

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA



JEFFREY O., et al.,

Plaintiffs,

CASE NO. 03-80178-CIV-PAINE

v.

Magistrate Judge Johnson

CITY OF BOCA RATON,

Defendant.

_____ /

MOTION TO DISMISS SECOND AMENDED COMPLAINT
(and Incorporated Memorandum of Law)

Defendant, CITY OF BOCA RATON (the "City"), by undersigned counsel and pursuant to Rule 12(b)(6), Fed. R. Civ. P., moves this Court for the entry of an order dismissing the Second Amended Complaint (the "Complaint") filed by the Plaintiffs, Bobby Hoover, Todd Conroy, Doug Byers (collectively, the "Resident Plaintiffs"), Regency Properties of Boca Raton, Inc. ("Boca House"), and Awakenings of Florida, Inc. ("Awakenings"), for failure to state a claim upon which relief can be granted. In support of its motion, the City states:

OVERVIEW

The Resident Plaintiffs, Boca House and Awakenings filed the instant lawsuit seeking relief from City Ordinance No. 4649 (the "City Ordinance") that they claim bans persons recovering from drug or alcohol addiction from residing in any residential neighborhood within the City. The Plaintiffs are also making a claim that the City refused to grant them a reasonable accommodation to the City's purported limitation on four or more unrelated persons living together in a single dwelling unit (the "City's Unrelated Person Limitation").



Because the Complaint challenges three completely separate events as a basis for its claims under the Fair Housing Amendments Act (“FHAA”) and the Americans with Disabilities Act (“ADA”) - (1) the passage of the City Ordinance, (2) the facial validity of the City Ordinance, and (3) the City’s purported refusal to make a reasonable accommodation from the City’s Unrelated Person Limitation – and is also attempting to plead several causes of action under both the FHAA and ADA, dismissal is proper in the instant matter because Rule 10(b), Federal Rules of Civil Procedure, mandates that the FHAA and ADA counts each be split into separate counts so that a clear presentation of the matters can be made.

Furthermore, the Resident Plaintiffs do not have standing to bring a claim for discrimination under the FHAA or ADA for the City’s purported failure to allow a reasonable accommodation from the City’s Unrelated Person Limitation. Fatally missing from the Complaint are any allegations of injuries suffered by the Resident Plaintiffs as a result of not receiving a reasonable accommodation.

Regardless, none of the plaintiffs, including the corporate plaintiffs, Boca House and Awakenings, can state a cause of action against the City under the FHAA or ADA for the City’s purported failure to allow a reasonable accommodation from the City’s Unrelated Person Limitation because the complaint is absent of any allegation that the plaintiffs ever made a request for a reasonable accommodation from that limitation. They also fail to allege what specific accommodation they were seeking, and it cannot be ascertained, based on the allegations in the Complaint, whether such requested accommodation would be reasonable or even necessary – matters that a plaintiff must demonstrate when making a claim under the FHAA and ADA.

Moreover, Boca House and Awakenings are not entitled to seek lost profits under the ADA because profit margins and loss of business opportunities do not directly benefit those handicapped individuals that the ADA is designed to protect.

Lastly, the Plaintiffs fail to state a cause of action for violation of their Equal Protection rights that purportedly underlies their claim under 42 U.S.C. §1983. The alleged constitutional violation is based on the same exact facts and allegations as their claims under the FHAA and ADA, does not allege anything more than certain “buzz words,” and does not demonstrate, in any way, how their Equal Protection rights under the Fourteenth Amendment have been violated.

Accordingly, the Complaint should be dismissed.

RELEVANT FACTS

The facts relevant to this motion, as alleged by the Plaintiffs in the Complaint¹, are as follows:

The Plaintiffs

1. Boca House and Awakenings are for profit Florida corporations that own certain apartment buildings, townhomes and single-family homes in the City and “rent” space to individuals recovering from alcohol and/or drug addiction in certain facilities within the City known commonly as sober houses. Complaint, ¶17.

2. The Resident Plaintiffs allege that they are recovering alcoholics and/or drug addicts “with disabilities” and are “in need of stable housing during [their] transition from rehabilitation to integrated community living.” Complaint, ¶¶10-12.

¹ For the purpose of this Motion only, the City accepts all allegations within the Complaint as true.

3. The Resident Plaintiffs are currently residing in drug and alcohol-free housing operated by Boca House. Complaint, ¶13.

The Plaintiffs' Challenge to the City Ordinance

4. The Plaintiffs assert that the City Ordinance, which was passed on May 29, 2002, is discriminatory on its face and was enacted with discriminatory intent in violation of the FHAA and the ADA (the "City Ordinance Challenge"). Complaint, ¶¶ 30, 58, 59, 67.

5. In the City Ordinance Challenge, the Plaintiffs allege that the purpose of the City Ordinance is "to exclude persons in recovery from residing in any residential district in the City" and that the ordinance is "expressly designed to relegate any housing provider that provides the environment needed by persons in recovery to the MC or RB-1 districts, where no other residential uses are located." Complaint, ¶39.

6. Boca House and Awakenings further assert that the City Ordinance was targeted to ban their particular sober house facilities from being located within the City's residential neighborhoods and to displace their tenants, including the Resident Plaintiffs. Complaint, ¶¶34, 35.

The Plaintiffs' Alleged Damages from the City Ordinance

7. Boca House and Awakenings both contend that as a result of the City Ordinance, they have had to "forgo the purchase of additional housing, thereby losing income." Complaint, ¶49. Furthermore, they also allege that the enactment of the City Ordinance has prevented them from refinancing existing obligations at current market rates and therefore they "have had to refinance their obligations at higher rates than would otherwise have been available, causing economic harm to them." Complaint, ¶50. Thus, both Boca House and Awakenings are asserting compensatory damages for lost profits and business opportunities.

8. The Resident Plaintiffs claim that due to the City Ordinance, they “have suffered emotional and mental distress as a result of the uncertainty created over whether they will have to leave their sober living residence housing.” Complaint, ¶52.

9. However, on April 8, 2003 (more than two months before the initial complaint in this lawsuit was served), the City amended the City Ordinance (the “Amendment”), which provided that any Substance Abuse Treatment Facility (as defined by the Amendment) that existed as of May 29, 2002, including the facilities in which the Resident Plaintiffs reside, are not required to comply with the City Ordinance until “no later than sixty days after the rendition of a final non-appealable order in that certain lawsuit challenging Ordinance No. 4649 filed against the City in the United States District Court for the Southern District of Florida styled *Joseph O. et al v. City of Boca Raton*, Case No. 02-015320 AO [sic], unless otherwise directed in such order, or 18 months after its effective date, whichever is later.” See Complaint, ¶34.²

The Plaintiffs’ Reasonable Accommodation Claim

10. The Plaintiffs also assert that the City violated the FHAA and ADA based on the City’s alleged “refusal to make a reasonable accommodation with respect to its zoning provision that prohibits sober living residences from having four or more unrelated residents reside in a single dwelling unit, without regard to the size of the unit, even when such occupancy is on a temporary or emergency basis.” (the “Reasonable Accommodation Claim”). Complaint, ¶3.³

11. The Plaintiffs do not allege if their request for a reasonable accommodation was ever made to the City, what specific accommodation they were seeking, or which plaintiff made

² A true and correct copy of the entire Amendment is attached as Exhibit “A.”

³ The Plaintiffs have not attached this subject “zoning provision” to the Complaint nor alleged where in the City’s Code of Ordinances such “zoning provision” is located.

the request for an accommodation. Furthermore, the Plaintiffs fail to state when, how, or to whom, the request was made and likewise fail to allege how the City purportedly refused to make the requested accommodation.

The Plaintiffs' Alleged Damages from the City's Purported Failure to Provide a Reasonable Accommodation from the City's Unrelated Person Limitation

12. Boca House and Awakenings claim that “[a]s the direct and proximate result of the City’s refusal to provide a reasonable accommodation for the number of unrelated individuals who can reside in a dwelling unit, Boca House and Awakenings have been forced to limit the number of tenants, thereby losing income.” Complaint, ¶51.

13. However, the Resident Plaintiffs have not alleged any injury or damages that they have suffered as a result of the City’s alleged refusal to provide a reasonable accommodation from the City’s Unrelated Person Limitation.

THE PLAINTIFFS’ CLAIMS

The Plaintiffs assert three counts in their Complaint: Count I - Violations of the Fair Housing Amendments Act (FHAA); Count II - Violations of the Americans with Disabilities Act (ADA); and Count III – Equal Protection under 42 U.S.C. §1983. The Plaintiffs are apparently bringing three types of challenges for both Count I and Count II (a facial challenge and a disparate treatment (or intentional discrimination) challenge to the City Ordinance and a claim for failure to provide a reasonable accommodation from the City’s Unrelated Person Limitation). In addition, the Plaintiffs seek the same relief from each of the three counts. Specifically, the Plaintiffs seek injunctive relief enjoining the enforcement of the City Ordinance and City’s Unrelated Person Limitation and also seek compensatory damages.

MEMORANDUM OF LAW

I. The Plaintiffs' Claims under the Count I (FHAA) and Count II (ADA) should be dismissed

Plaintiffs who allege violations under the FHAA or ADA may proceed under any or all of three theories: disparate treatment (or intentional discrimination), disparate impact and failure to make reasonable accommodations. *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 48 (2d Cir. 2002). A violation of the FHAA can also be established by demonstrating that the challenged statute or ordinance discriminates against the handicapped on its face. *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp 683, 693 (E.D. Pa. 1992).

A. The Complaint fails to Comply with F.R.C.P. 10(b)

The Complaint appears to make three challenges each under the FHAA and ADA, a facial challenge and a disparate treatment (or intentional discrimination) challenge to the City Ordinance, and a claim for failure to provide a reasonable accommodation from the City's Unrelated Person Limitation. Such multiple claims are required to be stated in separate counts pursuant to Federal Rule of Civil Procedure 10(b), which provides in pertinent part:

Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth. (Emphasis added).

The Complaint challenges three completely separate occurrences as a basis for its FHAA and ADA claims: (1) the passage of the City Ordinance, (2) the facial invalidity of the City Ordinance, and (3) the City's purported refusal to make a reasonable accommodation from the City's Unrelated Person Limitation. Complaint, ¶¶ 1, 3, 4, 58 and 67. Dismissal is proper in the instant matter because Rule 10(b) mandates that the FHAA and ADA claims, each of which

relate to separate occurrences, each be split into separate counts so that a clear presentation of the matters can be presented. *Veltmann v. Walpole Pharmacy, Inc.*, 928 F.Supp. 1161, 1164 (M.D. Fla. 1997).

Additionally, the fact that the Plaintiffs are commingling three separate and distinct claims under both Counts I and II subject the Complaint for dismissal as each claim requires different and distinct pleading and proof in order to be sustained.⁴ See *Benoit v. Ocwen Financial Corporation, Inc.*, 960 F.Supp 287, 289-290 (S.D. Fla. 1997) (dismissing complaint for failure to comply with Rule 10(b) as one of the plaintiff's counts suggested at least three separate and distinct claims that necessitated distinct pleading and proof to maintain each claim). Therefore, at the very least, the Complaint should be dismissed without prejudice to the Plaintiffs filing yet another amended complaint that separates their claims relating to the City Ordinance and their claims relating to the City's purported failure to grant a reasonable accommodation to the City's Unrelated Person Limitation.⁵ Regardless, the Plaintiffs' claim that the City's refusal to make a reasonable accommodation from the City's Unrelated Person Limitation violates the FHAA (Count I) and ADA (Count II) is legally insufficient and should be dismissed with prejudice.

⁴ The pleading elements necessary for making a reasonable accommodation claim to a facially neutral ordinance are completely different from those elements asserting that another ordinance is discriminatory on its face.

⁵ In fact, the City raised theses same grounds in response to the Plaintiffs' First Amended Complaint. However, the only changes made to the present Complaint were the deletion of certain individual plaintiffs, the addition of an additional individual plaintiff, and the disclosure of the Resident Plaintiffs' full legal names. The Plaintiffs elected not to amend the confusing and commingled counts or any of the other grounds raised in the instant motion – all of which were previously raised by the City in its Motion to Dismiss the First Amended Complaint.

B. The Resident Plaintiffs do not have standing to challenge the City's Unrelated Person Limitation because they have not alleged how they have been injured from such limitation

In order to establish standing in an ADA case, a plaintiff must demonstrate: (1) that he has suffered an injury-in-fact, (2) a causal connection between the asserted injury-in-fact and the challenged action of the defendant, and (3) that the injury will be redressed by a favorable decision. *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001). Similarly, in order to establish standing in an FHAA case, the plaintiff needs to allege a "distinct and palpable injury" as a result of the defendant's actions. *Oak Ridge Care Center, Inc. v. Racine County, Wisconsin*, 896 F.Supp 867, 873 (E.D. Wis. 1995), citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982).

While Boca House and Awakenings allege injuries suffered as a result of the City's refusal to make a reasonable accommodation from the City's Unrelated Person Limitation (Complaint, ¶51), the Resident Plaintiffs do not allege how they have suffered any injury from the City's refusal. Therefore, the Resident Plaintiffs do not have the proper standing to make the Reasonable Accommodation Claim under the FHAA or ADA. Thus, the Resident Plaintiffs' Reasonable Accommodation Claim in Count I and Count II should be dismissed.

C. The Plaintiffs failure to allege that they made a request for a reasonable accommodation is fatal to their Reasonable Accommodation Claim under the FHAA and ADA

Although the Complaint makes several references to the City's refusal to provide a reasonable accommodation to the City's Unrelated Person Limitation (Complaint, ¶¶ 3, 25, 45, 51, 60, 68), there are no allegations whatsoever stating that the Plaintiffs actually made a request for a reasonable accommodation from the City's Unrelated Person Limitation. As such, the Plaintiffs cannot state a cause of action under either the FHAA or ADA for the City's purported

failure to make a reasonable accommodation from the City's Unrelated Person Limitation. *Wood v. President and Trustees of Spring Hill College in the City of Mobile*, 978 F.2d 1214, 1222 (11th Cir. 1992) (holding that "a plaintiff cannot establish a claim under the Rehabilitation Act alleging that the defendant discriminated against him by failing to provide a reasonable accommodation unless he demanded such accommodation").⁶

A case directly on point is *Gaston*. In *Gaston*, the plaintiff, despite not ever making a request for a reasonable accommodation, claimed that the defendant discriminated against her, in violation of the ADA, by failing to provide a reasonable accommodation. 167 F.3d at 1363. In affirming the summary judgment entered in favor of the defendant, the Eleventh Circuit held that a plaintiff can only prevail on a claim that a defendant discriminated against him or her after the plaintiff first makes a request for a reasonable accommodation from the defendant, and the defendant fails to provide such accommodation. *Id.* at 1364. Thus, the court in *Gaston* held that the plaintiff's failure to demand a reasonable accommodation was "fatal to her ability to prevail on her claim that [the defendant] discriminated against her by failing to provide a reasonable accommodation." 167 F.3d at 1364.

Like the plaintiff in *Gaston*, the Plaintiffs in the instant case have failed to allege that they ever made a request for a reasonable accommodation from the City's Unrelated Person Limitation. Such failure is therefore fatal to their Reasonable Accommodation Claim under the

⁶ Congress intended for courts to rely on cases interpreting the Rehabilitation Act, 29 U.S.C. § 791, when interpreting similar language in the ADA. *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999). Likewise, because the FHAA adopted the concept of a reasonable accommodation from § 504 of the Rehabilitation Act, cases interpreting "reasonable accommodation" under the Rehabilitation Act also apply to claims under the FHAA. *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1044 (6th Cir. 2001).

FHAA and ADA, and accordingly, their Reasonable Accommodation Claim in Count I and Count II should be dismissed.

D. The Reasonable Accommodation Claim should be dismissed because the Plaintiffs fail to allege what reasonable accommodation they were seeking

Even if the Plaintiffs alleged that they did make a request for a reasonable accommodation from the City's Unrelated Person Limitation, their Reasonable Accommodation Claim still fails because they do not allege the specific accommodation that they were seeking. *See Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 603-604 (4th Cir. 1997) (stating that the FHAA "requires an accommodation for persons with handicaps if the accommodation is (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing," and it is the plaintiff's burden of proving each of these three elements by a preponderance of the evidence); *See also, Loren v. Sasser*, 309 F.3d 1296, 1302 (11th Cir. 2002)(stating that a plaintiff has the burden of proving that a proposed accommodation is reasonable). Because the Plaintiffs have not set forth any specific requested accommodation, it cannot possibly be ascertained (or refuted) that such accommodation was reasonable and necessary to afford handicapped persons an equal opportunity to use and enjoy housing.

1. Reasonableness cannot be determined unless the requested accommodation is pled

Although it is not specifically alleged in the Complaint, it appears that the Plaintiffs want an accommodation to exceed the City's Unrelated Person Limitation. However, without providing the specific number of unrelated persons by which it wishes to exceed the City's Unrelated Person Limitation, the reasonableness cannot be determined.

For example, if the Plaintiffs sought an accommodation to allow six unrelated persons to reside in a single dwelling unit, this may (or may not) be reasonable. Yet, if the Plaintiffs sought

an accommodation to allow fifty unrelated persons in a single dwelling unit, it would most likely not be reasonable. Thus, without knowing the requested accommodation, its reasonableness cannot be determined.

2. Necessity of the requested accommodation cannot be determined unless the requested accommodation is pled

The “necessary” element – the FHAA provision mandating reasonable accommodations which are necessary to afford an equal opportunity – requires the demonstration of a direct linkage between the proposed accommodation and the “equal opportunity” to be provided to the handicapped person. *Bryant Woods*, 124 F.3d at 604. This requirement has the attributes of a causation requirement. *Id.* If the proposed accommodation provides no direct amelioration of a disability’s effect, it cannot said to be necessary. *Id.*

Without knowing what the Plaintiffs’ requested accommodation is, it cannot be determined if it is the sober house businesses as a whole that are in need of an accommodation. *See Bryant Woods*, 124 F.3d at 605 (the proper inquiry is not whether a particular profit-making company needs such an accommodation, but rather do such businesses as a whole need the accommodation). Furthermore, it cannot be determined from the Complaint whether accommodations are necessary for therapeutic reasons or financial viability rather than simply needed to turn a profit (or larger profit) for Boca House and Awakenings. *See Lapid-Laurel, L.L.C. v. Zoning Board of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 460-461 (3rd Cir. 2002) (holding that plaintiff’s proposed accommodation to allow a 95 bed care facility was not necessary to afford disabled persons an equal opportunity to live in a residential neighborhood because there was not sufficient evidence to show that the requested accommodation was necessary for therapeutic reasons or for the group home’s financial viability); *Bryant Woods*, 124 F.3d at 605 (there was no evidence that the sought accommodation

of expanding group home limit from 8 persons to 15 persons was necessary to maintain the group home's financial viability).⁷ Accordingly, the Reasonable Accommodations Claim under the FHAA and ADA should be dismissed.

II. The claims by Boca House and Awakenings in Count II for lost profits under the ADA should be dismissed or stricken

The City does not debate that equitable relief enjoining discriminatory municipal actions may, under appropriate circumstances, be a possible remedy under the ADA. Such equitable relief serves the purposes of the ADA by directly benefiting the handicapped and allowing such individuals to have equal housing opportunities.

However, Boca House and Awakenings seek more than just equitable relief – they also seek damages. The law is well-settled that a plaintiff must demonstrate standing separately for each type of relief that is sought. *Discovery House, Inc. v. Consolidated City of Indianapolis*, 319 F.3d 277, 280 (7th Cir. 2003), citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000). Boca House and Awakenings may have standing to seek equitable relief, but they lack standing to seek lost profits under the ADA. While the Complaint is couched in terms of seeking relief from the purported discrimination against recovering alcoholics and drug addicts, it is merely a facade by Boca House and Awakenings to commercially exploit the ADA to seek monetary damages for lost profits and business opportunities. See Complaint, ¶¶49-51. The ADA does not provide remedies to protect the

⁷ The Complaint makes no mention that a reasonable accommodation was necessary for therapeutic reasons or to maintain economic viability. Rather, Boca House and Awakenings merely state that they are “losing income” as a result of being refused a reasonable accommodation from the City's Unrelated Person Limitation. See Complaint, ¶51.

profit margins of for-profit businesses, like Boca House and Awakenings. *See* 42 U.S.C. §12133.

A case directly on point is *Discovery House*. There, the court held that a for-profit corporate operator of drug treatment facilities did not have standing to seek lost profits under the ADA or the Rehabilitation Act stemming from the municipality's determination that a group home was not a permitted use. 319 F.3d at 280. In making its determination, the Seventh Circuit looked directly to the subject statutes and stated that "we see no way that either the ADA or the [Rehabilitation Act] contemplates a recovery for lost profits for a business like that of the *Discovery House*." *Id.*

The court further stated that:

Discovery House has a claim to standing under the ADA and [Rehabilitation Act] only because it runs a business which provides services . . . to persons presumably covered by [the ADA]. If it were running a plumbing business, it could hardly claim relief under [the ADA]. It follows, in our view, that the remedies we may find (other than those specifically set out in the statute) must, at the very least, be those which directly benefit the disabled (emphasis added).

319 F.3d at 281.

Certainly, the profit margins and loss of business opportunities of Boca House and Awakenings do not directly benefit those handicapped individuals that the ADA was designed to protect. Accordingly, Boca House and Awakenings do not have standing to seek compensatory damages under the ADA for lost profits and business opportunities.

III. The Plaintiffs do not state a cause of action in Count III for violation of their Equal Protection rights under §1983

In addition to their claims for violation of the FHAA and ADA, the Complaint attempts to set forth a cause of action for violation of their Equal Protection rights under 42 U.S.C. §1983,

which arises out of the same facts and stems from the same purported unlawful practices by the City. Thus, because the Plaintiffs' §1983 claim is based on an alleged deprivation of rights created solely by the FHAA and ADA, the Plaintiffs cannot maintain an action under 42 U.S.C. §1983. *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1531 (11th Cir. 1997) (holding that plaintiff could not maintain a §1983 action in lieu of or in addition to a claim under the Rehabilitation Act or ADA arising out of rights created by the Rehabilitation Act and ADA).

It is plainly obvious that the Plaintiffs' §1983 claim arises out of the purported violations of the FHAA and ADA. The Plaintiffs cloak their four paragraph bare-bones §1983 claim under the guise of purportedly violating the Equal Protection clause of the Fourteenth Amendment. Complaint, ¶¶ 71-74. However, their §1983 claim, which is based on the same exact facts and allegations as their claims under the FHAA and ADA, merely uses "buzz words" in an attempt to state a cause of action under §1983 and does not, in any way, demonstrate how the Plaintiffs' Equal Protection rights have been violated. *See Grey v. Wilburn*, 270 F.3d 607, 610 (8th Cir. 2001) (affirming trial court's dismissal of plaintiff's two paragraph §1983 "Equal Protection" claim because it was predicated on the same allegations set forth in his claims under the ADA and Rehabilitation Act). Accordingly, the Plaintiffs' claim under §1983 should be dismissed.

WHEREFORE the City respectfully requests that this Court enter an order dismissing, in whole or in part, all three Counts of the Complaint, attorneys fees and costs pursuant to 42 U.S.C. §§1988, 3613, or 12205, and for any further relief that this Court deems appropriate.

Respectfully submitted,

Diana Grub Frieser
City Attorney
City of Boca Raton
201 W. Palmetto Park Road
Boca Raton, FL 33432

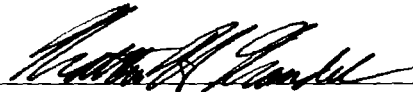
WEISS SEROTA HELFMAN
PASTORIZA GUEDES COLE & BONISKE, P.A.
Co-Counsel for the City of Boca Raton
3107 Stirling Road, Suite 300
Fort Lauderdale, FL 33312
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: 

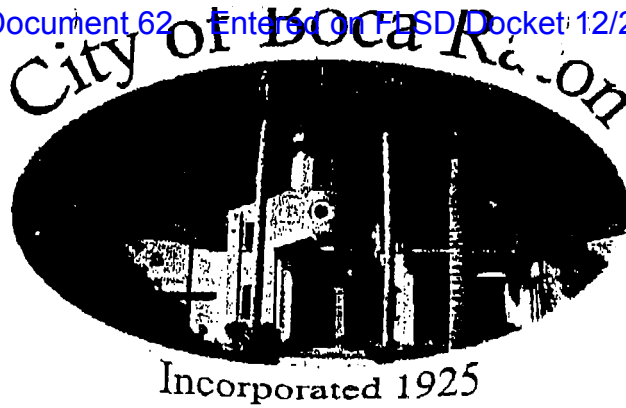
Jamie A. Cole
Florida Bar No.: 767573
Matthew H. Mandel
Florida Bar No.: 147303

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular mail this 19th day of December, 2003, to Gabriel E. Nieto, Esq., Steel Hector Davis, LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131, (305) 577-7001, Randall C. Berg, Jr., Esq., and Peter M. Siegel, Esq., Florida Justice Institute, Inc., 200 South Biscayne Boulevard, Suite 2870, Miami, Florida 33131, (305) 358-0910, and James K. Green, Esq., Suite 1630, Esperanté, 222 Lakeview Avenue, West Palm Beach, Florida 33401, (561) 655-1357.



Jamie A. Cole
Matthew H. Mandel



ORDINANCE

4701

1 AN ORDINANCE OF THE CITY OF BOCA RATON
2 RELATING TO SUBSTANCE ABUSE TREATMENT
3 FACILITIES; AMENDING SECTION 28-2, CODE OF
4 ORDINANCES, TO REVISE THE DEFINITION OF
5 SUBSTANCE ABUSE TREATMENT FACILITIES;
6 AMENDING SECTION 28-197, CODE OF ORDINANCES, TO
7 MODIFY THE TIME PERIOD FOR COMPLIANCE WITH
8 ORDINANCE NO. 4649 APPLICABLE TO A FACILITY THAT
9 EXISTED AS OF MAY 29, 2002; PROVIDING FOR
10 SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING
11 FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE
12

13 WHEREAS, on May 29, 2002, the City Council of the City of Boca Raton enacted
14 Ordinance No. 4649 relating to Substance Abuse Treatment Facilities; and

15 WHEREAS, Ordinance No. 4649 was adopted to establish local regulations for
16 Substance Abuse Treatment Facilities consistent with state legislation, and did not, nor did it
17 intend to, discriminate against any individuals recovering from substance abuse, and did not,

EXHIBIT

"A"

1 nor did it intend to, violate any state or federal laws, including the Americans with Disabilities Act
2 and the Fair Housing Act; and

3 WHEREAS, the City Council of the City of Boca Raton desires to amend its
4 regulations for Substance Abuse Treatment Facilities to reaffirm and clarify its original intent that
5 Ordinance No. 4649 does not supercede City Code provisions and state law which provide for
6 the location of community residential homes in residential zoning districts, and to make
7 additional revisions to the definition of Substance Abuse Treatment Facilities; and

8 WHEREAS, a lawsuit challenging Ordinance No. 4649 was filed against the City in
9 the United States District Court for the Southern District of Florida styled *Joseph O. et al v. City*
10 *of Boca Raton*, Case No. 02-015320 AO (the "Lawsuit"). The City Council of the City of Boca
11 Raton further desires to delay the date by which Substance Abuse Treatment Facilities in
12 existence on the effective date of Ordinance No. 4649 must comply with the Ordinance until
13 after the conclusion of the Lawsuit; and

14 WHEREAS, the City Council of the City of Boca Raton finds that it is in the public
15 interest to amend Sections 28-2 and 28-197, Code of Ordinances; now therefore

16
17 THE CITY OF BOCA RATON HEREBY ORDAINS:

18
19 Section 1. Section 28-2, Code of Ordinances, is amended to read:

20 "Substance Abuse Treatment Facility" shall mean a service provider or facility that is:

21 1) Licensed or required to be licensed pursuant to F.S. § 397.311 (18) or

22 2) Used for room and board only and in which treatment and rehabilitation activities
23 are provided at locations other than the primary residential facility, whether or not the facilities
24 used for room and board and for treatment and rehabilitation are operated under the auspices
25 of the same provider. For the purposes of this subparagraph (2), ~~the following shall be deemed~~
26 ~~to satisfy the "treatment and rehabilitation activities" component: (a) service providers or~~

1 facilities which require tenants or occupants to participate in treatment and rehabilitation
 2 activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol
 3 free, as a term or condition of, or essential component of, the tenancy or occupancy shall be
 4 deemed to satisfy the "treatment and rehabilitation activities" component of the definition
 5 contained in this section. ~~or (b) service providers or facilities which facilitate, promote, monitor,~~
 6 ~~or maintain records of, tenant participation in treatment and rehabilitation activities, or perform~~
 7 ~~testing to determine to determine whether tenants are drug and alcohol free, or receive reports~~
 8 ~~of results of such testing.~~

9 In addition, Community Residential Homes are defined in and regulated by Section 28-1304,
 10 City Code, and Section 419.001, Florida Statutes, and therefore are not Substance Abuse
 11 Treatment Facilities.

12 Section 2. Section 28-197, Code of Ordinances, is amended to read:

13 Section 28-197. Status of Substance Abuse Treatment Facilities.

14 Any substance abuse treatment facility that existed ~~exists~~ as of ~~the effective date of~~
 15 ~~this Ordinance~~ May 29, 2002 must comply with all provisions and requirements of this chapter
 16 no later than sixty days after the rendition of a final non-appealable order in that certain lawsuit
 17 challenging Ordinance No. 4649 filed against the City in the United States District Court for the
 18 Southern District of Florida styled *Joseph O. et al v. City of Boca Raton*, Case No. 02-015320
 19 AO, unless otherwise directed in such order, or 18 months after its effective date, whichever is
 20 later.

21 Section 3. If any section, subsection, clause or provision of this ordinance is held
 22 invalid, the remainder shall not be affected by such invalidity.

23 Section 4. All ordinances and resolutions or parts of ordinances and resolutions and
 24 all sections and parts of sections in conflict herewith shall be and hereby are repealed.

25 Section 5. Codification of this ordinance in the City Code of Ordinances is hereby
 26 authorized and directed.

1 Section 6. This ordinance shall take effect immediately upon adoption.

2 PASSED AND ADOPTED by the City Council of the City of Boca Raton this 8th
 3 day of April, 2003.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

ATTEST:

Sharma Carannante
 Sharma Carannante, City Clerk

CITY OF BOCA RATON, FLORIDA

Steven L. Abrams
 Steven L. Abrams, Mayor

Approved as to form:

Diana Grub Frieser
 Diana Grub Frieser, City Attorney

O03044a

COUNCIL VOTE			
	YES	NO	ABSTAINED
MAYOR STEVEN L. ABRAMS	✓		
DEPUTY MAYOR SUSAN WHELCHER	✓		
COUNCIL MEMBER DAVE FREUDENBERG		NOT PRESENT	
COUNCIL MEMBER BILL HAGER	✓		
COUNCIL MEMBER SUSAN HAYNIE	✓		

23