ald. Davis - Town Hall Meeting, 12. Ald. Davis - Additional Town Hall Meetings, 13. Letter from Ald. Murphy to City Attorney dated 1/11/06, 14. Letter from Ald. D'Amato to City Attorney dated 1/11/06, 15. Existing & Proposed Community Living and Adult Family facilities-Map, 16. NLC Decries Preemption of City Auth. at Fair Housing Hearing - Article, 17. Memorandum from LRB - Jeff Osterman, 18. CPL Bibliography 259 April 1990, 19. Fact Sheet: Facilities for persons with Disabilities in Milwaukee County, 20. Emails: Community Living Arrangements, 21. Aldermanic District Map, 22. Siting Group Homes for Developmentally Disabled Persons, 23. Notice Published on 3-16-06.PDF, 24. Letter from Independence First dated 1-30-06

Date	Ver.	Action By	Action	Result	Tally
2/1/2005	0	COMMON COUNCIL	ASSIGNED TO		
2/2/2005		PUBLIC WORKS COMMITTEE	REFERRED TO		
2/2/2005		PUBLIC WORKS COMMITTEE	REFERRED TO		
2/2/2005		PUBLIC WORKS COMMITTEE	REFERRED TO		
2/22/2005	1	CITY CLERK	DRAFT SUBMITTED		
12/22/2005	1	CITY CLERK	PUBLISHED		
1/5/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/5/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/6/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/10/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
1/11/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/17/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
1/23/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		

1/23/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
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1/23/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/24/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/24/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
1/31/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
2/13/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
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2/13/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
2/13/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
2/22/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE			
2/22/2006	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE			
2/22/2006	2	CITY CLERK	DRAFT SUBMITTED		
2/28/2006	2	COMMON COUNCIL	PASSED	Pass	13:2
3/8/2006	2	MAYOR	SIGNED		
3/16/2006	2	CITY CLERK	PUBLISHED		

041402
SUBSTITUTE 2

ALD. HINES, D'AMATO AND BAUMAN

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

295-201-144 cr
295-306 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-5 rc
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-5 rc
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-5 rc
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-5 rc
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

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.

Finally, this ordinance provides that, whenever the department of city development issues a certificate of occupancy for any small group shelter care facility, small foster home, group home, group foster home or community living arrangement classified by the zoning code as a limited use in the zoning district in which the facility is located, the department shall provide written notice of such issuance, including the location and description of the facility, to the local common council member. The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. 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 2. Section 295-306 of the code is created to read:

295-306. Council Member Notification of Certain Limited Uses. Whenever the department issues a certificate of occupancy for any small group shelter care facility, small foster home, group home, group foster home or community living arrangement classified by this chapter as a limited use in the zoning district in which the facility is located, the department shall provide written notice of such issuance, including the location and description of the facility, to the local common council member. Notification by electronic mail shall be deemed sufficient for compliance with this requirement.

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-5 of the code is repealed and recreated to read:

h-5. 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 9. 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 10. 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 11. 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 12. 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 13. Section 295-603-2-d-5 of the code is repealed and recreated to read:

d-5. 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 14. 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 15. 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 16. 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 17. 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 18. Section 295-703-2-e-5 of the code is repealed and recreated to read:

e-5. 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 19. 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 20. 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 21. 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 22. 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 23. Section 295-803-2-c-5 of the code is repealed and recreated to read:

c-5. 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 24. 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 25. 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 26. 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 27. 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 28. 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.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB05030-3

JDO

02/22/2006