



RECOVERY RESIDENCES (SOBER LIVING HOMES)

*Michael Cravens, Managing Attorney, Department of Law
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Presentation Overview

- Background – State Law Changes
- Legal Guideposts
 - The Fair Housing Act
 - The Americans with Disabilities Act
- Proposed Ordinance
 - What it does
 - What it does not do
- Questions





Background – State Law Changes

- As part of the 2023 and 2024 Regular Sessions, the Kentucky General Assembly enacted new state laws relating to recovery residences (sober living homes)
- KRS 222.502 prohibits the operation of recovery residences unless the operator has been certified by a certifying organization and provided proof of certification to the Kentucky Cabinet for Health and Family Services
- KRS 222.504 grants local governments authority and legal standing to impose civil fines and initiate legal actions against recovery residences that operate in violation of KRS 222.502





Legal Guideposts

- However, LFUCG should be mindful to adhere to the applicable federal law, which protects certain categories of persons from discrimination, in enacting any ordinance
- There are two specific federal laws that would limit LFUCG's ability to regulate this type of housing use that should be noted:
 - The Fair Housing Act
 - The Americans with Disabilities Act





Legal Guideposts

- The Fair Housing Act, as amended:
 - Prohibits discrimination in housing on the basis of disability
 - Makes it unlawful to use land use policies to treat groups of persons with disabilities less favorably than groups of non-disabled persons
 - Defines “disability” as a physical or mental impairment that substantially limits one or more major life activities, and defines “physical or mental impairment” to include alcoholism and drug addiction (other than addiction caused by current, illegal uses of controlled substances)





Legal Guideposts

- The Americans with Disabilities Act, as amended:
 - Requires that public programs, services, and activities are accessible to persons with disabilities
 - Requires reasonable accommodations be made to programs, services, and policies to provide equal housing opportunities
 - Prohibits discrimination by a local government against qualified individuals with disabilities
 - Defines “qualified individual with a disability” in a manner not to exclude:
 - Individuals who have successfully completed supervised drug rehabilitation
 - Individuals who are participating in supervised drug rehabilitation
 - Individuals who otherwise have been or are being rehabilitated and are not engaging in illegal use of a controlled substance





Legal Guideposts

- Bottom line: Individuals in recovery from substance abuse disorders generally qualify as disabled persons protected by the FHA and the ADA
- So, federal law prohibits LFUCG from prohibiting or significantly regulating recovery residences in a manner that would:
 - Discriminate in housing on the basis of disability
 - Deny equal housing opportunity on the basis of disability
 - Treat groups of persons with disabilities less favorably than groups of non-disabled persons





Proposed Ordinance

Mindful of the legal guideposts, the proposed ordinance:

- Adopts state law requirements for recovery residences
- Requires operators to provide proof of certification to LFUCG
- Requires operators to obtain a Recovery Residence License, renewable annually, and provide information and documents in support of the license application for purposes of examining compliance
 - License can be refused or revoked based on failure to provide proof of certification, failure to provide supporting documentation, or a failure to otherwise comply with applicable laws





Proposed Ordinance

Mindful of the legal guideposts, the proposed ordinance:

- Requires operators to obtain Zoning Compliance Permit
 - Requires operators to provide notice to abutting property owners upon application for a Zoning Compliance Permit
- Creates an enforcement scheme that authorizes civil citations and civil penalties against operators who violate the ordinance (including recording of liens)
 - Establishes an appeals process protective of due process
- Allows a six-month period following passage to allow operators adequate time to comply





Proposed Ordinance

Mindful of the legal guideposts, the proposed ordinance:

- Does **NOT** regulate recovery residences differently from a land use perspective – this is a residential use and should be treated the same as other residential uses
 - The recovery residences that are the subject of the proposed ordinance are not healthcare facilities or rehabilitation centers –these are residential dwellings rented by groups of individuals otherwise protected by the FHA and the ADA
- Does **NOT** regulate density (i.e., spacing requirements)
 - FHA and ADA prohibit treating groups of protected individuals less favorably than groups of non-protected individuals



Questions?



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