

1977 Assembly Bill 383

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## CHAPTER 205, Laws of 1977

AN ACT to renumber 48.68; to amend 48.67 (3), 50.03 (4) (a) 1 and 62.23 (7a); and to create 46.03 (22), 48.02 (7m), 48.68 (2) and (3), 48.745, 50.03 (2) (d), (3) (e) and (4) (a) 3, 59.97 (15), 60.74 (9) and 62.23 (7) (i) of the statutes, relating to effects of zoning and deed covenants on community living arrangements.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1. Legislative purpose.** The legislature finds that the language of statutes relating to zoning codes should be updated to take into consideration the present emphasis on preventing or reducing institutionalization and legislative and judicial mandates to provide treatment in the least restrictive setting appropriate to the needs of the individual. This change in emphasis has occurred as the result of recent advances in corrections, mental health and social service programs. It is the legislature's intent to promote public health, safety and welfare by enabling persons who otherwise would be institutionalized to live in normal residential settings, thus hastening their return to their own home by providing them with the supervision they need without the expense and structured environment of institutional living. To maximize its rehabilitative potential, a community living arrangement should be located in a residential area which does not include numerous other such facilities. The residents of the facilities should be able to live in a manner similar to the other residents of the area. The legislature finds that zoning ordinances should not be used to bar all community living arrangements since these arrangements resemble families in all senses of the word except for the fact that the residents might not be related. The legislature also finds that deed covenants which restrict or prohibit the use of property for community living arrangements are contrary to the vital governmental purpose of achieving these goals. The legislature believes these matters of statewide concern can be achieved only by establishing criteria which restrict the density of community living arrangements while limiting the types of and number of facilities which can exist in residential neighborhoods having an appropriate atmosphere for the residents, thereby preserving the established character of a neighborhood and community.

**SECTION 2.** 46.03 (22) of the statutes is created to read:

46.03 (22) COMMUNITY LIVING ARRANGEMENTS. (a) "Community living arrangement" means any of the following facilities licensed or operated, or permitted

under the authority of the department: child welfare agencies under s. 48.60, group foster homes for children under s. 48.02 (7m) and community-based residential facilities under s. 50.01; but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails.

(b) Community living arrangements shall be subject to the same building and housing ordinances, codes and regulations of the municipality or county as similar residences located in the area in which the facility is located.

(c) The department shall designate a subunit to keep records and supply information on community living arrangements under ss. 59.97 (15) (f), 60.74 (9) (f) and 62.23 (7) (i) 6. The subunit shall be responsible for receiving all complaints regarding community living arrangements and for coordinating all necessary investigatory and disciplinary actions under the laws of this state and under the rules of the department relating to the licensing of community living arrangements.

(d) A community living arrangement with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single-family or 2-family residences. A community living arrangement with a capacity for 15 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to more than 2-family residences. Covenants in deeds which expressly prohibit use of property for community living arrangements are void as against public policy.

(e) If a community living arrangement is required to obtain special zoning permission, as defined in s. 59.97 (15) (g), the department shall, at the request of the unit of government responsible for granting the special zoning permission, inspect the proposed facility and review the program proposed for the facility. After such inspection and review, the department shall transmit to the unit of government responsible for granting the special zoning permission a statement that the proposed facility and its proposed program have been examined and are either approved or disapproved by the department.

SECTION 3. 48.02 (7m) of the statutes is created to read:

48.02 (7m) "Group foster home" means any facility operated by a person required to be licensed by the department under s. 48.62 for the care and maintenance of 5 to 8 foster children.

SECTION 4. 48.67 (3) of the statutes is amended to read:

48.67 (3) The department shall prescribe the form and content of records to be kept and information to be reported by persons licensed by it. Child welfare agencies and group foster homes shall report upon application for renewal of licensure all formal complaints regarding their operation filed under s. 48.745 (2) and the disposition of each.

SECTION 5. 48.68 of the statutes is renumbered 48.68 (1).

SECTION 6. 48.68 (2) and (3) of the statutes are created to read:

48.68 (2) Before renewing the license of any child welfare agency or group foster home, the department shall consider all formal complaints filed under s. 48.745 (2) and the disposition of each during the current license period.

(3) Within 10 working days after receipt of an application for initial licensure of a child welfare agency or group foster home, the department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the child welfare agency or group home. No license may be granted to a child welfare agency or group foster home until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license

the department shall give full consideration to such hazards determined by the planning commission or agency.

SECTION 7. 48.745 of the statutes is created to read:

**48.745 Formal complaints regarding child welfare agencies and group foster homes. (1)**

If a complaint is received by a child welfare agency or group foster home, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

(2) Any individual may file a formal complaint under this section regarding the general operation of a facility and shall not be subject to reprisals for doing so. All formal complaints regarding child welfare agencies and group foster homes shall be filed with the county public welfare department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the bureau within the department which licenses child welfare agencies and group foster homes.

(3) Upon receipt of a formal complaint, the county department may investigate the premises and records and question the licensee, staff and residents of the facility involved. The county department shall attempt to resolve the situation through negotiation and other appropriate means.

(4) If no resolution is reached, the county department shall forward the formal complaint, results of the investigation and any other pertinent information to the unit within the department which is empowered to take further action under this chapter against the facility. The unit shall review the complaint and may conduct further investigation, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the final disposition of the complaint and the reasons therefor. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

(5) If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

SECTION 8. 50.03 (2) (d), (3) (e) and (4) (a) 3 of the statutes are created to read:

50.03 (2) (d) 1. If a complaint is received by a community-based residential facility, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

2. Any individual may file a formal complaint under this section regarding the general operation of a facility and shall not be subject to reprisals for doing so. All formal complaints regarding community-based residential facilities shall be filed with the county public welfare department on forms supplied by the county department, unless the county department designates the department to receive a formal complaint. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the unit within the department which licenses community-based residential facilities.

3. Upon receipt of a formal complaint, the county department may investigate the premises and records, and question the licensee, staff and residents of the facility involved. The county department shall attempt to resolve the situation through negotiation or other appropriate means.

4. If no resolution is reached, the county department shall forward the formal complaint, the results of the investigation, and any other pertinent information to the unit within the department which may take further action under this chapter against the facility. The unit shall review the complaint and may conduct further investigations, take enforcement action under this chapter or dismiss the complaint. The department shall notify the complainant in writing of the formal disposition of the complaint and the reasons therefor. If the complaint is dismissed, the complainant is entitled to an administrative hearing conducted by the department to determine the reasonableness of the dismissal.

5. If the county department designates the department to receive formal complaints, the subunit under s. 46.03 (22) (c) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.

(3) (e) Community-based residential facilities applying for renewal of license shall report all formal complaints regarding their operation filed under sub. (2) (d) and the disposition of each.

(4) (a) 3. Within 10 working days after receipt of an application for initial licensure of a community-based residential facility, the department shall notify the city, town or village planning commission, or other appropriate city, town or village agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards which may affect the health and safety of the residents of the community-based residential facility. No license may be granted to a community-based residential facility until the 30-day period has or until the department receives the response of the planning commission or agency, whichever is sooner. In granting a license the department shall give full consideration to such hazards determined by the planning commission or agency.

SECTION 9. 50.03 (4) (a) 1 of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

50.03 (4) (a) 1. The department shall issue a license if it finds the applicant to be fit and qualified, and if it finds that the facility meets the requirements established by this subchapter. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and shall file written reports. The department may designate and use full-time city or county agencies as its agents in making the inspections and investigations, including such subsequent inspections and investigations as are deemed necessary or advisable. The department shall reimburse the city or county furnishing such service at the rate of \$25 per year per license issued in the municipality. Before renewing the license of any community-based residential facility, the department shall consider all formal complaints filed under sub. (2) (d) 2 during the current license period and the disposition of each.

SECTION 10. 59.97 (15) of the statutes is created to read:

59.97 (15) COMMUNITY LIVING ARRANGEMENTS. For purposes of this section, the location of a community living arrangement, as defined in s. 46.03 (22), in any city, village or town, shall be subject to the following criteria:

(a) No community living arrangement may be established after the effective date of this act (1977) within 2,500 feet, or any lesser distance established by an ordinance of a city, town or village, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local municipality. Two community living arrangements may be adjacent if the local municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each city, village or town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or one percent of the municipality's population, whichever is greater. When the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the municipality may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this paragraph, and such exceptions may be granted at the discretion of the municipality.

(bm) A foster family home which is the primary domicile of a foster parent, which is for 4 or fewer children and which is licensed under s. 48.62 shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

(c) In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

(d) In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, or operated or permitted under the authority of the department of health and social services, the facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences, except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The local municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The local municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single subunit within the department to maintain appropriate records indicating the location and the capacity of each community living arrangement, and such information shall be available to the public.

(g) In this subsection, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this subsection.

(i) Not less than 11 months nor more than 13 months after the first licensure of a community living arrangement and every year thereafter, the common council, town board or village board of a city, town or village in which a community living arrangement is located may make a determination as to the effect of the community living arrangement on the health, safety or welfare of the residents of the city, town or village. The determination shall be made according to the procedures provided under par. (j). If the

common council, town board or village board determines that a community living arrangement's existence in the city, town or village poses a threat to the health, safety or welfare of the residents of the city, town or village, the common council, town board or village board may order the community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the community living arrangement. The community living arrangement shall cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(j) A determination under par. (i) shall be made after a hearing before the common council, town board or village board. The city, town or village shall provide at least 30 days' notice to the community living arrangement that such a hearing will be held. At the hearing, the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council, town board or village board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council, town board or village board. The common council, town board or village board shall take notes of the testimony and shall mark and preserve all exhibits. The common council, town board or village board may, and upon request of 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, town or village. Within 20 days after the hearing, the common council, town board or village board shall mail or deliver to the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 11. 60.74 (9) of the statutes is created to read:

60.74 (9) For purposes of this section, the location of a community living arrangement, as defined in s. 46.03 (22), in any town shall be subject to the following criteria:

(a) No community living arrangement may be established after the effective date of this act (1977) within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local township. Two community living arrangements may be adjacent if the town authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or one percent of the town's population, whichever is greater. If the capacity of the community living arrangements in the town reaches such total, the town may prohibit additional community living arrangements from locating in the township. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the town.

(bm) A foster family home which is the primary domicile of a foster parent, which is for 4 or fewer children and which is licensed under s. 48.62 shall be permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

(c) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, the community living arrangement is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided under par. (i).

(d) In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single subunit within the department to maintain appropriate records indicating the location and the capacity of each community living arrangement, and such information shall be available to the public.

(g) In this subsection, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this subsection.

(i) Not less than 11 months nor more than 13 months after the first licensure of a community living arrangement and every year thereafter, the town board of a town in which a community living arrangement is located may make a determination as to the effect of the community living arrangement on the health, safety or welfare of the residents of the town. The determination shall be made according to the procedures provided under par. (j). If the town board determines that a community living arrangement's existence in the town poses a threat to the health, safety or welfare of the residents of the town, the town board may order the community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the community living arrangement. The community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(j) A determination made under par. (i) shall be made after a hearing before the town board. The town shall provide at least 30 days' notice to the community living arrangement that such a hearing will be held. At the hearing, the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the town board. The town board shall take notes of the testimony and shall mark and preserve all exhibits. The town board may, and upon request of 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 town. Within 20 days after the hearing, the town board shall deliver to the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 12. 62.23 (7) (i) of the statutes is created to read:

62.23 (7) (i) *Community living arrangements.* For purposes of this section, the location of a community living arrangement as defined in s. 46.03 (22) in any city shall be subject to the following criteria:

1. No community living arrangement may be established after the effective date of this act (1977) within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.

2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.

2m. A foster family home which is the primary domicile of a foster parent, which is for 4 or fewer children and which is licensed under s. 48.62 shall be a permitted use in all residential areas and is not subject to subds. 1 and 2 except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subds. 1 and 2.

3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1 and 2, and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1 and 2, and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9, but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1 and 2, and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

6. The department of health and social services shall designate a single subunit within the department to maintain appropriate records indicating the location and number of persons served by each community living arrangement, and such information shall be available to the public.

7. In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

8. The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this paragraph.

9. Not less than 11 months nor more than 13 months after the first licensure of a community living arrangement and every year thereafter, the common council of a city in which a community living arrangement is located may make a determination as to the effect of the community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that a community living arrangement's existence in the city poses a threat to the health, safety or welfare of the residents of the city, the common council may order the community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the community living arrangement. The community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

10. A determination made under subd. 9 shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the community living arrangement that such a hearing will be held. At the hearing, the community living arrangement 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 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 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. Within 20 days after the hearing, the common council shall mail or deliver to the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 13. 62.23 (7a) of the statutes is amended to read:

62.23 (7a) EXTRATERRITORIAL ZONING. The governing body of any city which has created a city plan commission under sub. (1) and has adopted a zoning ordinance under sub. (7) may exercise extraterritorial zoning power as set forth in this subsection. Insofar as applicable ~~the provisions of sub. (7) (a), (b), (c), (ea) and, (h) and (i)~~ shall apply to extraterritorial zoning ordinances enacted under this subsection. This subsection shall also apply to the governing body of any village.

SECTION 14. **Application.** This act shall not affect the rights, powers or duties of any county, city, town or village as to their zoning authority over any community living arrangement which had obtained special zoning permission prior to the effective date of this act. However, those community living arrangements shall be required to register under sections 59.97 (15) (f), 60.74 (9) (f) and 62.23 (7) (i) 6 of the statutes, as created by this act, and under such sections the department must maintain public records of those community living arrangements. The location and capacity of those community living arrangements shall be included when determining whether a new community living arrangement can be located in a city, town or village under sections 59.97 (15) (a) and (b), 60.74 (9) (a) and (b) and 62.23 (7) (i) 1 and 2 of the statutes.

SECTION 15. **Program responsibilities.** In the list of program responsibilities specified for the department of justice under section 15.251 (intro.) of the statutes, insert reference to sections "59.97 (15) (h)", "60.74 (9) (h)" and "62.23 (7) (i) 8".