



CITY OF SAINT PAUL
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DATE: February 23, 2016

TO: Planning Commission

FROM: Comprehensive Planning Committee

RE: Congregate Living Zoning Study – a review of proposed text amendment initiated by Planning Commission Resolution 12-55, amending the zoning code text regarding congregate living facilities (Sec. 60.207.F., 60.217.P., 61.503, 63.207, 65.132, 65.143, 65.150 – 65.191, 65.662, 65.922, 66.221, 66.321, 66.421, 66.521)

ISSUE

On August 24, 2012, Planning Commission passed Resolution 12-55, initiating a zoning study to consider amendments to the Zoning Code regarding congregate living facilities. A need was identified for clearer definitions, improved consistency in standards among different types of facilities, and more timelessly accurate reflections of associated state programs that frequently change. Questions regarding definitions and regulations for congregate living facilities have continued to arise through more recent zoning applications, including how to define uses that appear to fall under multiple definitions, how to address proximity to schools, and how to address traffic/parking.

BACKGROUND

The congregate living portion of the Zoning Code was originally drafted in 1980 during a time widespread de-institutionalization of persons being treated for mental illness, mental handicaps, and substance abuse. The code received a major update in 1991, informed by a report from a 15-member task force that spent 11 months discussing and analyzing numerous additions and revisions. Additionally, sober houses were the subject of an in-depth, more focused, amendment in 2008. The subject zoning study is the first to address multiple types of congregate living in 24 years.

Due to the length and complexity of the background section, it is broken down into several subsections addressing the following questions:

- What are “Congregate Living Facilities”?
- Where are “Congregate Living Facilities”?
- What is the legal context for congregate living facilities regulation?
- How does the City Code currently regulate congregate living facilities?

What are “Congregate Living Facilities”?

Congregate living facilities are a category of residential uses that generally do not fit within the definition of a “family” because of the number of unrelated residents. They are commonly

recognized as important components of a healthy community that must be accommodated, but can have external impacts related to their size and outside services provided. The Saint Paul Zoning Code defines 18 categories of congregate living, including sober houses, rooming houses, nursing homes, dormitories, 3 types of community residential facilities, and others.

There is no complete inventory of all categories of congregate living in the city. The Department of Safety and Inspections (DSI) tracks certain categories in order to enforce separation requirements and maximum concentrations. Also, facilities information was recently obtained on a one time basis from the State of Minnesota Department of Human Services (DHS) for sites they license, though consistent future access to that data is not guaranteed. Other categories' facilities can be discovered via the Internet. There is also the issue that many facilities could fit under multiple definitions. Overall, we have a partial understanding of what congregate living facilities are like in Saint Paul today. The following paragraphs summarize our understanding of the various congregate living facilities, as categorized by our Zoning Code.

Foster home (Sec. 65.151) and Freestanding foster care home (Sec. 65.152)

By Zoning Code definition, a “freestanding foster care home” involves a license-holder who does not live on-site. According to DHS data, there are 4 freestanding foster care homes in Saint Paul, including 2 single-family homes with 5 or fewer adult residents, 1 single-family home with 4 youth residents, and 1 duplex with 10 adult residents with Alzheimer’s disease (5 in each unit). There are also approximately 200 (not freestanding) foster care homes in Saint Paul, each with between 1 and 6 residents, mostly for youth but several for adults, and nearly all in single-family homes.

Community residential facility, licensed human service (Sec. 65.153)

There are 36 licensed human service community residential facilities in Saint Paul in a variety of settings, including converted single-family homes, apartment buildings, and converted convents. Seventeen (17) of the facilities have 6 or fewer residents, 13 have between 7 and 16 residents, and 6 have more (up to 64 residents). Below are representative photographs of these facilities.



Community residential facility, licensed correctional (Sec. 65.154)

There are 5 licensed correctional community residential facilities in Saint Paul, with capacities ranging from 26 (Re-Entry Metro) to 65 (Totem Town). The facilities' campus sizes vary widely with Totem Town at 71 acres, two facilities at approximately 1 acre (one in Downtown collocated in a government building), and two facilities at less than 7,000 square feet. The facilities on smaller campuses are in converted single-family homes.

Community residential facility, health department licensed (Sec. 65.155)

There are 8 health department licensed community residential facilities in Saint Paul. Four (4) of the facilities have 16 or fewer residents, 2 have between 17 and 32 residents, and 2 have more (up to 60 residents). The facilities provide services to mentally ill and/or chemically dependent populations in accordance with the Zoning Code definition, and several focus on homeless populations who are also mentally ill and/or chemically dependent. One of the 8 facilities also possesses a license from DHS. Below are photographs of all 8 facilities.



Emergency housing facility (Sec. 65.156)

There are 5 facilities in Saint Paul that provide emergency housing under this definition, including the Dorothy Day Center, 2 facilities that combine emergency housing with transitional housing (Naomi Family Shelter and Booth Brown House), and 2 smaller, 10-bed facilities for teenagers on Larpentour Avenue.

Overnight shelter (Sec. 65.157)

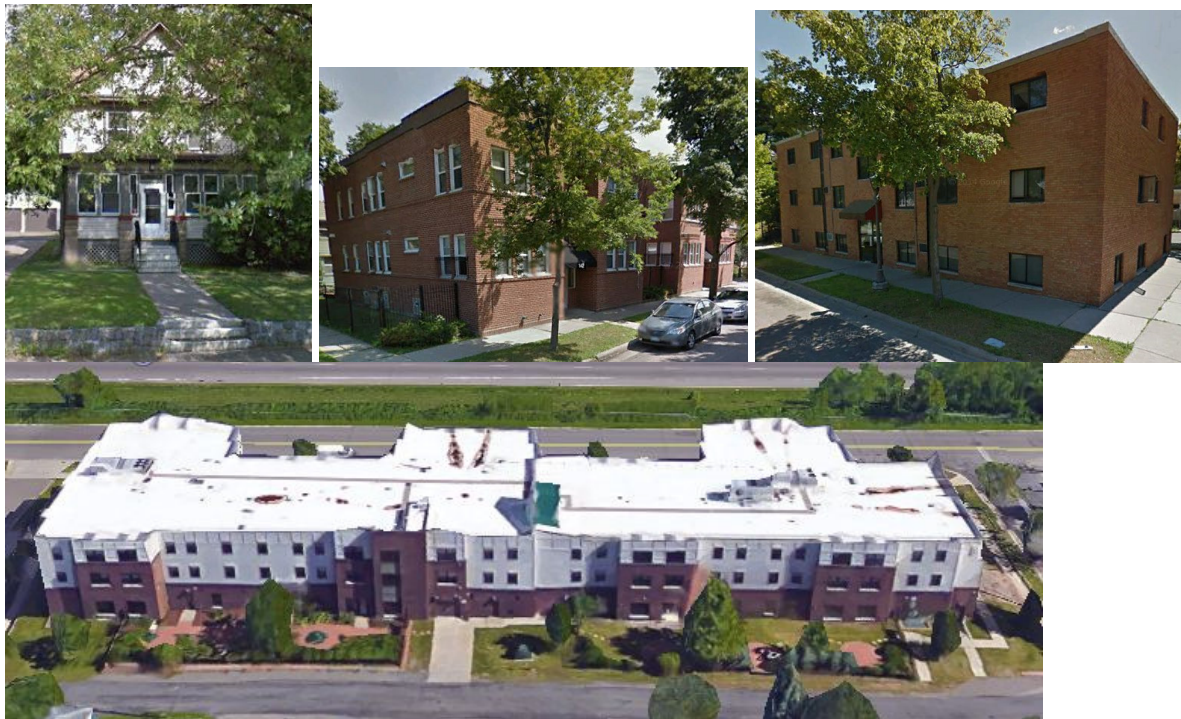
Only the Union Gospel Mission facility and the Catholic Charities Women's Shelter are currently categorized as overnight shelters.

Shelter for battered persons (Sec. 65.158)

There are 5 shelters for battered persons in Saint Paul with capacities ranging from 6 to 46 residents. Three (3) are in converted single-family homes, and 2 are in multi-family or institutional buildings. Photographs are not shown here in order to protect the occupants.

Transitional housing facility (Sec. 65.159)

There are 15 transitional housing facilities in Saint Paul, including 3 in converted single-family homes and the others in apartment buildings or a custom-built campus. Two (2) of the facilities have 6 or fewer residents, 9 have between 7 and 16 residents, and 4 have more (up to 39 residents). Transitional housing facilities, by Zoning Code definition, provide program activities to facilitate independent living – in practice, many of these programs are oriented to chemical dependency recovery and mental health. One program, notably, serves single mothers in poverty pursuing educational goals, none of whom necessarily have chemical dependence or mental health issues. Below are representative photographs of these facilities.



Sober house (Sec. 65.160)

There are 59 sober houses in Saint Paul, mostly located in converted single-family homes. In part due to clustering of sober houses in the Summit-University, Fort Road, and Union Park planning districts, a zoning study was launched in 2005 that created a definition and standards for sober houses to limit clustering and to abide by federal laws.

Boardinghouse (Sec. 65.170) and Roominghouse (Sec. 65.171)

These categories of congregate living facilities are generally not tracked. There was a notable conditional use permit granted in 2002 for a roominghouse with 71 units at 286 Marshall Avenue that had characteristics in common with a transitional housing facility, namely that it provided support services intended to facilitate independent living. However, its status as a roominghouse was confirmed through the conditional use permit approval process.

Assisted living (Sec. 65.180), Boarding care home (Sec. 65.181), and Nursing home (Sec. 65.182)

These categories are not tracked by the City, though they include large facilities like Cerenity and Sholom Home. The 3 categories are regulated the same by the Zoning Code. In modern

developments, assisted living is often co-located with “independent living”, i.e. apartments for seniors who do not (yet) need ongoing health care services.

Hospice (Sec. 65.183)

Hospices are not tracked by the City, but they include Our Lady of Peace on St. Anthony Avenue and Sholom Home (co-located with assisted living). See photographs below.

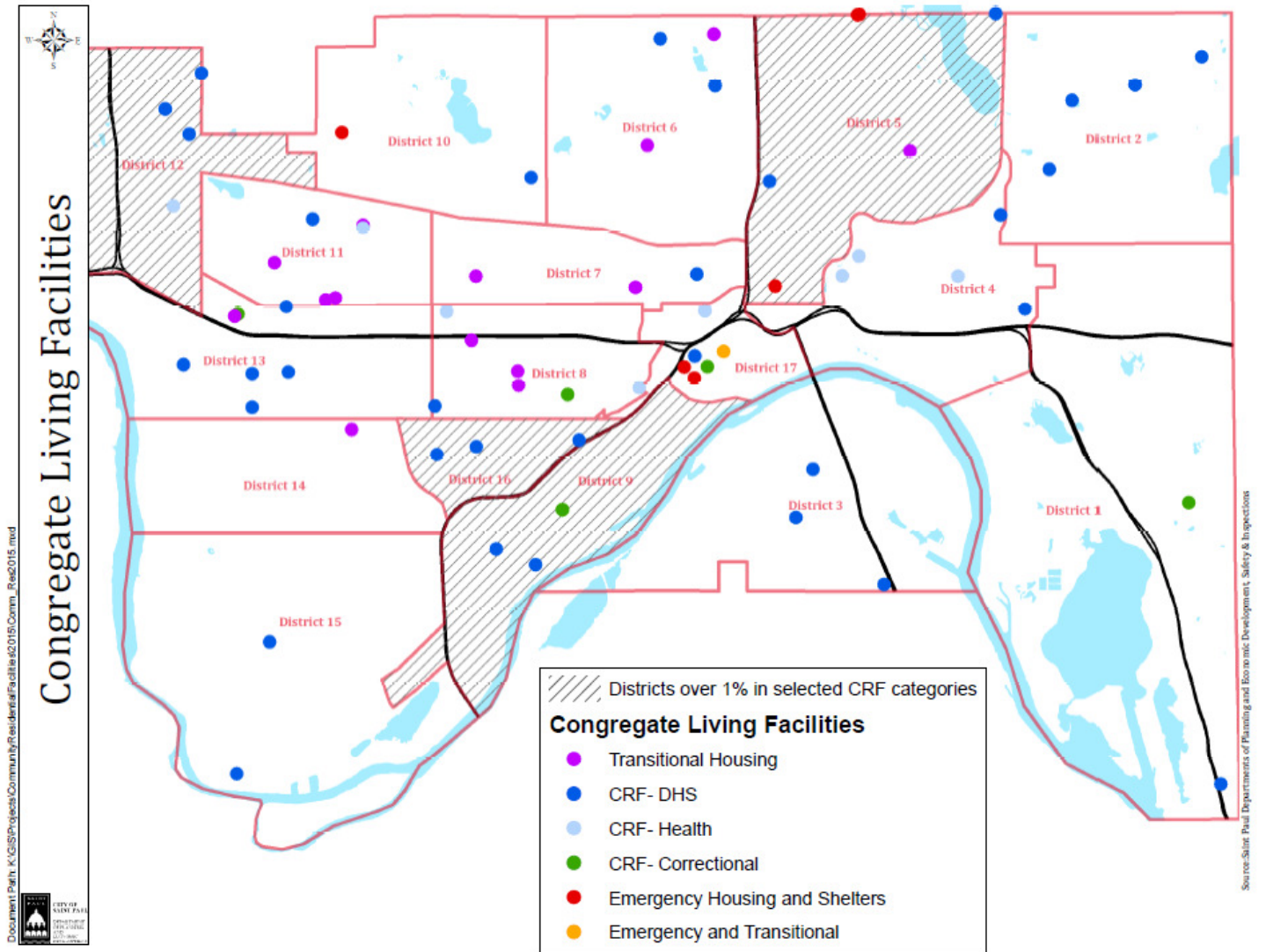


Dormitory (Sec. 65.190) and Fraternity, sorority (Sec. 65.191)

These categories are not tracked by the City.

Where are Congregate Living Facilities?

The City tracks certain categories of congregate living facilities in order to determine compliance with separation and concentration requirements in the Zoning Code. The following maps show the distribution of those facilities. Besides the information on the maps, there are 5 shelters for battered persons that are not shown for safety purposes, but can generally be described as being located in Districts 3, 4, 9, 10, and 16.



people who have been convicted of illegal drug use/sale/manufacturing, or persons who present a direct threat to the persons or property of others. A local government must allow for “reasonable accommodations” to allow persons or groups of persons with disabilities an equal opportunity to enjoy and use housing. The City of Saint Paul allows for such “reasonable accommodations” via Sec. 60.110, as applied through review by DSI.

The *Americans with Disabilities Act* (1990, amended 2010) similarly prohibits discrimination by public entities on the basis of disability, which is defined as “a physical or mental impairment that substantially limits one or more of the major life activities of (an) individual; a record of such an impairment; or being regarded as having such an impairment.” Such impairment includes “mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities” and diseases or conditions such as “orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.”

Minnesota State Law

The Minnesota Revised Statutes address licensing and regulation of congregate living facilities via three departments: the Department of Corrections (DOC), the Department of Health (DOH), and the Department of Human Services (DHS). The most relevant state laws to our zoning study address local regulation of DHS facilities, as follows. Residential facilities licensed by DHS for six (6) or fewer persons are permitted in single-family housing, regardless of local restrictions based on the definition of “family,” excepting only facilities for juvenile sex offenders. (The Saint Paul Zoning Code defines four (4) or fewer unrelated persons living together as a “family”.) Residential facilities licensed for seven (7) to 16 persons are permitted in multi-family housing, though local governments are allowed to require a conditional use permit (CUP) that is no more restrictive than CUPs for other uses. DHS requires residential facilities to be separated by 1,320 feet from other such facilities under normal circumstances.

Court Case

FamilyStyle v. City of Saint Paul is a 1990 US Court of Appeals decision that affirmed our separation requirements for mentally ill group homes on the basis that they ensure patients will actually live in a community environment rather than one that recreates an institutional environment through clustering of facilities.

How does the City Code currently regulate congregate living facilities?

The Zoning Code currently contains 18 categories of congregate living as defined in Chapter 65, Division III: Congregate Living (Sec. 65.151-191). The table below summarizes in which districts the uses are permitted:

The Zoning Code definitions and standards establish separation requirements and maximum populations per planning district for certain categories of congregate living, as summarized in the table below. The table also notes which categories (as currently defined) are protected by the *FHAA*.

	<u>Separation Requirement</u>	<u>Subject to 1% Maximum¹</u>	<u>Count Toward 1% Maximum</u>	<u>Protected Class²</u>
Foster home	No	No	No	No
Freestanding foster home	No	No	No	No
CRF - human service	Yes ³	No	Yes	Yes
CRF - correctional	Yes ³	Yes	Yes	No
CRF - health department	Yes ³	Yes	Yes	Yes
Emergency housing	Yes ³	Yes	Yes	No
Overnight shelter	Yes ⁴	No	Yes	No
Shelter for battered persons	Yes ⁵	Yes	Yes	No
Transitional housing	Yes ⁶	Yes	Yes	No
Sober house	Yes ⁷	No	No	Yes
Boardinghouse	No	No	No	No
Roominghouse	No	No	No	No
Assisted living	No	No	No	No
Boarding care home	No	No	No	No
Nursing home	No	No	No	No
Hospice	No	No	No	No

¹ Certain facilities' population in a planning district can be a maximum 1% of total district population.

² Those in a legally protected class can request "reasonable accommodations" to waive separation and 1% requirements. It is possible that other types of congregate living could also contain protected classes (e.g. an overnight shelter with high rates of mental illness). See Legal Context section above.

³ 600' from certain other facilities in B4-B5, or 1,320' from such facilities in other districts

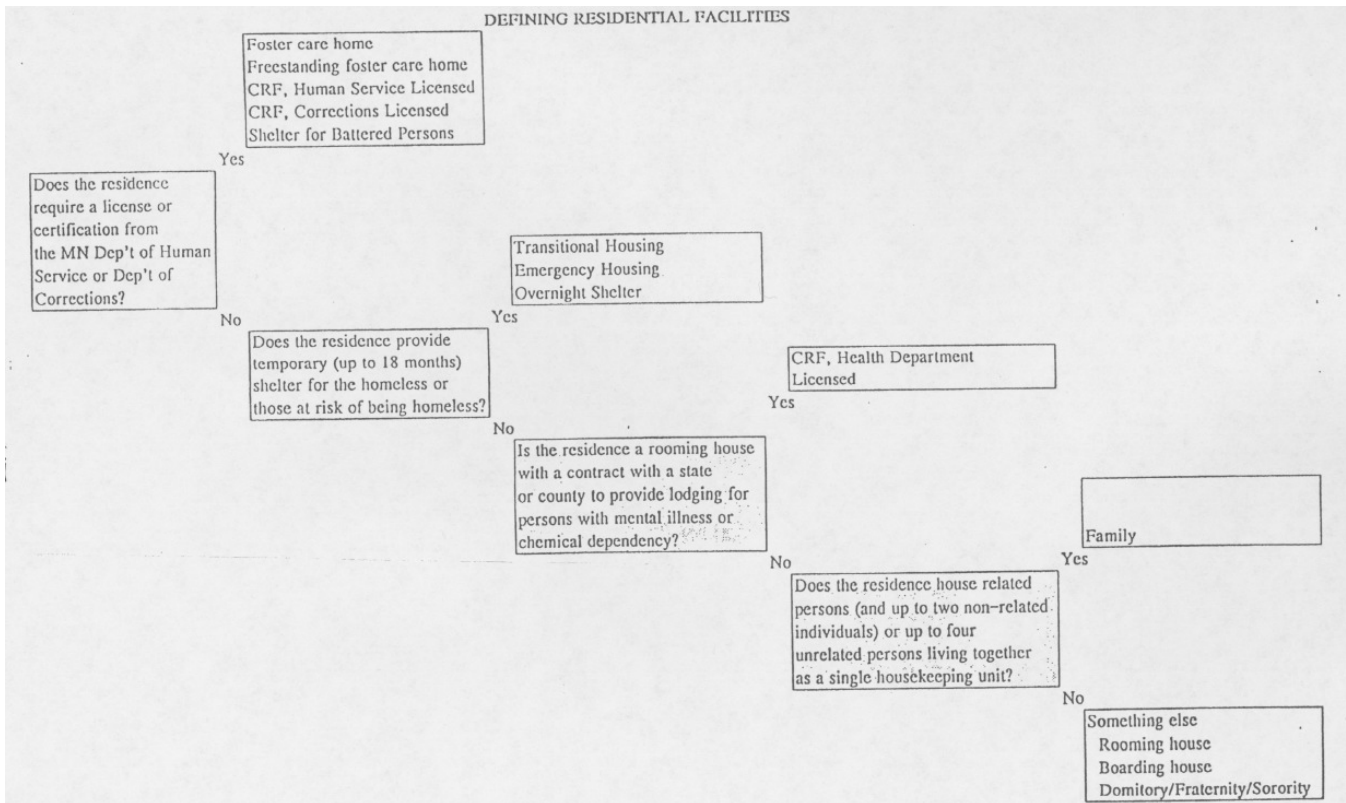
⁴ 600' from certain other facilities in all districts

⁵ 1,320' from certain other facilities in all districts

⁶ 1,320' from certain other facilities in RL-RT2 districts

⁷ 330' from other sober house properties

There is often uncertainty regarding which Zoning Code definition should apply to a proposed facility. The following decision tree came into use in about 2007, but is not formalized in the Zoning Code. It illustrates the complexity of the existing regulations.



PROPOSED AMENDMENTS & ANALYSIS

The full proposed amendments to the Zoning Code text and tables of permitted principal uses are among the memo attachments. A summary and analysis of the proposed amendments is below

Consolidate DHS CRFs, DOH CRFs, and Transitional Housing into a new definition: Supportive Housing Facility

These 3 existing categories primarily work with the same types of populations (often the same people with multiple problems) with the goal of re-entry into society, and in fact many existing sites could conceivably fall under more than one of these current definitions. Consolidation requires severing definitions tied to funding or licensing and instead focusing on what actually occurs at the facility. Separation requirements continue to be appropriate in order to ensure they are placed in normal neighborhood environments, and not placed in clusters that replicate an institutional environment (see *FamilyStyle v City of Saint Paul* court decision). DHS- and Health Department-Licensed Community Residential Facilities by definition serve handicapped clients under the *Fair Housing Amendments Act of 1988*, though Transitional Housing may or may not. The new category generally follows existing standards and districts for DHS-Licensed Community Residential Facilities, which represents looser regulations for Health Department-Licensed Facilities and Transitional Housing.

Consolidate Assisted Living, Boarding Care Home, Nursing Home, and Hospice into Adult Care Home

Assisted Living, Boarding Care Home, and Nursing Home use the same standards and are allowed in the same districts. It appears the main reason to have separate definitions was to replicate State agency definitions. It is proposed to further consolidate these three (3) categories with Hospice, given the similar land use effects. The new category is proposed to be permitted mostly in the same zoning districts as the current category of Hospice, which is the least restricted of the four (4).

Eliminate the 1% Maximum

The Zoning Code regulation limiting the population of certain categories of congregate living to 1% or less of the planning district's total population (the "1% maximum" clause) is intended to counter overconcentration, much like the spacing requirements (e.g. 1,320' or 600' between certain facilities). Notably, the regulation applies to only five (5) categories of congregate living, but uses seven (7) categories in calculating the 1% population. Particularly troublesome is that one of the most common categories of congregate living, DHS-licensed community residential facilities, contributes to the 1% but does not need to abide by it. The 1% maximum clause also has other drawbacks, including that it requires substantial staff time to track, does not account for barriers like highways or railroad tracks, and its application to planning district geographies is overall not as effective as numerical separation requirements in avoiding "institutional environments" and promoting integration into the community.

Consolidate Foster Home and Freestanding Foster Home

Both categories are regulated the same except for parking, and there is no known reason to repeat the State definitions here. A Freestanding Foster Home requires 1.5 off-street parking spaces per 4 residents, while a Foster Home has no special requirement and is thus treated as its primary use (generally a one-family dwelling unit, which requires 1.5 spaces). In practice, the 4 existing Freestanding Foster Homes in Saint Paul would have the same parking requirement whether regulated under the current parking requirements, or simply as single-family or two-family dwellings (as applicable). Elimination of the explicit parking requirement for Freestanding Foster Home would have no effect if future facilities are similar in size to existing.

Consolidate Roominghouse and Boardinghouse

Like the above issue, both Roominghouse and Boardinghouse are regulated the same, and there is no known reason to repeat the State definitions here.

Reduce Minimum Lot Size Requirements

A minimum lot size should continue to be specified for congregate living uses in certain zoning districts in order to meet the intent of minimum lot size regulations, which for other residential uses are based on number of units, not number of residents or number of rooms. That is, for example, a congregate living facility has only 1 living unit according to the Zoning Code regardless of the number of residents, and therefore would have an excessively small minimum lot size if relying only on the district standards. However, the existing minimum lot size requirements (generally 5,000 square feet plus 1,000 square feet for each guest room in excess of 2 guest rooms) for certain categories of congregate living seem to exceed actual need. The proposed amendments bring congregate living lot size more in line with similar residential uses in residential and T1 zoning districts. Meanwhile, minimum lot sizes are proposed to be

eliminated for congregate living uses in zoning districts that do not regulate multi-family uses that way, but instead rely on floor-to-area ratio (F.A.R.) to control density: T2-T4, business, and industrial districts.

Eliminate Petition Requirement Under Reuse of Large Structures for “Handicapped” Users

Given: (1) the general City policy to accommodate facilities supporting the reintegration of mentally ill and former substance abusers into mainstream society; (2) the reliable neighbor opposition to “those people” who are perceived to be likely to harm a child walking to a nearby school, etc.; (3) the protections afforded to mentally ill and other handicapped by the *FHAA*; and (4) the plethora of large structures in need of productive reuse; it would seem to be a reasonable accommodation to allow uses serving mentally ill and other handicapped persons to avoid the petition requirement for reuse of large structures. The public hearing notification requirements would remain.

PUBLIC HEARING TESTIMONY

The Planning Commission held a public hearing on January 22, 2016 and left the record open for written comments through January 25, 2016. At the hearing, representatives from the Merriam Park Housing Mix Working Group delivered a presentation raising concerns with the concentration of sober houses in their neighborhood and the cumulative impact of residences other than single-family residences – such as sober houses, other congregate living, and student housing – on the neighborhood’s character. The Working Group’s recommendations include: change the sober house separation requirement from 330 to 1,320 feet; study sober houses’ neighborhood impact, using Merriam Park as a case study; register, track, and forecast all housing types; consider instituting licenses and fees to sustain tracking and oversight of sober houses; and institute a notification system for citizens when a sober house comes in. The Working Group provided two versions of their PowerPoint presentation: the version delivered at Planning Commission, and a follow-up revised version provided a couple days later.

The Union Park District Council (UPDC) provided a letter endorsing some of the Working Group’s recommendations, including that: all housing types be registered, tracked, and forecasted; a citizen notification system be instituted for incoming sober houses; and tax implications be studied and addressed. The UPDC did not endorse the Working Group’s recommendation that Sober Houses be added to the collection of congregate living facilities that must generally be separated by 1,320 feet. (Subsequent to the public hearing, the UPDC changed their position on the Sober House separation, now agreeing with the Working Group that 1,320-foot separation should be recommended.)

People Incorporated, a congregate living provider specializing in mental health, provided a letter asking the Planning Commission to closely scrutinize, discuss, and disclose to the public the reasons for any of the differences in restrictions placed upon Supportive Housing Facilities and Adult Care Homes.

ANALYSIS OF TESTIMONY

The section below analyzes the main issues raised by public testimony.

1. Issue: Sober Houses should be separated from each other by 1,320 feet instead of the current regulation of 330 feet.

Response: Sober Houses are a litigiously sensitive land use that became regulated in Saint Paul well after other categories of congregate living. Sober Houses were the subject of an intense public process and zoning study from 2005 to 2008, including City Council initiation in response to constituent concerns, public hearings, discussions with sober house operators, and four meetings of the Neighborhood Planning Committee to analyze the issues. Sober Houses are different than other congregate living facilities in two important ways: (1) Sober Houses, by Zoning Code definition, do not provide on-site supportive services to residents such as mental health or social services; and (2) as noted in the 2008 study, Sober Houses are generally intended to function like a single family, with shared kitchens, bathrooms, living rooms, and other common areas. Therefore, Sober Houses should not be treated the same as other Congregate Living Facilities. Also, testimony in 2008 indicated that “bona fide” Sober Houses were not causing negative neighborhood impacts, but rather these were caused by groups masquerading as Sober Houses in order to evade regulations – a problem addressed by the establishment of the Sober House zoning regulations. There is no evidence in the record that the nature of Sober Houses has changed appreciably since 2008. Also, no evidence has been identified that an increase in the separation between sober houses is necessary to establish or maintain a “community” setting. Lacking such evidence, no change to the 330 foot separation is recommended.

2. Issue: Sober Houses’ neighborhood impact should be studied, using Merriam Park as a case study. Sober Houses have a presumed negative impact on neighborhoods.

Response: Such a study would need parameters defining the exact impacts to be studied and would need to have measurable, defensible results. Studies have been completed on property impacts in the past: according to the American Planning Association’s Policy Guide on Community Residences, more than 50 studies of community residences such as sober houses or other group homes have found that such facilities have no effect on the value of neighboring properties. No such study is recommended.

It should also be noted that characteristics of Congregate Living Facilities cited in the Working Group’s presentation, such as frequent turnover and lack of linkages to community, are not supported by any known existing study (the presentation cites Alene Taber’s work, which simply states those assumptions without measurable support). Merriam Park neighbor logs on Slide 8 of the Working Group’s presentation reflect conjecture (e.g. single-family residential = same family for 20 years, no smokers) and are not measurable and defensible.

3. Issue: The City should holistically register, track, and forecast all housing types.

Response: Congregate Living Facilities that have separation distance requirements, such as sober houses and Community Residential Facilities, are already tracked by the City. Sober houses must file a “request for reasonable accommodation” application with the City, which aids in tracking. Student housing is also already tracked by the City. Apartments, duplexes, and any other multi-unit residences can be identified through Ramsey County property records. The main category of housing that has not been

tracked is rental versus owner-occupied housing. The question of whether to regulate rental housing, in general, is beyond the scope of this zoning study.

4. Issue: The City should notify neighbors of incoming sober houses.

Response: In the 2008 Sober Houses Zoning Study, the City Attorney's Office advised against implementing neighborhood notification of incoming Sober Houses because it would violate the *Fair Housing Amendments Act of 1988* if the City denied a reasonable accommodation request in response to neighbors' fears or discriminatory concerns about people with disabilities. The legal issue cited in 2008 remains valid. No notification is recommended.

5. Issue: The City should consider instituting licenses and fees that sustain tracking and oversight of Sober Houses.

Response: This is already being done. The City requires Sober Houses to submit a request for reasonable accommodation, including a fee currently set at \$355.

6. Issue: The City should create a plan to study tax implications of Congregate Living Facilities.

Response: In order to avoid policies that are discriminatory against Congregate Living Facilities containing residents protected by federal law, any such study should address the tax implications of all types of land use (e.g. public housing, nonprofit colleges, government facilities, K-12 charter schools). Such study would be beyond the scope of this zoning study.

7. Issue: Supportive Housing facilities and Adult Care Homes are proposed to be regulated differently. For example, Supportive Housing Facilities with 7 to 16 residents would require a conditional use permit in the RT2 through T1 zoning districts, while similarly sized Adult Care Homes would not. Second, Adult Care Homes of any size require a conditional use permit in the business and industrial zoning districts other than B4-B5, while Supportive Housing Facilities do not. Third, Supportive Housing Facilities must be separated by 1,320 feet (or 600 feet in the B4-B5 districts) from certain other Congregate Living Facilities, while Adult Care Homes have no such separation requirements.

Response: Supportive Housing Facilities and Adult Care Homes have some similarities, including that they are residential uses where, by definition, services are regularly provided to the residents. They also each contain groups of people who have certain specific characteristics (e.g. age, infirmity, mental illness, former alcohol/substance addiction) not representative of the broader population as a whole. The purpose of separation requirements for Supportive Housing Facilities is to ensure their residents are located in mainstream community settings, and not placed in clusters that replicate an institutional environment. This is not a factor for Adult Care Homes, which have not traditionally used neighborhood integration as a treatment model. Therefore, separation requirements continue to be appropriate for Supportive Housing Facilities, but not for Adult Care Homes.

There are two purposes for regulating the number of residents for Supportive Housing Facilities through establishment of maximum numbers of residents and requirement for a conditional use permit: (1) to encourage facilities that are less institutional in nature due to their size; and (2) to fit with the zoning district's general character. Only the second purpose for regulating the number of residents is relevant to Adult Care Homes.

Therefore, the size regulations for Supportive Housing Facilities and Adult Care Homes should align with each other only in the zoning districts where larger facilities would not fit with the district's smaller-scale character: RL-RM1 residential, T1 traditional neighborhood, and OS-B2 business. Accordingly, additional revisions to the Adult Care Homes regulations are now proposed as incorporated in the attachments.

Also, for consistency with other I2 general industrial district regulations, which do not permit single-family residences, but allow mixed residential and commercial uses of 6+ units with a conditional use permit, both categories should require a conditional use permit in the I2 district, but not in the IT or I1 districts.

COMPREHENSIVE PLAN ANALYSIS

The Housing Chapter of the Comprehensive Plan applies to the proposed Zoning Code amendments in several ways. First and foremost, Strategy H-3.4.c calls for the City to examine and update the Zoning Code to correspond with the current state and county licensing and registration requirements and group housing programs, which is an issue explicitly addressed by this study. Strategy H-1.1 calls for increasing housing choices across the city. Strategy H-2.18 supports the expansion of housing choices for seniors, which is furthered by the expanded number of zoning districts that permit Assisted Living, Boarding Care Homes, and Nursing Homes (proposed to be combined as Adult Care Homes). Strategy H-3.4.a calls for siting permanent supportive and homeless housing to increase locational choices in an area, and increasing the distribution across the city, supported in the proposed regulation by continuation of separation requirements.

COMMITTEE RECOMMENDATION

The Comprehensive Planning Committee recommends that the Planning Commission approve the attached Draft Resolution recommending Zoning Code amendments to the Mayor and City Council.

Attachments

1. Draft Planning Commission Resolution
2. Existing and Proposed Tables of Permitted Principal Uses (consolidated and clean)
3. Written Testimony
4. Planning Commission Minutes of 1/22/16
5. 2008 Sober House Ordinance (#08-640) and Zoning Study

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, the Saint Paul Zoning Code, found in chapters 60 through 69 of the Saint Paul Legislative Code, is established to provide housing choice and housing affordability, to implement the policies of the comprehensive plan, and to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community; and

WHEREAS, Section 61.801(a) of the Zoning Code calls for periodic review of said code to reflect current city policies and to bring the Zoning Code up-to-date; and

WHEREAS, on August 24, 2012, the Planning Commission passed Resolution 12-55 that initiated a zoning study to consider amendments regarding congregate living due to a recognized need for clearer definitions, improved consistency in standards among different types of facilities, and more timelessly accurate reflections of associated state programs that frequently change; and

WHEREAS, the Saint Paul Planning Commission held a duly noticed public hearing on January 22, 2016 regarding potential amendments to congregate living zoning regulations; and

WHEREAS, the Comprehensive Planning Committee of the Saint Paul Planning Commission, having reviewed the public hearing testimony and a memorandum containing analysis provided by staff, provided a recommendation for consideration by the Saint Paul Planning Commission; and

WHEREAS, the Saint Paul Planning Commission, having reviewed the public hearing testimony and the Comprehensive Planning Committee's recommendation, finds the proposed text amendments to be supported by the policies of the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the following proposed amendments to the Legislative Code is recommended for approval by the Mayor and Council of the City of Saint Paul:

moved by _____
seconded by _____
in favor _____
against _____

Sec. 60.207. F.

~~Facility resident. A person who resides in a community residential facility and contributes toward meeting the facility's licensed capacity.~~

Sec. 60.217. P.

Planning district. One (1) of seventeen (17) geographic areas delineated, and from time to time amended, by the city council to facilitate citizen participation, and early notification of proposed city actions, ~~and planning for the purpose of determining concentration of community residential facilities. Planning district thirteen is divided into three (3) separate planning districts: Merriam Park, Snelling-Hamline and Lexington-Hamline.~~ An official map of the designateddelineated areas is maintained by the department of planning and economic development.

Sec. 61.503. Conditional use permit, change requiring new permit.

A change to a conditional use requires a new permit when one (1) of the following conditions occurs:

- (f) The number of residents in a ~~community residential facility increases, or the number of rooming units in a rooming or boarding house~~congregate living facility increases.

Table 63.207 Minimum Required Off-Street Parking By Use

Land Use	Minimum Number of Parking Spaces
<i>Residential Uses</i>	
Community residential facility, emergency Emergency housing facility, free-standing foster care home <u>licensed correctional community residential facility</u> , overnight shelter, shelter for battered persons, <u>sober house</u> , <u>supportive housing facility</u> transitional housing facility	1.5 spaces per every 4 adult facility residents
Sober house	1.5 spaces per every 4 adult residents
Roominghouse, boardinghouse	1 space per 3 occupancy units
Nursing home, boarding care home, assisted living, hospice <u>Adult care home</u>	1 space per every 3 residents
Dormitory, fraternity, sorority	1 space per every 3 residents

Sec. 65.132. Reuse of large structures.

Conversion or reuse of residential structures of over nine thousand (9,000) square feet gross floor area and permitted nonresidential structures such as churches and schools.

Standards and conditions in residential districts:

- (a) The planning commission shall find that the structure cannot reasonably be used for a conforming use.
- (b) The planning commission shall find that the proposed use and plans are consistent with the comprehensive plan.
- (c) The planning commission shall find that the proposed use and structural alterations or additions are compatible with the surrounding neighborhood and land uses.
- (d) Parking for the new use shall be provided in accordance with the requirements of section 63.200 for new structures.
- (e) Applications for conversion or reuse shall include a notarized petition of two-thirds (2/3) of the property owners within one hundred (100) feet of the property proposed for the reuse, site plans, building elevations, and landscaping plans, and other information which the planning commission may request. The notarized petition requirement shall be waived for a proposed conversion or reuse to serve residents who are all considered handicapped under the Federal Fair Housing Act Amendments of 1988.

Sec. 65.143. Mixed residential and commercial use.

Standards and conditions in B1—B3 business and industrial districts:

- (a) In B1—B3 business and IT industrial districts, ~~dwelling units~~residential uses shall be limited to no more than fifty (50) percent of the first floor and fifty (50) percent of a basement. Entire upper floors may be for residential use. At least fifty (50) percent of the first floor shall be devoted to principal uses permitted in the district, other than residential uses.
- (b) In I1—I2 industrial districts, ~~dwelling units~~residential uses shall not be located in the basement or first floor and at least eighty (80) percent of the first floor shall be devoted to principal uses permitted in the district, other than residential uses. In the I2 district, a conditional use permit is required for a mixed residential and commercial use with more than six (6) dwelling units.

Division 3. 65.150. Congregate Living

Sec. 65.151. Foster home.

Sec. 65.152. ~~Freestanding foster care home.~~Reserved

Sec. 65.153. ~~Community residential facility, licensed human service.~~Supportive housing facility.

Sec. 65.154. Community residential facility, licensed correctional.

Sec. 65.155. ~~Community residential facility, health department licensed.~~Reserved.

Sec. 65.156. Emergency housing facility.

Sec. 65.157. Overnight shelter.

Sec. 65.158. Shelter for battered persons.

Sec. 65.159. ~~Transitional housing facility.~~Reserved.

Sec. 65.160. Sober house.

Secs. 65.161—65.169. Reserved.

~~Sec. 65.170. Boardinghouse.~~

Sec. 65.171. Roominghouse.

Secs. 65.172—65.179. Reserved.

~~Sec. 65.180. Assisted living-Adult care home.~~

~~Sec. 65.181. Boarding care home.~~

~~Sec. 65.182. Nursing home.~~

~~Sec. 65.183. Hospice.~~

~~Secs. 65.184-181—65.189. Reserved.~~

~~Sec. 65.190. Dormitory.~~

~~Sec. 65.191. Fraternity, sorority.~~

Sec. 65.151. Foster home.

A dwelling unit in which a foster care program licensed by the commissioner of human services or the commissioner of corrections is operated, whether located in the principle residence of the license holder or not.

Development standards:

In B1, B2—B3 business, and ~~IRIT~~—I2 industrial districts, the use shall be within a mixed-use building. In B4 and B5 business districts, the use shall be within a multiple-family building.

Sec. 65.152. ~~Freestanding foster care home.~~Reserved.

~~A dwelling unit in which a foster care program that is licensed by the commissioner of human services is operated in other than the principle residence of the license holder.~~

~~*Development standards:*~~

~~See Sec. 65.151. Foster home.~~

Sec. 65.153. ~~Community residential facility, licensed human service.~~Supportive housing facility.

One (1) main building, or portion thereof, on one (1) zoning lot where ~~one (1) or more children or~~ persons with ~~mental retardation or related conditions,~~ mental illness, chemical dependency, ~~or physical or~~ mental handicaps, and/or persons who have experienced homelessness ~~reside on a 24-hour-per-day basis under the auspices of a program licensed by the state department of human services to provide lodging in conjunction with monitoring, supervision, treatment, rehabilitation, habilitation, education or training of the residents of the facility~~ and wherein counseling, training, support groups, and/or similar services are provided to the residents.

This definition does not include:

- (1) Foster homes ~~or freestanding foster homes~~ as defined in this code;
- (2) Residential treatment programs physically located on hospital grounds;
- (3) Regional treatment centers operated by the commissioner of human services;
- (4) Licensed semi-independent living services for persons with mental retardation or related conditions or mental illness, if the license holder is not providing, in any manner, direct or indirect, the housing used by persons receiving the service.

(5) Community residential facilities, licensed correctional, as defined in this code.

Standards and conditions:

- (a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than four (4) adult residents, except in B5—B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons ~~with more than four (4) adult facility residents, or~~ overnight shelter, ~~or transitional housing facility with more than four (4) adult facility residents, except in B4—B5 business districts where it shall be at least six hundred (600) feet from any other such facility.~~
- (b) In RL—RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2 residential, traditional neighborhood, OS—B3 business and ~~RII~~—I2 industrial districts, the facility shall serve sixteen (16) or fewer facility residents.
- (c) In residential and T1 traditional neighborhood districts, a conditional use permit is required for facilities serving seven (7) or more facility residents.
- ~~(d) In B4—B5 business districts, the facility shall be located in a multiple-family structure.~~
- ~~(e) In residential and T1 traditional neighborhood districts~~Except in B4—B5 business districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~two (2)~~six (6) guest rooms. In T2—T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

(C.F. No. 05-441, § 3, 8-24-05; Ord. No. 11-27, § 1, 4-20-11)

Sec. 65.154. Community residential facility, licensed correctional.

One (1) main building, or portion thereof, on one (1) zoning lot where one (1) or more persons who are placed there by a court, court services department, parole authority or other correctional agency having dispositional power over persons charged with or convicted of a crime or adjudicated delinquent reside ~~on a 24-hour-per-day basis~~ under the care and supervision of a residential program licensed by the state department of corrections.

This definition does not include:

- (1) Licensed foster care homes serving persons under eighteen (18) years of age in the principal residence of the license holder;
- (2) Municipal, county or regional jails, workhouses, juvenile detention facilities, or state correctional facilities operated by the commissioner of corrections.

Standards and conditions:

- (a) Preliminary licensing review by the state department of corrections.
- (b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than four (4) adult residents, except in B4—B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons ~~with more than four (4) adult facility residents, or~~ overnight shelter, ~~or transitional housing facility with more than four (4) adult facility residents, except in B4—B5 business districts where it shall be at least six hundred (600) feet from any other such facility.~~
- ~~(c) Except in B4—B5 business districts, the facility shall not be located in a planning district in which one (1) percent or more of the population lives in licensed community residential facilities, emergency housing facilities with more than four (4) adult facility residents, shelters for battered persons, overnight shelters, and/or transitional housing facilities with more than four (4) adult facility residents.~~

- (~~dc~~) The facility serves no more than sixteen (16) facility residents, except in B4—B5 business districts where it shall serve no more than thirty-two (32) facility residents.
- (~~ed~~) It shall occupy the entire structure.
- (~~fe~~) In residential and T1 traditional neighborhood districts~~Except in B4—B5 business districts,~~ the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~two (2)~~four (4) guest rooms. In T2—T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

(C.F. No. 05-441, § 3, 8-24-05)

Sec. 65.155. ~~Reserved. Community residential facility, health department licensed.~~

~~One (1) main building, or portion thereof, on one (1) zoning lot which is licensed by the commissioner of health as a rooming and/or boardinghouse and receives fifty (50) percent or more of its residents under a contract or other arrangement with the state or a local government human services agency to provide lodging for people who are mentally ill or chemically dependent.~~

~~Standards and conditions:~~

- ~~(a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other licensed community residential facility, emergency housing facility, shelter for battered persons with more than four (4) adult facility residents, overnight shelter, or transitional housing facility with more than four (4) adult facility residents, except in B4—B5 business districts where it shall be at least six hundred (600) feet from any other such facility.~~
- ~~(b) Except in B4—B5 business districts, the facility shall not be located in a planning district in which one (1) percent or more of the population lives in licensed community residential facilities, emergency housing facilities, shelters for battered persons with more than four (4) adult facility residents, overnight shelters, and/or transitional housing facilities with more than four (4) adult facility residents.~~
- ~~(c) The facility shall serve no more than sixteen (16) adult facility residents and minor children in their care, except in B4—B5 business districts where it shall serve no more than thirty-two (32) total facility residents.~~
- ~~(d) The facility shall not be located in a two-family or multifamily dwelling unless it occupies the entire structure.~~
- ~~(e) Except in B4—B5 business districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of two (2) guest rooms.~~

~~(C.F. No. 05-441, § 3, 8-24-05)~~

Sec. 65.156. Emergency housing facility.

One (1) main building, or portion thereof, on one (1) zoning lot where persons who do not have housing live on a 24-hour-per-day basis until more permanent arrangements can be made, but generally for no longer than thirty (30) days.

Standards and conditions:

See section 65.155153, ~~community residential facility, health department licensed~~ supportive housing facility, standards and conditions (a)—(ed).

Sec. 65.157. Overnight shelter.

One (1) main building, or portions thereof, on one (1) zoning lot where persons receive overnight shelter, but are not expected or permitted to remain on a 24-hour-per-day basis.

Condition:

The facility shall be a minimum distance of six hundred (600) feet from any other of the following congregate living facilities with more than four (4) adult residents: overnight shelter, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or shelter for battered persons ~~with more than four (4) adult facility residents, or transitional housing facility with more than four (4) adult facility residents.~~

Sec. 65.158. Shelter for battered persons.

One (1) main building, or portion thereof, on one (1) zoning lot where adults and children who have suffered assault or battery live on a 24-hour-per-day basis for a period of time generally not to exceed thirty (30) days and are served by a program certified by the state department of corrections.

Standards and conditions for shelters for battered persons serving more than four (4) adult facility residents and minor children in their care:

- (a) In residential, traditional neighborhood and OS—B2 business districts, a conditional use permit is required for facilities serving more than four (4) adult facility residents and minor children in their care.
- (b) ~~In residential districts,~~ the facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than four (4) adult residents: shelter for battered persons ~~with more than four (4) adult facility residents,~~ supportive housing facility, licensed correctional community residential facility, emergency housing facility, or overnight shelter, ~~or transitional housing facility with more than four (4) adult facility residents.~~
- ~~(c) Except in B4—B5 business districts, the facility shall not be located in a planning district in which one (1) percent or more of the population lives in licensed community residential facilities, emergency housing facilities, shelters for battered persons with more than four (4) adult facility residents, overnight shelters, and/or transitional housing facilities with more than four (4) adult facility residents.~~
- (~~dc~~) In RL—RT2 residential, traditional neighborhood, OS—B3 business and ~~IRIT~~—I2 industrial districts, the facility shall serve sixteen (16) or fewer adult facility residents and minor children in their care.
- (~~ed~~) The facility shall not be located in a two-family or multifamily dwelling unless it occupies the entire structure.
- (~~fe~~) In residential and T1 traditional neighborhood districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~two (2)~~ four (4) guest rooms. In T2—T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

(C.F. No. 05-441, § 3, 8-24-05; Ord. No. 11-27, § 1, 4-20-11)

Sec. 65.159. Reserved Transitional housing facility.

~~One (1) main building, or portion thereof, on one (1) zoning lot where persons who may or may not have access to traditional or permanent housing but are capable of living independently within a reasonable period of time, generally about eighteen (18) months, reside on a 24-hour-per-day basis for at~~

~~least thirty (30) days and participate in appropriate program activities designed to facilitate independent living.~~

~~Standards and conditions for transitional housing facilities serving more than four (4) adult facility residents and minor children in their care:~~

- ~~(a) In residential, traditional neighborhood and OS—B2 business districts, a conditional use permit is required for facilities serving more than four (4) adult facility residents and minor children in their care.~~
 - ~~(b) In RL—RT2 residential districts, the facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other transitional housing facility with more than four (4) adult facility residents, licensed community residential facility, emergency housing facility, shelter for battered persons with more than four (4) adult facility residents, or overnight shelter.~~
 - ~~(c) Except in B4—B5 business districts, the facility shall not be located in a planning district in which one (1) percent or more of the population lives in licensed community residential facilities, emergency housing facilities, shelters for battered persons with more than four (4) adult facility residents, overnight shelters, and/or transitional housing facilities with more than four (4) adult facility residents.~~
 - ~~(d) In RL—RT1 residential districts, the facility shall serve six (6) or fewer adult facility residents and minor children in their care. In RT2 residential, traditional neighborhood, OS—B3 business and IR—I2 industrial districts, the facility shall serve sixteen (16) or fewer adult facility residents and minor children in their care.~~
 - ~~(e) In RL—RT2 residential districts, the facility shall not be located in a two-family or multifamily dwelling unless it occupies the entire structure.~~
 - ~~(f) In residential districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of two (2) guest rooms.~~
- ~~(C.F. No. 05-441, § 3, 8-24-05; Ord. No. 11-27, § 1, 4-20-11)~~

Sec. 65.160. Sober house.

A dwelling unit occupied by more than four (4) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988, that provides a non-institutional residential environment in which the residents willingly subject themselves to written rules and conditions, including prohibition of alcohol and drug use (except for prescription medications obtained and used under medical supervision), intended to encourage and sustain their recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses are financially self-supporting. This definition does not include facilities that receive operating revenue from governmental sources. Sober houses do not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

Standards and conditions:

A request for reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988 by providing an exception to the maximum number of unrelated persons living together in a dwelling unit shall automatically be granted if the following standards and conditions are met. This does not limit the city from granting additional reasonable accommodation for this use under the general provisions of this code.

- (a) The operator shall submit a request for reasonable accommodation to the zoning administrator on a form provided by the city, specify the number of residents, and provide information

necessary to assure the use meets applicable zoning standards. The maximum total number of residents permitted in the sober house shall be specified by the fire certificate of occupancy.

- (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall submit a written parking plan that demonstrates sufficient parking for the use.
- (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- (d) For a structure serving seventeen (17) or more sober house residents, a conditional use permit is required. This use shall be exempt from section 61.501 conditional use permit general standards (a), (c), and (d).
- (e) Property containing one or more sober house units shall be a minimum distance of three hundred thirty (330) feet from any other property containing a sober house.

(C.F. No. 08-640, § 1, 7-9-08)

Secs. 65.161—65.169-170. Reserved.

~~Sec. 65.170. Boardinghouse.~~

~~Any roominghouse which provides meals to its roomers.~~

Sec. 65.171. Roominghouse.

- (1) Any residential structure or dwelling unit, supervised or not, which provides living and sleeping arrangements for more than four (4) unrelated individuals for periods of one (1) week or longer; or
- (2) Any residential structure or dwelling unit which provides single room occupancy (SRO) housing as defined in CFR section 882.102 to more than four (4) unrelated individuals; or
- (3) Any building housing more than four (4) unrelated individuals which has any of the following characteristics shall be considered and regulated as a roominghouse:
 - a. Rental arrangements are by the rooming unit rather than the dwelling unit.
 - b. Rooming unit doors are equipped with outer door locks or chains which require different keys to gain entrance.
 - c. Kitchen facilities may be provided for joint or common use by the occupants of more than one (1) rooming unit.
 - d. Rooming units are equipped with telephones having exclusive phone numbers.
 - e. Rooming units are equipped with individual intercom security devices.
 - f. Each rooming unit has a separate assigned mailbox or mailbox compartment for receipt of U.S. mail.

This definition does not include:

- (1) Supportive housing facilities as defined in this code.
- (2) Licensed correctional community residential facilities as defined in this code.
- (3) Sober houses as defined in this code.

Standards and conditions, ~~except in B4—B5 business districts:~~

- (a) In residential and T1 traditional neighborhood districts, aA minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in

excess of ~~two (2)~~four (4) guest rooms. In T2—T4 traditional neighborhood, BC community business (converted), and industrial districts the density shall be regulated as for multifamily uses.

- ~~(b) In the I2 general industrial district, a roominghouse must be co-located with a health department licensed community residential facility as defined and regulated in section 65.155. This condition may not be modified.~~

(C.F. No. 05-441, § 1, 8-24-05)

Secs. 65.172—65.179. Reserved.

Sec. 65.180. Adult care home.~~Assisted living.~~

~~A facility licensed by the state department of health where individualized home care aide services or home management services are provided to residents either by the management or by providers under contract with the management where aged, infirm, or terminally ill persons reside in order to receive nursing care, custodial care, memory care, Medicare-certified hospice services, or individualized home care aide services either by the management or by providers under contract with the management.~~

Standards and conditions:

~~See section 65.182. Nursing home.~~

Sec. 65.181. Boarding care home.

~~A building or structure where aged or infirm persons reside on a twenty-four-hour basis in order to receive custodial care and related personal services; for purposes of this code, the same as a nursing home.~~

Sec. 65.182. Nursing home.

~~A building or structure where aged or infirm persons reside on a twenty-four-hour basis in order to receive nursing care and related services.~~

Standards and conditions:

- (a) ~~The yard requirements for multiple family use in the district apply. In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of four (4) guest rooms. In T2—T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.~~
- (b) In traditional neighborhood development districts, a facility located within a predominantly residential or mixed-use area shall have direct access to a collector or higher classification street.
- (c) In traditional neighborhood development districts, the site shall contain a minimum of one hundred fifty (150) square feet of ~~green~~outdoor community space per resident, consisting of ~~outdoor~~ seating areas, yards and/or gardens ~~and/or recreational facilities~~. Public parks or plazas within three hundred (300) feet of the site may be used to meet this requirement.
- ~~(d) In RL—RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2—RM1 residential, T1 traditional neighborhood and OS—B2 business districts, the facility shall serve sixteen (16) or fewer facility residents.~~

~~(e) In residential and T1 traditional neighborhood districts, a conditional use permit is required for facilities serving seven (7) or more facility residents.~~

Sec. 65.183. Hospice.

~~One (1) main building, or portion thereof, on one (1) zoning lot in which terminally ill persons live in order to receive appropriate Medicare-certified hospice services.~~

~~Standards and conditions:~~

~~(a) A conditional use permit is required for hospices serving seventeen (17) or more facility residents.~~

~~(b) In RL—RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2—RM1 residential and OS—B3 business districts, the facility shall serve sixteen (16) or fewer facility residents.~~

~~(c) The yard requirements for multiple-family use in the district apply.~~

Secs. 65.184181—65.189. Reserved.

Sec. 65.190. Dormitory.

A building designed for or used as group living quarters for students of a high school, college, university or seminary, organized and owned by a high school, college, university or seminary.

Standards and conditions:

(a) In residential, ~~and TN1 traditional neighborhood,~~ and BC community business (converted) districts, a conditional use permit is required for off-campus dormitories.

(b) The use must be within two hundred fifty (250) feet of the campus of the institution it serves, for a college, university, seminary or other such institution of higher learning as established in a conditional use permit. In RL—R4 residential districts, the use shall be on the campus.

(c) The yard requirements for multiple-family use in the district apply when the use is not located on a campus established in a conditional use permit.

Sec. 65.191. Fraternity, sorority.

A building used as group living quarters for students of a college, university or seminary, who are members of a fraternity or sorority that has been officially recognized by the college, university or seminary.

Standards and conditions:

(a) In residential, ~~and TN1 traditional neighborhood,~~ and BC community business (converted) districts, a conditional use permit is required for off-campus fraternities and sororities.

(b) The use must be within two hundred fifty (250) feet of the campus boundary as established in the conditional use permit for the institution it serves. In RL—R4 residential districts, the use shall be on the campus.

(c) If it is outside of the campus boundary, the use must be located in an existing structure designed and built as a one- or two-family dwelling or new structure that meets the height, density and setback requirements for a two-family dwelling.

Sec. 65.662. Adult bookstore.

Standards and conditions:

- (c) In B3 business and I1—I2 industrial districts the adult bookstore shall be located at least five hundred (500) feet from any protected use. In B4—B5 business districts the adult bookstore shall be located at least two hundred fifty (250) feet from any protected use. "Protected use" shall be defined as residential buildings in nonresidential zoning districts, mixed commercial residential buildings, a day care center, where such day care center is a principal use; a house of worship; a public library; a school (public, parochial or private elementary, junior high or high school); a public regional park or parkway, public park, public recreation center or public specialized recreation facility as identified in the parks and recreation element of the Saint Paul Comprehensive Plan; a fire station; a supportive housing facility; a licensed correctional community residential facility; an emergency housing facility or a hotel/motel. The distance shall be measured in a straight line from the closest point of the property line of the building in which the adult bookstore is located to the closest point of the property line of the building in which is located an aforementioned protected use.

Sec. 65.922. Support services in housing for the elderly.

Support services within elderly housing as defined in section 65.123 including limited food service, beauty salon and retail goods sales areas.

Development standard:

Support service areas shall ~~not~~ exceed five (5) percent of designated community room area.

Sec. 66.221. Principal uses.

Table 66.221, principal uses in residential districts, lists all permitted and conditional uses in the RL—RM3 residential districts, and notes applicable development standards and conditions.

Table 66.221. Principal Uses in Residential Districts

Use	RL	R1— R4	RT1	RT2	RM1	RM2	RM3	Definition (d) Standards (s)
<i>Residential Uses</i>								
Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	(d)
Community residential facility, licensed human service <u>Supportive housing facility</u>	P	P	P	P/C	P/C	P/C	P/C	(d), (s)
Community residential facility, licensed correctional					C	C	C	(d), (s)
Community residential facility, health department licensed					C	C	C	(d), (s)
Emergency housing facility					C	C	C	(d), (s)

Shelter for battered persons	P/C	P/C	P/C	P/C	P/C	P/C	P/C	(d), (s)
Sober house	P	P	P/C	P/C	P/C	P/C	P/C	(d), (s)
Transitional housing facility	P/C	P/C	P/C	P/C	P/C	P/C	P/C	(d), (s)
Roominghouse, boarding house					C	C	C	(d), (s)
Nursing home, boarding care home, assisted living						C	P	(d), (s)
<u>Hospice Adult care home</u>	P	P	P	<u>P/C</u>	<u>P/C</u>	P/C	<u>P/C</u>	(d), (s)
Dormitory	P	P	P/C	P/C	P/C	P/C	P/C	(d), (s)
Fraternity, sorority	P	P	P/C	P/C	P/C	P/C	P/C	(d), (s)

Sec. 66.321. Principal uses.

Table 66.321, principal uses in traditional neighborhood districts, lists all permitted and conditional uses in the T1—T4 traditional neighborhood districts, and notes applicable development standards and conditions.

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	T1	T2	T3	T4	Definition (d) Standards (s)
<i>Residential Uses</i>					
Congregate Living					
Foster home, freestanding foster care home	P	P	P	P	(s) <u>(d)</u>
Community residential facility, licensed human service <u>Supportive housing facility</u>	<u>P/C</u>	P	P	P	(d), (s)
Community residential facility, licensed correctional	C	C	C	C	(d), (s)
Community residential facility, health department licensed	C	C	C	C	(d), (s)
Emergency housing facility	C	C	C	C	(d), (s)
Shelter for battered persons	P/C	P/C	P/C	P/C	(d), (s)
Transitional housing facility	P/C	P/C	P/C	P/C	(d), (s)
Sober house	P/C	P/C	P/C	P/C	(d), (s)
Roominghouse	C	<u>P/C</u>	C	C	(d), (s)
Nursing home, boarding care home, assisted living	P	P	P	P	(d), (s)
Hospice Adult care home	<u>P/C</u>	P	P	P	(d), (s)
Dormitory	P/C	P	P	P	(d), (s)
Fraternity, sorority	P/C	P	P	P	(d), (s)

Sec. 66.421. Principal uses.

Table 66.421, principal uses in business districts, lists all permitted and conditional uses in the OS—B5 business districts, and notes applicable development standards and conditions.

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Definition (d) Standards (s)
<i>Residential Uses</i>								
Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	(d), (s)
Community residential facility, licensed human service <u>Supportive housing facility</u>	P	P	P	P	P	P	P	(d), (s)
Community residential facility, licensed correctional			C	C	C	C	C	(d), (s)
Community residential facility, health department licensed			C	C	C	C	C	(d), (s)
Emergency housing facility			C	C	C	C	C	(d), (s)
Overnight shelter							C	(d), (s)
Shelter for battered persons	P/C	P/C	P/C	P/C	P	P	P	(d), (s)
Transitional housing facility	P/C	P/C	P/C	P/C	P	P	P	(d), (s)
Sober house	P/C	P/C	P/C	P/C	P/C	P/C	P/C	(d), (s)
Roominghouse, boarding house			C			P	P	(d), (s)
Nursing home, boarding care home, assisted living			C			P	P	(d), (s)
Hospice <u>Adult care home</u>	C <u>P</u>	C <u>P</u>	P <u>C</u>	C <u>P</u>	P	P	P	(d), (s)
Dormitory			P/C			P	P	(d), (s)
Fraternity, sorority			P/C					(d), (s)

Sec. 66.521. Principal uses.

Table 66.521, principal uses in industrial districts, lists all permitted and conditional uses in the IT—I3 industrial districts, and notes applicable development standards and conditions.

Table 66.521. Principal Uses in Industrial Districts

Use	IT	I1	I2	I3	Definition (d) Standards (s)

Residential Uses					
<i>Congregate Living</i>					
Community residential facility, licensed human service <u>Supportive housing facility</u>	P	P	<u>PC</u>		(d), (s)
Community residential facility, licensed correctional		C	C		(d), (s)
Community residential facility, health department licensed		C	C		(d), (s)
Correctional facility		C	P		
Emergency housing facility		C	C		(d), (s)
Overnight shelter		C	C		(d), (s)
Shelter for battered persons	P	P	P		(d), (s)
Transitional housing facility	P	P	P		(d), (s)
Sober house	P/C	P/C	P/C		(d), (s)
Roominghouse, boarding house	<u>P</u>	<u>P</u>	C		(d), (s)
Hospice <u>Adult care home</u>	<u>PC</u>	<u>PC</u>	<u>PC</u>		(d), (s)

Merriam Park Housing Mix Working Group

Draft Report for City of Saint Paul
Planning Commission

January 22, 2016

*As delivered January 22, 2016 at the
Planning Commission public hearing

Merriam Park

Housing Mix Working Group - Agenda

- Background, Findings
 - Kevin Anderson [Slides 3 – 12]
- Best Practices Data/Sources
 - Margaret Ryther [Slide 13]
- Our Data (Maps)
 - Gretchen Robertson [Slides 14 – 18]
- Recommendations
 - Gene Pelszynski [Slides 19 – 21]
- Next Steps and Q&A
 - John Syverud [Slides 22 – 23]

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- As a result, we are nearing a tipping point of overconcentration and need a stabilizing factor to ensure a balance of all types of housing.

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- Union Park District Council (UPDC) established our Merriam Park Housing-Mix Working Group in November under the authority of its Land Use Committee.^[2]
- Our focus: Cumulative impact of mixed housing
- Our recommendations today are regarding Sober Houses

[See our Mission on Appendix A]

Working Group Principles

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 - Group members welcome the changes coming to Merriam Park. We are not objecting to density; we are concerned, however, with overconcentration.
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How Sober Houses versus SFRs Affect Neighborhood Character/Continuity*

Daily Life Activities/Factors	Sober House – Data and Observation	SFR – Data and Observation
Purpose of the house	Mission to provide supportive living	Provides day-to-day living activities and community
Financial Aspect	Moneymaker for owner: Gross income of \$10,000+ per month	Cost to owner: Pay mortgage of \$1,500 per month
Numbers	Range anywhere from 7 to 14 customers, 1 manager	4 residents
Turnover of residents	New residents each week	Same family for 20 years
Linkage to community	Due to frequent turnover, hard to know whether someone is a neighbor, a visitor or other	Have known these neighbors for years
Traffic	3- 5 cars	2 cars
Parking	Mostly on street	Garage or off-street space
House/backyard activity and noise	7 - 14 customers + 1 manager results in high usage and volume; Tours for prospective customers often weekly	Use backyard average of 1 hour each Saturday and Sunday
Level of smoke	4 to 8 customers * 5 smoke breaks daily = 20 to 45 cigarettes within 30 feet of SFR's back door	No smokers
Services: City inspections, construction workers, etc.	Once a week minimum	Once every six month at most
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*Based on Merriam Park neighbors logs [Appendix D - For Profit Sober House Marketing example]

Impact Continuity and Character

Sober Houses affect neighborhood continuity and character
Merriam Park is a prime location for Sober Houses

Issues around size,
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Sober Houses require
more City regulation
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SFR



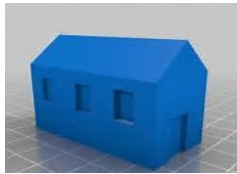
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From a Resident's Perspective: Overconcentration of CLFs

We risk hitting a "tipping point" of overconcentration

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Sober House



Correctional; DHS
Foster Care



Student
Rental



SFR



Other: AirBnB, sleeping
rooms, accessory
dwellings, etc.



Supportive Living Not
Requiring City Approval



Working Group Findings – Summary

- Sober Houses affect neighborhood continuity and character
 - Sober Houses are driven by mission and revenue^[4]
 - Issues around size, services and residents’ turnover^[5]
 - Once converted, single-family houses rarely switch back^[6]
 - Nonprofit Sober Houses pay no property taxes^[7]
 - Sober Houses require more City regulation/oversight than single-family homes^[8]
- Merriam Park is a prime location for Sober Houses
 - Large homes at reasonable prices^[9]
 - St. Thomas and other colleges add student rentals to the mix^[10]
 - Other types (AirBnB’s, sleeping rooms, accessory dwellings) add density^[11]
- We risk hitting a “tipping point” of overconcentration
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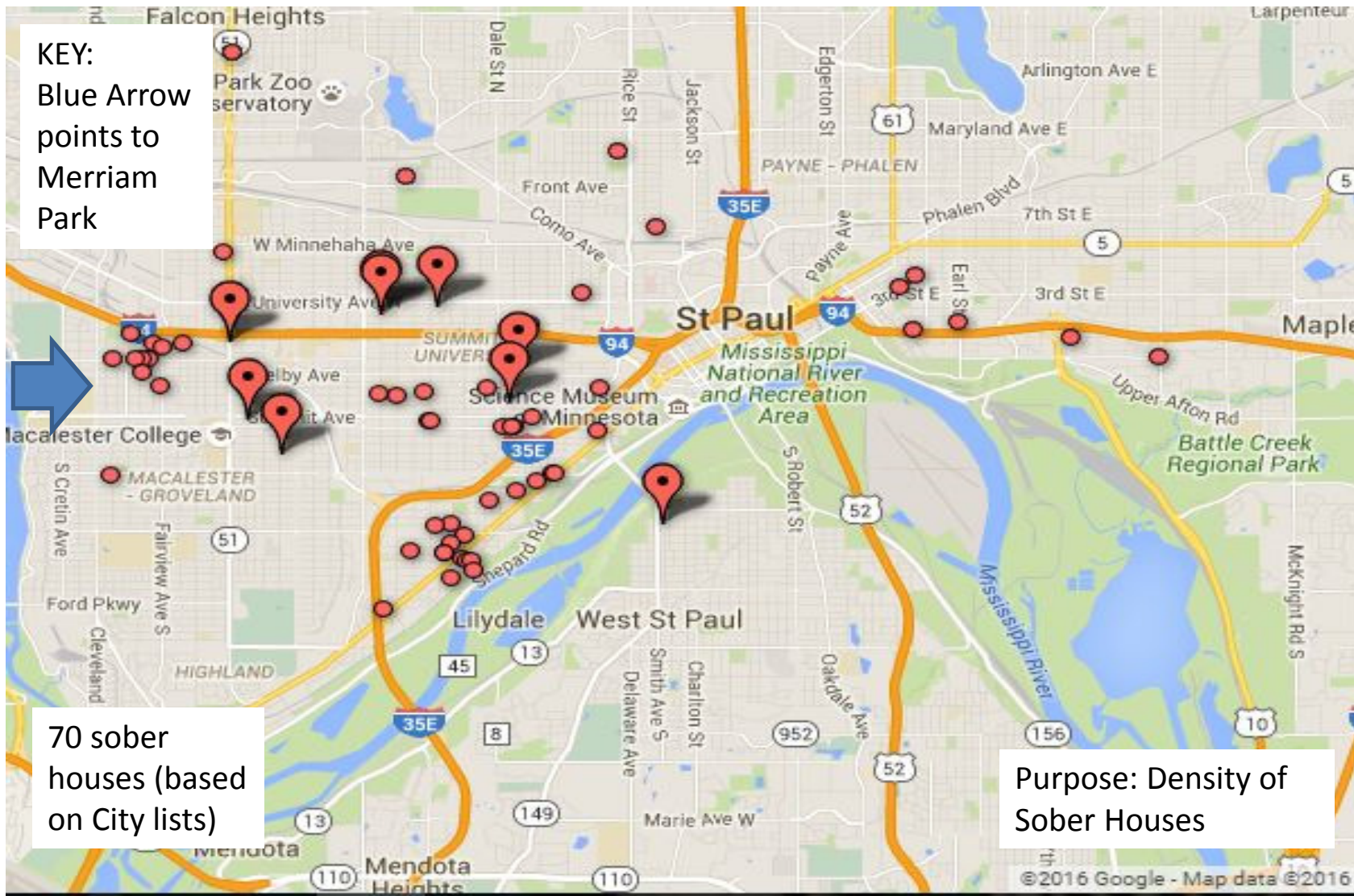
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- Other City Examples
 - Arizona: In towns like Mesa, Tempe and Surprise distance requirements range from 1,200 feet to 1,320 feet between sober houses ^[16]

*See Appendix B1 for additional research

Our Data (Maps)

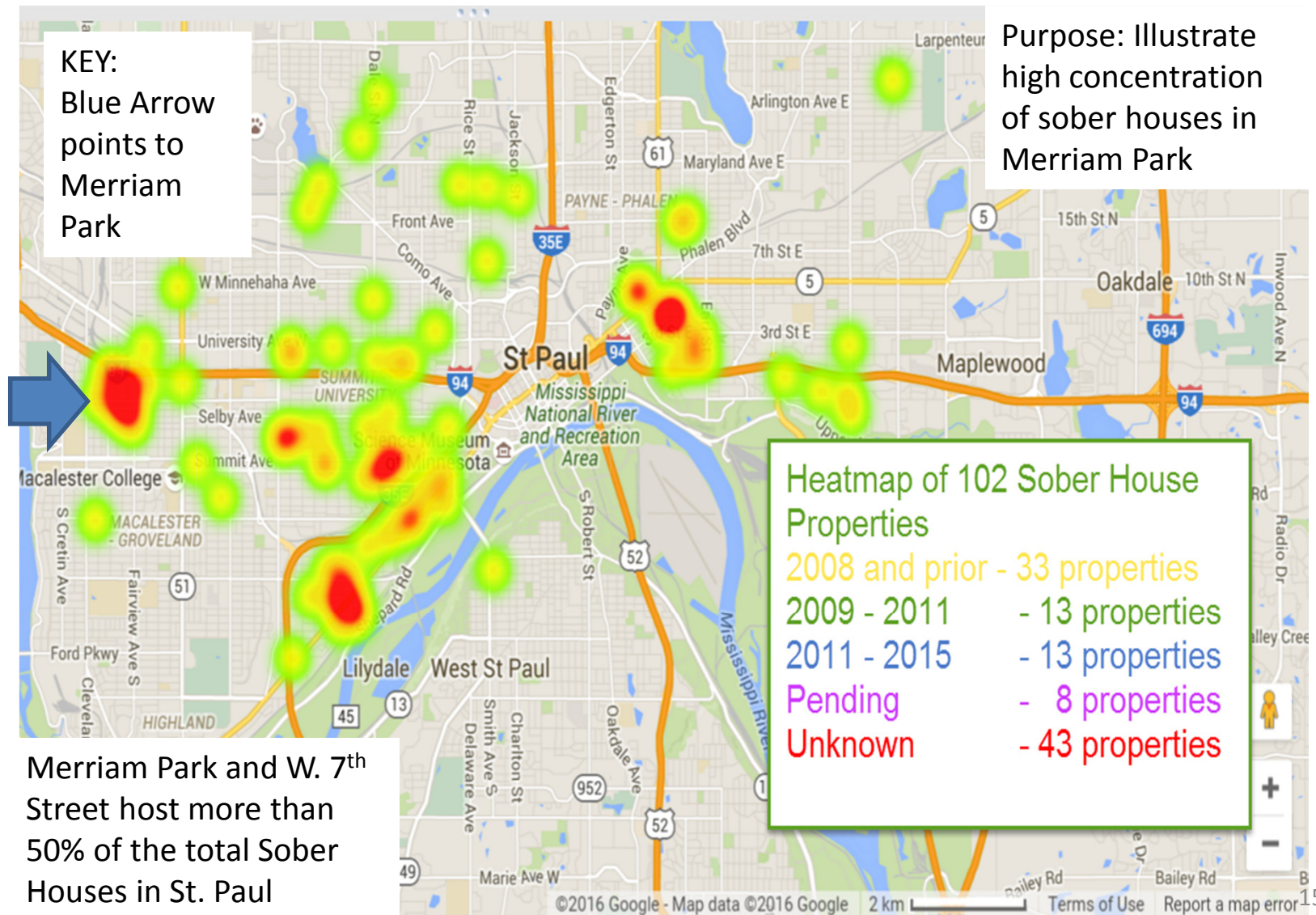
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Sober Houses Today – 70*

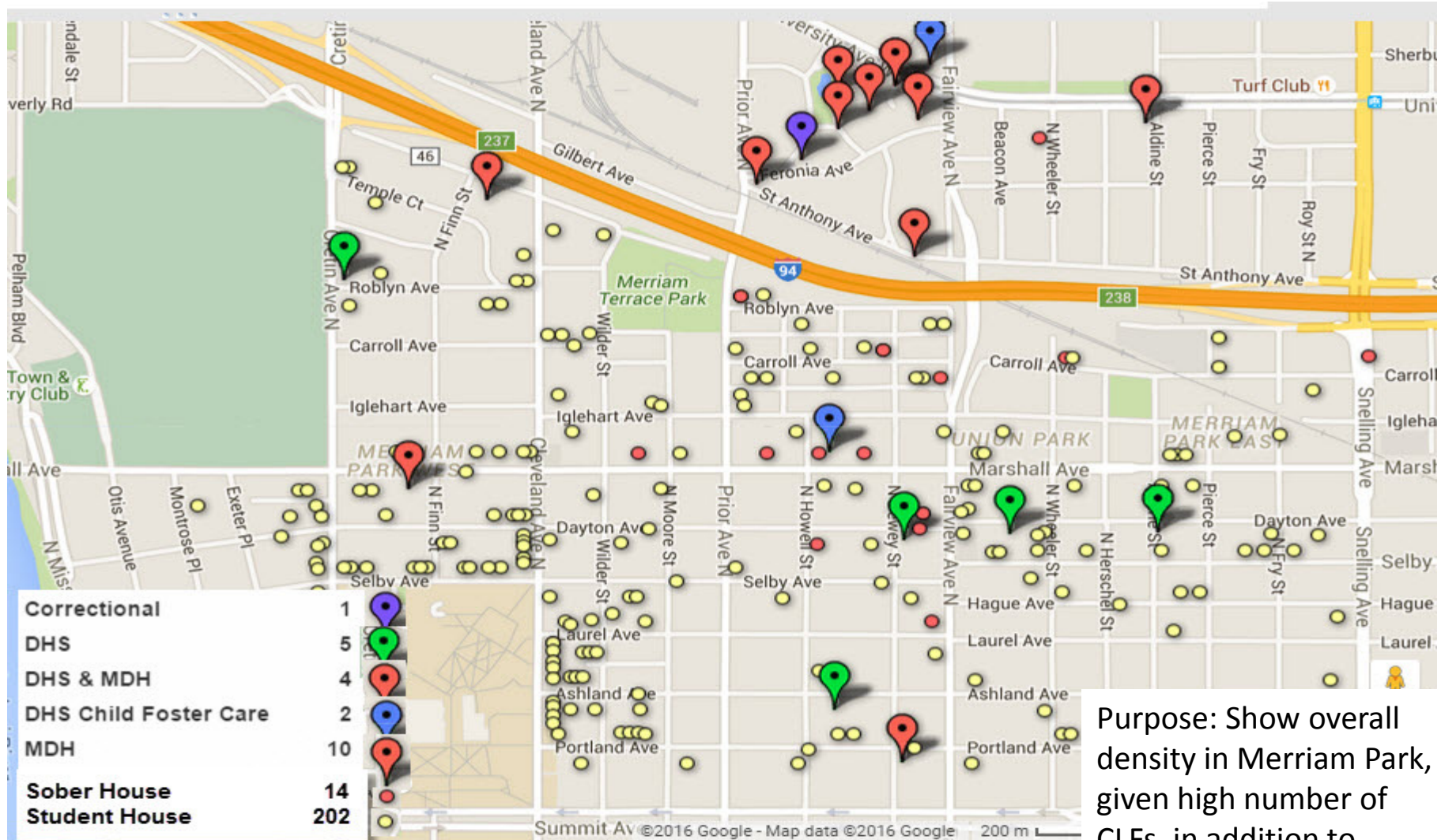


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Sober Houses – Heat Map



On Top of That: Student Rental Overlay



Purpose: Show overall density in Merriam Park, given high number of CLFs, in addition to student rentals

Primary Recommendation: Mandate Distance of 1,320 Feet Between Sober Houses

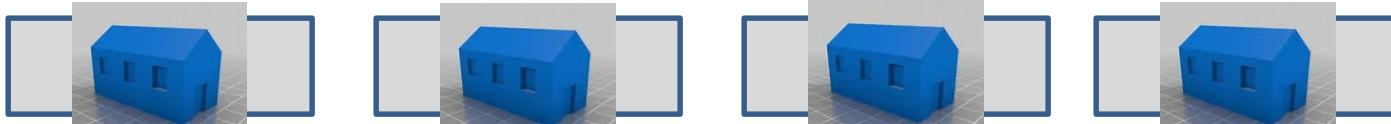
- We are asking for a change in the distance requirement of Sober Houses from 330 feet to 1,320 feet.
- The impact and pressure of various mixed housing on Merriam Park is cumulative.
 - We have a unique neighborhood footprint with more Sober Houses, congregate living facilities and student rentals than any other City area.
- As a result, we are nearing a tipping point of overconcentration and need a stabilizing factor to ensure a balance of all types of housing.

*Consider grandfathering in current Sober Houses; See Appendix B1 and B2 for current distance requirements in St. Paul.

Advantages to 1,320 Feet Distance Requirement

- How 1,320 feet maintains the residential character for all and ensures balance of all types of housing:
 - Today 330 feet – Upper Limit: One Sober House every block [up to 173; a 12X increase from today]
 - Recommendation of 1,320 feet – Upper Limit: One Sober House every four blocks [Up to 43; a 3X increase from today]

TODAY : 330 feet Separation Distance - Upper Limit [4 Block Area]



RECOMMENDED: 1,320 feet Separation Distance – Upper Limit [4 Block Area]



*See Appendix A for detailed data

Working Group

Sub-Recommendations

We request that the City of Saint Paul:

- Study Sober Houses' neighborhood impact, using Merriam Park as a case study:
 - Study impact to neighborhood and Sober House residents
 - Consider the holistic impact of all types of mixed housing – e.g., other CLFs, student rentals, etc.
 - Study tax implications*
- Holistically register, track and forecast all housing types [Today the City does not have a comprehensive list – See Appendix D]*
- Institute a notification requirement, so citizens are aware of incoming Sober Houses*
- Consider instituting licenses and fees that sustain tracking and oversight of Sober Houses

*Endorsed by Union Park Land Use Committee; additional recommendations were added following the Union Park committee meeting

Working Group Next Steps

- Request that the City Planning Commission (CPC) institute our recommendations and include them in the Zoning study
- Promote our recommendations for adoption to the Saint Paul City Council and the Mayor's office
- Solicit additional input from the community and partner with groups wanting to further explore these issues
- Replicate this study as a “best practice.”

Conclusion

- Primary Recommendation: We are asking for a change in the distance requirement of Sober Houses from 330 feet to 1,320 feet.
- Sub-recommendations:
 - Study Sober Houses' neighborhood impact, using Merriam Park as a case study
 - Holistically register, track and forecast all housing types
 - Institute a notification requirement, so citizens are aware of incoming Sober Houses
 - Consider instituting licenses and fees that sustain tracking and oversight of Sober Houses
- Avoids overconcentration, ensures balance while allowing ample opportunity for additional Sober Houses to move into Merriam Park (3X increase vs. a 12X increase)
- The quality of life for all in Merriam Park is about maintaining a balance of mixed housing types

Appendix A: Working Group Mission

- Achieve a balance of single-family residential (SFR) and mixed housing in Merriam Park:
 - Develop a residential land type and usage map
 - Review existing studies and literature
 - Engage community stakeholders
 - Study property tax implications
 - Craft recommendations for the City and UPDC board
 - Leverage the model across City neighborhoods

Appendix B1: Additional Research

- City of Saint Paul current regulation
 - Zoning study 2005^[12]; a zoning code regulation limits the population of certain categories of congregate living to $\leq 1\%$ of the planning district's total population^[18]
[Cite 330 feet]
- Minnesota college town models
 - Northfield and Winona both require that only 20% of a given block can be rental housing^[19]

Appendix B2: Separation Requirement

Below are the 8 categories of Congregate Living Facilities that have a distance requirement today^[12*]

- CRF: Human Service
- CRF: Correctional
- CRF: Health department
- Emergency housing
- Overnight shelter
- Shelter for battered persons
- Transitional housing
- Sober houses

*Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; from: Comprehensive Planning Committee; 10/28/15

Appendix B3:

Detailed Distance Requirements

#	CLF (Regulated Today)	Current Regulation*
1	CRF: Human Service	1,320 from certain other facilities
2	CRF: Correctional	1,320 from certain other facilities
3	CRF: health department	1,320 from certain other facilities
4	Emergency housing	1,320 from certain other facilities
5	Overnight shelter	600 from certain other facilities
6	Shelter for battered persons	1,320 from certain other facilities
7	Transitional housing	1,320 from certain other facilities in RL-RT2 districts
8	Sober houses	330 feet from other Sober Houses
		*12: Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; From: Comprehensive Planning Committee; 10/28/15

Appendix C: Example of For-profit Sober House Marketing

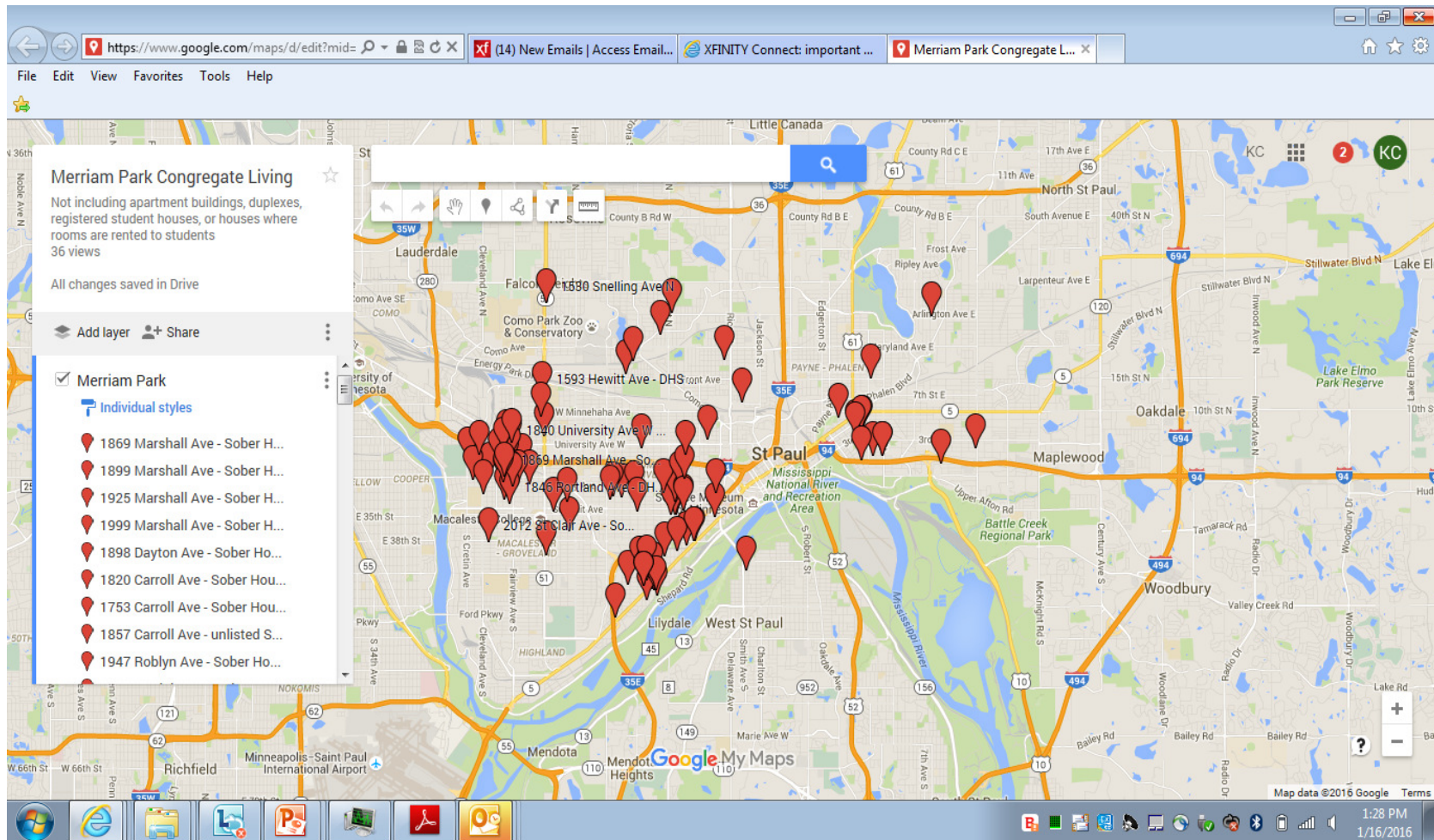
Campus & Location

Transitions is uniquely set-up as a campus in the heart of one of the worlds' epicenters of recovery–The Twin Cities, Minnesota. Saint Paul in particular is home to a vast recovery community and is known to be one of the most supportive and nurturing environments for the recovering person. In fact, many refer to Saint Paul as the “Recovery Capital of the World.”

Transitions campus is nestled in the charming, quiet residential Merriam Park Neighborhood of Saint Paul where Cornerstone, outpatient offices, sober living residences and Arches are all within walking distance of each other– designed to promote a strong community based on frequent peer-to-peer interaction. Among the hundreds of twelve step meetings taking place each week in The Cities, dozens of them are within walking distance of Transitions.

Due to Transitions near proximity to the Saint Paul/Minneapolis border, clients have easy access to a diverse arena of various recreation and entertainment activities, numerous colleges and universities and an abundance of employment opportunities.

Appendix D: 94 Sober Houses in St. Paul vs 70 Official City List*



*Found via Internet research; CLFs with 4 or more residents marketing themselves as sober houses

Appendix E: Implications of a 1,320 foot Sober House Distance Requirement

Distance Requirements	Numbers Today	Upper Limit	% Increase
Current Rule: Sober Houses 330 feet	14 Sober Houses	173 Sober Houses [up to 1 every block]	12X Increase
Recommendation: 1,320 feet between Sober Houses	14 Sober Houses	43 Sober Houses [up to 1 every 4 blocks]	3X Increase

Citations

- 1: Merriam Park Boundaries: University to the north, Snelling to the east, Summit to the south and the River to the West
- 2: Union Park District Council <http://unionparkdc.org/our-work/committees/land-use>
- 3: Residential Recovery Homes and Their Local Impacts, Group Homes ,Residential Recovery Facilities Conference, Alene Taber, March 2, 2007
- 4: Minnesota House of Representatives – Research Department, 2001: <http://www.house.leg.state.mn.us/hrd/pubs/asstlvlg.pdf>
- 5: Alene M. Taber, Esq., AICP Michael J. Alti, Esq. Jackson, DeMarco, Tidus & Peckenpaugh 2030 Main Street, Suite 1200 Irvine, CA 92614 ;
http://clkrep.lacity.org/onlinedocs/2007/07-3427_misc_5-15-2008.pdf;
- 6: HUD, 2015: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/alcp
- 7: MN Department of Revenue, 2015: <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS172.pdf>
- 8: Assisted Living.com, 2015: <http://www.assistedliving.com/laws-by-state/>
- 9: Zillo, 2015: http://www.trulia.com/real_estate/Merriam_Park_West-Saint_Paul/10796/market-trends/
[Average price per square foot for Merriam Park West in 2015 is \$207; while average price per square foot for Macalester Groveland is \$234.]
- 10: City of St. Paul, 2015: <https://www.stpaul.gov/departments/city-council/ward-offices/ward-4-council-president-stark/student-housing-zoning-overlay>
- 11: Design center for American Urban Landscape, 2003: http://www.corridordevelopment.org/pdfs/from_MDC_Website/db9.pdf; Airbnb: https://www.airbnb.com/?af=43888734&c=brdsearch_d_engus_na_na_p2_txt&dclid=CKDdoZuXlsoCFZBwMAodCO8FBw; Sleeping rooms: <http://www.theguardian.com/commentisfree/2015/oct/26/overcrowding-sharing-bed-housing> ; Accessory Dwellings: <http://accessorydwellings.org/tag/crowding/>
- 12: Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; From: Comprehensive Planning Committee; 10/28/15 [Each CLF is regulated separately]
- 13: Riverbank House Blog, 2015: <http://riverbankhouse.net/sober-houses-affordable-sober-living-meets-promise-profit/>
- 14: Family Style of St. Paul, Inc. v. City of St. Paul (8th Cir. 1991) 923 F.2d 91: <http://www.casebriefs.com/blog/law/property/property-law-keyed-to-singer/fair-housing-law/familystyle-of-st-paul-inc-v-city-of-st-paul/>
- 15: Costa Mesa Federal judge rules in favor distance requirement: <http://www.costamesaca.gov/index.aspx?page=40&recordid=2314>;
<http://m.ocregister.com/articles/mesa-695675-costa-court.html>
- 16: Arizona City Examples of Distance Requirements: **The Republic (Metro Phoenix newspaper)** By Parker Leavitt **April 27, 2013**;
<http://www.mesaaz.gov/home/showdocument?id=15964>
- 17 - Characteristics of Residential: <https://www.planning.org/greatplaces/neighborhoods/characteristics.htm>
- 18- Appendix B1 : Sober Thoughts on Fair Housing, Michael Mischke, 6/30/15: <http://forums.e-democracy.org/groups/stpaul-issues/messages/topic/2Agv11cp0Fem8oJIXNRF74> ;
- 19- Appendix B1: *Dean v. City of Winona*, 843 N.W.2d 249 (Minn. Ct. App. 2014). <http://www.cityofwinona.com/wp-content/uploads/2012/12/winona-rental-august-20151.pdf>
- 20 - Appendix C: Marketing Example: <http://www.transitions.pro/locations/>

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For More Information Contact:
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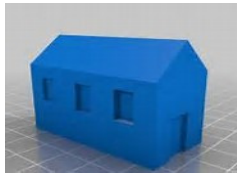
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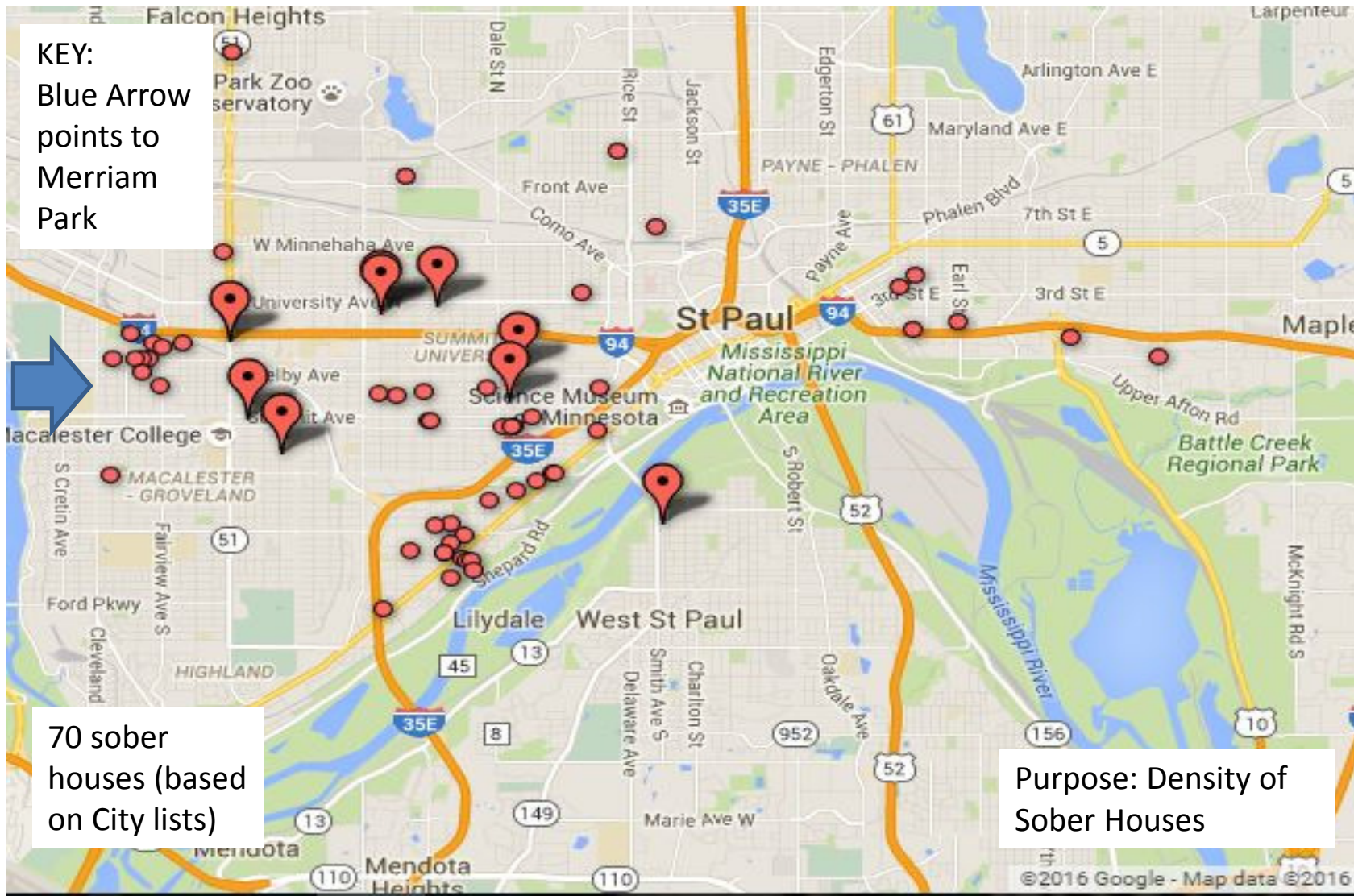
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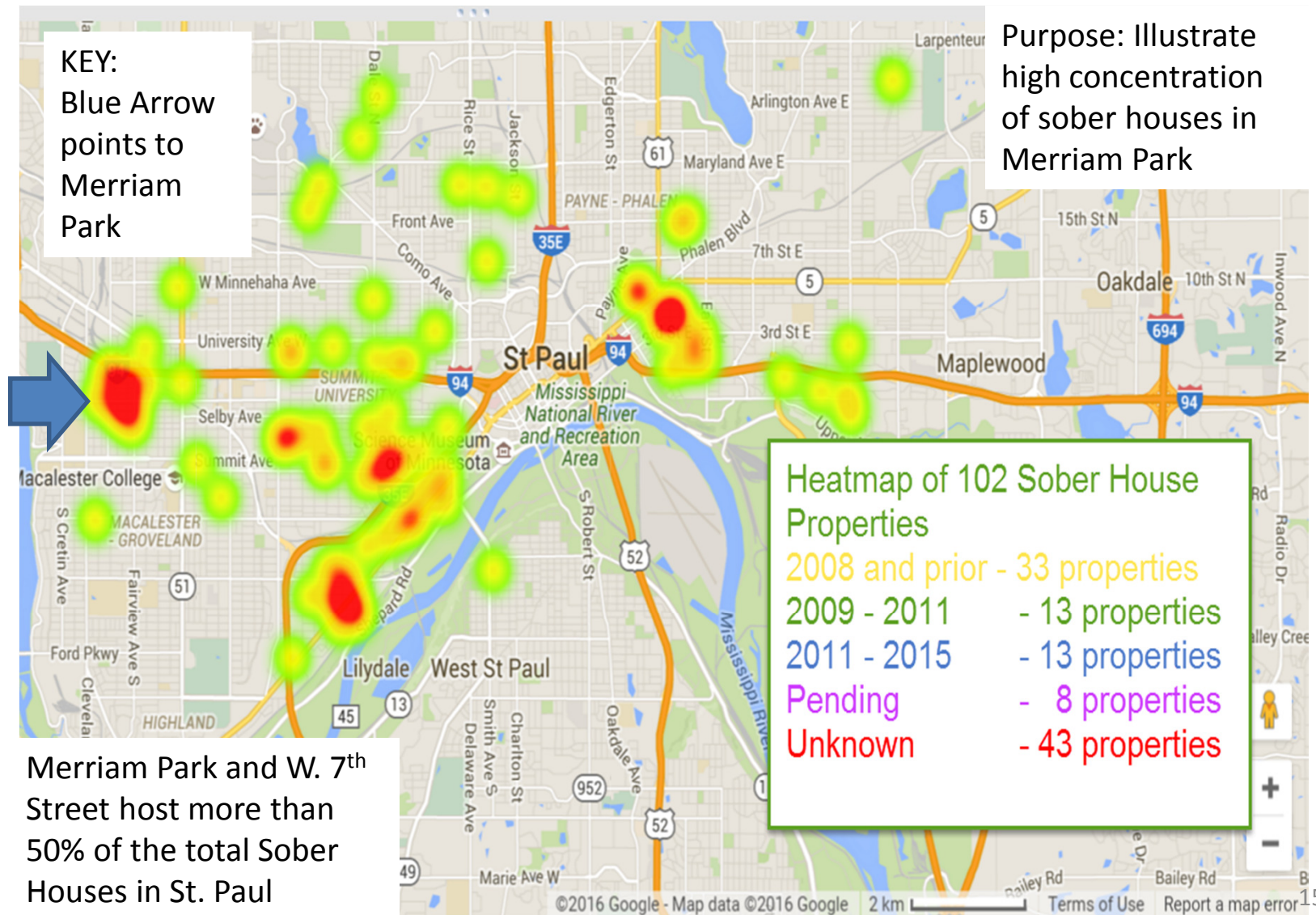
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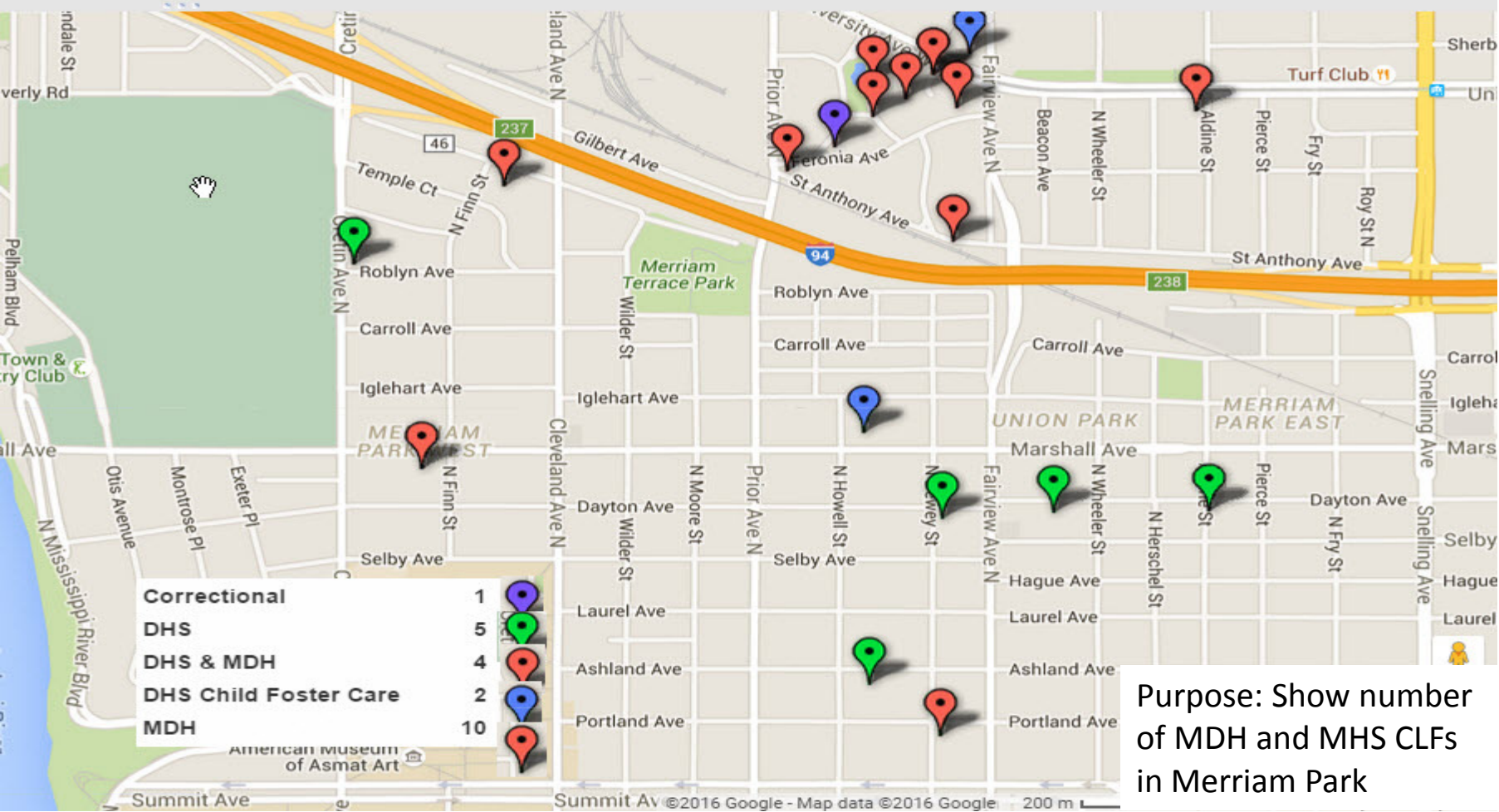


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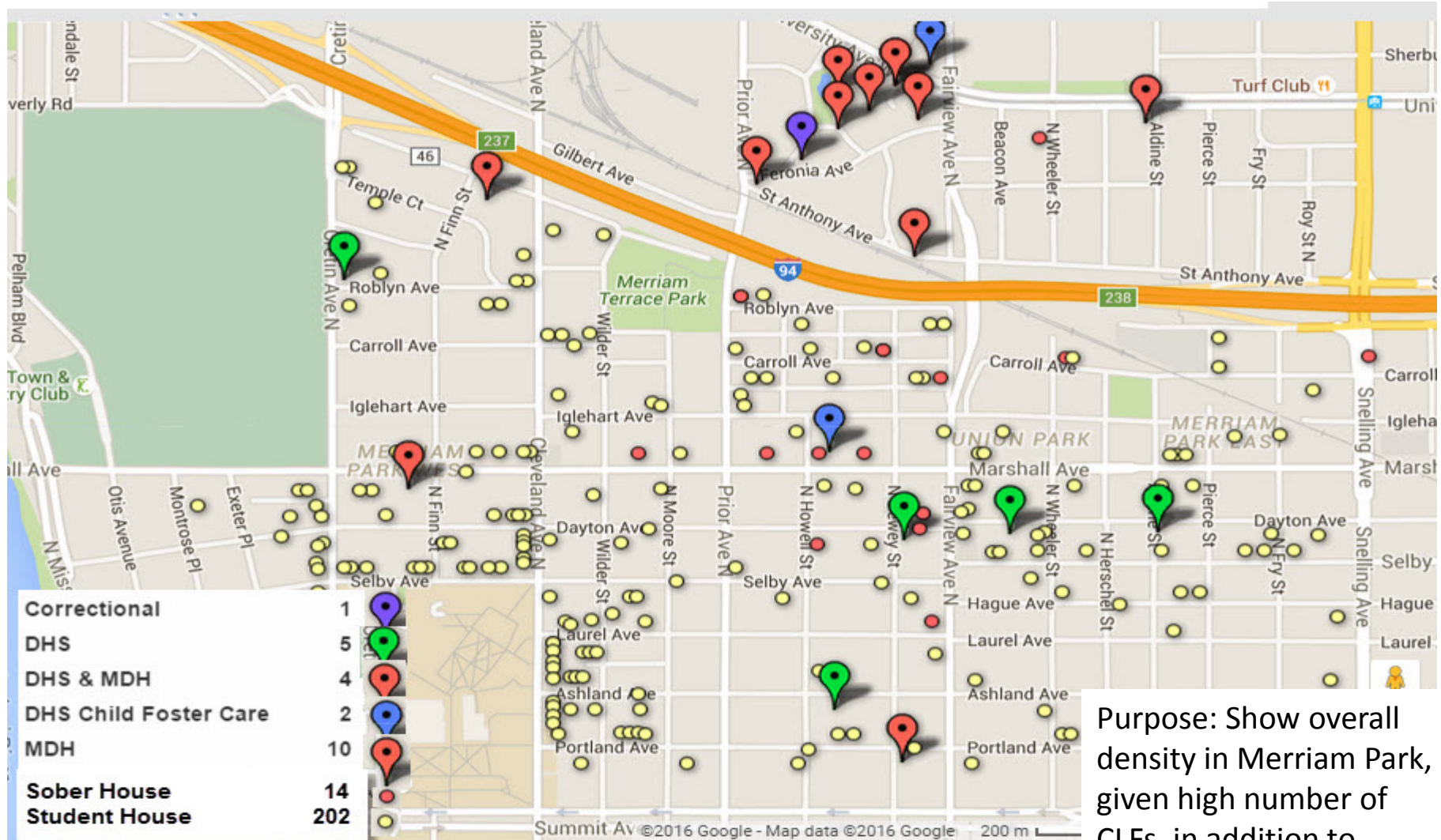
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Purpose: Show overall density in Merriam Park, given high number of CLFs, in addition to student rentals

Primary Recommendation: Mandate Distance of 1,320 Feet Between Sober Houses

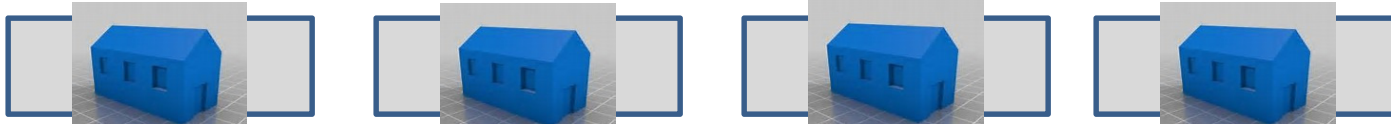
- We are asking for a change in the distance requirement of Sober Houses from 330 feet to 1,320 feet.
- The impact and pressure of various mixed housing on Merriam Park is cumulative.
 - We have a unique neighborhood footprint with more Sober Houses, congregate living facilities and student rentals than any other City area.
- As a result, we are nearing a tipping point of overconcentration and need a stabilizing factor to ensure a balance of all types of housing.

*Consider grandfathering in current Sober Houses; See Appendix B1 and B2 for current distance requirements in St. Paul.

Advantages to 1,320 Feet Distance Requirement

- How 1,320 feet maintains the residential character for all and ensures balance of all types of housing:
 - Today 330 feet – Upper Limit: One Sober House every block [up to 173; a 12X increase from today]
 - Recommendation of 1,320 feet – Upper Limit: One Sober House every four blocks [Up to 43; a 3X increase from today]

TODAY : 330 feet Separation Distance - Upper Limit [4 Block Area]



RECOMMENDED: 1,320 feet Separation Distance – Upper Limit [4 Block Area]



*See Appendix A for detailed data

Working Group

Sub-Recommendations

We request that the City of Saint Paul:

- Study Sober Houses' neighborhood impact, using Merriam Park as a case study:
 - Study impact to neighborhood and Sober House residents
 - Consider the holistic impact of all types of mixed housing – e.g., other CLFs, student rentals, etc.
 - Study tax implications*
- Holistically register, track and forecast all housing types [Today the City does not have a comprehensive list – See Appendix D]*
- Institute a notification requirement, so citizens are aware of incoming Sober Houses*
- Consider instituting licenses and fees that sustain tracking and oversight of Sober Houses

*Endorsed by Union Park Land Use Committee; additional recommendations were added following the Union Park committee meeting

Working Group Next Steps

- Request that the City Planning Commission (CPC) institute our recommendations and include them in the Zoning study
- Promote our recommendations for adoption to the Saint Paul City Council and the Mayor's office
- Solicit additional input from the community and partner with groups wanting to further explore these issues
- Replicate this study as a "best practice."

Conclusion

- Primary Recommendation: We are asking for a change in the distance requirement of Sober Houses from 330 feet to 1,320 feet.
- Sub-recommendations:
 - Study Sober Houses' neighborhood impact, using Merriam Park as a case study
 - Holistically register, track and forecast all housing types
 - Institute a notification requirement, so citizens are aware of incoming Sober Houses
 - Consider instituting licenses and fees that sustain tracking and oversight of Sober Houses
- Avoids overconcentration, ensures balance while allowing ample opportunity for additional Sober Houses to move into Merriam Park (3X increase vs. a 12X increase)
- The quality of life for all in Merriam Park is about maintaining a balance of mixed housing types

Appendix A: Working Group Mission

- Achieve a balance of single-family residential (SFR) and mixed housing in Merriam Park:
 - Develop a residential land type and usage map
 - Review existing studies and literature
 - Engage community stakeholders
 - Study property tax implications
 - Craft recommendations for the City and UPDC board
 - Leverage the model across City neighborhoods

Appendix B1: Additional Research

- City of Saint Paul current regulation
 - Zoning study 2005^[12]; a zoning code regulation limits the population of certain categories of congregate living to $\leq 1\%$ of the planning district's total population^[18]
[Cite 330 feet]
- Minnesota college town models
 - Northfield and Winona both require that only 20% of a given block can be rental housing^[19]

Appendix B2: Separation Requirement

Below are the 8 categories of Congregate Living Facilities that have a distance requirement today^[12*]

- CRF: Human Service
- CRF: Correctional
- CRF: Health department
- Emergency housing
- Overnight shelter
- Shelter for battered persons
- Transitional housing
- Sober houses

*Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; from: Comprehensive Planning Committee; 10/28/15

Appendix B3:

Detailed Distance Requirements

#	CLF (Regulated Today)	Current Regulation*
1	CRF: Human Service	1,320 from certain other facilities
2	CRF: Correctional	1,320 from certain other facilities
3	CRF: health department	1,320 from certain other facilities
4	Emergency housing	1,320 from certain other facilities
5	Overnight shelter	600 from certain other facilities
6	Shelter for battered persons	1,320 from certain other facilities
7	Transitional housing	1,320 from certain other facilities in RL-RT2 districts
8	Sober houses	330 feet from other Sober Houses
		*12: Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; From: Comprehensive Planning Committee; 10/28/15

Appendix C: Example of For-profit Sober House Marketing

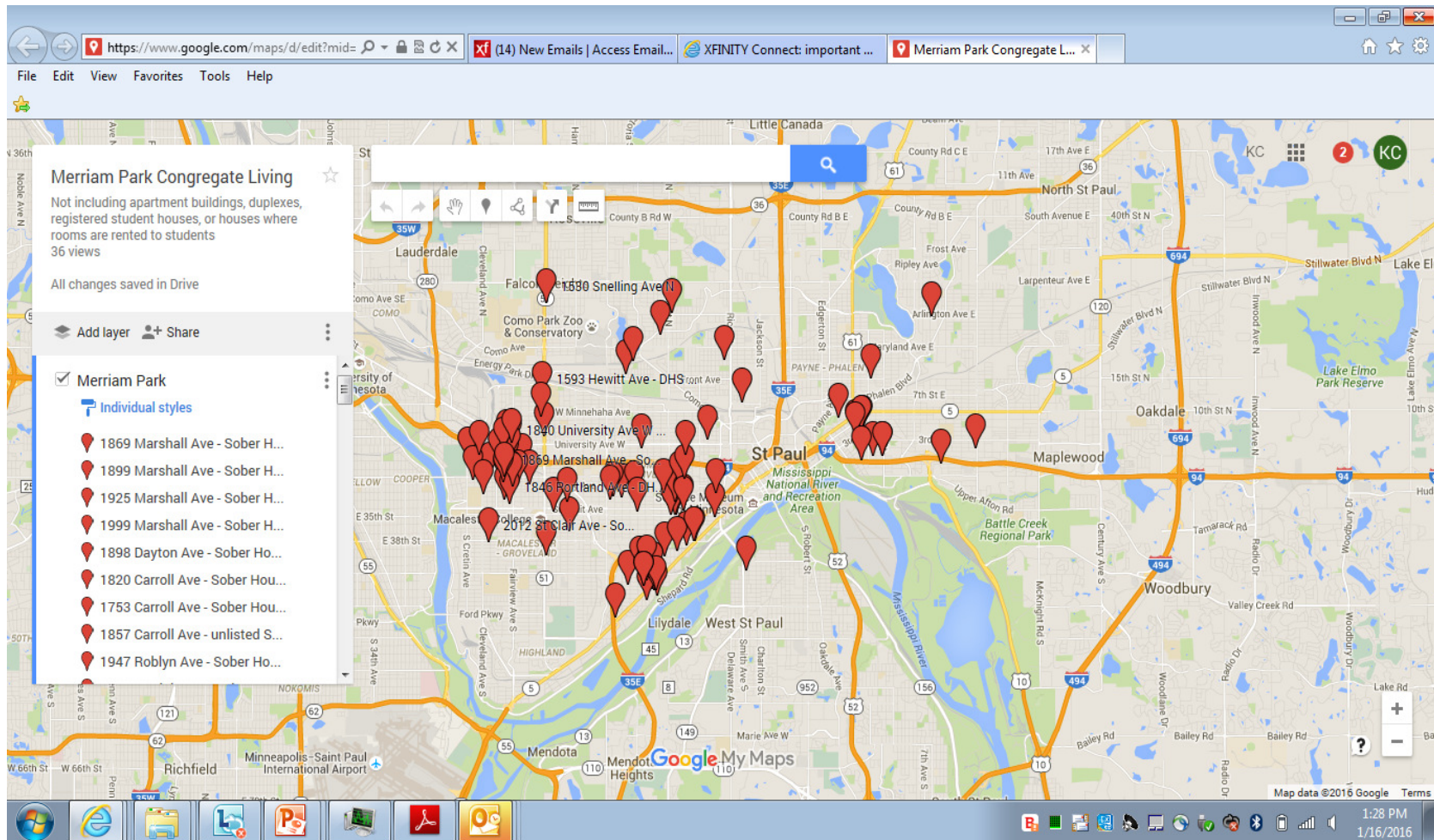
Campus & Location

Transitions is uniquely set-up as a campus in the heart of one of the worlds' epicenters of recovery–The Twin Cities, Minnesota. Saint Paul in particular is home to a vast recovery community and is known to be one of the most supportive and nurturing environments for the recovering person. In fact, many refer to Saint Paul as the “Recovery Capital of the World.”

Transitions campus is nestled in the charming, quiet residential Merriam Park Neighborhood of Saint Paul where Cornerstone, outpatient offices, sober living residences and Arches are all within walking distance of each other– designed to promote a strong community based on frequent peer-to-peer interaction. Among the hundreds of twelve step meetings taking place each week in The Cities, dozens of them are within walking distance of Transitions.

Due to Transitions near proximity to the Saint Paul/Minneapolis border, clients have easy access to a diverse arena of various recreation and entertainment activities, numerous colleges and universities and an abundance of employment opportunities.

Appendix D: 94 Sober Houses in St. Paul vs 70 Official City List*



*Found via Internet research; CLFs with 4 or more residents marketing themselves as sober houses

Appendix E: Implications of a 1,320 foot Sober House Distance Requirement

Distance Requirements	Numbers Today	Upper Limit	% Increase
Current Rule: Sober Houses 330 feet	14 Sober Houses	173 Sober Houses [up to 1 every block]	12X Increase
Recommendation: 1,320 feet between Sober Houses	14 Sober Houses	43 Sober Houses [up to 1 every 4 blocks]	3X Increase

Citations

- 1: Merriam Park Boundaries: University to the north, Snelling to the east, Summit to the south and the River to the West
- 2: Union Park District Council <http://unionparkdc.org/our-work/committees/land-use>
- 3: Residential Recovery Homes and Their Local Impacts, Group Homes ,Residential Recovery Facilities Conference, Alene Taber, March 2, 2007
- 4: Minnesota House of Representatives – Research Department, 2001: <http://www.house.leg.state.mn.us/hrd/pubs/asstlvlg.pdf>
- 5: Alene M. Taber, Esq., AICP Michael J. Alti, Esq. Jackson, DeMarco, Tidus & Peckenpaugh 2030 Main Street, Suite 1200 Irvine, CA 92614 ;
http://clkrep.lacity.org/onlinedocs/2007/07-3427_misc_5-15-2008.pdf;
- 6: HUD, 2015: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/alcp
- 7: MN Department of Revenue, 2015: <http://www.revenue.state.mn.us/businesses/sut/factsheets/FS172.pdf>
- 8: Assisted Living.com, 2015: <http://www.assistedliving.com/laws-by-state/>
- 9: Zillo, 2015: http://www.trulia.com/real_estate/Merriam_Park_West-Saint_Paul/10796/market-trends/
[Average price per square foot for Merriam Park West in 2015 is \$207; while average price per square foot for Macalester Groveland is \$234.]
- 10: City of St. Paul, 2015: <https://www.stpaul.gov/departments/city-council/ward-offices/ward-4-council-president-stark/student-housing-zoning-overlay>
- 11: Design center for American Urban Landscape, 2003: http://www.corridordevelopment.org/pdfs/from_MDC_Website/db9.pdf; Airbnb: https://www.airbnb.com/?af=43888734&c=brdsearch_d_engus_na_na_p2_txt&dclid=CKDdoZuXlsoCFZBwMAodCO8FBw; Sleeping rooms: <http://www.theguardian.com/commentisfree/2015/oct/26/overcrowding-sharing-bed-housing> ; Accessory Dwellings: <http://accessorydwellings.org/tag/crowding/>
- 12: Review of proposed text amendment initiated by Planning Commission Resolution 12-55, To: Planning Commission; From: Comprehensive Planning Committee; 10/28/15 [Each CLF is regulated separately]
- 13: Riverbank House Blog, 2015: <http://riverbankhouse.net/sober-houses-affordable-sober-living-meets-promise-profit/>
- 14: Family Style of St. Paul, Inc. v. City of St. Paul (8th Cir. 1991) 923 F.2d 91: <http://www.casebriefs.com/blog/law/property/property-law-keyed-to-singer/fair-housing-law/familystyle-of-st-paul-inc-v-city-of-st-paul/>
- 15: Costa Mesa Federal judge rules in favor distance requirement: <http://www.costamesaca.gov/index.aspx?page=40&recordid=2314>;
<http://m.ocregister.com/articles/mesa-695675-costa-court.html>
- 16: Arizona City Examples of Distance Requirements: **The Republic (Metro Phoenix newspaper)** By Parker Leavitt **April 27, 2013**;
<http://www.mesaaz.gov/home/showdocument?id=15964>
- 17 - Characteristics of Residential: <https://www.planning.org/greatplaces/neighborhoods/characteristics.htm>
- 18- Appendix B1 : Sober Thoughts on Fair Housing, Michael Mischke, 6/30/15: <http://forums.e-democracy.org/groups/stpaul-issues/messages/topic/2Agv11cp0Fem8oJIXNRF74> ;
- 19- Appendix B1: *Dean v. City of Winona*, 843 N.W.2d 249 (Minn. Ct. App. 2014). <http://www.cityofwinona.com/wp-content/uploads/2012/12/winona-rental-august-20151.pdf>
- 20 - Appendix C: Marketing Example: <http://www.transitions.pro/locations/>

Merriam Park Housing Mix Working Group

For More Information Contact:
John Syverud at jbmcrud@q.com



UNION PARK DISTRICT COUNCIL

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An Affirmative Action, Equal Opportunity Employer

January 13, 2016

Saint Paul Planning Commission
25 West Fourth Street, Suite 1400
Saint Paul, MN 55102

Dear Commissioners:

On January 11, 2016, the Union Park District Council Land Use Committee reviewed the report and recommendations of the Merriam Park Housing Mix Working Group, and discussed the recommendations with members of the Working Group with respect to proposed changes of Congregate Living Facility regulations.

The Committee voted unanimously to endorse the “sub-recommendations” of the Group, recommending that the City of Saint Paul take the following actions:

- Holistically register, track, and forecast all housing types.
- Institute a notification requirement, so citizens are aware of incoming Congregate Living Facilities.
- Study tax implications and create a plan to address those.

The Committee did not endorse the Working Group’s recommendation to mandate a distance of 1,320 feet between any instances of all eight named categories of Congregate Living Facilities.

If you have any questions, please feel free to contact me.

Sincerely,

Julie Reiter, Executive Director
Union Park District Council



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February 16, 2016

Saint Paul Planning Commission
25 West Fourth Street, Suite 1400
Saint Paul, MN 55102

Dear Commissioners:

On February 15, 2016, the Union Park District Council Land Use Committee reviewed the modified report and recommendations of the Merriam Park Housing Mix Working Group, and discussed the recommendations with members of the Working Group. The Group's recommendations had been modified to address Committee concerns related to its previous proposal to mandate a distance of 1,320 feet between any instances of all eight named categories of Congregate Living Facilities (CLFs).

The Committee voted unanimously to endorse the updated report and recommendations of the Group, believing that the recommendations reflect the community's desire to better align sober housing regulation with the distance requirements imposed on other congregate living facilities.

Specifically, the Committee endorsed the Working Group's recommendations that the City take the following actions:

- Evaluate the current distance requirement between sober houses and increase it from 330 feet to 1,320 feet if feasible.
- Study sober houses' neighborhood impact, using Merriam Park as a case study.
- Holistically register, track, and forecast all housing types.
- Institute a resident notification requirement that is consistent with the notification given for the other seven types of CLFs.
- Consider instituting licenses and fees in a manner that is consistent among all eight types of CLFs.

Please note that the Committee did **not** endorse the Working Group's recommendation that the distance requirement might apply differently to arterial streets.

If you have any questions, please feel free to contact me.

Sincerely,

Julie Reiter, Executive Director
Union Park District Council



January 25, 2016

St. Paul Planning Commission

Dear Chair Wencil and Planning Commissioners:

As you may be aware, People Incorporated Mental Health Services is a Minnesota non-profit organization with a nearly fifty year history of innovation in community-integrated programs in Twin Cities metropolitan area. Originally founded in 1969 to provide help and support for an underserved and stigmatized population, People Incorporated is recognized as a leader in initiating evidence-based mental health services. People Incorporated currently operates more than 60 programs in a variety of settings, including several programs and facilities within the City of St. Paul.

With this background, I would like to share with you People Incorporated's perspective on the draft zoning code amendments related to congregate living which were presented in a public hearing to the Planning Commission on January 22, 2016.

In reviewing the draft zoning code amendments, People Incorporated has identified that some of the programs or facilities it operates in St. Paul may fall under the definition of "supported housing facilities" as proposed in these amendments. Additionally, People Incorporated has identified several differences between the restrictions placed upon facilities defined as "supportive housing facilities" and the restrictions placed upon facilities defined as "adult care homes." For example, while both supportive housing facilities and adult care homes are permitted to serve the same number of facility residents in most residential, traditional neighborhood and business districts, only supportive housing facilities are required to obtain a conditional use permit in all residential districts for any facility serving seven or more facility residents. (Draft Zoning Code Amendments to Sec. 65-153(b)-(c) and Sec. 65-180(d)). Additionally, supportive housing facilities must comply with distance restrictions (i.e. minimum distances between a supportive housing facility and other types of congregate living facilities), whereas adult care homes have no such restrictions. (Draft Zoning Code Amendments to Sec. 65-153(a) and Sec. 65-180).

While there may be logical, good-faith reasons for differences in restrictions between these proposed categories, we also recognize that restrictions of this sort can sometimes serve to isolate and segregate certain populations, such as individuals with mental illness or individuals with disabilities – some of the very individuals served as residents of supported housing facilities. For this reason, we ask that the Commission closely scrutinize, discuss, and disclose to the public the reasons for any of the differences in restrictions placed upon supportive housing facilities and adult care homes. Only through this open analysis and disclosure can the public be reassured that any differences in the restrictions placed upon these two types facility are not based upon any stigmas or misperceptions about the individuals who may be served as residents of these newly-defined supportive housing facilities.

Thank you for the opportunity to share our perspective with you.

Regards,



Mike Turpin
General Counsel

**Saint Paul Planning Commission
City Hall Conference Center
15 Kellogg Boulevard West**

Minutes January 22, 2016

A meeting of the Planning Commission of the City of Saint Paul was held Friday, January 22, 2016, at 8:30 a.m. in the Conference Center of City Hall.

Commissioners Present: Mmes. DeJoy, McMahon, Padilla, Reveal, Shively, Thao, Underwood, Wang, Wencil; and Messrs. Edgerton, Gelgelu, Lindeke, Nelson, Ochs, Oliver, Ward, and Wickiser.

Commissioners Absent: Ms. *Merrigan, and Mr. *Makarios.

*Excused

Also Present: Donna Drummond, Planning Director; Bill Dermody, Jake Reilly, Tony Johnson and Sonja Butler, Department of Planning and Economic Development staff.

I. Approval of minutes December 18, 2015.

MOTION: *Commissioner Thao moved approval of the minutes of December 18, 2015. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.*

II. Chair's Announcements

Report of the Nominating Committee and Election of Officers.

Commissioner Wickiser reported on behalf of the Nominating Committee. The committee offered the following slate of officers: Barbara A. Wencil for Chair, Elizabeth Reveal for First Vice-Chair, Paula Merrigan for Second Vice-Chair, and Daniel Ward II for Secretary.

Chair Wencil called for nominations from the floor. There were none.

MOTION: *Commissioner Wickiser moved to approve the slate of candidates. The motion carried unanimously on a voice vote.*

III. Planning Director's Announcements

Donna Drummond announced that the Communications Committee will be meeting immediately after the Planning Commission meeting to review the annual report which should be ready by the next meeting. The City Council denied a rezoning at 805 Hudson Road after the Planning Commission had recommended denial. The conditional use permit application for the CVS Pharmacy drive through at Grand and Fairview that was denied by the Planning Commission has been appealed to City Council and the public hearing date has not yet been set. Lastly the City is doing an extensive outreach process to identify desired qualifications for the next Police Chief.

Input is being taken through February 18, 2016.

IV. PUBLIC HEARING: Congregate Living Zoning Study – Item from the Comprehensive Planning Committee. (*Bill Dermody, 651/266-6617*)

Chair Wencil announced that the Saint Paul Planning Commission was holding a public hearing on the Congregate Living Zoning Study. Notice of the public hearing was published in the Legal Ledger on November 19, 2015, and was sent to the citywide Early Notification System list and other interested parties.

Bill Dermody, PED staff gave a few introductory words. There was a need identified several years ago to address the congregate living section of the Zoning Code to provide better clarity and consistency. The zoning study was released in November and a longer time for review was scheduled to account for the holiday and to account for the complexity of the issues. Some of the major changes that are proposed are that 18 categories of congregate living in the zoning code are to be consolidated into 11 categories. Also, there is an elimination of the 1% maximum – that certain categories of congregate living may constitute a maximum 1% of the population in the planning district. There are also many smaller changes. In addition to the standard notice that goes out to the public in general and to the district councils, he reached out to Ramsey County, the State of Minnesota and to several major congregate living providers making sure that they were aware of what was going on.

Chair Wencil read the rules of procedure for the public hearing.

Chair Wencil announced that the five people signed up to speak are all part of the Merriam Park Housing Mixed Working Group. They will be giving a power point presentation and each person will have a section to speak about which can be viewed on the web page at: <http://www.stpaul.gov/planningcommission>.

The following people spoke.

1. Kevin Anderson, 1892 Dayton Avenue, Saint Paul, MN. He is part of the Merriam Park Housing Mixed Working Group which developed recommendations for the zoning study. Five of them are neighborhood group members who will present today. Their primary recommendation for consideration is to change the distance requirement of sober houses from 330 feet to 1320 feet. Their presentation findings and recommendations will demonstrate how this will lead to a balance of mixed housing in Merriam Park and maintain quality for all. The impact and pressure of mixed housing is additive. Merriam Park is like no other neighborhood in Saint Paul. In addition to sober houses and congregate living facilities, they are the college neighborhood of Saint Paul. They have reached the tipping point of over-concentration and they need the stability factor to help ensure balance. In terms of background, they are interested neighbors who began meeting last fall and became a working group of the Union Park District Council Land Use Committee. Their main interest is mixed housing, but today they are talking about sober housing. They have some principles that the group lives by and first of all they welcome the changes in Merriam Park – that is the reason they live there. They are not objecting to density – they are objecting to over concentration.

They believe in mixed housing. What they are trying to do is find a workable solution for all and find a balance between single family homes and sober houses. There are three areas where they have their findings: first of all, residential has value; second, sober houses have an adverse impact on residential neighborhood character; and third, they created a grid from what it is like to live next to a sober house versus single family. There were some real different impacts, like when you live next to a sober house you live next to a business with 15 customers as opposed to a single family. In Merriam Park they have large homes that are reasonably priced, so they are a main place to put sober houses and they have hit a tipping point of over-concentration. They have all these types of mixed houses. They are a unique neighborhood with student houses and other types of mixed houses so they want the Planning Commission to consider their recommendations.

2. Margaret Ryther, 1878 Dayton Avenue, Saint Paul, MN. They have conducted a lot of research on sober houses over the past several months, which directly support their recommendations. There is a key case of Family-Style Homes Incorporated versus the City of Saint Paul - this is a foundational case which is referenced nationally. In 1991, the United States Eighth Circuit Court of Appeals ruled that separation requirements continue to be appropriate in order to ensure that residents of a type of supportive congregate living facility (group homes for the mentally ill) are placed in neighborhood environments. This rule establishes the importance of separation with the benefit of individuals with disabilities who are protected against discrimination by the American Disabilities Act and the Fair Housing Act. Headlined "Judge sides with city and dismisses sober living home lawsuit" that is a new ruling and doing a lot of research they found in Costa Mesa, CA there is a distance requirement of 650 feet between sober houses. The federal judge ruled in late 2015 in the city's favor on the first case to be adjudicated. The courts are moving in a new direction and are now establishing that it is legally allowable for cities to regulate distance requirements between sober houses. In towns like Mesa, Tempe and Surprise Arizona distance requirements range from 1,200 feet to 1,320 feet between sober houses.
3. Gretchen Robertson, 1562 Laurel Avenue, Saint Paul, MN stated they have developed some maps to illustrate their findings. Today there are about 70 sober houses on Saint Paul's official list and 13 of them are in Merriam Park. Their heat map shows the areas of highest concentration of sober houses in Saint Paul. Merriam Park and West 7th Street host more than 50% of the total number of sober houses in Saint Paul. Merriam Park has a high concentration of sober houses in addition to a number of other types of congregate living facilities. Their map shows some of those Minnesota Department of Health facilities, Minnesota Human Services, Correctional sites and child foster care. Merriam Park has a high overall density of non-single family homes, sober houses, congregate living facilities and student housing. So there is a high concentration of mixed housing like no other neighborhood.
4. Eugene Pelsynski, 1890 Dayton Avenue, Saint Paul, MN stated they are asking that the distance requirement between sober houses be changed from 330 feet to 1,320 feet. The impact and pressure of various mixed housing on Merriam Park is cumulative and it compounds. And their unique neighborhood is the home to the largest concentration of sober houses, congregate living facilities and student rentals. Over time all of these different types have been looked at separately. The 1320 ft. separation would go a long way to helping avoid overconcentration. What is the advantage to a 1320 ft. requirement? It does introduce the concept of balance as well as it avoids concentration, and it provides ample opportunity for additional sober houses to move into the neighborhood. Right now there are 173 blocks

in Merriam Park - under City regulations they could have 173 sober houses. With their proposal the 1320 ft. separation there would still be room for them to increase their ratio by 3 times, instead of the 12 times which is what they would see if they went to 173. And of course all of the existing sober houses would be grandfathered in and that the separation requirement would not be enforced for them. Also they came up with sub-recommendations, asking that the City study sober house impact on neighborhoods and use Merriam Park as a case study. Next, they would like the city to comprehensively register, track and forecast all housing types. Another thing they ask is that the City institute a notification requirement. And, lastly, consider instituting licenses and fees that sustain tracking and oversight of Sober Houses. Their records show that there are many more sober houses than on current City records.

5. John Syverud, 1882 Dayton Avenue, Saint Paul, MN stated that their working groups' next steps are to request that the Planning Commission institute their recommendations and include them in the zoning study. They intend to promote their recommendations for adoption to the Saint Paul City Council and the Mayor's Office. They also intend on getting more input from the community and partner with groups wanting to further explore these issues and they hope to replicate this study as a "best practice" across the city. In conclusion their first recommendation is that the City of Saint Paul • require 1320 feet between sober houses.

Sub-recommendations: • Study sober houses' neighborhood impact, using Merriam Park as a case study; • Holistically register, track and forecast all housing types; • Institute a notification requirement, so citizens are aware of incoming sober houses; • Consider instituting licenses and fees that sustain tracking and oversight of sober houses. • Avoid overconcentration, ensuring balance while allowing ample opportunity for additional congregate living facilities to move into Merriam Park (3X increase vs. a 12X increase). This would maintain the residential character of Merriam Park as it relates to the quality of live for all neighbors.

Commissioner Ward said that there was a statement made that this particular concentration of student housing, congregate living, and sober houses has an impact on property values. He did not hear any substantial data or anything that supports that hypothesis. So how does a sober house or foster home or congregate living facility or anything mentioned in your report have a derogatory impact on property values?

Mr. Syverud said that they have not actually studied specifically in a quantitative manner. There are studies about property marketability and values – "if a neighborhood is viewed as less desirable for permanent residents because of the over-concentration of group homes, residential property values may decline." That is footnote [3] in the appendix, which came from Dinky Town in Minneapolis as an example.

Commissioner Ward said so this is all conjecture.

Mr. Syverud replied yes, he just said that they have not done that study; they have not looked at data specifically.

Commissioner Ward made a personal observation saying that usually when groups come and do a presentation it's like the little red hen saying the sky is falling, the sky is falling, property values are falling, property values are falling. They are not because property values

are not set just by sober homes – property values are determined by appraisal and appraisers use three qualitative methods for coming up with value. And the value is based on what the market will support in that area. One of those approaches is what we call an income approach. In determining value by the income approach, if the house is considered a business and is generating income that's one form of appraisal that could be used to come up with value of a home. Income approach is typically more than market. If students are there, if there are tenants that are there and those tenants are generating an income in excess of what the mortgage is, the value is rising rather than the value going down.

Mr. Syverud asked if he was talking about that specific property.

Commissioner Ward replied for the whole area, because that particular property isn't by itself, it's part of the whole.

Mr. Syverud said so you are saying that the adjacent properties are enhanced by businesses that are next door to them?

Commissioner Ward said absolutely.

Mr. Suverud said that he would like to study that further, because he does not know that.

Commissioner Wickiser commented that perception that is given with group homes can often times color the neighborhood and that can be negative. He does know that other parts of Saint Paul, the group homes and sober houses are really welcomed. As a Zoning Committee member, they hear a lot of instances where they are bumping up against distance requirements and they are dealing with people that are in abusive relationships that have children and things of that nature. He would like Mr. Syverud to consider that aspect, that they are being tugged in both directions as Planning Commission members and it is not all the same throughout Saint Paul. There are neighbors that come in that have elderly neighbors that have their walks shoveled as a result of sober houses and things of that nature that are asking us to keep the sober house in their neighborhood. In the process of this, try to keep an open mind that not all neighborhoods are the same and the issues in your neighborhood are not necessarily spread out.

Mr. Syverud said he understands that and one of the things that they are looking at is that it looked to him like the other 7 or 8 of the congregate living facilities already have a 1320 foot distance requirement on them so they are asking that maybe sober houses be considered in the same manner.

Commissioner Padilla said that they do hear a lot about the need and one of the things that she consistently struggles with is the fact that she does not want to leave community members behind or in a situation where they have no other housing options because we are being too restrictive in our boundaries and distance requirements. She asked them to comment on the Union Park District Council letter and why they did not endorse the working group's recommendation to mandate a distance of 1320 feet.

Mr. Syverud said there was a lot of discussion and the committee was split 50/50 and initially there was about an 80% endorsement and then with more discussion they were very concerned about the potential for lawsuits against the City because of the protected class

nature of chemically dependent individuals. There was more discussion and there was a motion for that particular primary 1320 foot requirement, which was not accepted, but the other four were passed.

Mr. Anderson added that they had presented to them a larger proposal that involved congregate living facilities and so they were voting on something completely different. And through talking to them we realized that what really is being talked about is sober houses. Another thing is they did not include their research on the latest court cases where now across the country courts are ruling that you can have a distance requirement such as 1320 feet. So they are going back to the Union Park Committee in the next two months and they expect that the Union Park Committee will vote for this proposal seen today.

Commissioner Lindeke thanked everyone who came out and for sharing this informative, well put together presentation.

Commissioner Oliver asked if they had looked into the reasons why sober houses in particular chose Merriam Park and West 7th versus other areas of the city. Beyond the marketing, have you reached out to the operators or discussed what they are looking for to see, whether what we are doing is going to have any impact on what they are looking for, or is it strictly the fact that there are older houses? Is there anything else that you found out about what the motivations are and why Merriam Park has drawn so many of these?

Mr. Syverud said they speculate based on primarily the marketing that the housing stock in their neighborhood is desirable because it's relatively large and relatively inexpensive. But no, they have not reached out yet, but one of their plans is to reach out more to groups like Minnesota Association of Sober Housing (MASH). There is a member of MASH that sat in on the Union Park District Council and had some opinions about that, but they haven't really had extensive interaction with them yet.

Commissioner Wang would like to know about the history of the numbers, the distance numbers in City Code particularly why the 330, 600 and 1320. Also, boarding and rooming houses –which are not offering services, but in terms of the physical layout of a building – how are they different from sober houses?

Mr. Dermody said that back in the late 80's early 90's there was a major study of all congregate living by the City, and at that time there was a change in the Zoning Code to institute generally a 1320 separation requirement between certain categories, which is 600 in downtown. The sober house regulation did not occur at that time. We had a sober house zoning study in 2008 through 2010 and they addressed that issue. Sober houses had fallen through the cracks and were not regulated in any way in the City of Saint Paul. It is not clear from the record why 330 feet was chosen, but talking to people who were involved at that time it seems that it had something to do with a fear of lawsuits against the City and it was felt that 1320 feet was too restrictive and that would be difficult to uphold in court. But the 330 feet would be something that the sober house people could live with and they could probably stand legally behind that. Also there were many maps that featured Merriam Park at the time and looked at where sober houses were located. So maybe the existing situation might have influenced the number that they ended up with.

Commissioner Wang asked how 330, 600 and the 1320 ft. are related to the average size of a city block.

Mr. Dermody said the average size of a city block is 330 feet, so that's one per block.

Commissioner Wang asked how boarding and rooming houses are different from a sober house.

Mr. Dermody said in the code there is no reference provided for boarding houses or rooming houses. In practice they have had at least one, possibly more, rooming houses that operated very much like a congregate living facilities and did provide services on site, but because of where the services were funded they were treated differently. So this is actually the confusion of where to draw the line that is part of the reason they are doing this study. If this study were approved as it is proposed right now, rooming and boarding houses would be combined into one and they would not have services like the other types of facilities.

Commissioner Wang asked if there was anything that said how long the minimum amount of time someone might be living in a boarding or rooming house?

Mr. Dermody replied that there is no information in the definition about how long they stay in a boarding or rooming house.

Commissioner Wang wondered why the working group did not look at the lack of distance requirement particularly with boarding and rooming houses.

Mr. Syverud said they are focused on sober houses.

Commissioner Edgerton asked about why the focus on sober houses. Within the congregate living category, there are supportive housing facilities where persons with mental illness, chemical dependency or physical handicap are allowed, and you're specifically focusing on sober houses among the group – he is wondering why.

Mr. Syverud said if he understands the rules at this point, there is one every approximately four block requirement for most of the other congregate living facilities, while sober houses is a quarter of that. So the density of sober houses could be considerably higher and there is a considerable growth in the Merriam Park neighborhoods, that's why they focused on sober houses.

Commissioner Ward said that sober homes do include those that are chemically dependent, alcohol is a chemical and it is labeled as an addictive disease. So those individuals that are staying in sober homes are also protected under the ADA. Also, sober homes could be someone that may or may not be on a chemical but suffering from a condition where they are being treated for something. There is no time limit, but if he recalls correctly there is a limit to the number of people that could reside in that particular unit and there was a number spoken of about 15 customers and as he remembers it was nowhere near 15, because when you get over 7 the requirements for the County kick in and those conditions change from a sober home to a facility that has to be regulated by the County because there is up to 7 people there. Based on what he remembers he believes there were some size limitations.

Mr. Syverud said that he's sure that's correct, the property that he is talking about on his block is a main family home and a mother-in-law apartment in the back where the garage might be and they are putting 8 people in the back and 7 people in the front – and this is a sober home.

Mr. Anderson said that the limit of 4 unrelated people in a structure does not apply to sober homes, so on his block for example the sober home has 14 customers and that includes 1 manager. And there are 15 individuals living in a home on his block in a sober house.

Commissioner Ward said that this is one particular incidence that one is isolated but the other ones are different – they are not 15, 15, 15.

Mr. Anderson said no, there are 12, 9. The whole limit of 4 people per house does not apply when you get to sober houses.

Mr. Pelsynski said that you have to hit 17 before there is any County oversight in a sober house.

Commissioner Ward replied I knew there was a number. Also you talked about the structure of a fee based situation. You all put a lot of work and effort into this and when we were going over this before there were a total of 34 sober homes in the city that the City could identify. Thirty-four in Merriam Park and a few online that were not accounted for so now you're saying it's up to...

Mr. Syverud replied 70 on the records but then there's a delta between that and the actual number of homes that we have been able to identify doing internet research. Margaret Ryther has been very thorough in going through and looking for promotions and things like that so there appears to be another half dozen to three quarters of a dozen that the City is not aware of.

Commissioner Ward said let's say we're considering a fee base deal. What stops the rooming houses and the other congregate living facilities from crying foul, because that is somewhat discriminatory because it is singling out just sober homes and we didn't get charged a fee but the sober home owners are saying now we're being charged a fee and nobody else is. So why is that? And why not just charge a fee across the board if it is going to help the community with limiting the density as you discussed in those areas of overconcentration of these types of facilities?

Mr. Syverud said that is a great recommendation.

Commissioner Ward said because he would think that if it is a fee just for one type that is very similar to all the other ones, if it were him he would say that it was somewhat unfair.

MOTION: Commissioner Thao moved to close the public hearing, leave the record open for written testimony until 4:30 p.m. on Monday, January 25, 2016, and to refer the matter back to the Comprehensive Planning Committee for review and recommendation. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

V. Zoning Committee

SITE PLAN REVIEW – List of current applications. (*Tom Beach, 651/266-9086*)

One item to come before the Site Plan Review Committee on Tuesday, January 26, 2016:

- 150 space expansion of a large existing parking serving the DNR Building Landlocked parcel at 0 Kittson (behind 520 Lafayette Road)

Two items to come before the Site Plan Review Committee on Wednesday, February 3, 2016:

- Achieve Language Academy – Office addition to an existing school building at 2169 Stillwater Avenue. (*Tom Beach*)
- McMurray Field Area Transportation Improvements – Add parking spaces and modify existing street alignments at 1151 Wynne. (This is part of Como Park located southwest of Lexington and Como)

NO ZONING BUSINESS

Commissioner Nelson announced the item on the agenda at the next Zoning Committee meeting on January 28, 2016.

VI. 2015 Fall Market Watch Update – Informational presentation by Jake Reilly, 651/266-6618)

Jake Reilly gave a brief power point presentation which can be seen on the web page at: <http://www.stpaul.gov/planningcommission>

Commissioner Thao asked to what extent data in Market Watch is disaggregated by race, gender, and age. She said that disparities between communities are well known, so this report will show positives for some communities and negatives for others.

Mr. Reilly said that current iterations of Market Watch have examined age as related to employment and population numbers, but not in relationship to jobs, because the data about individuals is easily accessible, but the data about firms, which comes from DEED, is not. Part of Planning & Economic Development's racial equity plan involves evaluating five specific data points disaggregated by race, age, and gender that PED has the ability to affect and figuring out how to affect them by closing gaps. That plan looks at the data points that PED has the power to change. One of the reasons this information is important is because Minnesota is an in-migration state, which means that more people are moving here than in other places, and many of those new residents were not born in the United States.

Commissioner Thao enquired if they are disaggregating rental market data by segments of the city.

Mr. Reilly said the rental market data is disaggregated by neighborhood and evaluated based on each of the 17 District Councils. On the whole, while there are rental rates that are increasing by as much as 50 percent, when compared with rents in the rest of the region, Saint Paul's rental rates are still lower than average.

Commissioner Lindeke said that it would be really interesting to him to see how investment or disparities play out across the city. He would like to see some maps or visuals showing whether all the new construction is downtown or spread throughout the city, where are foreclosures, or any maps of any data sets.

~~Mr. Reilly said maps and tables were included in the full report.~~

Commissioner Lindeke said that he would be interested in seeing one or two graphics or visuals in the presentation to the commission.

Commissioner Thao asked Mr. Reilly if a recent presentation from the state demographer and an economist would be available to the public.

Mr. Reilly is not sure if it is available to the public but they did send the link and he will go and see what he can get and if he can download it, he will make it available.

VII. Comprehensive Planning Committee

Commissioner Thao reported that their last meeting on Tuesday, January 19, 2016 was canceled. At their next meeting on February 2, 2016 they will review and make recommendation from today's public hearing on Congregate Living Zoning Study.

VIII. Neighborhood Planning Committee

Commissioner Oliver had no report and announced that the next Neighborhood Planning Committee meeting on Wednesday, January 27, 2016 has been cancelled.

IX. Transportation Committee

Commissioner Lindeke said at their last meeting they welcomed two new members and heard from MnDOT about large scale plans for how to spend transportation dollars at the state level. They also got an update from the Ramsey County Regional Rail Authority about the Riverview Corridor, which is still considering many modes and alignments. Commissioner Lindeke also announced the items on the agenda for the next Transportation Committee meeting on Monday, January 25, 2016.

Commissioner Wickiser commented that the Riverview Corridor is only vague to the public at this point. There is a decisive action on behalf of the county as far as the direction that it is going.

X. Communications Committee

Commissioner Thao announced that the Communications Committee will meet directly after the Planning Commission meeting today to go over the annual report.

XI. Task Force/Liaison Reports

Commissioner Padilla announced that the Snelling-Midway Community Advisory Committee was canceled last night. Also, there will be a community meeting on Tuesday, January 26, 2016

at Concordia University, Buenger Education Center from 7 to 8:30 p.m.

Commissioner Thao reported that the Grand Round Advisory Committee had their public open house on plans for the Grand Round North Segment which will be under construction this year including the following parkways: Johnson Parkway, Phalen Regional Park, Wheelock Parkway, Como Regional Park, Como Avenue-Como Regional Park to Raymond Avenue, Raymond Avenue and Pelham Boulevard.

XII. Old Business

None.

XIII. New Business

None.

XIV. Adjournment

Meeting adjourned at 9:50 a.m.

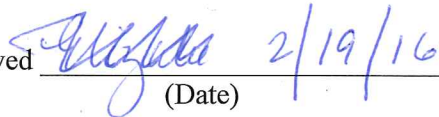
Recorded and prepared by
Sonja Butler, Planning Commission Secretary
Planning and Economic Development Department,
City of Saint Paul

Respectfully submitted,



Donna Drummond
Planning Director

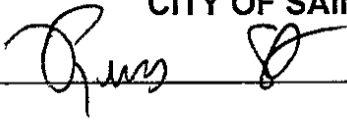
Approved


(Date)

Daniel Ward II
Secretary of the Planning Commission

**ORDINANCE
CITY OF SAINT PAUL, MINNESOTA**

28

Presented by 

1
2 An ordinance amending the Legislative Code Chapter 65 by creating a new § 65.160, entitled
3 “sober house,” which defines and permits this residential use with associated zoning standards;
4 amending § 63.207, Parking requirements by use, by adding a line with a parking requirement for
5 *sober house*; and amending use tables in §§ 66.221, 66.321, 66.421, and 66.531 adding *sober*
6 *house* as a permitted use in certain zoning districts.

PUBLISHED
AUG 04 2008

7
8
9 THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN

10
11 Section 1

12 That Legislative Code Chapter 65 is hereby amended by adding a new §65.160 entitled “sober house,” as
13 follows:

14 **Sec. 65.160. Sober house.**

15 A dwelling unit occupied by more than four (4) persons, all of whom are in recovery from chemical
16 dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988, that
17 provides a non-institutional residential environment in which the residents willingly subject themselves to
18 written rules and conditions, including prohibition of alcohol and drug use (except for prescription
19 medications obtained and used under medical supervision), intended to encourage and sustain their
20 recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom
21 facilities and other common areas of the unit. Sober houses are financially self-supporting. This
22 definition does not include facilities that receive operating revenue from governmental sources. Sober
23 houses do not provide on-site supportive services to residents, including the following: mental health
24 services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care
25 services; financial management services; legal services; vocational services; and other similar supportive
26 services.

27 *Standards and conditions:*

28 A request for reasonable accommodation for this use as required under the Federal Fair Housing Act
29 Amendments of 1988 by providing an exception to the maximum number of unrelated persons living
30 together in a dwelling unit shall automatically be granted if the following standards and conditions are
31 met. This does not limit the city from granting additional reasonable accommodation for this use under
32 the general provisions of this code.

- 33 (a) The operator shall submit a request for reasonable accommodation to the zoning administrator on a
34 form provided by the city, specify the number of residents, and provide information necessary to
35 assure the use meets applicable zoning standards. The maximum total number of residents permitted
36 in the sober house shall be specified by the Fire Certificate of Occupancy.
- 37 (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall
38 submit a written parking plan that demonstrates sufficient parking for the use.
- 39 (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- 40 (d) For a structure serving 17 or more sober house residents, a conditional use permit is required. This
41 use shall be exempt from section 61.501 conditional use permit general standards (a), (c), and (d).
- 42 (e) Property containing one or more sober house units shall be a minimum distance of three hundred
43 thirty (330) feet from any other property containing a sober house.

08-040

Sober house	P	P	P/C	P/C	P/C	P/C	P/C	✓
Roominghouse, boarding house					C	C	C	✓
Nursing home, boarding care home, assisted living						C	P	✓
Hospice	P	P	P	P	P	P/C	P	✓
Dormitory	P	P	P/C	P/C	P/C	P/C	P/C	✓
Fraternity, sorority	P	P	P/C	P/C	P/C	P/C	P/C	✓

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Section 4

60 That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.321, Principal Uses in
61 Traditional Neighborhood Districts, is hereby amended as follows:

62 **Table 66.321. Principal Uses in Traditional Neighborhood Districts**

Use	TN1	TN2	TN3	Development Standards
Residential Uses				

63

Congregate Living				
Foster home, freestanding foster care home	P	P	P	
Community residential facility, licensed human service	P	P	P	✓
Community residential facility, licensed correctional	C	C	C	✓
Community residential facility, health department licensed	C	C	C	✓
Emergency housing facility	C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	✓
Sober house	P/C	P/C	P/C	✓
Roominghouse, boardinghouse	C	P	C	✓
Nursing home, boarding care home, assisted living	P	P	P	✓
Hospice	P	P	P	✓
Dormitory	P/C	P	P	✓
Fraternity, sorority	P/C	P	P	✓

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Section 5

66 That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.421, Principal Uses in
67 Business Districts, is hereby amended as follows:

68 **Table 66.421. Principal Uses in Business Districts**

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Residential Uses								

69

Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	✓
Community residential facility, licensed human service	P	P	P	P	P	P	P	✓
Community residential facility, licensed correctional			C	C	C	C	C	✓
Community residential facility, health department licensed			C	C	C	C	C	✓
Emergency housing facility			C	C	C	C	C	✓
Overnight shelter							C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P	P	P	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P	P	P	✓

08-040

Sober house	P/C	P/C	P/C	P/C	P/C	P/C	P/C	✓
Roominghouse, boardinghouse			C					✓
Nursing home, boarding care home, assisted living			C					✓
Hospice	C	C	P/C	C	P	P	P	✓
Dormitory			P/C					✓
Fraternity, sorority			P/C					✓

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Section 6

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.521, Principal Uses in Industrial Districts, is hereby amended as follows:

Table 66.521. Principal Uses in Industrial Districts

Use	IR	II	I2	I3	Development Standards
Residential Uses					

75

Congregate Living	IR	II	I2	I3	Development Standards
Foster home, freestanding foster care home	P	P	P		✓
Community residential facility, licensed human service	P	P	P		✓
Community residential facility, licensed correctional		C	C		✓
Community residential facility, health department licensed		C	C		✓
Correctional facility		C	P	C	
Emergency housing facility		C	C		✓
Overnight shelter		C	C		✓
Shelter for battered persons	P	P	P		✓
Transitional housing facility	P	P	P		✓
Sober house	P/C	P/C	P/C		✓
Hospice	P	P	P		✓

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Section 7

This ordinance shall become effective thirty (30) days after its passage, approval and publication.

	Yeas	Nays	Absent
Benav <i>Stark</i>	✓		
Bostrom	✓		
Harris	✓		
Helgen	✓		
Lantry	✓		
Montgomery <i>Carter</i>	✓		
Thune	✓		
	7	0	0

Requested by Department of:
Planning and Economic Development

By: _____

Form Approved by City Attorney
By: P.W. Warren 8-25-08

Form Approved by Mayor for Submission to Council

By: _____

Adopted by Council: July 9, 2008

Date:

Adoption Certified by Council Secretary:

By: Nancy Erickson

Approved by Mayor

Date: Returned Unsigned by Mayor

PUBLISHED
AUG 04 2008

PUBLISHED
AUG 04 2008



08-640

Department/office/council:
PE -Planning & Economic Development

Date initiated:
30-MAY-08

Green Sheet NO: 3054835

Contact Person & Phone:
Luis Pereira
266-6591

Must Be on Council Agenda by (Date):
18-JUN-08

Doc. Type: ORDINANCE

E-Document Required: N

Document Contact:

Contact Phone:

Assign Number For Routing Order

	Department	Sent To Person	Initial/Date
0	Planning & Economic Development	Luis Pereira	LP 5/30/08
1	Planning & Economic Development	Director - Cecile Bedor	CB
2	City Attorney	Peter Warner	PW 6-7-08
3	Mayor's Office	Mayor/Assistant	
4	Council		
5	City Clerk	City Clerk	

ALT

RECEIVED

Total # of Signature Pages 38 (Clip All Locations for Signature)

JUN 02 2008

Action Requested:
Review and adopt ordinance pertaining to zoning code regulations for sober houses.

CITY ATTORNEY

Recommendations: Approve (A) or Reject (R):

_____ Planning Commission

_____ CIB Committee

_____ Civil Service Commission

Personal Service Contracts Must Answer the Following Questions:

- Has this person/firm ever worked under a contract for this department?
Yes No
- Has this person/firm ever been a city employee?
Yes No
- Does this person/firm possess a skill not normally possessed by any current city employee?
Yes No

Explain all yes answers on separate sheet and attach to green sheet

Initiating Problem, Issues, Opportunity (Who, What, When, Where, Why):
The Sober House Zoning Study was initiated by City Council Resolution 05-462 to study and recommend regulations for sober houses in keeping with the reasonable accommodation requirement of the Federal Fair Housing Act. On October 10, 2007, the City Council passed interim ordinance 07-887 preserving the status quo regarding sober houses, which expires on September 12, 2008. The Planning Commission will hold a public hearing on the draft ordinance on June 13, 2008, and make its recommendations on June 27, 2008.

Advantages If Approved:
Ordinance will provide a clear definition and standards for sober houses in keeping with the reasonable accommodation requirements of the Federal Fair Housing Act.

Disadvantages If Approved:
None.

Disadvantages If Not Approved:
Saint Paul will continue to have relatively unclear standards for defining and providing reasonable accommodation for sober houses.

Total Amount of Transaction: _____ **Cost/Revenue Budgeted:** N

Funding Source: _____ **Activity Number:** _____

Financial Information:
(Explain)



CITY OF SAINT PAUL
OFFICE OF THE MAYOR

08-640

CHRISTOPHER B. COLEMAN
Mayor

July 18, 2008

Council President Kathy Lantry
and City Councilmembers
310 City Hall
Saint Paul, Minnesota 55102

Dear Council President Lantry and City Councilmembers:

As you know, you recently sent me Council File 08-640 pertaining to zoning code regulations for sober houses.

While we share the same goal of promoting livability throughout the City of Saint Paul, I need to express my serious concerns about the language in Council File 08-640. I agree that a clear definition of sober houses is necessary to ensure both that reasonable accommodations are made for those living with addiction, and that the integrity of our neighborhoods is protected. I also agree that sober house operators should be required to provide information to the city that is necessary to ensure that a house meets applicable zoning standards. Moreover, I agree that sober houses must be subject to specific parking requirements so that sober house residents and their neighbors have an equal opportunity to park their cars near their homes.

I am concerned, however, about the departure from the planning commission and legal counsel recommendations regarding the 330-foot separation requirement for sober houses. As the staff report noted, with assistance of legal counsel, this separation requirement may not meet the common legal test for handicapped people articulated by the Federal Courts of Appeal. As always, I am concerned about putting the city at risk of lengthy and costly litigation.

That being said, I am acutely aware of the reality of a 7-0 vote, and know that a veto-proof council majority limits my options going forward. Therefore, I am returning this ordinance unsigned.

Sincerely,

Christopher B. Coleman
Mayor



08-640



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6655
Facsimile: 651-228-3314

May 30, 2008

Mayor Chris Coleman
City Council President Kathy Lantry and Councilmembers
Third Floor – City Hall
Saint Paul, MN 55102

RE: Draft Sober House Zoning Amendments for City Council Review and Action

Dear Mayor Coleman, Council President Lantry, and Council Members:

Attached are zoning amendments relating to sober houses for City Council review and action, along with background material and supporting information in the Sober House Zoning Study requested by the City Council. On May 16, 2008, the Planning Commission voted to release the attached draft sober house ordinance for public review, and to set a Planning Commission public hearing on the draft ordinance for June 13.

The Commission also voted to transmit the draft ordinance to the City Council at this time, prior to the Planning Commission public hearing and recommendation, so the City Council can begin its review process and have more time to review and adopt the ordinance prior to expiration of the sober house interim ordinance on September 12, 2008. A schedule for review and adoption of the sober house ordinance is also attached. The Planning Commission will transmit its recommendations to the Mayor and City council on June 27.

Sincerely,

A handwritten signature in cursive script that reads "Luis Pereira".

Luis Pereira
Planner, PED

Cc: Brian Alton
Wendy Lane
Allan Torstenson
Peter Warner



08-640



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6700
Facsimile: 651-228-3220

DATE: 4/23/08
TO: Neighborhood Planning Committee
Planning Commission
City Council offices
Peter Warner
Wendy Lane
Cecile Bedor
FROM: Allan Torstenson, Luis Pereira
RE: **Sober House Zoning Study Timeline**

Schedule to Meet Interim Ordinance Deadline

Planning Commission Review		City Council Adoption	
5/7/08	Neighborhood Committee approves public hearing draft		
5/16/07	Planning Commission sets public hearing date	5/21/08	Submit ordinance public hearing draft and greensheet to City Council
6/13/08	Planning Commission holds public hearing	6/18/08	First reading on proposed ordinance
6/18/08	Neighborhood Committee considers public hearing testimony	6/25/08	Second reading
6/27/08	Planning Commission makes recommendation	6/27/08	Transmit Planning Commission recommendation to Mayor and City Council
		7/2/08	Council's public hearing
		7/9/08, 7/16/08, or 7/23/08	Final adoption
		By 8/4/08	Send ordinance to Legal Ledger
		By 8/7/08	Publication in Legal Ledger
		By 9/8/08	Effective date of ordinance
		9/12/08	Interim Ordinance Expires

SAINT PAUL SOBER HOUSE ZONING STUDY

08-640

Planning Commission Public Hearing Draft

City Council Request

City Council Resolution 05-462, adopted on May 25, 2005, directed PED to do a study of “sober houses”, after the Council was informed that the number of sober houses locating in the City was on the rise. A sober house has been commonly referred to as a private residence for individuals in recovery from chemical dependency. People recovering from chemical dependency are considered “disabled” by the Federal Fair Housing Act, a federal law that prohibits discrimination against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.¹ The Supreme Court has ruled that individuals in recovery from chemical dependency living in congregate facilities cannot be excluded from zoning districts under family composition rules, which limit the number of unrelated persons living together in a single family dwelling.

The City’s Zoning Code currently lacks a definition of a sober house, and does not contain clear regulations that apply to them. The City Council resolution directed PED to identify the current law regarding sober house regulations, determine the limitations of municipal regulations of sober houses, and update the Zoning Code to comply with federal law. In addition, the resolution directed PED to determine if neighborhood notification about sober houses could be implemented, and to explore the feasibility of adopting other city regulations. The City Zoning Code’s definition of “family,” provision about “reasonable accommodation,” and the appropriateness of the sober house land use within single family zones are all relevant issues that merit study.

Authority for the Study

Amendments to the Zoning Code follow the procedures in §64.400 of the Code and Minnesota Statutes §462.357. Either the City Council or the Planning Commission can initiate citywide amendments. Public hearings with required notice are held at both the Planning Commission and the City Council.

¹ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws.

Existing Regulations

08-640

The Federal Fair Housing Act (FFHA)

As discussed above, the FFHA defines chemically dependent individuals as members of a protected class of people (“disabled”), prohibiting discrimination against them. The fundamental local implication of the FFHA is that it prohibits discrimination “against any person . . . because of a handicap” in the sale or rental of housing. 42 U.S.C. 3604(f)(2).

As applied to municipalities, the FFHA prohibits a municipality from refusing “to make reasonable accommodations in rules, policies, practices or services” when those are necessary to permit handicapped persons “to use and enjoy a dwelling.” 42 U.S.C. 3604(f)(3)(B). An example might be an accommodation that would allow a higher number of unrelated residents to live in a single family house than normally allowed by the municipal definition of “family” or the single family zoning.

Apart from of the FFHA, municipalities still have the authority to protect safety and health, as long as the applicable regulations do not restrict the ability of disabled individuals to live in communities. This is true as long as the building/fire codes (safety and health regulations) are required, applied, and enforced *in the same way* on families and groups of similar size of other unrelated people, not just those individuals residing within sober houses.²

State of Minnesota statute

State statute §462.357 governs municipal zoning ordinances within Minnesota. Subd. 7 and 8 discuss when a licensed residential facility shall be considered equivalent to a permitted single family use, or a permitted multifamily use.³

Subd. 7. Permitted single family use.

A **state licensed** residential facility or a housing with services establishment registered under chapter 144D **servicing six or fewer persons** . . . shall be considered a **permitted single family residential use** of property for the purposes of zoning. . . .”

Subd. 8. Permitted multifamily use.

Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a **state licensed** residential facility **servicing from 7 through 16 persons** . . . shall be considered a **permitted multifamily residential use** of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the

² Leamon, Elizabeth A.L. “The Zoning of Group Homes for the Disabled... Zeroing in on a Reasonable Accommodation.” University of Connecticut Law Journal, p. 10.

³ “Handicapped,” under the state statute, includes adults who are chemically dependent or abuse chemicals.

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residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

The State statutes clearly define any state-licensed community residential facility (CRF) as a single family use if it serves six or fewer residents. The City Zoning Code has different occupant thresholds for different congregate living facilities and group homes. The statute does not explicitly define the equivalent of a permitted single family or multifamily use for a group home that is not licensed by the state (including a typical sober house in the City of Saint Paul).

Municipal Code

Building Code and Inspection, Leg. Ch. 33, and Uniform Fire Code, Leg. Ch. 55

The Municipal Building Code is based on the State Building Code, and is enforced by City building inspectors in the Department of Safety and Inspections (DSI). The Municipal Fire Code is based on the State Fire Code, and is enforced by City fire inspectors, also in DSI. The Municipal Building Code applies to new buildings that are constructed, whereas the Municipal Fire Code is applied to existing buildings that are already constructed. These two codes are considered “companion codes”, and are therefore consistent.

The Departments of Justice (DOJ) and Housing and Urban Development (HUD) assert that group homes for persons with disabilities are “subject to state regulations intended to protect the health and safety of their residents”, and find such regulations to be “necessary and appropriate.”⁴ This suggests that is necessary and appropriate to apply the Fire and Building codes to sober houses, just as they are applied to other similar residential uses. On the other hand, the DOJ and HUD do caution that it would be inappropriate to apply health and safety measures that go beyond those normally imposed on similar congregate residential uses.

Zoning Code, Leg. Ch 60-69

While there is no explicit definition of a sober house use in the City Zoning Code, the use shares some characteristics with community residential facilities (CRFs), transitional housing, and roominghouses. They are like CRFs in terms of being occupied by people in recovery from chemical dependency. They are like transitional housing in that they serve residents for a temporary period of time in between living in a more formalized residential institution and living independently. They are like some roominghouses that function as a single room occupancy, which includes bedrooms with internal locks on the doors, accompanied by common living areas. Here are the three definitions discussed above (with bold text emphasizing similarities to sober housing):

§65.153. Community residential facility, licensed human service.

One (1) main building, or portion thereof, on one (1) zoning lot where one (1) or more children or **persons with** mental retardation or related conditions, mental illness,

⁴ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm.

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chemical dependency or physical handicaps reside on a 24-hour-per-day basis under the auspices of a program licensed by the state department of human services to provide lodging in conjunction with monitoring, supervision, treatment, rehabilitation, habilitation, education or training of the residents of the facility.

This definition does not include:

- (1) Foster homes or freestanding foster homes as defined in this code;
- (2) Residential treatment programs physically located on hospital grounds;
- (3) Regional treatment centers operated by the commissioner of human services;
- (4) Licensed semi-independent living services for persons with mental retardation or related conditions or mental illness, if the license holder is not providing, in any manner, direct or indirect, the housing used by persons receiving the service.

§65.159. Transitional housing facility.

One (1) main building, or portion thereof, on one (1) zoning lot where **persons who may or may not have access to traditional or permanent housing but are capable of living independently** within a reasonable period of time, generally about eighteen (18) months, reside on a 24-hour-per-day basis for at least thirty (30) days and participate in appropriate program activities designed to facilitate independent living.

§65.171. Roominghouse.

- (1) Any residential structure or dwelling unit, supervised or not, which provides living and sleeping arrangements for more than four (4) unrelated individuals for periods of one (1) week or longer; or
- (2) Any residential structure or dwelling unit which provides **single room occupancy (SRO)** housing as defined in CFR section 882.102 to more than four (4) unrelated individuals; or
- (3) Any building housing more than four (4) unrelated individuals which has any of the following characteristics shall be considered and regulated as a roominghouse:
 - a. Rental arrangements are by the rooming unit rather than the dwelling unit.
 - b. Rooming unit doors are equipped with outer door locks or chains which require different keys to gain entrance.**
 - c. Kitchen facilities may be provided for joint or common use by the occupants of more than one (1) rooming unit.**
 - d. Rooming units are equipped with telephones having exclusive phone numbers.
 - e. Rooming units are equipped with individual intercom security devices.
 - f. Each rooming unit has a separate assigned mailbox or mailbox compartment for receipt of U.S. mail.

A previous effort for outlining a process of distinguishing between various types of similar congregate living uses included the following illustrative decision tree (figure 1).⁵ It might be noted that a “sober house” best falls within the “something else” category in the last box on bottom right.

⁵ Homans, Nancy. PED.

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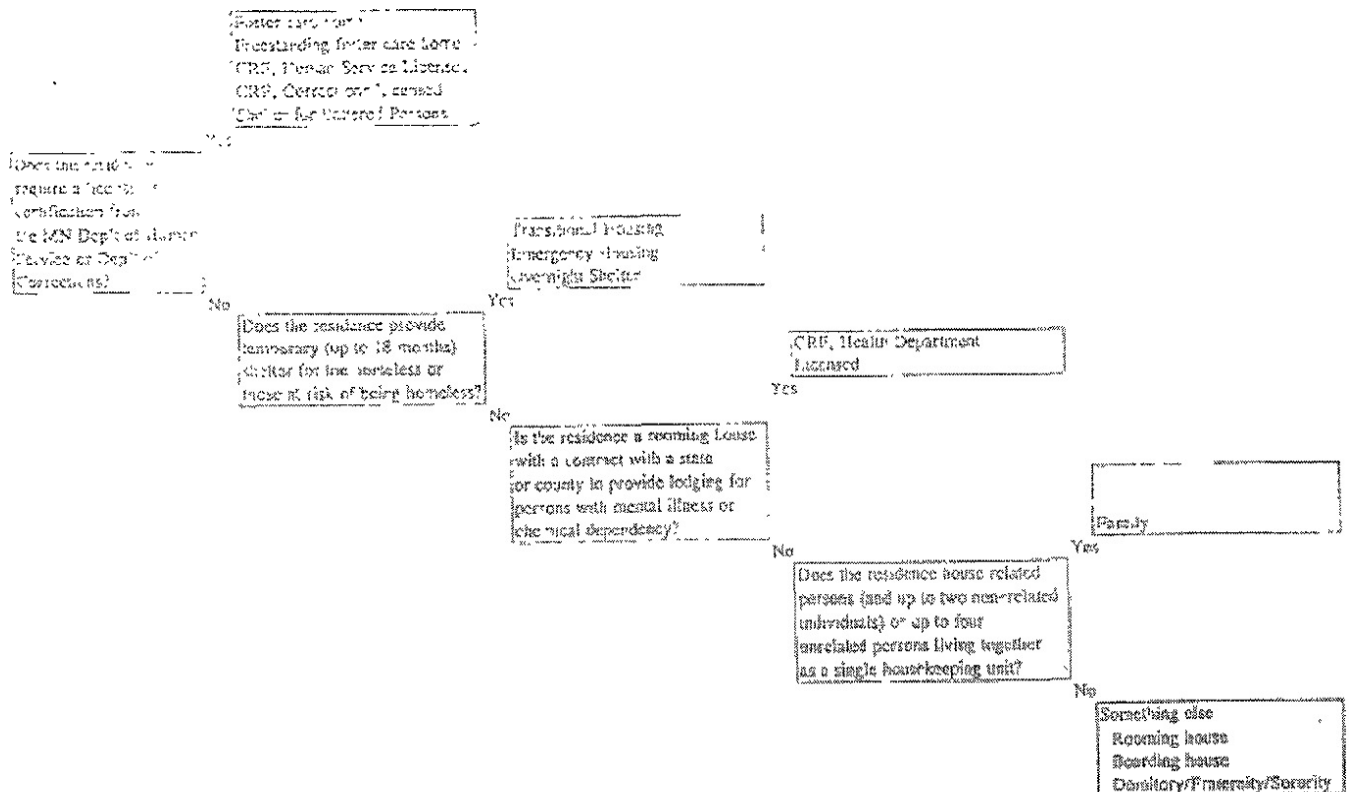


Fig. 1. Illustrative Decision Tree for Determining the Type of Congregate Residential Facility or Group Home

Trends in Sober Housing

The number of sober houses appears to be growing in Saint Paul. Within the last year, several applications were submitted to DSI requesting the establishment of new sober houses. While the City maintains a tally of sober houses that City staff knows about, it has been compiled on the basis of operators who have chosen to self-identify themselves and cooperate with City inspectors in order to receive the proper Certificates of Occupancy for the buildings they operate. Because of this process of self-identification, the list is likely incomplete. Until recently, the City had no explicit way to evaluate proposed *new* sober houses, beyond inspecting for Building and Fire Code compliance, and the subsequent issuance of a Certificate of Occupancy. Most of the sober houses on the City’s list are either single family or duplex structures.

City fire inspectors have found that some sober houses in Saint Paul are connected informally to a treatment program such as Hazelden or Fairview Hospital, and receive resident referrals from them. Some sober house operators refer residents to other sober houses in Saint Paul, or back to residential facilities with more services. While it was previously suggested at a City Council meeting that the City might require all sober houses to be affiliated with a treatment program or center, the City Attorney’s Office believes that the City likely cannot require this.

There is a widely-acknowledged therapeutic benefit for individuals recovering from chemical dependency to live in a supportive residential environment with others recovering from similar

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problems. Sober houses are a form of supportive housing that allows individuals to make a transition from chemical dependency to recovery, and eventual re-establishment into society. As such, it is important to integrate this type of housing into residential neighborhoods, and ensure that Saint Paul is an inclusive city.

Key Goals: Equal Access, Neighborhood Integration, and Structural Life Safety

As discussed above, group homes for persons with disabilities are subject to regulations intended to protect the health and safety of their residents, including the application of State of Minnesota Fire and Building codes. The codes apply to sober houses, just as they are applied to other similar residential uses. It is the City's responsibility to apply and enforce these regulations to ensure the sober house structures provide for the safety of their residents.

While the City must ensure that disabled individuals have the opportunity to use and enjoy a given dwelling (sober house), it should also ensure that the conditions exist for this dwelling to be well-integrated into the surrounding residential neighborhood. The goal to integrate sober houses within neighborhoods is motivated both by a concern for the residents of a sober house, as well by a concern about the livability of that neighborhood for other residents.

It is unclear how the exact concentration of sober houses in a neighborhood affects the goal to integrate them well within a neighborhood. However, there is a perception in Saint Paul that sober houses are becoming overly concentrated in certain neighborhoods. Concentration is a concern to sober housing operators and residents, as the intent of sober housing identified by some operators is to provide a residential, *non-institutional* environment that has therapeutic benefit to sober house residents. Concentration of sober housing appears to be a larger concern to residents in some neighborhoods that their neighborhoods are receiving more than their fair share of housing that departs from a traditional single family occupancy. The City has multiple goals. While it must provide for housing opportunities for disabled individuals, it should also seek to integrate such housing into residential neighborhoods, and is also expected to protect the character of existing residential neighborhoods.

A high concentration of larger sober houses in one area can lead to a "fundamental alteration in a local government's land use and zoning system," specifically if a high proportion of them do not comply with the applicable occupancy and single family zoning regulations. The DOJ and HUD assert that:

"especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods."⁶

Concentration standards currently apply to other congregate residential uses in Saint Paul such as community residential facilities, emergency housing facilities, overnight shelters, shelters for battered persons, and transitional housing facilities (see figure 2 below). These uses must be

⁶ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm.

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separate from similar uses by $\frac{1}{4}$ of a mile (1,320 feet). In addition to this, the concentration of these uses is also governed by a "population cap." The purpose of concentration standards is to limit the extent to which such "institutional" congregate residential uses, many of which are licensed by the State and/or County, can be concentrated in any particular area of the city.

Current Concentration Standard for Other Group Homes / Congregate Residential Facilities

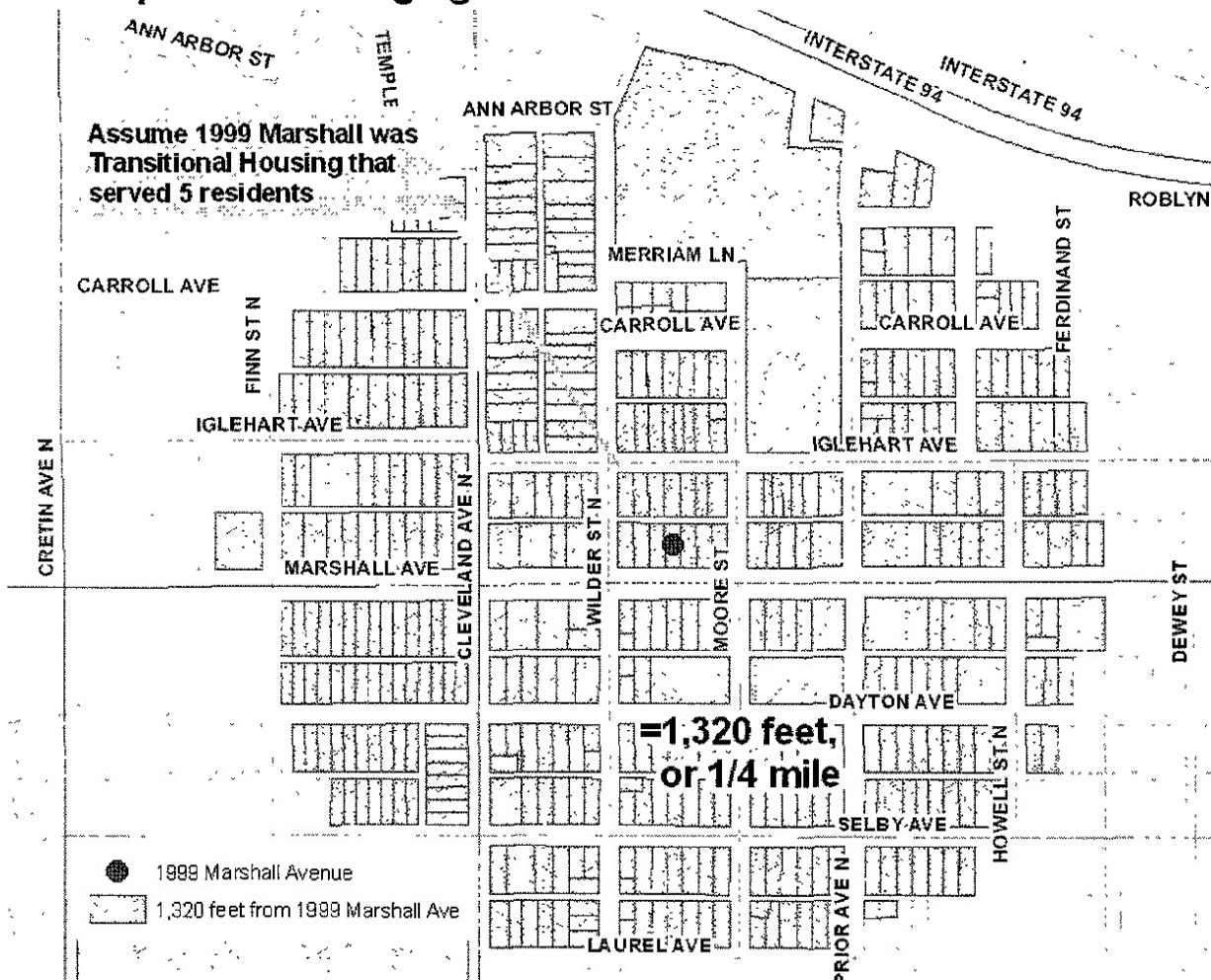


Fig. 2. According to §65.159(b), in RL-RT2 residential districts, a transitional housing facility serving more than 4 adult residents shall be a minimum of 1,320 feet from any other transitional housing facility with more than 4 adult facility residents, licensed community residential facility, emergency housing facility, shelter for battered persons with more than four adult facility residents, or overnight shelter. **No new facilities of the types listed here would be permitted on any of the properties highlighted above.**

How Sober Houses Differ from Licensed Residential Facilities (Group Homes)

While a typical sober house serves residents with disabilities - similar to residents served at the licensed, service-intensive congregate residential uses listed above - it is **unlike** these uses in that it is most commonly smaller-scale and found in a one- or two-family house. While sober houses in Saint Paul typically have 6-12 adult residents - which does not conform with the City's definition of "family" (up to 4 unrelated adults) - sober house operators and residents emphasize that the residents in each house function like a single family. Residents in sober houses share

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kitchens, bathrooms, living rooms and other common areas of the house, and sometimes bedrooms. Remaining sober is a condition of living in the house, and residents support one another to move forward toward independent living and away from chemical dependency. Sober houses do not provide any treatment services onsite, only providing informational referrals, which is also unlike the state-licensed facilities that serve residents with chemical dependency. Because sober houses do not provide onsite services, their residents are not considered to be a “service-dependent” population like the residents in licensed group homes.

Why the Number of Residents per Sober House Matters At the Neighborhood Level

Residents of a particular sober house may function like a single family unit, irrespective of the number of residents in the house. Municipal definitions of family composition (occupancy) have been struck down by the Supreme Court when used as a basis for denying a permit for a group home that is proposed to house more unrelated people than allowed by the occupancy limit. However, scale matters in examining the external land use impacts of sober houses on neighborhoods that are predominantly zoned for single-family uses.

At what point does a particular sober house become less like a “single family use”, for purposes of zoning (not occupancy), and more like a “service-intensive” housing facility, such as a licensed community residential facility? Determining the tipping point is a rather subjective exercise.⁷ The Saint Paul Zoning Code definition of “family” is no more than 4 unrelated adults. The Building Code’s definition of a single family occupancy is 1-5 people. State statute §462.357 (above), which governs municipal zoning ordinances within Minnesota, in Subd. 7 states that a state-licensed residential facility which serves six or fewer persons shall be considered a permitted single family residential use of property for the purposes of zoning. Another guideline would be that of Oxford House, an internationally-established network of sober houses, which has a model that requires at least six residents in each house (but may range up to 15 residents). According to the City’s unofficial tally of known sober houses, 11 of 13 existing sober houses in single family houses have over six people in them.

If the City were take some guidance from the State statutes that govern licensed residential facilities to help define and regulate sober houses, sober houses with six or fewer residents would be considered a “single family” use, while houses with 7-16 residents would be considered a multifamily use. Under this standard, most existing sober houses in Saint Paul would be considered a multifamily use, as:

- 68% of sober houses that the City has on record are either in single family houses or duplexes, and
- 85% of sober houses in single family houses and 55% of sober houses in duplexes have six or more residents.

Sober house operators might argue that a block zoned for and predominantly developed with single family homes would be unlikely to convert entirely from traditional single family

⁷ Another guideline would be that of the Oxford House, an internationally-established network of sober houses, which has a model that requires at least 6 residents in each house (but may range up to 15 residents). Finally, according to the City’s unofficial tally of known sober houses, 11 of 13 existing single family sober houses have over 6 people in them.

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occupancies to sober houses of more than 4 four residents (this has not happened, even in the absence of regulations). Even if this were to happen, the same sober house operators might argue that a block zoned for and predominantly developed with single family homes were to convert entirely from traditional single family occupancies to sober houses of six or fewer residents, the neighborhood land use impacts of such a conversion – particularly on-street parking availability – could be negligible because many of the residents do not have driver’s licenses or own/operate vehicles. However, such an assertion might not hold up as conditions change - sober house residents might acquire jobs as they recover, and thus need to also acquire a car to get to their jobs. In addition, even if only half of the single family homes on such a block were to convert to sober houses from traditional single family occupancies, at some point, there is a “tipping point”, and the land use impacts of several sober houses occupied by a large number of residents becomes significant – whether because of noise, on-street parking availability, etc. For example, if half the homes on a block with 5,000 square foot lots are converted to sober houses with 7+ residents each, it might even be argued that the street has the land use impacts of a “service-intensive” or “institutional” housing facility, given the concentration of residents with disabilities in a small geographic area. In either case (a block consisting entirely of sober houses with six or fewer residents, or half of a block consisting of sober houses with 7 or more residents), parking management is a key concern. Because of this, any sober house should be asked to demonstrate sufficient parking for the use (based on the number of residents, any other relevant factors).

To conclude, a concentration of sober houses with larger numbers of residents has a greater potential for significant land use impacts than a concentration of sober houses occupied by less residents. The latter have land use impacts more comparable to traditional “families.” Because of this, there is a stronger case for a concentration standard for larger sober houses (similar to the way the City currently regulates the concentration of other larger congregate residential facilities).

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Possible Zoning Approach

1. Land Use Definition

Based on information gathered from the tally of existing sober houses in Saint Paul, as well as input from sober house operators, sober houses are a distinct land use from single family homes, licensed, community residential facilities serving people with disabilities, transitional housing, and roominghouses. The following is proposed as a land use definition for sober houses which reflects these distinctions:

Sober house.

A dwelling unit occupied by more than four (4) persons in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988 that provides a non-institutional residential environment in which the residents willingly subject themselves to rules and conditions intended to encourage and sustain their recovery. The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses are financially self-supporting. This definition does not include facilities that receive operating revenue from governmental sources. Sober houses do not provide on-site supportive services to residents, including the following: mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

The intent of the definition above is to distinguish between sober houses and more service-intensive, government-licensed housing facilities occupied by residents with a higher level of dependence, and to reduce the existing lack of clarity about what constitutes a "legitimate" sober house. This definition would not include dwelling units occupied by four or less residents (which are covered by the standard definition of family).

2. Application Process

Currently, when a new sober house wishes to begin operating (or when City staff find out about a pre-existing sober house already in operation), the Department of Safety and Inspections issues a questionnaire to the operator inquiring about how the house functions. The operator is asked to submit written answers to this questionnaire that specify the number of residents and bedrooms, and other building and site data. This questionnaire was devised jointly by staff in DSI and the City Attorney's Office (the latter providing information on what has been deemed by courts to be within the acceptable range of inquiry for municipalities when dealing with sober houses or group homes for the disabled).

While several sober house operators have submitted answers to the questionnaire developed by City staff, and City staff has accordingly made administrative decisions on whether to grant reasonable accommodation to various City codes (Housing and Zoning Codes), this questionnaire is being improved and standardized as a part of this study.

The City Attorney’s Office has said that based on rulings from other jurisdictions, the City may not prevail in requiring a Conditional Use Permit⁸ or a license for all sober houses, or a public hearing process to decide whether or not a permit for a sober house should be granted.

3. Zoning Standards

If the City adopts a distinct land use definition for sober housing, the following set of associated zoning standards are proposed (akin to the standards specified for many defined land uses in the Zoning Code).

Standards for Application and Parking

To account for #1 and #2 (above), the following standard for sober houses is proposed:

The following standards and conditions are intended to provide reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988:

- (a) The operator shall submit written answers to a questionnaire provided by the zoning administrator that specify the number of residents, the number of bedrooms, and other building and site data. The maximum total number of residents permitted in the sober house will be specified by the Fire Certificate of Occupancy.

Standards by Zoning District

As discussed in the section entitled “Why the Number of Residents per Sober House Matters At the Neighborhood Level” above, defining sober houses like the way the State statutes define licensed residential facilities (as being either a permitted single family or multifamily use) is one possible approach. However, given that many of the existing sober houses within single family homes in Saint Paul have over six residents, using a modified approach would likely accommodate more of the existing sober houses in Saint Paul, and be more reasonable. The following zoning standards are proposed:

- (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- (d) A conditional use permit is required for any structure serving 17 or more sober house residents. This use shall be exempt from §61.501 conditional use permit general standards (a), (c), and (d).

Standard (c) modifies the idea behind State statute §462.357 Subd. 7, which defines state-licensed residential facilities of six or fewer residents as a permitted single family use. Allowing sober houses to be occupied by up to 10 residents in single family residential districts would accommodate more of the existing sober houses in single family houses. Restricting single family districts to sober houses occupied by up to six or eight residents would accommodate far fewer of the 11 existing single family-zoned sober houses.

Standard (d) reflects §462.357 Subd. 8, which requires state-licensed residential facilities occupied by seven through 16 residents to be a permitted multifamily use. Multifamily uses are permitted in RT2 Townhouse and RM1-RM3 Multifamily Residential zones, all Traditional

⁸ Outlined below is a proposed exception to this – for structures serving 17 or more sober house residents.

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Neighborhood zones, and all Business zones (in some districts as mixed residential/commercial uses). The Zoning Code currently mirrors this state statute by specifying over 16 residents as the point at which certain residential facilities must meet additional standards. For example, for community residential facilities licensed by the State Department of Human Services, any facility occupied by 17 or more residents must have a minimum lot area of 5,000 square feet plus 1,000 square feet for each guest room in excess of two guest rooms. A conditional use permit for sober houses occupied by 17 or greater residents is justifiable because state law treats licensed residential facilities of this size differently – given the potential neighborhood impacts of such a large-scale residential land use. A CUP would allow the Planning Commission to review and require reasonable conditions to mitigate the impacts of this use. While CUPs should not otherwise be part of the City approach to regulating sober houses, the City Attorney’s Office believes that they are justifiable at this larger scale.

Lot Area Standard

Many sober houses in Saint Paul are located on lots of about 5,000 square feet in size and some of these are occupied by as many as 14 residents. However, a minimum lot size standard for houses occupied by a higher number of residents would help to mitigate parking and other effects of larger sober houses on the surrounding property. The following standard is recommended:

- (e) The minimum per unit lot area as applicable in the zoning district plus eight hundred (800) square feet for each resident in excess of six (6) residents.

4. Zoning Districts

If the above land use definition and zoning standards are adopted, it would logically follow that sober houses would be permitted in all residential, traditional neighborhood, business, and IR-12 industrial zoning districts, subject to all of the standards for sober houses. Permitting sober houses in all districts where residential uses are permitted is consistent with the City’s goal of ensuring that sober houses are integrated into their surrounding neighborhoods.

5. Parking Plan

Given that the current requirement for a residential use is 1.5 parking spaces/dwelling unit, and a sober house may be occupied by more residents with cars than a unit occupied by municipally-recognized “family”(a biological family or 4 unrelated adults), the following parking standard is proposed for sober houses (to be located in §63.207 of the Zoning Code):

Land Use	Minimum Number of Parking Spaces
Sober house	1.5 spaces per every 4 residents

Examples of this parking standard are below:

- 5 residents X (1.5/4) = 1.88, rounded up to 2 spaces
- 6 residents X (1.5/4) = 2.25, rounded down to 2 spaces
- 7 residents X (1.5/4) = 2.63, rounded up to 3 spaces
- 8 residents X (1.5/4) = 3 spaces
- 9 residents X (1.5/4) = 3.38, rounded down to 3 spaces

10 residents X (1.5/4) = 3.75, rounded up to 4 spaces
 11 residents X (1.5/4) = 4.13, rounded down to 4 spaces
 12 residents X (1.5/4) = 4.5, rounded down to 4 spaces
 Etc.

Because a sober house may not meet be able to meet the parking requirement in §63.207, the following zoning standard is proposed:

- (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall submit a written parking plan that demonstrates sufficient parking for the use.

The written “alternative parking plan” would have to show off-street parking spaces, the location of on-street parking spaces that are normally available, and the anticipated number of cars to be kept by residents of the house. Other elements of the parking plan to potentially include might be the sober house’s proximity to transit, the number of residents with driver’s licenses, written house rules that restrict the total number of cars to be parked at the house, and/or any written shared parking agreements that the operator has secured for parking on nearby property located within 300 feet of the property occupied by the sober house (as per §63.303, *Parking Location, Residential*).⁹ If a sober house has regular “AA” or other house meetings that result in a large number of non-resident participants that drive cars to the house, the parking plan should also show adequate parking for such visitors. Requiring a parking plan for individual sober houses is consistent with the City’s goal of ensuring that sober houses are well-integrated into their surrounding neighborhoods.

6. Concentration Standard

With the rights of individuals seeking the benefit of living in a sober house to find such options across the city, balanced with goals to integrate sober houses into neighborhoods and protect neighborhood character in mind, the City should consider adopting a modest concentration standard. This standard might only apply to sober houses with seven or more residents, i.e. a “multifamily use” by State statute §462.357 Subd. 8, given that units with a higher number of residents are more likely to have significant neighborhood land use impacts (such as a reduced availability of on-street parking), as discussed above.

Again, the Department of Justice and Department of Housing and Urban Development have said that

“...density restrictions are generally inconsistent with the Fair Housing Act. . . .”

and

“...it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.”¹⁰

⁹ The existing requirements for shared parking are specified in §63.206(d) or (g) of the Zoning Code.

¹⁰ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm, p. 5.

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A small limit on concentration would not preclude sober houses from locating in an entire neighborhood, but rather would spread them out across a given neighborhood. One option, for example, might require that any sober house with seven or more residents be located at least 330 feet from any other sober house with seven or more residents (see **figure 3a** below).

Another option, reflected in the following standard (f), is a two-pronged concentration standard that distinguishes between sober houses of 5-6 residents, and those with 7 or more residents (see **figure 3b** below):

- (f) A sober house shall be a minimum distance of three hundred thirty (330) feet from any other sober house, and a sober house occupied by seven (7) or more residents shall be a minimum distance of six hundred sixty (660) feet from any other sober house, measured from property line to property line.

As with any of the above proposed regulations, if adopted, any sober house operator would have the right to request a reasonable accommodation from the concentration standard (#7 below).

Fig. 3a. Option A

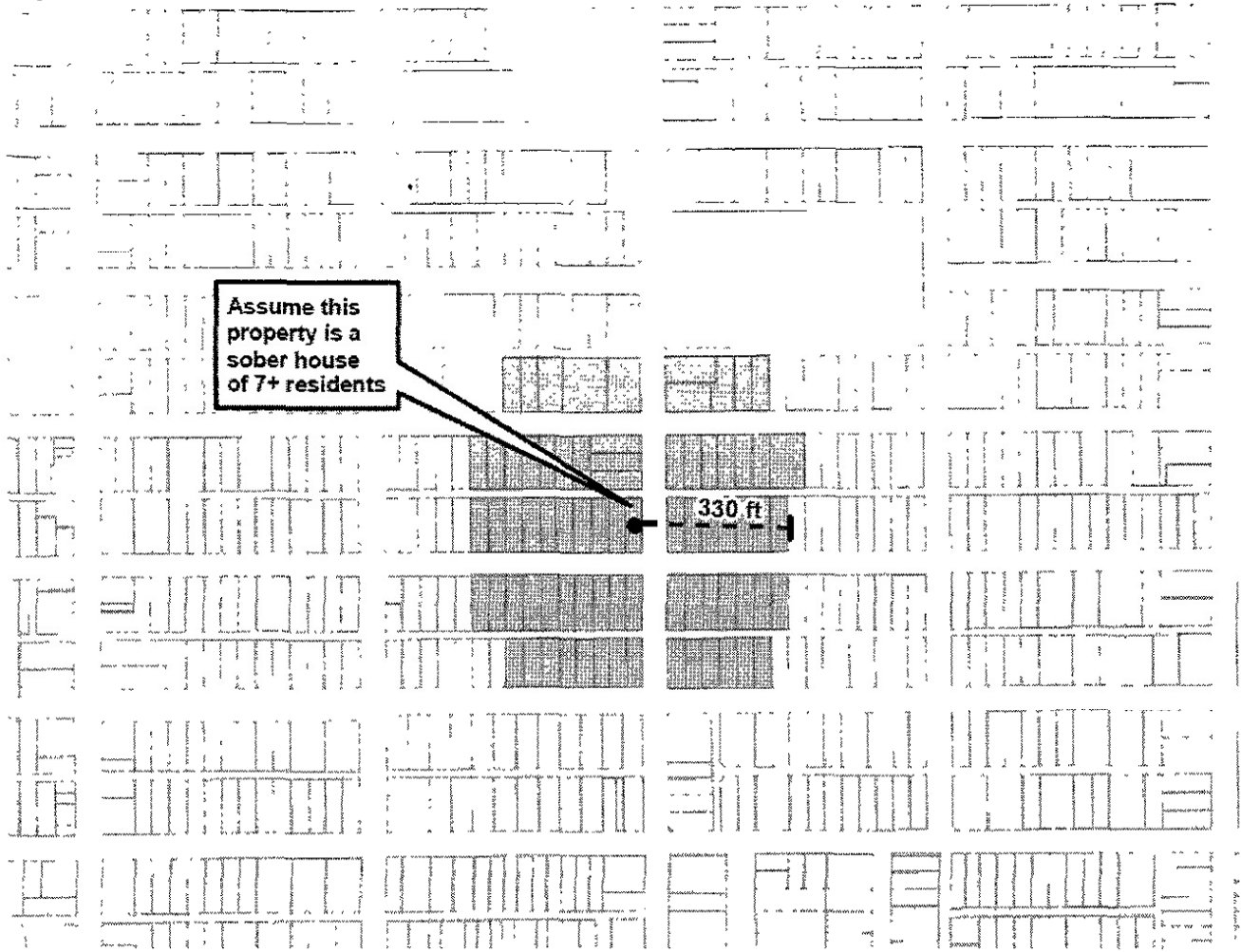


Fig. 3a. According to Option A outlined above, any sober house serving seven or more residents shall be a minimum of 330 feet from any other sober house serving seven or more residents. **Under this option, no new sober houses serving seven or more residents would be permitted on any of the properties highlighted above.**

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Fig. 3b. Option B

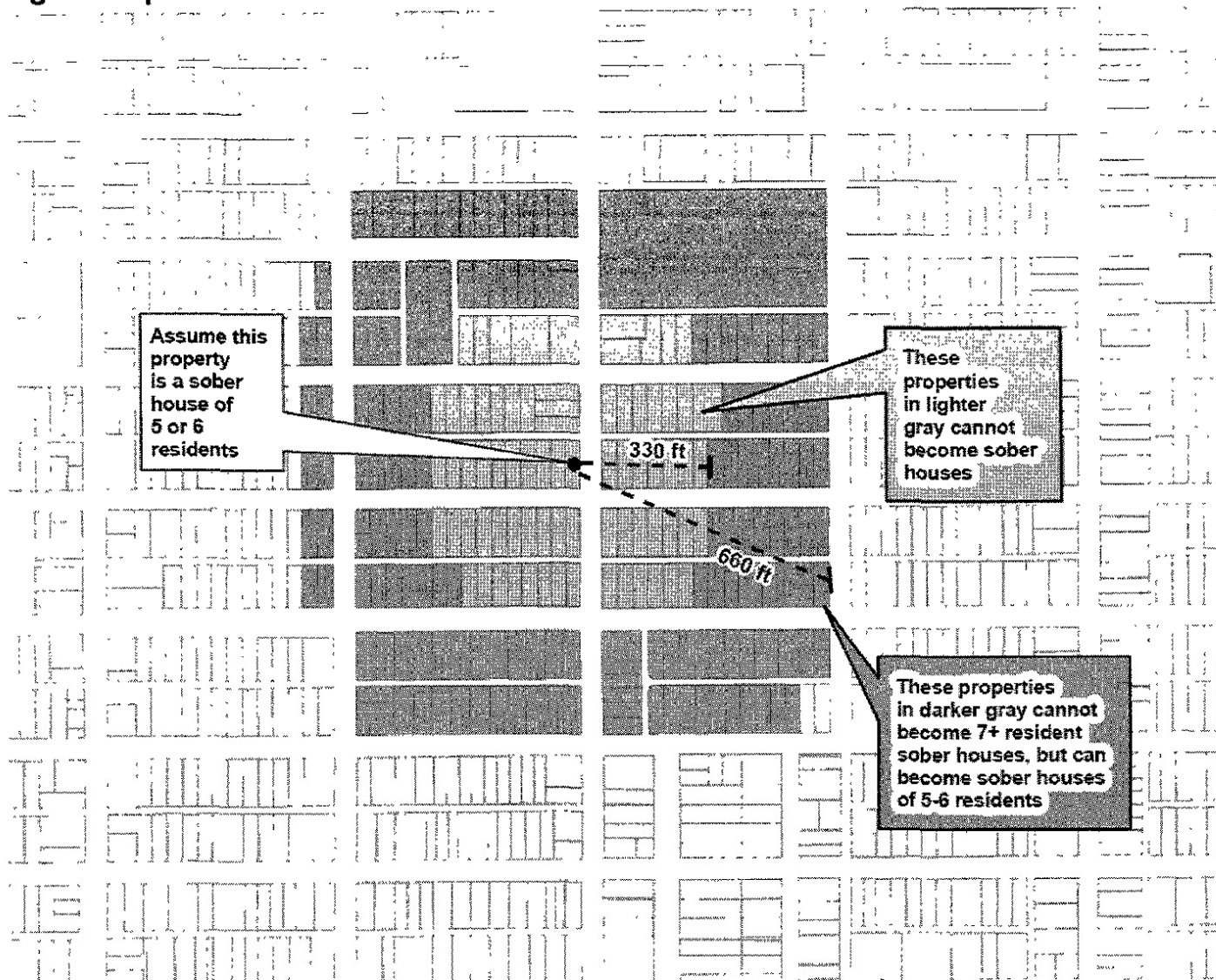


Fig. 3b. According to Option B (standard (f) above), any sober house must be a minimum of 330 feet from any other sober house; and any sober house of seven or more residents must be a minimum of 660 feet from any other sober house. **Under this two-tiered concentration standard, the exact separation required is a function of the number of residents in a sober house.**

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7. Reasonable Accommodation procedures

As per §60.110 of the Zoning Code, the City must make reasonable accommodations in its official controls in order to allow group housing for individuals in recovery from chemical dependency as required by the Federal Fair Housing Act Amendments of 1988. Requests for reasonable accommodation must be balanced with the City's legitimate interest in protecting, through its building, housing, and zoning codes, the character of residential neighborhoods, and the health and safety of the community:

Sec. 60.110. Reasonable accommodation. The city has a legitimate interest in preserving the character of residential neighborhoods by adopting regulations relating to the number and type of structures and uses, the number of persons who may occupy a dwelling or structure, and off-street parking, in order to control population density, noise, disturbance and traffic congestion. However, these regulations shall not be applied so as to prevent the city from making reasonable accommodation as required by the Federal Fair Housing Act Amendments of 1988.

A request for reasonable accommodation, beyond what is allowed under building, housing, and zoning codes, must be made to the City in writing, specifically requesting a reasonable accommodation from the particular regulation(s) (as per §60.110 of the Zoning Code), and include supporting documentation that shows how the proposed facility is internally structured, physically and programmatically, to serve its occupants. This is the current practice that DSI has been using for new sober house applications. Once received, the request for a reasonable accommodation is jointly considered, case-by-case, by the zoning administrator, building official, and fire inspector (DSI staff). Currently, their decisions are based on the responses to the sober house questionnaire, the written request for reasonable accommodation, and other information that may be requested by City staff. Provided that the dwelling unit and structure meet certain minimum building, fire safety, and housing code requirements necessary to protect life and property, the zoning administrator may grant such request for reasonable accommodation and issue a Certificate of Occupancy certifying code compliance for a sober house. The decision of the zoning administrator may be appealed pursuant to Legislative Code §61.701.

Additional Procedural Steps for Determining Which Accommodations are Reasonable

If the City chooses to adopt a distinct land use definition and zoning standards for sober houses such as those outlined above, any new proposed sober house would be measured against such standards. As the ones outlined will accommodate the right of new sober houses to locate in residential neighborhoods (through zoning), they will not, by right, accommodate everything a new sober house would request. Upon determining that a proposed sober house meets all of the City-adopted standards, the zoning administrator shall put the determination in writing, noting that the house is granted a reasonable accommodation to exist as a sober house. The letter shall specify any relevant standards and conditions that the house shall follow, including the maximum number of residents, any applicable parking plan, and other relevant information from the questionnaire.

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Upon determining that a proposed sober house does not meet one or more of the City-adopted standards, the zoning administrator shall inform the applicant. The applicant will have the opportunity to submit a written request for reasonable accommodation, along with any supporting information about **why such accommodation is necessary in order to meet the particular needs of the residents, or why the accommodation is of therapeutic benefit to the residents.** Upon receiving a written request for reasonable accommodation, the zoning administrator shall consult with any relevant DSI and other City staff, including zoning, building, and fire inspection staff to determine whether such an accommodation:

1. Imposes an undue burden or expense on the local government
2. Creates a fundamental alteration in the zoning scheme

A request will be considered “reasonable” only if the answers to both of these questions is “no.” The DOJ and HUD state that what is considered “reasonable” in one circumstance (neighborhood context) may not be “reasonable” in another.¹¹ They give the examples of a four-person home for adults with mental retardation in a single-family zoned neighborhood as being “reasonable”, while a 50-bed nursing home in a single-family zoned neighborhood as not being “reasonable.” The DOJ and HUD state that the “scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors” that should be taken into account in making the determination.

If the request is determined to “pass” both of the above two questions, i.e. it is reasonable, the zoning administrator shall put the determination in writing, noting that the sober house is granted a reasonable accommodation from one or more of the applicable standards to exist as a sober house. The letter shall specify any relevant standards and conditions that the house shall follow, including the maximum number of residents, the parking plan, and other relevant information from the questionnaire.

Ongoing Operations & Enforcement

Legitimate concerns may arise about sober houses that do not follow the specifications as outlined by the zoning administrator in the written determination of reasonable accommodation. If the sober house is not operated in compliance with a reasonable accommodation, the City will follow the process for revoking the reasonable accommodation as provided for in §61.108 of the Zoning Code:

Sec. 61.108. Conditions violated, permit revocation.

The zoning administrator shall notify the planning commission when a development covered by a permit or other matter is not in compliance with any of the conditions imposed upon such use permit. The commission may, at a public hearing, following notice to the owner of subject property and other adjacent property owners as specified in section 61.303(c), and upon determination that the conditions imposed by such approval are not being complied with, revoke the authorization for such approval and require that such use be discontinued.

¹¹ Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act, http://www.usdoj.gov/crt/housing/final8_1.htm, p. 4.

The commission, in lieu of revoking the permission, may impose additional conditions, modify existing conditions, or delete conditions which are deemed by the commission to be unnecessary, unreasonable or impossible of compliance.

Neighbors or occupants of a problematic sober house can also make use of Saint Paul's Information & Complaints Office for problems such as garbage management, tall grass or weeds, unsafe or unsanitary conditions in a house, and neighborhood disturbances such as noise. For more serious problems with a property, neighbors might consider following procedures for shutting down a problem property, as specified by DSI.¹² Below are some definitions used by DSI:

A **routine code enforcement case** is simply any housing code violation regarding a single-family residential unit or duplex, either owner occupied or rental, including the exterior property area, garages, sheds, fences, and the structure itself, both interior and exterior. Code enforcement is also responsible for maintaining the City's right-of-way free and clear of obstructions and garbage.

A **problem property** is best defined by simply saying: If you live next door to a problem property you know it! Constant calls to get rid of the junk, intolerable behavior by occupants and guests, etc. A problem property can be a rental property or an owner occupied property; it can be a commercial property or a residential property; it can be a single-family unit, a duplex or an apartment building.

Possible strategies used by the City for stopping the nuisance activities at a problem property include code enforcement orders to correct or abate, condemnation/vacant building registration, criminal charges or charges for excessive consumption, nuisance abatement orders, or revocations of the property's fire certificate of occupancy.

Neighborhood Notification

The resolution for this Zoning Study directed PED to determine if neighborhood notification about sober houses could be implemented. The City Attorney's Office has said that this cannot be done. According to the US Department of Justice and HUD, a local government violates the FFHA if it blocks a group home for people with disabilities or denies a requested reasonable accommodation in response to neighbors' fears or discriminatory concerns about people with disabilities. According to the City Attorney's Office,

“A zoning ordinance that requires only sober house uses to obtain a conditional use permit is a form of actionable discrimination under the FFHA and the US and Minnesota Constitutions. The only way that a condition use permit could be required is if the City required all groups of more than four unrelated adults to apply for and obtain a conditional use permit. We do not currently do that.”

¹² See report a problem property, see <http://mn-stpaul.civicplus.com/forms.asp?FID=65>. Procedures for shutting down a problem property are located at <http://www.ci.stpaul.mn.us/index.asp?NID=1704>.

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In addition to this, the City Attorney's Office has said that the City should not license sober houses.

Alternative Regulatory Approaches

There are three basic alternatives approaches for regulating sober houses – continuing current DSI practices (status quo); adopting reasonable accommodation standards for sober houses that are clear; or adopting reasonable accommodation standards for sober houses that are clear, but more restrictive.

1. Reasonable Accommodation Without Clear Standards (Status Quo). No new special regulations proposed for sober houses because they are protected by the Federal Fair Housing Act and because most municipalities who have attempted to enforce regular occupancy standards or restrictive single family zoning regulations have seen their regulations struck down in courts as discriminatory. The City might be on the safest legal grounds with this approach.

With this approach, there would be no special regulations for sober houses, including land use definitions, zoning standards, or concentration standards (separation requirements). Continue to use the questionnaire and grant reasonable accommodations when requirements for this are met as outlined in #7 above. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy.

OR

2. Reasonable Accommodation With Clear Standards. Adopt some special regulations for sober houses that are clear and reasonable, given that legal precedents show that the range within which municipalities can regulate sober houses is relatively narrow. This approach would chart new territory by avoiding common legal pitfalls which municipalities have faced in attempting to regulate sober houses too tightly in the past.

With this approach, the City would adopt a sober house land use definition and new zoning standards (those outlined above) that would allow for new sober houses in Saint Paul, including a small concentration standard. Formalize, standardize, and continue to use the questionnaire, and grant reasonable accommodations. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy.

Based on research done to date, the "Reasonable Accommodation With Clear Standards" is the recommended approach for four reasons:

1. It supports the integration of sober houses into neighborhoods
2. It reduces the existing lack of clarity about sober houses
3. It provides clear guidance for the location of sober houses
4. It avoids the common legal pitfalls which municipalities have faced in attempting to regulate sober houses too tightly in the past

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OR

3. More Restrictive. Treat sober houses no differently than traditional single family homes by enforcing existing zoning and occupancy codes *or* adopt new special regulations for sober houses that are more restrictive. This approach puts the City on the most tenuous legal grounds.

With this approach, the City would fully enforce existing occupancy standards and single family zoning regulations on sober houses; or, adopt the land use definition, *stricter* new zoning standards for single family residential districts, and a *larger* concentration standard for sober houses. Formalize, standardize, and continue to use the questionnaire, and grant reasonable accommodations. Continue to regulate sober houses by issuing (or revoking) a Fire Certificate of Occupancy. The zoning standards outlined above might be replaced with standards such as the following:

- (c) In RL-R4 Residential Districts, the sober house shall serve six (6) or fewer residents.
- (f) A sober house shall be a minimum distance of one thousand, three hundred and twenty (1,320) feet from any other sober house, measured from property line to property line.

The idea behind (c) above directly parallels §462.357 Subd. 7 of Minnesota state statute, *without* modification to accommodate more of the existing single family sober houses. The larger concentration standard of 1,320 feet between sober houses is the same as existing City concentration standards for some licensed residential facilities.

The “More Restrictive” approach is not recommended because it does not support the integration of sober houses into neighborhoods, and it does not avoid the common legal pitfalls that municipalities have faced in attempting to regulate sober houses too tightly in the past.

Luis Pereira - Relevant reading for Wed. mtg regarding sober houses

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From: Luis Pereira
To: Neighborhood & Current Planning Committee
Date: 4/7/2008 3:56 PM
Subject: Relevant reading for Wed. mtg regarding sober houses
CC: Torstenson, Allan

Hello Neighborhood Planning Committee members,

I recently came across the following **two documents (attached)**. After reviewing these, City staff believe they represent balanced perspectives on the regulation of housing for people with disabilities. They also include good discussions of Fair Housing Act (FHA) issues.

Please note that these readings discuss housing for people with disabilities more **broadly** - including community residential facilities, halfway houses and other housing facilities serving service-dependent populations ("group homes"). Sober houses differ from such "group homes" because the residents in sober houses are not "service-dependent," because no services are provided in a sober house, and because the individuals in a sober house have independently chosen to live there and abide by house rules.

1) "The Siting of Group Homes for the Disabled and Children - Local Officials Guide"

This guide was put together by two groups that agree on some things and disagree on others. The National League of Cities (NLC) on one hand, and "the Coalition to Preserve the Fair Housing Act" (Coalition) on the other. The Coalition represents more than fifty civil rights, disability, fair housing and human services advocacy organizations. The guide was the product of a dialogue between the two groups, spurred by some legislative efforts in the late 1990s to amend the Fair Housing Act to make it clearer for localities wishing to regulate group homes. The NLC supported the effort to amend the FHA, while the Coalition did not. While the legislative efforts to amend the FHA failed, this document is a great summary of the issues, including the points of agreement and disagreement between them.

Some key highlights to check out:

- pp. 6-7 - the section entitled "How FHA protection applies to group homes" discusses how the way a municipality defines a "family" and occupancy limits can be subject to Fair Housing scrutiny. In a famous case, the Supreme Court held that a zoning ordinance may violate the FHA if it defines family units or maximum occupancy limits differently for related and unrelated people. Note especially the examples on page 7. You will see at the bottom of page 7 that the NLC and the Coalition disagree on these sample definitions of "family," in terms of their compliance with the FHA.
- pp. 8-11 discuss "reasonable accommodation" requirements and procedures. Note the sample language on p. 11.
- pp. 15-18 discuss "spacing restrictions." The NLC and the Coalition disagree about the extent to which governments can justify such spacing restrictions. While the box on page 15 is a good overview, the text on pages 16-18 gives more detail on why they disagree.

2) "Policy Guide on Community Residences"

The American Planning Association board of directors composed and ratified this policy guide in 1997. It uses the term "community residence" to refer to a range of housing types for people with disabilities. It is good summary of the issues, and includes some definitions (group home, halfway house, etc.). Again, note that a sober house is **unlike** a "group home" as they define it here (p. 1), given the presence of support staff and services in a group home (i.e. residents are "service-dependent" people, unlike in a sober house).

Key highlights include:

- pp. 4-9 - the "Findings" section that starts on the bottom of page 4. Note particularly finding #5 on page 5, which discusses "normalization" and "community integration" in regard to the number of group homes that can be absorbed into a neighborhood's "social structure."

- Starting on page 6, the "Policy Positions" section, noting in particular, Policy #2.

I encourage you to review this material when you have a chance - I will draw upon it on Wednesday afternoon's meeting. On Wednesday, we will go through staff's research on your suggestions from the 3/26 meeting, and present a draft approach on some of the issues.

Thanks,

Luis

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**LOCAL
OFFICIALS
GUIDE**

Enclosed:

LP
excerpts
from full
guide
4/3/08

FAIR HOUSING

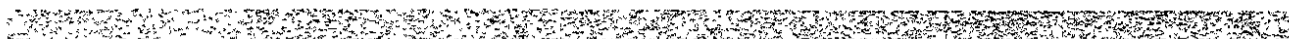


The Siting of Group Homes for the Disabled and Children

by
Cameron Whitman
and
Susan Parnas

Full guide available at:
http://www.bazelon.org/issues/housing/cpfha/1group_homes.pdf

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acknowledge the contributions of all the members of the Community and Economic Development Committee who provided NLC with their city ordinances addressing the siting of group homes.

The Coalition wishes to acknowledge the important contributions of Professor Chai Feldblum of the Georgetown Federal Legislation Clinic and Katie Corrigan, formerly the Clinic's Teaching Fellow. Law students Dan Losen, Dana Singiser, Adam Walker, Amy Weiss, Brad Rubin and George Hazel contributed substantial research and writing. Bazelon Center intern Sarah Lawskey (Yale Law School '01) improved the paper's organizational structure and edited and produced this final version.

Publication of this paper is not the last step, but the first in a longer process. We pledge ourselves and our organizations to continuing dialogue on these issues, during which we will seek greater consensus and clarity in enforcement of the FHA.

Donald Borut, *Executive Director*
NATIONAL LEAGUE OF CITIES

Michael Allen, *Convener*
COALITION TO PRESERVE THE FAIR HOUSING ACT

THE FOLLOWING DEFINITION OF FAMILY IS NOT EXEMPT UNDER THE FHA BECAUSE IT DOES NOT MERELY CAP THE NUMBER OF RESIDENTS IN A DWELLING BUT RATHER DIRECTS THAT DWELLINGS MAY HOUSE ONLY FAMILIES. IT RESTRICTS THE NUMBER OF UNRELATED PEOPLE WHO MAY LIVE TOGETHER BUT NOT THE NUMBER OF RELATED PEOPLE. THEREFORE, IT IS GOVERNED BY THE PROVISIONS OF THE FHA AND MAY TRIGGER LITIGATION IF YOUR DEFINITION IS DISCRIMINATORY.

Definition of "Family" That Triggers FHA Scrutiny

Family means an individual or two or more persons related by genetics, adoption or marriage, or a group of five (5) or fewer persons who are not related by genetics, adoption or marriage.

THE FOLLOWING DEFINITIONS ARE SIMILAR TO THOSE USED IN MANY LOCAL ZONING ORDINANCES. NLC BELIEVES THEM TO BE CONSISTENT WITH THE FHA.*

Sample Definition of "Family"

Family means one (1) or more persons who are related by blood or marriage, and including any foster children or a group of not more than five (5) persons living together as a housekeeping unit by joint agreement on a non-profit cost sharing basis, or a combination of persons related by blood or marriage along with no more than two (2) unrelated adults to a maximum number of five (5) persons living together and occupying a single housekeeping unit with a single kitchen facility. In addition, up to eight persons, including six or fewer persons with a disability or handicap and not to exceed two staff residents residing in a dwelling shall be considered to be a family.

Sample Definitions of "Family Living Arrangements"

- One or more persons related by blood, marriage, adoption, or guardianship living as a single housekeeping unit, in all districts.
- Four persons plus their offspring living as a single housekeeping unit, in all districts.
- Six persons living as a single housekeeping unit in R4 districts.
- A functional family living as a single housekeeping unit which has received a special exemption use permit.
- In this section, offspring means descendants, including natural offspring, adopted children, foster children and legal wards.
- In this section, functional family means a group of people plus their offspring, with a relationship which is functionally equivalent to a family. The relationship must be of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit. Functional family does not include any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary.

*THE COALITION IS UNABLE TO ENDORSE THESE DEFINITIONS BECAUSE IT BELIEVES THEM TO BE INCONSISTENT WITH THE FHA AND FHAA.

It's important to note, however, that municipalities must have fair, nondiscriminatory procedures for determining reasonable accommodation. In a Pennsylvania case, the court concluded that a municipality had failed to make a reasonable accommodation because the process of obtaining one was lengthy, costly, and burdensome.⁵⁵ Conversely, the reasonable accommodation procedures of Lubbock, Texas, were not held to be unduly burdensome because they were relatively rapid and flexible.⁵⁶

In addition, zoning procedures are unfairly applied if "the result of such procedures is foredoomed." They must not be "manifestly futile."⁵⁷ If, for example, a municipality consistently denies reasonable accommodations to group homes because of local opposition, that procedure may be deemed futile.⁵⁸ By contrast, the special use procedure employed in Palatine, Illinois, was not considered futile because the municipality had granted numerous zoning exceptions to group homes in the face of community opposition.⁵⁹

2. Group Homes Must Show That the Accommodation Is Necessary

The burden is on the group home provider to show that the requested accommodation is necessary. In determining whether a requested accommodation is necessary, courts look for a link between the requested accommodation and the "equal opportunity" that would be provided.⁶⁰ People with disabilities must demonstrate that without the accommodations, they would be denied the opportunity to enjoy housing of their choice in the community of their choice.

Group home operators have generally been successful in making these arguments. For example, some operators have demonstrated "necessity" by arguing that group homes provide the only means by which people with disabilities can continue to live in residential neighborhoods.⁶¹ In a case in New York, group home residents requested that the town modify its definition of "family" so that people in recovery from alcohol and drug use could continue living as a group in a residential area. The court emphasized that people in recovery require a group living arrangement for psychological and emotional support. The plaintiffs demonstrated that without the requested modification, they would be deprived of the same opportunity to rent a house as people without disabilities.⁶²

3. To Reject the Accommodation, Municipalities Must Show the Accommodation Constitutes a "Fundamental Alteration" or an "Undue Burden"

If a municipality wishes to deny the requested accommodation, the municipality must show that the accommodation is unreasonable.⁶³ In determining the "reasonableness" of a proposed accommodation, a court will consider whether the accommodation would:

- fundamentally alter the nature of the ordinance, neighborhood, or local zoning procedures;
- undermine the legitimate purposes and effects of existing zoning regulations; or
- impose undue financial and administrative burdens on the municipality.

Given these standards, it makes sense that the municipality would have to be the one to show that a proposed accommodation is unreasonable. The municipality is in a much better position to supply information about, for example, the nature or purpose of a zoning ordinance or how an accommodation would affect the municipality.

Myths, fears, and stereotypes are not sufficient to demonstrate a "fundamental alteration" in the neighborhood. For example, a municipality cannot deny a reasonable accommodation to a group home for recovering alcoholics out of fear that the home's residents might relapse into alcoholism and cause property damage

NLC OFFERS THE FOLLOWING SAMPLE PROCEDURE BY WHICH REQUESTS FOR
REASONABLE ACCOMMODATIONS CAN BE HANDLED.

Sample Reasonable Accommodation Guidelines

It is the policy of the city of _____ to provide fair access to housing for persons with disabilities and all other FHA-protected persons, including providing reasonable accommodation in the application of its zoning laws pursuant to federal and state law and under the procedures of section _____ of the Code.

In making a determination as to whether a requested accommodation is reasonable, it is necessary to consider whether the accommodation:

- Would impose an undue financial or administrative burden on the City; or
- Would require a fundamental alteration in the nature of a City program.

The reasonable accommodation provisions of the _____ Code cite the following factors as part of the consideration:

- Special needs created by the disability;
- Potential benefit that can be accomplished by the requested modification;
- Potential impact on surrounding uses;
- Physical attributes of the property and structures;
- Alternative accommodations which may provide an equivalent level of benefit;
- In the case of a determination involving a single family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

These factors are designed to elicit the factual information necessary to balance a city's interests with the need for the housing. It is legitimate for a city to consider the type of neighborhood expressed in its zoning and Comprehensive Plan designations (irrespective of the type of structure involved or the actual surrounding uses). These considerations will vary depending on whether the request is being made in a single family, multifamily, or commercial zoning district and can only be based on physical impacts of the proposed use, not the type of resident.

The programs should be considered for requests for reasonable accommodation:

- Health and Public Safety
- Occupancy standards (# of people per square feet of sleeping area)
- Exiting
- Building permits (house must meet building code standards)
- Residential neighborhood or zoning district
- Residential character of a house (interior and exterior should be consistent with single family use with sufficient common areas, kitchens and bathrooms)
- Parking (access to public transportation, off-site parking, nature of disability with respect to likelihood of driving, development of alternative parking plan).

Many localities have attempted to limit the location of group homes by enacting and enforcing spacing and density restrictions. Spacing restrictions are land-use laws that require a minimum distance between group homes and other community fixtures, including schools, shelters, and residences. A typical restriction prohibits a group home from locating within 1500 feet of a school or another group home

Density restrictions, by contrast, limit the percentage of a community's population that may consist of group home residents. For example, if a proposed home's residents would push the total number of group home residents in the community past a certain percentage of the overall population – say, 0.5% – that home would be prohibited from locating there.

NLC and the Coalition agree that in unusual circumstances, when group homes are so densely clustered as to recreate an institutional environment in the community, spacing restrictions are permissible. One such circumstance was presented in the case of *Familystyle, Inc. v. City of St. Paul*,⁶⁴ in which a spacing restriction prevented a group home operator from adding three homes to a one-and-a-half block area that already contained eighteen group homes and more than 100 group home residents. In such a case, a court should allow a locality to enforce a reasonable spacing restriction that is designed to promote greater integration of group homes throughout the entire community.

NLC and the Coalition disagree, however, about the extent to which other governmental interests can justify such restrictions. The diverging points of view are presented below.

In some communities, group homes are located principally in low- and moderate-income neighborhoods and few if any in the more affluent sections. This over-concentration may occur because group home operators are unable to afford homes in higher-income neighborhoods or because those neighborhoods present strongly organized resistance. City and community leaders should educate everyone about the importance of group homes and the responsibility all neighborhoods share to accept their fair share.

Additionally, providers in some neighborhoods have clustered group homes within individual blocks, changing the perceived character of these areas from residential to institutional. Since clustering is often confined to low- to moderate-income neighborhoods, clustering defeats efforts to reintegrate group home residents with their communities. In states where non-profit group homes pay no taxes, clustering them in one area can deplete that area's tax base. Multiple clusters of group homes for children can also strain the local school system. In New Jersey, for instance, townships that lack their own schools must send children to schools in neighboring townships. This carries a price tag of \$10,000 per child.

Communities have responded to the overconcentration problem by enacting blanket spacing or dispersal requirements that prohibit group homes from locating within a certain distance of each other or limiting the number of homes by population percentage. Some courts have held that dispersal requirements do violate the Fair Housing Act if the local government does not make a reasonable accommodation or an exception to the dispersal requirements. Such an "exception" would be allowing group home providers to apply for a special use permit if they wanted to locate within the spacing distance. Courts have defined the term reasonable accommodation to be "one which does not impose undue financial or administrative burden on the entity (the local government) making the accommodation or undermines the purpose which the requirement seeks to achieve."⁶⁵

measure their progress against that need, not against some predetermined quota.

In defending spacing and density restrictions, localities frequently express concerns that group home residents will raise crime rates, decrease the value of neighboring property, or alter the residential character of the community. More than 100 studies have shown, however, that group homes for children or people with disabilities have no appreciable negative effects on the surrounding communities.⁶⁶

Applying the basic tenets of the FHA – that people should have maximum opportunity to choose where they will live – courts have almost universally struck down spacing and density restrictions, most often because there was no evidence of significant clustering in the first place.⁶⁶ In determining whether a particular restriction violates the Fair Housing Act, courts have generally looked at whether the city or state has:

- imposed a law that applies only to people with disabilities and places harmful restrictions on them (“facial discrimination”);
- enacted a law that applies to the entire community but has a particularly negative impact on people with disabilities (“discriminatory effect”); or
- failed to make a “reasonable accommodation” for people with disabilities by refusing to grant relief from an onerous, but legal, zoning restriction.

Courts have generally agreed that spacing and density restrictions discriminate facially against people with disabilities and cannot be cured by the willingness of a locality to make a “reasonable accommodation,” i.e., by granting an exception to the spacing or density restriction. In other words, the spacing or density restriction needs to be justified on its own grounds. If the locality can justify its restriction – as, for example the City of St. Paul was able to do in the *Familystyle* case – the court will hold that the spacing restriction is not illegal, even though it facially discriminates against people with disabilities.

The Coalition agrees with NLC that additional guidance from courts and federal agencies is important in this area, primarily because there is some uncertainty about the level of justification required to sustain a spacing or density restriction. The emerging standard is that articulated by the Federal Courts of Appeal for the Sixth and Tenth Circuits, and adopted by other federal district courts which have held that locality can justify a facially discriminatory spacing or density restriction only if the restriction is either:

- “warranted by the unique and specific needs and abilities” of the persons to whom the regulations apply; or
- actually benefits, rather than discriminates against, the individual(s) affected.⁷⁰

In *Larkin v. Michigan Department of Social Services*,⁷¹ the state of Michigan argued that its spacing restriction helped integrate people with disabilities into the community and “serve[d] the goal of deinstitutionalization by preventing a cluster of [group homes for people with disabilities] from recreating an institutional environment in the community.”⁷² The court, however, held that the state failed to show how the special needs of people with disabilities warranted this intervention. Specifically, the court noted the lack of any evidence suggesting that clustering would occur without government intervention. The state failed to show that its spacing restriction would actually further the possibly legitimate goal of deinstitutionalization.

The *Larkin* standard allows localities to enforce facially discriminatory spacing and density restrictions if the localities can show those restrictions are warranted for particular group homes and group home residents. While this approach requires localities to produce substantial, particularized evidence to justify its restrictions, it does not assume these restrictions are always invalid. The *Larkin* court noted that, in the rare instances when group homes are indeed becoming so concentrated as to recreate an institutional setting, then a spacing restriction might serve the goal of deinstitutionalization.⁷³



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CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

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Telephone: 651-266-6655
Facsimile: 651-228-3314

To: Neighborhood Committee
From: Luis Pereira, PED
Date: May 7, 2007
Re: Sober House Zoning Study – staff response to 4/9 NC comments and proposed public hearing draft

A. New Revisions to Study and Ordinance:

1. Parking

At the 4/9 Neighborhood Committee meeting, the committee agreed with the revised parking standard as proposed by staff, with a minor revision. Per §63.206(b) of the Zoning Code, if the computed parking space requirement includes a fractional space and up through a half of a space (0.5), the number rounds down. Otherwise, if the computed number > 0.5 , it rounds up. The proposal was as follows (and is reflected in the attached revised ordinance):

Amend the Chapter 63 parking tables to create a separate parking standard for sober houses. Given that the ordinary requirement for a residential use is 1.5 parking spaces/unit, and a sober house may be occupied by more residents with cars than a unit occupied by municipally-defined “family” (a biological family or 4 unrelated adults), staff proposes the following:

- For every 4 sober house residents, 1.5 off-street parking spaces shall be provided:
 - 4 residents X $(1.5/4) = 1.5$, rounded down to 1 space
 - 5 residents X $(1.5/4) = 1.88$, rounded up to 2 spaces
 - 6 residents X $(1.5/4) = 2.25$, rounded down to 2 spaces
 - 7 residents X $(1.5/4) = 2.63$, rounded up to 3 spaces
 - 8 residents X $(1.5/4) = 3$ spaces
 - 9 residents X $(1.5/4) = 3.38$, rounded down to 3 spaces
 - 10 residents X $(1.5/4) = 3.75$, rounded up to 4 spaces
 - 11 residents X $(1.5/4) = 4.13$, rounded down to 4 spaces
 - 12 residents X $(1.5/4) = 4.5$, rounded down to 4 spaces
 - Etc.
- Shared parking agreements – Sober houses could partially or entirely meet the parking standard above by following the existing requirements for shared parking, as per §63.206(d) or (g) of the Zoning Code
- **Alternative parking plan** - If the sober house cannot meet the parking standard with off-street spaces and/or shared parking agreement(s), it could submit a written “alternative parking plan.” Such a plan would have to show any off-street parking spaces, the location of on-street parking spaces that are typically available during the day/at night, and the anticipated number of cars to be kept by residents of the house. Other elements of the parking plan that might be included are the sober house’s proximity to transit, the number of residents without driver’s licenses, and/or written house rules that restrict the total number of cars to be parked at the house.

2. Questionnaire

The Neighborhood Committee did not comment on the revised questionnaire, but it had been streamlined by staff. Staff will continue to update this questionnaire, administratively, by the Zoning Administrator, in consultation with staff from PED and the City Attorney's Office. In addition, while the City is already required to make reasonable accommodations by the Federal Fair Housing Act and noted in §60.110 of the Zoning Code, the process for doing so is a procedure that is not an explicit part of the ordinance and is not specific to sober houses.

The Neighborhood Committee agreed with keeping the requirement to submit a floor plan with the questionnaire, given that it would help city staff figure out the upper range on the number of occupants allowable in a given sober house (useful to the Fire Marshal as well). The Neighborhood Committee also agreed with including a required affidavit for each house (not each resident), and staff will continue refining this.

B. Questions from the Neighborhood Committee, and staff responses:

a. "Sober houses are not different from group homes", i.e. the argument that a lack of services/staffing in sober houses does not matter from a neighborhood perspective

Based on research reviewed by staff and previous litigation from around the country, unlicensed homes such as sober houses are distinct from licensed "group homes." Group homes house a "service-dependent" population and often include staff that live onsite with the residents whereas sober house residents are independent adults who do not require any treatment or supervision from a staffperson. Group homes are typically licensed by the State of Minnesota, and many receive financial support via contracts with the state or county government, making them more akin to an institution. Literature that staff has found on the Fair Housing Act distinguishes between licensed facilities – which often must comply with state-level regulations in order to receive funding – and unlicensed facilities, which operate independently of governmental assistance. An analysis by the city attorney of Vancouver, Washington reviews the likelihood that a municipal dispersal requirement for group homes could be upheld, in terms of court decisions such as *Familystyle of St. Paul, Inc. v. City of St. Paul*, on one hand, and *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, on the other.¹:

...there seems to be a significant difference between when a State enacts a broad policy against clustering and "ghettoization" of group homes in order to further the legitimate interests of integration, and when a municipality enacts a local ordinance without a supporting state policy. Second, even if a municipality could enact a dispersal ordinance without such a state policy or statute, it cannot do so without having legitimate public health and safety objectives in mind at the outset when drafting such an ordinance. It must show a sincere desire to further the policy of integration, and not merely assert apparent neutrality while actually acting upon the fears and NIMBY attitudes of its non-handicapped citizens....

*...There seems to be less scrutiny of statewide policies, since states regulate "institutions" rather than "individuals." As was stated in *Familystyle*, because the state did not have any individuals in mind when enacting its dispersal regulation, it could not have violated the FHAA which prohibits discrimination against handicapped individuals. Another way to rationalize the holding of *Horizon House* in light of*

08/6/40

Familystyle is that the municipality there acted, not only without state regulatory guidance, but also without asserting legitimate government interests in defending its exclusionary zoning practices.

Where a municipality acts without authorization or guidance from the State, its motives are more likely to be viewed as suspect and potentially discriminatory. Additionally, the thrust of the holding in Familystyle was that States do not regulate individuals when enacting policy regulations, but instead, monitor institutions in the interest of public health, welfare, and safety. When a municipality enacts spacing requirements, however, eventually only a finite number of group homes will be able to locate within its boundaries. Therefore, dispersal zoning comes closer to regulating individuals, rather than group homes as "institutions," by eventually limiting the housing choices available to the handicapped.

Fair Housing Act literature is clear that governments *can* use incentives such as funding to influence where a residential facility chooses to locate. Human services facilities that are licensed by and receive funding from the State of Minnesota are also regulated by state statute §245A, which mandates minimum separation requirements. While this statute was successfully defended in the *FamilyStyle* case, it is not clear that local governments can apply the same statute for residential facilities that are completely independent of governmental assistance or licensing (the outcome of the *Horizon House* case).

b. "Why are we basing our ordinance on some parts of State law, but not on others?"

There are important reasons why the City should not seek to extend all State regulations for licensed residential facilities equally to sober houses. While state law does hold that licensed residential uses of six or fewer people must be treated as a permitted single family use, it is silent on the question of how to view unlicensed facilities in terms of being single- or multifamily. The State of California has weighed in on this issue and the implication of its statutes is that licensed and unlicensed residential facilities are treated similarly in many cities in terms of the number of people that can occupy them and still be considered a single family use. However, the California State government does treat some licensed residential facilities *differently* – some, such as care facilities for the developmentally disabled – are required to be separated from similar facilities by 300 feet², while others – such as licensed facilities for the elderly, drug and alcohol treatment facilities – have no such separation requirements.

While there is little dispute that the Fair Housing Act has been interpreted to mean that a local government can adopt and enforce an occupancy cap as long as it is applied equally to all homes occupied by related and unrelated people (i.e. group homes and sober houses are treated similarly in terms of a maximum number of residents per house), the law is not clear that separation requirements for unlicensed residential homes will pass FHA scrutiny.

c. "Why has staff proposed a two-tiered Reasonable Accommodation approach (5-6 residents vs. 7+ resident houses)?"

Staff supports keeping the two-tiered reasonable accommodation approach in place. According to one sober house operator, many existing sober houses in Saint Paul have 4-6 residents. On the other hand, according to the City's unofficial tally of known sober houses, 11 of 13 existing single family sober houses have over 6 people in them. New sober houses would be regulated under the proposed zoning standards to ensure that neighborhoods with smaller lots zoned predominantly single family would not be impacted by larger sober houses (unless there is a large lot with the required off-street parking available).³ For example, the proposed lot area standard would require that each new sober house meet the lot area required in the base zoning district for up to six residents, as well as an additional 800 square feet per each

² California Health & Safety Code 1267.9.

³ This is well-illustrated by the W. 7th Street neighborhood map that was distributed to the Neighborhood Committee on 3/26/08 (map dated 3/19/08).

resident above six. Applied to the 34 existing sober houses in town, only five of the 34 would comply (i.e. 29 would become non-conforming). More simply, this standard means that single family lots that just meet the lot area required in R4, R3, R2, and R1 districts (5,000; 6,000; 7,200; and 9,600 square feet, respectively) would only be allowed up to 6 people (assuming all other zoning standards are met).

Another reason staff supports keeping the two-tiered approach to reasonable accommodation is that the most highly-profiled/successful example of sober living housing in the United States is Oxford House, a model that is said to need six residents at a minimum. By greatly restricting a "sober house" with 5-6 unrelated residents in them, the City would be ignoring its own data about the typical number of residents in existing sober houses, as well as publicly-available information on the Oxford House model. This approach would disregard important characteristics about sober houses in Saint Paul and elsewhere, making it hard for the City to claim that the integration of sober houses into neighborhoods is a key goal of the ordinance.

An additional reason for keeping the two-tiered approach to reasonable accommodation is that once controlled for traffic and parking impacts (via a specific parking standard for sober houses), no real distinction has been made between sober houses occupied by four versus six residents, in terms of significant adverse impacts. The lack of identifiable adverse impacts thus begs the question of why additional restrictions are needed beyond those that control for neighborhood-level traffic and parking impacts of houses with more residents.

C. Legal questions from the Neighborhood Committee, and City Attorney's Office responses:

Following the April 9, 2008, Neighborhood Committee meeting, Mr. Warner of the City Attorney's Office was asked to provide an opinion about two questions. The questions and Mr. Warner's answers are set forth below in #1 and #2 below:

1. Do disabled residents have maximum freedom to choose to live in any particular house under the Federal Fair Housing Act? Answer: YES.

By way of background, which is applicable to both questions asked, it is necessary to set out a brief recitation of the evolution of the Federal Fair Housing Act (FFHA) which was first enacted by Congress as Title VIII of the Civil Rights Act of 1968. See, Fair Housing Act of 1968, 42 U.S.C. § 3591 et seq. Initially, the FFHA prohibited housing discrimination on the basis of "race, color, religion, or national origin." In 1974, Congress amended the FFHA to prohibit housing discrimination based on "gender." See Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, 729 (1974). To strengthen enforcement and expand the coverage of the FFHA, Congress enacted the Fair Housing Amendments Act of 1988 (FHAA). See, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (current version at 42 U.S.C. §§ 3601-3631) (2008). The FHAA expanded the FFHA's coverage to prohibit housing discrimination against "handicap" persons. 42 U.S.C. § 3604(f)(1). In addition, the FHAA made it unlawful to refuse to make "reasonable accommodations" to facilitate occupancy by handicap persons. 42 U.S.C. § 3604(f)(3)(B). The FHAA is thus the primary federal statutory remedy for discrimination in housing by generally making it unlawful to refuse to sell, rent, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, handicap, or national origin. See, 42 U.S.C. § 3604(a-f).

My answer above is specifically based upon the language of 42 U.S.C. § 3602(f)(1) which provides that it shall be unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of," (emphasis added) and 42 U.S.C. § 3602(f)(3)(B) which further provides for that subsection that "discrimination includes: a refusal to

make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." (emphasis added). I was unable to locate any case or legal treatise that indicated that the FHAA limited where a person who was protected by the FHAA could live. Obviously, the FHAA does not give a person who is protected by it the right to live in a dwelling that the person cannot afford to buy or rent. However, the overwhelming number of cases that have been reviewed for this zoning study clearly demonstrate that people protected by the FHAA have used the provisions cited above in order to have the opportunity to live in a particular dwelling of their choice (my emphasis) that had been made unavailable or denied to them based upon their race, color, religion, sex, familial status, handicap, or national origin.

2. Does a physical v. mental handicap make a difference in terms of concentration standards? Answer: NO.

In my review of cases and treatises for this zoning study, I was unable to locate any materials which indicated that the FHAA contemplated a concentration differential based upon mental or physical handicap. I was, however, able to locate several cases where it was held that concentration standards regarding dwellings for the handicapped were discriminatory under the FHAA. See, Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775 (7th Cir. 2002), United States v. City of Chicago Heights, 161 F. Supp.2d 819 (N.D. Ill, East. Div. 2001), Larkin v. Michigan Dept. of Soc. Services, 89 F.3d 285 (6th Cir. 1996); See also, Citizens for a Balanced City v. Plymouth Congregational Church, 672 N.W.2d 13 (Minn. App. 2003).

D. City staff recommendation:

1. Possible change A (Staff supports):

a. Change the concentration standard to 330' for houses with 7 or more residents, consistent with other parts of the Zoning Code

(g) A sober house occupied by seven (7) or more residents shall be a minimum distance of three hundred thirty (330) feet from any other sober house with seven (7) or more residents, measured from property line to property line.

And recommend the draft ordinance (attached) for a public hearing at the Planning Commission.

- OR -

2. Possible change B (Staff does not support):

b. Change the concentration standard to 600' for houses with 7 or more residents, consistent with other parts of the Zoning Code

(g) A sober house occupied by seven (7) or more residents shall be a minimum distance of six hundred (600) feet from any other sober house with seven (7) or more residents, measured from property line to property line.

And recommend draft ordinance (attached) for a public hearing at the Planning Commission, with a revision to include possible change B.

Policy Guide on Community Residences

Adopted by Special Delegate Assembly, September 21, 1997

Ratified by Board of Directors, September 22, 1997

Municipalities and counties throughout the nation continue to use zoning to exclude community residences from the single-family residential districts despite 25 years of planning standards⁽¹⁾ and the vast majority of court decisions⁽²⁾ that recognize community residences for people with disabilities as a residential use. Misconceptions about their nature and impacts abound although there is a wealth of scientific evidence that community residences for people with disabilities generate no adverse impacts on the surrounding community and function as residential uses. More recently the Fair Housing Amendments Act of 1988⁽³⁾ prohibited zoning regulations of community residences that are based on unfounded myths and fears about the residents, and appeared to explicitly disallow the use of special use permits as the primary means of regulating community residences. Yet this misclassification and exclusion continues unabated throughout most of the nation.

During the 1970s and 1980s, every state, as well as the federal government, started to reshape its policies toward people with severe disabilities. States recognized that warehousing people with disabilities in institutions was not only extremely costly, but also ineffective. A large proportion of those who were institutionalized could live in much less restrictive environments such as a familylike environment in a house or apartment surrounded by other residential uses. They did not require the high level of care furnished by an institution. Overwhelming evidence showed that allowing individuals with disabilities to live in a familylike setting in the community in a community residence was not only much less expensive than consigning them to institutions, but also substantially more effective. In a familylike setting, people with disabilities could learn the life skills we teach our own children on a daily basis. Living in a community residence, namely a group home or halfway house, fosters normalization in which these individuals learn to lead as normal a life as possible. As the courts have noted time and again, community residences are the very opposite of an institution in terms of how they function and perform, and in terms of how they use the land. To achieve a familylike setting, these community residences need to be located in the same residential zoning districts as dwellings occupied by biological families.

Definitions

Because there is so much misunderstanding of this subject, it is essential to first define several terms.

Group Home

A dwelling unit occupied as a single housekeeping unit in a familylike environment by up to approximately 12 to 15 persons with disabilities plus support staff. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents. A group home is owned or operated under the auspices of a nonprofit association, private care provider, government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians. Interrelationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years.

The group home constitutes a *family*, a *single housekeeping unit* where residents share responsibilities, meals, and recreational activities as in any family. The intention is for group home residents, like members of a biological family, to develop ties in the community. Like people without disabilities, these individuals attend schools, work, and may receive other support services in the community. The group home staff is specially trained to help the residents achieve the goals of independence, productivity, and integration into the community. Together, the staff and residents constitute a *functional family*.⁽⁴⁾ The group home's staff teaches the residents with disabilities the same life activities taught in conventional homes. They learn personal hygiene; shopping cleaning, laundry, and recreational skills; how to handle money; how to take public transportation; how to use community facilities. They learn how to live as a family. *The group home fosters the very same family values our most exclusive residential zoning districts advance.*

The primary purpose of the group home is to provide a familylike setting with ongoing supervision and support for persons unable to live independently in the community. It is *not a clinic where treatment is the principal or essential service provided*. A treatment regime may be incorporated into the daily routine of persons with disabilities wherever they may live, whether with their families, in an institution, or in a group home. So, just like the person with a disability who lives with her family, the group home resident may have a daily habilitation regime to follow. *Any treatment received at home is incidental to the group home's primary purpose.*⁽⁵⁾

Residency in a group home is long term relatively permanent and measured in years, not months or weeks. There is no

maximum level of zoning regulation permissible for community residences for people with disabilities in accord with sound planning principles, the Fair Housing Amendments Act of 1988 (FHAA), and case law. These policy guidelines do not suggest that any community or state with less restrictive zoning provisions should make their zoning provisions more restrictive.

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Exclusionary zoning practices

Limiting the number of unrelated individuals who can dwell together has been one of the most commonly used zoning techniques to exclude community residences from singlefamily districts.

The definition of family in most zoning codes allow no more than three, four, or five unrelated individuals to occupy a dwelling unit. Some allow no unrelated people to live together, even as roommates.⁽¹⁰⁾ The U.S. Supreme Court upheld these restrictive definitions in *Village of Belle Terre v. Borass*⁽¹¹⁾. Since most community residences need six or more residents to succeed therapeutically and financially, this restriction has effectively blocked most community residences from locating in the residential areas in which they need to locate.

Another common technique has been to require a special use permit for a community residence to locate in a residential district.⁽¹²⁾ At a public hearing, an applicant must demonstrate that its proposed land use meets the criteria for granting a special use permit. In the case of community residences, neighbors commonly claim that the proposed community residence will reduce property values and introduce crime and congestion to the neighborhood. Many opponents assert that the community residence is a business rather than a dwelling. In many allwhite communities, opposition is driven by a fear of racial integration, namely that group home residents and staff may be of African ancestry. All of these objections reflect false impressions of community residences and their occupants.

City officials quite often yield to objections by neighbors and reject the application of the community residence even when the applicant demonstrates it meets the criteria for awarding the special use permit. This was the scenario that led to the U.S. Supreme Courts 1985 decision in *City of Cleburne v. Cleburne Living Center* where the Court ruled the city had illegally denied the group homes special use permit based on the neighbors unfounded fears and myths about the group home and its residents.⁽¹³⁾

This technique is extremely effective at limiting the housing opportunities for people with disabilities who need a community residence to live in. When a special use permit is required, the buyer usually seeks to purchase the property with a clause that makes the sale contingent on receiving the special use permit. That sort of provision is quite common in the sale of commercial property, but extremely rare in the sale of owneroccupied residential property. Few homeowners can afford to sell their houses subject such a contingency clause. Most homeowners need the proceeds from the sale of their current house to buy a new one. Consequently, few homeowners are willing to sell to a group home operator who insists on this kind of contingency clause and few group home operators can afford to take the risk that their special use permit application will be denied and theyll be stuck with a house they cannot use as a group home.

In 1974 the American Society of Planning Officials (one of APAs predecessor organizations) surveyed 400 U.S. cities and found that the zoning ordinances of fewer than 25 percent provided specifically for community residences. Of those that mentioned group homes or halfway houses, the vast majority either prohibited them from singlefamily districts or required them to obtain a special use permit to locate in such residential zones.⁽¹⁴⁾

Ten years later, the zoning picture for community residences was still grim. The General Accounting Office found that 65.5 percent of the time local zoning ordinances or practices prevented or made it difficult for group homes for people with developmental disabilities to locate in the singlefamily districts their operators preferred.⁽¹⁵⁾ Subsequent recent research prior to adoption of the Fair Housing Amendments Act of 1988 found that little had changed.⁽¹⁶⁾

Role of the Fair Housing Amendments Act of 1988

Rather than simply add people with disabilities to the list of protected classes under the Fair Housing Act, Congress added a new section to the act that declared discrimination includes:

a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.⁽¹⁷⁾

Much of the FHAA litigation has revolved around the issue of reasonable accommodation. Given this statutory language, it is hard to see how anybody can contend that the FHAA requires that community residences be treated the *exactly the same* as singlefamily residences. The statute requires only that a reasonable accommodation be made in a citys zoning ordinance to give people with disabilities an equal opportunity to use and enjoy a dwelling. This does not mean that they have a right to dwellings they cannot afford to buy or rent. It does not mean that a city must change its zoning to allow communes, boarding houses, or fraternities in its most exclusive singlefamily districts.

For zoning purposes, community residences are much closer in terms of land use to a residence ordinarily occupied by a conventional family than any other land use. The majority of courts have ruled that a community residence is the opposite of an institution, boarding house, or a commercial use.

2 Community residences have no effect on the value of neighboring properties.

More than 50 studies have examined their impact on property values probably more than for any other small land use. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do not affect property values of even the house next door. They have no effect on how long it takes to sell neighboring property, including the house next door. They have learned that community residences are often the best maintained properties on the block. And they have ascertained that community residences function so much like a conventional family that most neighbors within one to two blocks of the home don't even know there is a group home or halfway house nearby.⁽²⁴⁾

3 Community residences have no effect on neighborhood safety.

A handful of studies have also looked at whether community residences compromise neighborhood safety. The most thorough study, conducted for the State of Illinois, concluded that the residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois. It revealed a crime rate of 18 per 1,000 people living in group homes compared to 112 per 1,000 for the general population.⁽²⁵⁾

4 Community residences do not generate adverse impacts on the surrounding community.

Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.⁽²⁶⁾

5 Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block.

For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents' normalization would be compromised. Such clustering would create a *de facto* social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood.

Normalization and community integration require that persons with disabilities be absorbed into the neighborhood's social structure. The existing social structure of a neighborhood can accommodate no more than one or two group homes on a single block. Neighborhoods seem to have a limited absorption capacity for servicedependent people that should not be exceeded.⁽²⁷⁾ Social scientists note that this level exists, but they can't quite determine a precise level. Writing about servicedependent populations in general, Jennifer Wolch notes, At some level of concentration, a community may become saturated by services and populations and evolve into a servicedependent ghetto.⁽²⁸⁾

According to one leading planning study, While it is difficult to precisely identify or explain, saturation is the point at which a community's existing social structure is unable to properly support additional residential care facilities [group homes]. Overconcentration is not a constant but varies according to a community's population density, socioeconomic level, quantity and quality of municipal services and other characteristics. There are no universally accepted criteria for determining how many group homes are appropriate for a given area.⁽²⁹⁾

Nobody knows the precise absorption levels of different neighborhoods. However, the research strongly suggests that as the density of a neighborhood increases, so does its capacity to absorb people with disabilities into its social structure. Higher density neighborhoods presumably have a higher absorption level that could permit group homes to locate closer to one another than in lower density neighborhoods that have a lower absorption level.⁽³⁰⁾

This research demonstrates there is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their *raison d'être*.

6 Community residences should be licensed or certified to protect the welfare of their residents.

The individuals who occupy a community residence constitute a vulnerable population unable to fully care for themselves. Licensing helps ensure that the operator is qualified to furnish the requisite care and support services the group home

POLICY 3: When a proposed halfway house for persons with disabilities does not comply with the jurisdiction's definition of family, then the jurisdiction is required to make a reasonable accommodation in its zoning code to allow halfway houses for people with disabilities as of right in all multiplefamily residential districts if the proposed halfway house meets these two requirements:

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1. That a rationally based spacing requirement be provided to avoid an undue concentration of community residences and
2. When the proposed group home or its operator must be licensed or certified by the appropriate state, national, regional, or local licensing or certification body.

If a proposed group home fails to meet both tests, then a zoning ordinance should allow the operator to apply for a special use permit.

From a zoning perspective, halfway houses perform more like multiplefamily housing than singlefamily housing. They don't emulate a family quite as closely as a group home does. They billet many more people. They place a limit on length of residency, unlike a group home which is a more permanent living arrangement akin to singlefamily housing.

POLICY 4: Halfway houses should be allowed in all singlefamily zones by special use permit due to their multiplefamily characteristics that warrant the extra scrutiny provided by the special use permit or comparable review process when locating in a singlefamily district.

On many occasions the operator of a halfway house may prefer to locate it in a singlefamily district. Halfway houses are not, per se, incompatible with singlefamily homes. However, the heightened scrutiny of a conditional use permit hearing is warranted to assure that a proposed halfway house will be compatible with the other land uses in a singlefamily district. The standards to apply are the same ones used for other special uses.

POLICY 5: Local planners should, on an informal basis, seek to facilitate communication between the operators of proposed community residences and the surrounding community to help foster full integration of the residents of a community residence into the community. Planners should help neighbors learn how each proposed community residence emulates a family and how it serves as a residence that is properly located in a residential zone, not an institutional use that belongs outside residential districts. They should disseminate to neighbors and public officials the findings of the extensive research on the absence of adverse impacts of community residences on the surrounding community.

Authority

1. See M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (American Planning Association Planning Advisory Service Report No. 397 (1986)); D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* (American Society of Planning Officials PAS Rep. No. 300, 1974); and N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).
2. See N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).
3. Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(1) et. seq.
4. Gailey at 9798.
5. H. R. Turnbull, III, *CommunityBased Residences for Mentally Handicapped People* 12 (1980). Some courts have found this distinction to be crucial when determining that group homes function as families and are residential uses allowable in residential zoning districts.
6. Oxford House, which has been the subject of so much FHAA litigation falls somewhere between the group home and halfway house. Unlike the halfway house, Oxford House places no limit on the length of stay. Unlike a group home, or even halfway house, Oxford House has no staff. The residence is run by its officers who are elected periodically from among its residents. Unlike a group home, Oxford House needs 10 to 15 residents to function successfully, both therapeutically and financially. The courts have generally construed Oxford House to be a group home.
7. See D. Braddock, R. Hemp, L. Bachelder, G. Fujiura, *The State of the States in Developmental Disabilities* 8 (4th ed. 1994); Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et. seq.
8. Id. at 12.
9. This policy guideline focuses solely on the zoning treatment for group homes and halfway houses for people with disabilities, the two most common types of community residences. Other types of community residences may warrant zoning treatment different from that recommended here.

Goes the Neighborhood: A Summary of Studies Addressing the Most Often Expressed Fears About the Effects of Group Homes on Neighborhoods in Which They Are Placed (CPL Bibliography No. 259, April 1990); M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (Am. Plan. A. Plan. Advisory Serv. Rep. No. 397 (1986). See e.g., City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (monograph 1976) (found no negative impacts on selling price of houses near or adjacent to halfway houses for people with alcohol addictions, adult exoffenders, juvenile exoffenders).

25. Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities*, 15 Illinois Planning Council on Developmental Disabilities (1986).

26. Daniel Lauber, *Zoning for Family and Group Care Facilities* at 10.

27. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

28. Jennifer Wolch, "Residential Location of the Service Dependent Poor," 70 *Annals of the Association of American Geographers*, at 330, 332 (Sept. 1982).

29. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber, *Zoning for Family and Group Care Facilities* at 25.

30. Lauber, *Zoning for Family and Group Care Homes* at 25.

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ORDINANCE
CITY OF SAINT PAUL, MINNESOTA

Presented by _____

Kathy Party

1
2 An ordinance amending the Legislative Code Chapter 65 by creating a new § 65.160, entitled
3 “sober house,” which defines and permits this residential use with associated zoning standards;
4 amending § 63.207, Parking requirements by use, by adding a line with a parking requirement for
5 *sober house*; and amending use tables in §§ 66.221, 66.321, 66.421, and 66.531 adding *sober*
6 *house* as a permitted use in certain zoning districts.
7
8

9 THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN

11 Section 1

12 That Legislative Code Chapter 65 is hereby amended by adding a new §65.160 entitled “sober house,” as
13 follows:

14 **Sec. 65.160. Sober house.**

15 A dwelling unit occupied by more than four (4) persons in recovery from chemical dependency and
16 considered handicapped under the Federal Fair Housing Act Amendments of 1988 that provides a non-
17 institutional residential environment in which the residents willingly subject themselves to rules and
18 conditions intended to encourage and sustain their recovery. The residents of a sober house are similar to
19 a family unit, and share kitchen and bathroom facilities and other common areas of the unit. Sober houses
20 are financially self-supporting. This definition does not include facilities that receive operating revenue
21 from governmental sources. Sober houses do not provide on-site supportive services to residents,
22 including the following: mental health services; clinical rehabilitation services; social services; medical,
23 dental, nutritional and other health care services; financial management services; legal services;
24 vocational services; and other similar supportive services.

25 Standards and conditions:

26 The following standards and conditions are intended to provide reasonable accommodation for this use as
27 required under the Federal Fair Housing Act Amendments of 1988:

- 28 (a) The operator shall submit written answers to a questionnaire provided by the zoning administrator
29 that specify the number of residents, the number of bedrooms, and other building and site data. The
30 maximum total number of residents permitted in the sober house will be specified by the Fire
31 Certificate of Occupancy.
- 32 (b) For a sober house that does not meet the parking requirement in section 63.207, the operator shall
33 submit a written parking plan that demonstrates sufficient parking for the use.
- 34 (c) In RL-R4 Residential Districts, the sober house shall serve ten (10) or fewer residents.
- 35 (d) A conditional use permit is required for any structure serving 17 or more sober house residents. This
36 use shall be exempt from section 61.501 conditional use permit general standards (a), (c), and (d).
- 37 (e) The minimum per unit lot area as applicable in the zoning district plus eight hundred (800) square feet
38 for each resident in excess of six (6) residents.
- 39 (f) A sober house shall be a minimum distance of three hundred thirty (330) feet from any other sober
40 house, and a sober house occupied by seven (7) or more residents shall be a minimum distance of six
41 hundred sixty (660) feet from any other sober house, measured from property line to property line.

42
43 Section 2

44 That Legislative Code Sec. 63.207, Parking requirements by use, in the “Residential Uses” section of the

Roominghouse, boarding house					C	C	C	✓
Nursing home, boarding care home, assisted living						C	P	✓
Hospice	P	P	P	P	P	P/C	P	✓
Dormitory	P	P	P/C	P/C	P/C	P/C	P/C	✓
Fraternity, sorority	P	P	P/C	P/C	P/C	P/C	P/C	✓

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Section 4

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.321, Principal Uses in Traditional Neighborhood Districts, is hereby amended as follows:

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Residential Uses				

61

Congregate Living				
Foster home, freestanding foster care home	P	P	P	
Community residential facility, licensed human service	P	P	P	✓
Community residential facility, licensed correctional	C	C	C	✓
Community residential facility, health department licensed	C	C	C	✓
Emergency housing facility	C	C	C	✓
Shelter for battered persons	P/C	P/C	P/C	✓
Transitional housing facility	P/C	P/C	P/C	✓
<u>Sober house</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>✓</u>
Roominghouse, boardinghouse	C	P	C	✓
Nursing home, boarding care home, assisted living	P	P	P	✓
Hospice	P	P	P	✓
Dormitory	P/C	P	P	✓
Fraternity, sorority	P/C	P	P	✓

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Section 5

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.421, Principal Uses in Business Districts, is hereby amended as follows:

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Residential Uses								

67

Congregate Living								
Foster home, freestanding foster care home	P	P	P	P	P	P	P	✓
Community residential facility, licensed human service	P	P	P	P	P	P	P	✓
Community residential facility, licensed correctional			C	C	C	C	C	✓
Community residential facility, health department licensed			C	C	C	C	C	✓
Emergency housing facility			C	C	C	C	C	✓
Overnight shelter							C	✓
Shelter for battered persons	P/C	P/C	P/C	P/C	P	P	P	✓
Transitional housing facility	P/C	P/C	P/C	P/C	P	P	P	✓
<u>Sober house</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>✓</u>
Roominghouse, boardinghouse			C					✓

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Nursing home, boarding care home, assisted living			C					✓
Hospice	C	C	P/C	C	P	P	P	✓
Dormitory			P/C					✓
Fraternity, sorority			P/C					✓

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Section 6

That Legislative Code Chapter 66, the "Congregate Living" section of Table 66.521, Principal Uses in Industrial Districts, is hereby amended as follows:

Table 66.521. Principal Uses in Industrial Districts

Use	IR	I1	I2	I3	Development Standards
Residential Uses					
Congregate Living					
Foster home, freestanding foster care home	P	P	P		✓
Community residential facility, licensed human service	P	P	P		✓
Community residential facility, licensed correctional		C	C		✓
Community residential facility, health department licensed		C	C		✓
Correctional facility		C	P	C	
Emergency housing facility		C	C		✓
Overnight shelter		C	C		✓
Shelter for battered persons	P	P	P		✓
Transitional housing facility	P	P	P		✓
Sober house	P/C	P/C	P/C		✓
Hospice	P	P	P		✓

Section 7

This ordinance shall become effective thirty (30) days after its passage, approval and publication.

	Yeas	Nays	Absent
Bostrom			
Carter			
Harris			
Helgen			
Lantry			
Stark			
Thune			

Requested by Department of:

Planning and Economic Development

By:

Form Approved by City Attorney

By: P.W. Warner 6-3-08

Adopted by Council:

Date:

Adoption Certified by Council Secretary:

By:

Approved by Mayor

Date:

Form Approved by Mayor for Submission to Council

By: