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Case Law on Community Residences and Zoning Code Definition of "Family"

The courts have consistently found that a zoning code is discriminatory on its face if it fails to treat community residences for people with disabilities that comply with the jurisdiction's zoning definition of "family" the same as other families. The courts look at the jurisdiction's zoning code definition of "family" (alternatively, "household") as well as the absence of a definition of "family.".

- So if a city's zoning code definition of "family" allows **any number of unrelated individuals to live together as a single housekeeping unit** — there is no cap on the number unrelated occupants in a dwelling — community residences for people with disabilities must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license.

- When a definition of "family" establishes **a cap on the number of unrelated people living together** as a single housekeeping unit, community residences that fit within that cap must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license. The Fair Housing Act's reasonable accommodation requirement kicks in for community residences that house more unrelated people than the cap in the definition of "family." So if the cap on unrelated occupants is four people, then a city cannot require spacing or licensing for community residences with four or fewer occupants and must allow community residences for up to four people as a permitted use in all zoning districts where residences of any type are permitted uses.

- When a city's **zoning ordinance does not define "family,"** community residences for people with disabilities must be allowed as of right where ever residences are permitted uses and the zoning code cannot impose any zoning restrictions like spacing or a licensing requirement on community residences for people with disabilities because, doing so, would treat them differently than other groups of unrelated people living together — facial discrimination once again.

Below is a list of *some* of the court decisions that illustrate these principles. Recent cases are pretty are because this rule of law is so well–established.

- ***United States of America v. City of Chicago Heights***, 161 F.Supp.2d 819 (N.D.Ill. 2001)
  This *Chicago Heights* decision offers the clearest explanation that a community residence for people with disabilities that complies with the cap on the number of unrelated individuals allowed to dwell together under a city's zoning code definition of "family" constitutes a family for zoning purposes, *not* a community residence, and must be treated the same as any other

family. No spacing distance, licensing, or other requirement *not* imposed on all other residences can be imposed on such a living arrangement.

Chicago Heights' zoning code definition of "family" included up to five unrelated people living as a single housekeeping unit. Threshold's proposed community residence for eight people with mental illness was within 500 feet of an existing house licensed by the state as a "community residence" housing five individuals with developmental disabilities. Since this was within the city's 1,000–foot spacing distance between community residences allowed as of right, the city required Thresholds to apply for a special use permit. The city denied the special use permit.

The court ruled that the city erred when it classified as a "community residence" the house in which the five people with developmental disabilities lived as a "community residence." The court arrived at this conclusion because the existing house licensed as a community residence fit within the cap of five unrelated persons allowed to constitute a family under the zoning code's definition of "family." Consequently, *for zoning purposes,* the existing house was a single–family residence occupied by a family and zoning cannot treat it as a community residence (even though the State of Illinois had licensed it as a community residence for people with developmental disabilities).

- ***Valencia v. City of Springfield,*** 2017 WL 3288110 (C.D. Ill. Aug. 2, 2017), upheld in *Valencia v. City of Springfield, Illinois,* 883 F.3d 959 (2018). The most relevant language is in the district court's decision. Under the city's definition of "family" allowing up to five unrelated individuals to live together as a single housekeeping unit, both group homes were families and, therefore, a spacing distance could not be required.

- ***Children's Alliance v. City of Bellevue,*** 950 F.Supp. 1491 (W.D. Wash. 1997)

- ***Oxford House–Evergreen v. City of Plainfield,*** 769 F. Supp. 1329, 134146 (D.N.J. 1991) (invalidating the City's attempt to preclude an Oxford House from a single–family district)

- ***Support Ministries for Persons with AIDS v. Village of Waterford***, 808 F. Supp. 120, 136·38 (N.D.N.Y. 1992) (requiring city to issue the permits sought to establish home for persons with AIDS under definition of "family" as opposed to a boarding house)
- ***Merritt v. City of Dayton***, No. C·3·91·448 (S.D. Ohio Apr. 7, 1994) (rejecting a 3,000–foot spacing requirement where community residence met definition of "family").
- ***Oxford House v. City of Virginia Beach***, 825 F. Supp. 1251, 1264 (E.D. Va. 1993)
- ***Oxford House v. Township of Cherry Hill***, 799 F. Supp. 450,462 n. 25 (D.N.J. 1992)
- ***Easter Seals Society of New Jersey and "John Does" v. Township of North Bergen***, 798 F. Supp. 228 (D.N.J. 1992) (while the decision to issue a preliminary injunction was based on other factors, the briefs made it clear that North Bergen's zoning code did not define "family" at all which ultimately contributed to the court rejecting the township's zoning provisions for group homes)

The above list is *not* exhaustive.

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Inclusive Definition of "Family" or "Household"

While legal, many zoning code definitions of "family" don't recognize the expansion of the nature of family structures common today. The following is definition of "family" that is substantially more inclusive than today's typical definition. For those jurisdictions that prefer to use the word "household," just substitute it for "family." As explained later, it is essential that this definition include a cap on the number of unrelated individuals that can constitute a "family" [which is perfectly legal according to the U.S. Supreme Court's decision in *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974)].

> **Family**: A family consists of any person living alone or any number of people related by blood, marriage, adoption, or guardianship; two unrelated individuals in a domestic partnership who have made a commitment to share their lives, living as a single housekeeping unit along with their children including step children, adopted children, and children under guardianship; or up to four unrelated individuals not living in a domestic partnership.

This definition does not make any distinctions regarding gender in a domestic partnership, nor does it require that the couple be legally married. Consequently it includes couples comprised of any genders. In addition, the number "four" is an example of a common cap on the number of unrelateds not in a domestic partnership. A cap is essential for reasons explained further below.

In addition to what traditional zoning definitions of "family" cover, the above definition encompasses:

- Unmarried couples of any gender(s) living in a domestic relationship as a single housekeeping unit plus their children of all types (biological, adopted, foster)
- Blended families
- Nuclear families

- Extended families
- “Domestic partnership” in this definition encompasses not only unmarried domestic partnerships but also all legally recognized same-sex relationships, including civil unions and reciprocal beneficiary arrangements

This definition very deliberately does *not* include communes. The moment a city includes communes in its zoning code’s definition of “family,” is the moment it loses the ability to legally zone for community residences for people with disabilities and for recovery communities. As explained below, you get the same result if there is no definition of “family” or the definition allows any number of unrelated people to live together as a single housekeeping unit.

While this definition certainly can be refined, it is critical that it include a cap on the number of unrelated occupants not in a domestic partnership.

The cap on the number of unrelateds not *in a domestic relationship is essential to preserve the ability of a jurisdiction to zone for community residences for more than four people (in this example) with disabilities. Without this cap, a jurisdiction* cannot *use zoning to regulate community residences for people with disabilities at all. Whatever number is chosen for the cap on unrelated individuals, keep in mind that any community residence for people with disabilities that fits within that cap* cannot *be subjected to any zoning requirements that are not applicable to all families.*

And if the zoning code either does not cap the number of unrelated individuals that constitutes a family or does not define family at all, the zoning ordinance cannot regulate community residences for people with disabilities at all including provisions to prevent clustering and concentrations and provisions to require licensing/certification to protect the occupants from scam and incompetent operators who abuse, exploit, rob, and otherwise mistreat residents. In both these circumstances, a jurisdiction must treat a community residence for people with disabilities exactly the same as any other family — namely the jurisdiction would have no ability to legally zone for community residences for people with disabilities. I would recommend a cap of three or four although the U.S. Supreme Court has ruled that the cap can be as low as two. in an opinion written by Justice William O. Douglas.

Keep in mind that this is a practical functional definition of "family" that can be implemented under a zoning ordinance. Many, if not most, of the definitions discussed online are so theoretical and amorphous that they couldn’t possibly be used in a real world zoning ordinance.