

ORDINANCE NO.: 4769

AN ORDINANCE to create Section 15.01(OOO) and 15.26(Z) and to repeal and recreate Section 15.42 of the Code of Ordinances of the City of La Crosse to regulate Community Living Arrangements (CLAs).

THE COMMON COUNCIL of the City of La Crosse do ordain as follows:

SECTION I: Paragraph 15.01(OOO) is hereby created to read as follows:

(OOO) COMMUNITY LIVING ARRANGEMENTS (CLA)

Community living arrangements (CLAs), consistent with definitions in the Wisconsin Statutes, shall include community living arrangements for adults (WIS. STAT. § 46.03 (22)); community living arrangements for children (WIS. STAT. § 48.743 (1)); a foster home (WIS. STAT. § 48.02 (6)); a treatment foster home (WIS. STAT. § 48.02 (6)); an adult family home (WIS. STAT. § 50.01 (1)); a community-based residential facility (WIS. STAT. § 50.01 (1g)); group homes; facilities providing residential or placement options for the populations served by federal, state, or local correctional entities; detoxification-only shelters and shelters for the temporary placement of persons suffering from the effects of the over-consumption of drugs and/or alcohol; as well as similar facilities to those defined and described herein. Statutory constraints on these definitions and City powers are incorporated into this ordinance.

SECTION II: Paragraph 15.26(Z) is hereby created to read as follows:

(Z) COMMUNITY LIVING ARRANGEMENTS.

(1) Conditional Use Procedures.

- (a) Any exceptions to the provisions of Section 15.42 sought by the agent of a community living arrangement facility or adult family home shall request such permission of the City by following the City's conditional use permitting procedures.
- (b) The owner/operator of a proposed community living arrangement shall submit the following with the application for a conditional use permit:
 - (i) A building plan as required by the City's Zoning Ordinance, plus: (a) the layout of the building and any planned additions, including size and layout of rooms; (b) the total square footage of the building and total living space and square feet; (c) the number of bedrooms and the number of beds per bedroom; (d) handicap and emergency access and exit;

- (ii) A site plan as required by the City's Zoning Ordinance including: (a) location and the "footprint" of building(s) and structure(s); (b) off-street parking areas; and (c) proposed landscaping;.
 - (iii) A drainage plan, landscape plan, and utility plan is required by the Zoning Ordinance.
- (c) The application for a residential conditional use permit shall also be accompanied by an operational plan which includes: the name and address of the CLA operator; the proposed operation and supervision, including the type of CLA and any programs offered; the number of employees; the proposed bed capacity and total number of occupants of the structure, including any residents not under residential care.
- (d) Upon receipt of all necessary information and permit fee, the City Planning Department may request the Wisconsin Department of Health and Social Services to inspect the proposed CLA and review the proposed operation. Approval of the Department may be a condition of approval of the conditional use permit. The same shall apply to any other applicable agency or department, such as the Federal Veterans Administration where appropriate. Comments or reports on the proposed CLA received from such agencies will be considered. The CLA conditional use permit request must confirm compliance with Chapter C HSS-3 of the Wisconsin Administrative Code, Chapter 50 of the Wisconsin Statutes, and all other applicable licensing regulations of the Wisconsin DHSS and any other relevant agency, as is appropriate to the facility seeking the conditional use permit. The CLA must confirm compliance with all applicable State and local Housing Building, and Fire Codes.
- (e) The application will also confirm adequate off-street visitor and employee parking. The City may require more parking than is normally required if special characteristics of the CLA warrant such additional parking.
- (f) In the business zoning districts, all proposed residential uses are to be above the first floor.
- (g) There shall be no outdoor signs on or near the facility and the CLA's exterior appearance and proposed operation must be compatible with the surrounding residences when it is in a residential district or surrounding uses when it is in a business or other district.
- (h) When the proposed CLA is not within one half-mile (2,640 feet), measured from property line to property

line, of a public park, the CLA shall provide seventy-five square feet of open recreational space on the property per bed.

(i) The City shall use the following factors when reviewing the proposed capacity (density) of the CLA: (1) per person living space requirements of Chapter C HSS-3 of the Wisconsin Administrative Code, the Federal Veterans Administration ("VA") Regulations, the City of La Crosse minimum housing code requirements and any other applicable requirements. In no case shall the City approve a capacity which would provide less living space per person than State, local or VA requirements; (2) the ambulatory and physical nature of residents; (3) the densities of residential uses within the surrounding neighborhood; (4) the density data available from the U.S. Census Bureau for the city; (5) densities of other CLA's the City has reviewed since adoption of these ordinance standards; (6) densities of other similar CLAs in the city; (7) the type of CLA building and room layout; (8) the proposed living and working space arrangements for residents, house parents and other employees; (9) the area and configuration of the CLA lot; (10) any comments from the Wisconsin DHSS, the VA, La Crosse County, City representatives, and other applicable agencies.

(i) The City shall also consider other issues which may have an adverse social, economic, or environmental impact, or effect on the health, safety or welfare of abutting or neighboring properties or the city as a whole

(2) Conditional Use Review Standards.

(a) Statement of Purpose: The development and execution of this zoning ordinance is based upon the division of the city into districts, within which districts the use of land and buildings, and size and location of buildings and structures in relation to the use of land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use at a

particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development, and operation of such uses. Such uses are classified as conditional uses and fall into two (2) categories:

- (i) Uses publicly operated or traditionally affected with a public interest.
- (ii) Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

The following provisions are established to regulate these conditional uses which require special consideration.

- (b) Standards: No application for a conditional use shall be recommended, approved or granted by the City Plan Commission unless the Commission shall find all of the following:
 - (i) That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or welfare.
 - (ii) That the City will be able to provide municipal services to the property where the conditional use is proposed, given due consideration of the costs of providing such services.
 - (iii) That the uses, values, and enjoyment of other property in the neighborhood for purposes already established shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
 - (iv) That the establishment of the conditional use will not impede normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 - (v) That adequate utilities, access roads, drainage, parking supply, internal circulation improvements, including but not limited to vehicular, pedestrian, bicycle, public transit, and other necessary site improvements have been or are being provided.
 - (vi) That appropriate measures to address transportation demand have been or will be taken to provide adequate ingress and egress, including all off-site improvements, so designed as to minimize traffic congestion and

- to ensure public safety and adequate traffic flow, both on-site and on the public streets.
- (vii) That the conditional use shall conform to all applicable regulations of the district in which it is located.
 - (viii) That when applying the above standards to an application by a community living arrangement the City Plan Commission shall:
 1. Bear in mind the City's general intent to accommodate community living arrangements in applying these criteria.
 2. Exercise care to avoid an over-concentration of community living arrangements which could create an institutional setting and seriously strain the existing social structure of the community. Considerations relevant to the determination include:
 3. The distance separating the proposed community living arrangement from other such facilities.
 4. The capacity of the community living arrangement and the percentage by which the facility will increase the population of the aldermanic district and/or the city.
 5. The total capacity of all community living arrangements in the city.
 6. The impact on the city of other community living arrangements.
 - i. The success or failure of integration into communities or other community living arrangements operated by the individual or group seeking the conditional use permit.
 - ii. The ability of the City to meet the special needs, if any, of the applicant facility.

SECTION III: Subsection 15.42 is hereby repealed and recreated to read as follows:

15.42 COMMUNITY LIVING ARRANGEMENTS.

- (A) LOCATION REQUIREMENTS. Community living arrangements shall be subject to the following criteria. Agents of a facility may apply for an exception to these requirements as outlined in 15.26(Z). Exceptions shall be granted at the discretion of the City. Any exception shall come in the form of a Conditional Use Permit and

the City will use its conditional use process and its evaluation criteria to decide such an application.

- (1) No community living arrangement may be established within 2,500 feet of any other such facility.
- (2) The City may prohibit additional community living arrangements from locating in the city when the total capacity of such community living arrangements exceeds 25 persons, or one percent of the city's population, whichever is greater.
- (3) The City may prohibit additional community living arrangements from being located within any aldermanic district when the capacity of community living arrangements in that district reaches 25 persons or one percent of the aldermanic district's population, whichever is greater.
- (4) A foster home or treatment foster home that is the primary domicile of a foster parent or a treatment foster parent and that is licensed under WIS. STAT. § 48.62 shall be a permitted use in all residential areas and is not subject to sub-points (1) through (3) of this ordinance section, except that foster homes and treatment foster homes operated by corporations, churches, associations or public agencies shall be subject to the constraints contained in sub-points (1) through (3) of this ordinance section.
- (5) Any adult family home as described in WIS. STAT. § 50.01 (1)(b), meaning a place where three or four adults who are not related to the operator of a facility reside and receive care, treatment or services in that facility and the care, treatment or services are above the level of room and board and may include up to seven hours per week of nursing care per resident, may not be established within 2,500 feet of any other adult family home or any community living arrangement.
- (6) An adult family home as defined in sub-point (5), that meets the criteria established in that sub-point, and is licensed under WIS. STAT. § 50.033 (1m) (b) is permitted to locate in the city without restriction as to the number of adult family homes in the city, and may locate in any residential zone, without being required to obtain special zoning permission, except as provided in this ordinance's Annual Review provision.
- (7) Where a community living arrangement has a capacity for eight (8) or fewer persons being served by the facility's program, and where the CLA meets the criteria established in sub-points (1) through (3) of this ordinance section, and is licensed, operated or permitted under the authority of the Wisconsin Department of Health Services or the Wisconsin Department of Children and Families, that facility is entitled to locate in any residential zone, without being required to obtain any further special zoning

permission except as provided in the Annual Review provision of this ordinance.

- (8) In all cases where a community living arrangement has a capacity for nine (9) to fifteen (15) persons being served by the facility's program, and meets the criteria established in sub-points (1) through (3) of this ordinance section, and is licensed, operated or permitted under the authority of the Wisconsin Department of Health Services or the Wisconsin Department of Children and Families, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or two-family residences, except as provided in the Annual Review requirements of this ordinance, but the facility is entitled to apply for special zoning permission to locate in those areas.
- (9) In all cases where a community living arrangement has a capacity for serving sixteen (16) or more persons, meets the criteria contained in sub-points (1) through (3) of this ordinance section, and is licensed, operated or permitted under the authority of the Wisconsin Department of Health Services or the Department of Children and Families, that facility may apply for special zoning permission to locate in areas zoned for residential use.

(B) ANNUAL REVIEW.

- (1) Not less than 11 months, nor more than 13 months, after the first licensure of an adult family home under WIS. STAT. §50.033 or a community living arrangement, and every year thereafter, the Common Council may make a determination as to the effect of the adult family home or community living arrangement on the health, safety and/or welfare of the city's residents.
- (2) This residential impact determination shall be made after a hearing before the Common Council. The City shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the facility may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The Common Council may call witnesses and may issue (c) subpoenas. All witnesses shall be sworn by the Common Council. The Common Council shall take notes of the testimony and shall mark and preserve all exhibits. The Common Council may, and upon request of the facility's representatives, shall, cause the proceedings to be recorded by a stenographer or by a recording device, the expense thereof to be paid by the City. Within 20 days after the hearing, the Common Council shall mail or deliver to the facility its written determination stating the

reasons therefore. The determination shall be a final determination.

- (3) If the Common Council determines that the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety and/or welfare of the city's residents, the Common Council may order the adult family home or community living arrangement to cease operation until special zoning permission is obtained. This order is subject to judicial review pursuant to WIS. STAT. § 68.13, except that a free copy of the transcript of any hearing at which the determination is made may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within ninety days after the date of the Order, or the date of final judicial review of the order, or the date of the denial with special zoning permission, whichever is later.

- (C) PRE-LICENSURE COMMUNITY INVOLVEMENT. Prior to the initial licensure of a residential care center for children and youth operated by a child welfare agency or group home or a community-based residential facility by the State of Wisconsin, the applicant for licensure must make a good faith effort to establish a community advisory committee consisting of representatives from the proposed facility, the neighborhood in which the proposed facility will be located, and a local unit of government, in accordance with WIS. STAT. § 48.68(4) or WIS. STAT. § 50.03(4)(g), as applicable, with the local government representative being the local Common Council member or the council member's designee.

SECTION VI: This ordinance shall take effect and be in force from and after its passage and publication.

_____/s/_____

Tim Kabat, Mayor

_____/s/_____

Teri Lehrke, City Clerk

Passed: 09/12/13
Approved: 09/13/13
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