

Ordinance 0019-25 – Review of Adult Family Homes and Community Living Arrangements

An ordinance to create Chapter 62, Article III; and to amend Chapter 114, Article II, Division 1, Section 114-33 of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 62, Article III of the Municipal Code of the City of Racine is created as follows:

ARTICLE III. – REVIEW OF ADULT FAMILY HOMES AND COMMUNITY LIVING ARRANGEMENTS

Sec. 62-70. – Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section.

Adult family home is as defined in Wis. Stat. § 50.01(1) as amended from time to time.

State Law reference – Definitions, Wis. Stat. § 50.01(1).

Community living arrangement is as defined in Wis. Stat. § 62.23(7)(i) as amended from time to time.

State Law reference – Community and other living arrangements, Wis. Stats. §§ 46.03(22), 48.743(1), 50.01(1), and 62.23(7)(i).

Determination period means the interval beginning no earlier than 11 months and ending no later than 13 months following initial licensure and every year thereafter.

State Law reference – Wis. Stat. § 62.23(7)(i)9.

Licensee means any person licensed or required to be licensed under Wisconsin law to operate an adult family home or a community living arrangement.

Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the effect of the adult family home or community living arrangement on the health, safety, or welfare of the residents of the city and that reasonable persons would accept in support of a conclusion.

State Law reference – Wis. Stat. § 62.23(7)(de)1.b.

Sec. 62-71. – Authority.

The common council may determine whether an adult family home or community living arrangement located anywhere within the city poses a threat to the health, safety, or welfare

of the residents of the city.

State Law reference – Wis. Stat. § 62.23(7)(i)9. and 10.

Sec. 62-72. – Review process.

(a) Initial Determination.

- (1) *Identification.* Upon request of the department of city development, the chairperson of the planning, heritage, and design commission may place an item on the agenda to review an adult family home or community living arrangement.
- (2) *Initial determination.* The planning, heritage, and design commission shall determine whether there is evidence that an adult family home or a community living arrangement identified under subsection (a)(1) poses a threat to the health, safety, or welfare of the residents of the city.
- (3) *Action.* If the planning, heritage, and design commission makes an initial determination that there is evidence that an adult family home or a community living arrangement poses a threat to the health, safety, or welfare of the residents of the city, then the planning, heritage, and design commission may take either of the following actions:
 - a. *Reasonable accommodation hearing.* Request that the planning, heritage, and design commission convene for a reasonable accommodation hearing under subsection (b).
 - b. *Referral.* Refer the matter to the City Attorney's Office to pursue a proactive solution with the licensee that mitigates the potential threat. Any proposed proactive solution is subject to approval by the planning, heritage, and design commission.
- (4) *Additional information.* In lieu of making an initial determination under subsection (a)(2), the planning, heritage, and design commission may request that the department of city development provide it with additional information that may further assist it in making an initial determination under subsection (a)(2) at the next meeting of the planning, heritage, and design commission.

(b) Reasonable accommodation hearing.

- (1) *Notification.* The city shall serve the licensee with notice of the reasonable accommodation hearing by first class mail or personal service by at least 15 days before the reasonable accommodation hearing. The notice shall request, but not require, the appearance of the licensee. Service by mail is complete upon mailing.
- (2) *Discussion.* The licensee shall be advised that any statements regarding the alleged

underlying facts may be considered by the planning, heritage, and design commission at the reasonable accommodation hearing and/or the common council at any subsequent hearing. The licensee may elect not to discuss the alleged underlying facts at the reasonable accommodation hearing, and such silence may not be considered adversely to the licensee by the planning, heritage, and design commission.

(3) *Determination.* The planning, heritage, and design commission shall determine both from the reasonable accommodation hearing:

- a. Whether there is evidence that the adult family home or the community living arrangement poses a threat to the health, safety, or welfare of the residents of the city.
- b. Whether the city can make a reasonable accommodation that mitigates the threat to the health, safety, or welfare of the residents of the city.

(4) *Action.* If the planning, heritage, and design commission determines that there is evidence that the adult family home or the community living arrangement poses a threat to the health, safety, or welfare of the city, then the planning, heritage, and design commission may, after consultation with the city attorney's office, take any one or more of the following actions:

- a. Pursue necessary steps to provide reasonable accommodation.
- b. Request that the city attorney's office pursue informal disposition or other remedies available by law.
- c. Request a review hearing before the common council within the determination period.

(c) Review hearing.

(1) *Scheduling.* Upon a request under subsection (b)(5)d., the common council shall convene for a review hearing under subsection (c) within the determination period.

(2) *Notification.* The city shall serve the licensee with notice of the review hearing by certified mail or by service under Wisconsin Statutes section 801.11 at least 30 days before the review hearing. The notice shall state the alleged underlying facts that serve as evidence of a threat to the health, safety, or welfare of the residents of the city. Proof of certified mailing from the United States post office shall be sufficient to establish that proper notice has been provided. Service by mail is complete upon mailing

(3) *Hearing.* At the review hearing, the parties may be represented by an attorney, present evidence, call and examine witnesses, and cross-examine witnesses of the

other party. The common council may call witnesses, and the chairperson of the common council may sign and issues subpoenas on behalf of the common council.

- (4) *Sworn witnesses.* All witnesses shall be sworn by the common council.
- (5) *Admissibility.* The common council shall not be bound by common law or statutory rules of evidence. The common council shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. The common council shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality, and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record
- (6) *Record of proceedings.* 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 licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city.
- (7) *Final determination; decision.* The common council shall decide from the review hearing whether substantial evidence proves that the adult family home or the community living arrangement poses a threat to the health, safety, or welfare of the residents of the city. Not more than 20 days after the review hearing, the common council shall mail first class or deliver to the parties its written decision that includes therein the reasons for its determination.
- (8) *Cease order.* If the common council decides under subsection (c)(7) that an adult family home or a community living arrangement poses a threat to the health, safety, or welfare of the residents of the city, then the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained.
- (9) *Operation.* The adult family home or community living arrangement shall cease operation within 90 days after the date of the order, the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.
- (10) *Judicial review.* The common council's determination shall be a final determination that is subject to judicial review under Wisconsin Statutes section 68.13. A free copy of the review hearing shall not be provided to the licensee.

State Law reference – Personal jurisdiction, manner of serving summons for, Wis. Stat. § 801.11; Judicial review, Wis. Stat. § 68.13.

Sec. 62-73. – Antidiscrimination.

- (a) *Compliance.* The city shall enforce this ordinance in full compliance with the Fair

Housing Act (42 U.S.C. § 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and the Rehabilitation Act (28 U.S.C. § 701 et seq.) The city shall not initiate or conduct reviews in a manner that targets or discriminates against individuals based on disability, familial status, or other protected characteristics under the Fair Housing Act, Americans with Disabilities Act, or Rehabilitation Act.

- (b) *Scope.* Any action taken under this ordinance shall be narrowly tailored to address identified threats to public health, safety, or welfare, and shall not be based on stereotypes or general fears.
- (c) *Reasoning.* All proposed reasons for the common council's written determination shall be reviewed by the city attorney's office or contracted legal counsel prior to issuance of a final determination.

Sec. 62-74. – Severability.

If any portion of this ordinance is deemed invalid by a court of competent jurisdiction, the remaining provisions shall remain in effect.

Cross reference – Duties, § 2-332; Planning, heritage, and design commission, § 114-33.

State Law reference – Wis. Stats. §§ 62.23(7)(i), (i)9, (10), and 885.01(3).

Part 2: Chapter 114, Article II, Division 1, Section 114-33 of the Municipal Code of the City of Racine is amended to create subsection (b)(4) as follows:

- (4) Conduct reviews of adult family homes and community living arrangements as established under section 62-72.

Cross reference – Review of adult family homes and community living arrangements, § 62-70, et seq.

Part 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.