

**CITY OF EGG HARBOR**

**Ordinance No.5 2021**

**AN ORDINANCE OF THE CITY OF EGG HARBOR, NEW JERSEY,  
AMENDING CHAPTER 170 OF THE CITY CODE**

**WHEREAS**, pursuant to N.J.S.A. 40:55D-89 the City of Egg Harbor Land Use Board undertook the periodic review of the City of Egg Harbor Master Plan; and

**WHEREAS**, on March 16, 2021 the City of Egg Harbor Land Use Board held a public hearing and reviewed and approved a Memorandum entitled Review and Recommendation for Cooperative Sober Living Facility Land Use Regulations prepared by Board Engineers Remington & Vernick dated March 16, 2021, which is attached and made part of this ordinance as Exhibit A; and

**WHEREAS**, at that time, the Land Use Board made a recommendation to the City Council to amend the City Code in accordance with the findings in this memorandum;and

**WHEREAS**, the City Council wishes to adopt an amendment to the City Zoning Ordinances with respect to Cooperative Sober Living Facilities as well as rooming homes and boarding houses; and

**WHEREAS**, N.J.S.A. 40:55D-66.1 permits certain community residences in all residential districts of a municipality stating the requirements thereof shall be the same as for a single- family dwelling unit located within such districts; and

**WHEREAS**, the City of Egg Harbor recognizes that the Fair Housing Act as amended (42 U.S.C. § 3601) provides protections for persons with disabilities; and

**WHEREAS**, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment or enforcement of zoning regulations by the City of Egg Harbor pursuant to its local police powers as long as the zoning regulations are consistent with state and federal law, including the Fair Housing Act as amended; and

**WHEREAS**, the legislative history of the Fair Housing Amendments Act of 1988 cautions that local zoning regulations that result “from false or over protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose” are prohibited. H.R. Rep. No. 711, 100<sup>th</sup> Cong. 2D Session, reprinted in 1988 U.S.C.C.A.N. 2173, 2192 (1988); and

**WHEREAS**, zoning regulation of community residences for people with disabilities should seek to achieve legitimate government interests, actually achieve those legitimate government interests, and be the least drastic means of actually achieving those legitimate government interests; and

**WHEREAS**, The Fair Housing Act does not provide for local land use policies or actions that treat groups of persons with certain disabilities differently than groups of people with other disabilities; and

**WHEREAS**, clustering of community residences on a block or in a neighborhood undermines the ability of community residences to achieve normalization and community integration for their residents which is one of the essential purposes of a community residence for people with disabilities; and

**WHEREAS**, the City of Egg Harbor is hereby amending its Zoning Ordinances to make the reasonable accommodations the Fair Housing Act requires by removing any terms and conditions that have the effect of limiting or making housing unavailable to people with disabilities and adding definitions while preserving the ability of community residences for people with disabilities to emulate a family and achieve normalization and community integration of their residents; and

**WHEREAS**, the City of Egg Harbor is hereby amending its Zoning Ordinances to give prospective operators of community residences for people with disabilities clarity and certainty on where such homes may locate as of right and via conditional use permits; and

**WHEREAS**, community residences for people with disabilities that meet the definition of a single housekeeping unit constitute a family under the City of Egg Harbor's Zoning Ordinances and must be treated the same as any other family; and

**WHEREAS**, these new zoning provisions make the reasonable accommodation the Fair Housing Act requires by allowing rooming or boarding houses of up to ten people with disabilities as a conditional use in all residential districts and all other zoning districts where residential uses are allowed, subject to rationally based spacing distances; and

**WHEREAS**, because transitional recovery homes for people with disabilities are more akin in terms of function and performance to a rooming or boarding house than single-family residences, the heightened scrutiny of a conditional use permit is warranted for such transitional community residences in single-family zoning districts; and

**WHEREAS**, this ordinance specifies standards narrowly tailored to assure that the proposed recovery homes will not interfere with normalization or community integration of the occupants of any nearby existing recovery homes nor contribute to creating a de facto social service district that thwarts the purpose and successful functioning of recovery homes and results in segregation of people with disabilities; and

**WHEREAS**, the heightened scrutiny of a “use” variance is warranted when a proposed recovery home for people with disabilities fails to meet the definition of a single housekeeping unit or the criteria to be allowed as a conditional use; and

**WHEREAS**, a recovery home that does not meet the definition of a single housekeeping unit that has been denied a “F” license would not be permitted due to the state’s own requirements for licensing as a cooperative sober living residence ; and

**WHEREAS**, like all residential uses, the overcrowding provisions in the City’s adopted housing code determines the maximum number of occupants of a recovery home for people with disabilities no matter how many the zoning code would allow, with or without a reasonable accommodation request to house more than ten people; and

**WHEREAS**, the Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others, provided however, that determining whether someone poses such a direct threat must be made on an individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EGG HARBOR, NEW JERSEY, AS FOLLOWS:**

**Section 1.** Article III, Terminology, Chapter 170-17 Definitions is amended as follows:

1. **BOARDING HOUSE:** Boarding house has the meaning set forth in N.J.S.A. 55: 13B-3.
2. **COOPERATIVE SOBER LIVING RESIDENCE, (CSLR):** A recovery home that is a rooming or boarding house that has been issued a “F” License by the New Jersey Department of Community Affairs pursuant to N.J.A.C. 5:27-1.1 et seq. It does not operate as a single housekeeping unit. The 2017 New Jersey Uniform Construction Code defines a CSLR as “ a residential setting that serves solely as a home for individuals who are recovering from drug or alcohol addiction and is intended to provide an environment where the residents can support each other’s sobriety and recovery.” In addition to the other requirements specified in the regulations, a cooperative sober living residence must satisfy the following criteria;
  - a. Management by an entity or organization that provides an operator who shall reside in the residence and exercise some level of control over the operation of the residence and establishes the residence’s rules;

- b. Occupancy shall not exceed 10 individuals, exclusive of the operator;
- c. The requirement of the maintenance of an alcohol and drug free environment;
- d. No provision of on-site counseling therapy, clinical treatment, or alcohol and/or drug treatment by the licensee;
- e. No provision of food, laundry, financial, or other personal services by the licensee;
- f. Ability of licensee, at its discretion, to provide non clinical recovery and support services. The licensee may also elect to mandate or encourage residents to attend self-help recovery programs, participate in activities related to maintaining sobriety and continuing recovery, or receive off-site services deemed desirable or necessary to maintain sobriety; and
- g. Ability of licensee, at its discretion, to require drug or alcohol testing of residents.

3. **NON-OXFORD HOUSE MODEL RECOVERY HOME:** A recovery home that does not operate using the Oxford House model and does not operate as a single housekeeping unit. Examples of activities that indicate the house is a Non-Oxford House Model, may include but are not limited to: residents enter into individual leases with the owner or operator of the home for the occupancy of their room and the common area; there is a limited number of staff on site who will enforce rules, oversee the taking of medication, and perform random drug screening; residents are required to attend AA/NA meetings; residents are required to attend mandatory house meetings; residents are prohibited from sleeping outside the house; staff enforces a curfew; or guests are prohibited. They are rooming homes or boarding houses.

4. **OXFORD HOUSE MODEL RECOVERY HOME:** Oxford House has been authorized by Congress to provide community living arrangements for persons with drug and alcohol addiction. It is a recovery home in which the residents are self-governing, all residents contribute to the maintenance and expenses of the house, the residents determine who can reside in the house, there is no limit to how long an individual can reside in the house, there is no addiction treatment, therapy, or paid staff provided; the house operates as a single housekeeping unit, and the house is not required to be licensed by the New Jersey Department of Community Affairs.

5. **RECOVERY HOME:** A residential environment that provides people in recovery a safe alcohol and drug free place to live as they transition back

into the community.

6. ROOMING HOUSE: A rooming house has the meaning set forth in N.J.S.A. 55:13B-3.

**Section 2.** Article VI-Supplemental District Regulations is amended as follows:

Chapter 170-75 is created titled, Boarding House, Cooperative Sober Living Residence, Non-Oxford House Model Recovery Home, Oxford House Model Recovery Home, Recovery Home and Rooming House.

1. A rooming house or boarding house operating as a Non -Oxford house model recovery home is a conditional use permitted in all residential zones as stated in Chapter 170-10, as a reasonable accommodation for persons with disabilities, only if it meets the following specified conditions and is a Cooperative Sober Living Residence (CSLR).
  - (i) The owner obtains a Class F license to operate a cooperative sober living residence from the New Jersey Department of Community Affairs pursuant to N.J.A.C. 5:27-1.1 et seq; and
  - (ii) Requires a minimum separation distance from any other existing or proposed CSLR facility in accordance with the following:
    - a. 600 feet along the frontage of any avenue or terrace;
    - b. 300 feet along the frontage of any street;
    - c. 300 feet from any intersection which is 300 feet of another facility; and
  - (iii) Requires a minimum separation of 1000 feet from any school, in accordance with the most recent Drug Free School Zone Map.
2. All other rooming houses and boarding houses which are not operating as Non-Oxford Model Recovery Homes are prohibited in all residential zones found in Chapter 170-10.
3. A residential single-family detached dwelling unit includes an Oxford House Model Recovery Home is a permitted use in all residential zones found in Chapter 170-10.

**Section 3. Inconsistent Ordinance Repealed.** Should any provision of this Ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of such prior ordinances are hereby repealed, but only to the extent of any inconsistencies.

**Section 4. Invalidity.** In the event that any provision of this ordinance or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect, and, to realize this intent, the provisions and applications of this Ordinance are declared to be severable.

**Section 5. Captions.** Captions contained in this Ordinance have been included only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

**Section 6. Effective date.** This Ordinance shall take effect upon passage and publication

Date of Introduction: April 8, 2021

Publication: April 14, 2021

Public Hearing: April 22, 2021

Date of Adoption:

ATTEST

CITY OF EGG HARBOR.

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Meg Steeb, City Clerk

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Lisa Jiampetti, Mayor