

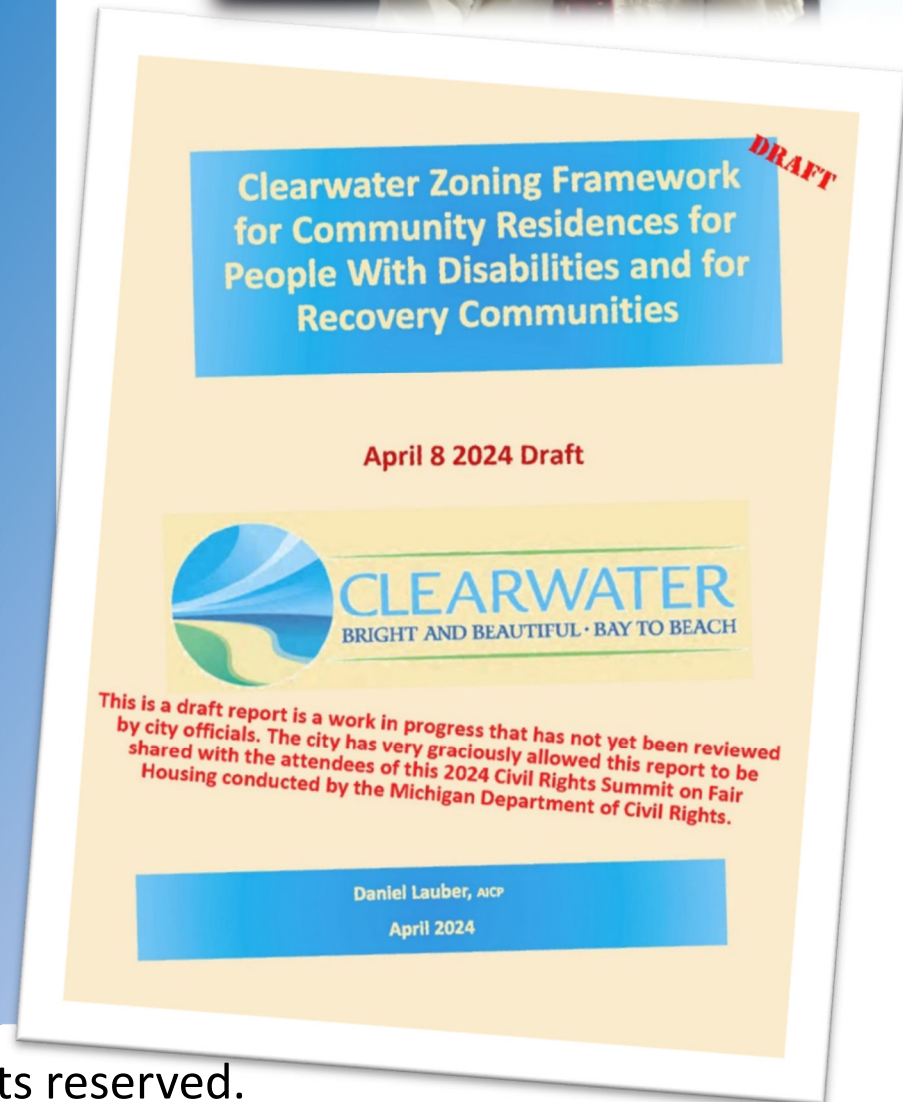
# Exclusionary Zoning: Overcoming Zoning That Excludes Affordable Housing, Minorities, and Group Homes for People with Disabilities

## Zoning for Group Homes: Complying With the Fair Housing Act

June 12, 2024

Daniel Lauber, AICP  
dan@lauber.law

<http://www.grouphomes.law>  
708-366-5200



# Guiding Principles for Community Residence Zoning

To make the “reasonable accommodation” that the Fair Housing Act requires, zoning protections must be fact-based and:

- Be **intended to achieve** a legitimate government interest
- **Actually accomplish** that legitimate government interest
- Constitute the **least drastic means** needed to actually attain that legitimate government interest



**What to do when lost?  
Return to the beginning.**

*— Vizzini addressing Inigo Montoya and Fezzik*



**All community residences for people with disabilities including sober homes:**

# The Beginning

- **Emulate biological family**
- **Normalization and community integration**
- **Use neighbors without disabilities as role models**
- **A residential land use**
- **To succeed, need to be located in safe residential neighborhoods, *not* clustered on a few adjacent blocks nor concentrated in a neighborhood**



## What we know about community residences

# The Beginning


- Over 50 studies on impacts on property values, neighborhood safety, and more
- No adverse impacts as long as *not clustered on a block or a few adjacent blocks and they are licensed or certified*
- Clustering *may* occur when more than one or two community residences are on a block or three or four on a few adjacent blocks

# Why zone for community residences?

- **Need to comply with nation's Fair Housing Act**
- **Level the housing playing field for people with disabilities**
- **Establish strongest legal protection against scam operators**
- **Scam operators leaving Delray Beach, Palm Beach County, Pompano Beach, Panama City, West Palm Beach, Prescott AZ, and other jurisdictions that have adopted some variation of proposed zoning approach**
- **Prevent concentrations and clustering from even starting**
- **Provide some zoning certainty to housing providers**

**Zoning approach  
seeks to actually  
achieve  
legitimate  
government  
interests:**

**Require all community  
residences — including  
existing ones — to obtain  
available license or  
certification in order to:**



**Zoning approach  
seeks to actually  
achieve  
legitimate  
government  
interests:**

- (1) Extend to people in recovery from substance use disorder the same protections afforded to people with other disabilities:** Protection from abuse, mistreatment, exploitation, theft, and fraud at the hands of unscrupulous or incompetent operators
- (2) Assure they receive the support they need** to achieve normalization and community integration, and in the case of people in recovery, achieve long-term sobriety



Zoning approach seeks to actually achieve legitimate government interests:

**Enable** community residences to achieve core principles of normalization and community integration by:

- (1) **Preventing** any existing clusters or concentrations in a neighborhood from expanding and becoming more intense
- (2) **Preventing** new clusters or concentrations from forming

Fair Housing  
Amendments  
Act of 1988  
Adds to Sec.  
804 (U.S.C.  
3604)

Adds “handicap” to list of protected classes, but also makes unique provisions for people with “handicaps”

“(3) For purposes of this subsection, **discrimination includes ...**

**(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” — §3604(f)(3)(B)**

## Fair Housing Act Kicks In

“The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. **The Act is intended to prohibit the application of special requirements through land–use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.**”

— *House of Representatives Report Number 711, 100th Congress, 2d Session 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173*

## Fair Housing Act Keeps Kicking In

“Another method of making housing unavailable has been the **application or enforcement of otherwise neutral rules and regulations on health, safety, and land-use in a manner which discriminates against people with disabilities**. Such discrimination often results 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. These and similar practices would be **prohibited**.”

— *House of Representatives Report Number 711, 100th Congress, 2d Session 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173*

# Guiding Principles for Community Residence Zoning

To make the “reasonable accommodation” that the Fair Housing Act requires, zoning protections must be fact-based and:

- Be **intended to achieve** a legitimate government interest
- **Actually attain** that legitimate government interest
- Constitute the **least drastic means** needed to actually accomplish that legitimate government interest

# Threshold Zoning Regulatory Question:

Start with  
local zoning  
code's  
definition of  
"family" or  
the lack  
thereof

## Basic legal principle from the case law:

Zoning that treats a group of people with disabilities differently than the same sized group of people without disabilities  
= **discriminatory on its face**

---



Zoning code doesn't define "family" or "household"

---



Definition of "family" or "household" allows any number of unrelated individuals to live together as a single housekeeping unit

---



Community residence fits within cap on number of unrelated individuals that constitutes a "family" or "household"

**Group home case law is *very* fact-specific**  
**Many have misinterpreted court rulings in**

***Valencia v. City of Springfield, Illinois***

**883 F.3d 959 (2018)**

***United States v. Chicago Heights, Illinois***

**161 F.Supp.2d 819 (2001)**

- ◆ **Valencia:** *Both* group homes were families under Springfield's zoning definition of "family" that allowed up to 5 unrelated individuals
- ◆ **Chicago Heights:** *The existing group home* housed 5 people, within Chicago Heights' zoning definition of "family" allowing up to 5 unrelated individuals

**Definition of “family”  
allows up to 4 unrelated**

**Fits within the cap of 4  
unrelated individuals that  
constitutes a “family”**

**Exceeds cap of 4 unrelated  
individuals that constitutes a  
“family”**

**Therefore, it’s a “family” and  
must be treated the same as  
any other “family.”**

**All community residences for  
people with disabilities with up  
to 4 residents are a permitted  
use in all districts where  
residences are allowed with no  
additional zoning requirements**

**Zoning code must make a  
“reasonable accommodation”  
for community residences for  
people with disabilities**

**Using least drastic means that  
actually achieve a legitimate  
government interest**



**Community residence occupied by more than the 4 unrelated individuals that constitute a “family”**

## **Family Community Residence**

- ✓ **Relatively *permanent* tenancy**
- ✓ **No time limit on length of residency**
- ✓ **Typically at least 6 months by rules and/or in practice**

## **Transitional Community Residence**

- ✓ **Relatively *shorter* tenancy**
- ✓ **Residency limited to weeks or months**
- ✓ **Typically fewer than 6 months by rules and/or in practice**

Community residence occupied by more than the 4 unrelated individuals that constitute a “family”

## Family Community Residence

**Relatively *permanent* tenancy**

No time limit on length of residency

Typically at least 6 months

**Permitted use in all zoning districts where residences are allowed when:**

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community
- B. Licensed, certified, or Oxford House Charter
- C. No more than 12 occupants (including live-in staff)

If A, B, or C is *not* met: **Apply for a “reasonable accommodation”**

Reasonable accommodation can be made via a special use or conditional use permit, or by a codified “reasonable accommodation” process

Community residence occupied by more than the 4 unrelated individuals that constitute a “family”

## Transitional Community Residence

Relatively *transient* tenancy  
Residency limited to weeks or months  
Typically less than 6 months

**Permitted use in all zoning districts where multi-family housing is allowed when:**

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community
- B. Licensed or certified
- C. No more than 12 occupants (including live-in staff)

If A, B, or C is *not* met or the site is in a pure single-family district: **Apply for a “reasonable accommodation”**

Reasonable accommodation can be made via a special use or conditional use permit, or by a codified “reasonable accommodation” process

**Community residence occupied by more than  
the 4 unrelated individuals proposed to constitute a “family”**

**Family Community Residence**

**Relatively *permanent* tenancy**  
**No time limit on length of residency**  
**Typically at least 6 months**

**Transitional Community Residence**

**Relatively *transient* tenancy**  
**Residency limited to weeks or months**  
**Typically less than 6 months**

**Permitted use in all districts where  
residences are allowed when:**

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community**
- B. Licensed, certified, Oxford House Charter**
- C. No more than 12 occupants**

**Permitted use in all districts where  
multi-family housing  
is allowed when:**

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community**
- B. Licensed or certified**
- C. No more than 12 occupants**

**If A, B, or C is *not* met:  
Apply for reasonable accommodation**

**If A, B, or C is *not* met, or the site is in  
a pure single-family district:  
Apply for reasonable accommodation**

**Reasonable accommodation can be made via a special use or conditional use permit, or by a codified “reasonable accommodation” process**

# Bottom line on number of residents



Local property maintenance code, minimum housing code, building code, etc. usually includes ...



... a formula to prevent overcrowding



Applies to *all* residences



One occupant of sleeping area: **70 square feet**



More than one occupant of sleeping area: **50 square feet per occupant**

# Examples of Clustering and Concentrations

## 2 concentrations:

21 sites (top)

15 sites (bottom)

Top half of map:

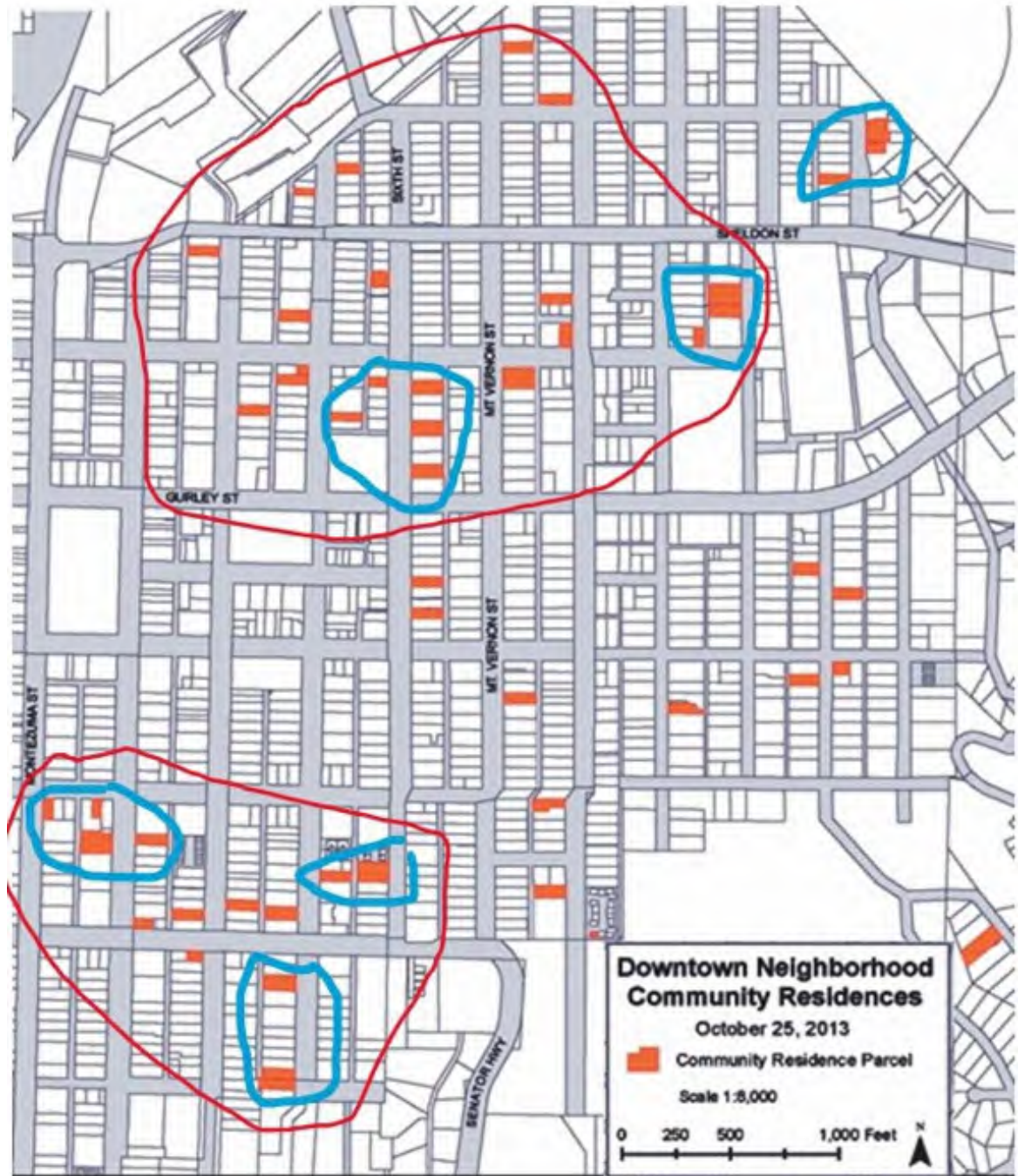
3 clusters

## Lower concentration:

3 clusters

+

2 sites located back to back



# Examples of Clustering and Concentrations

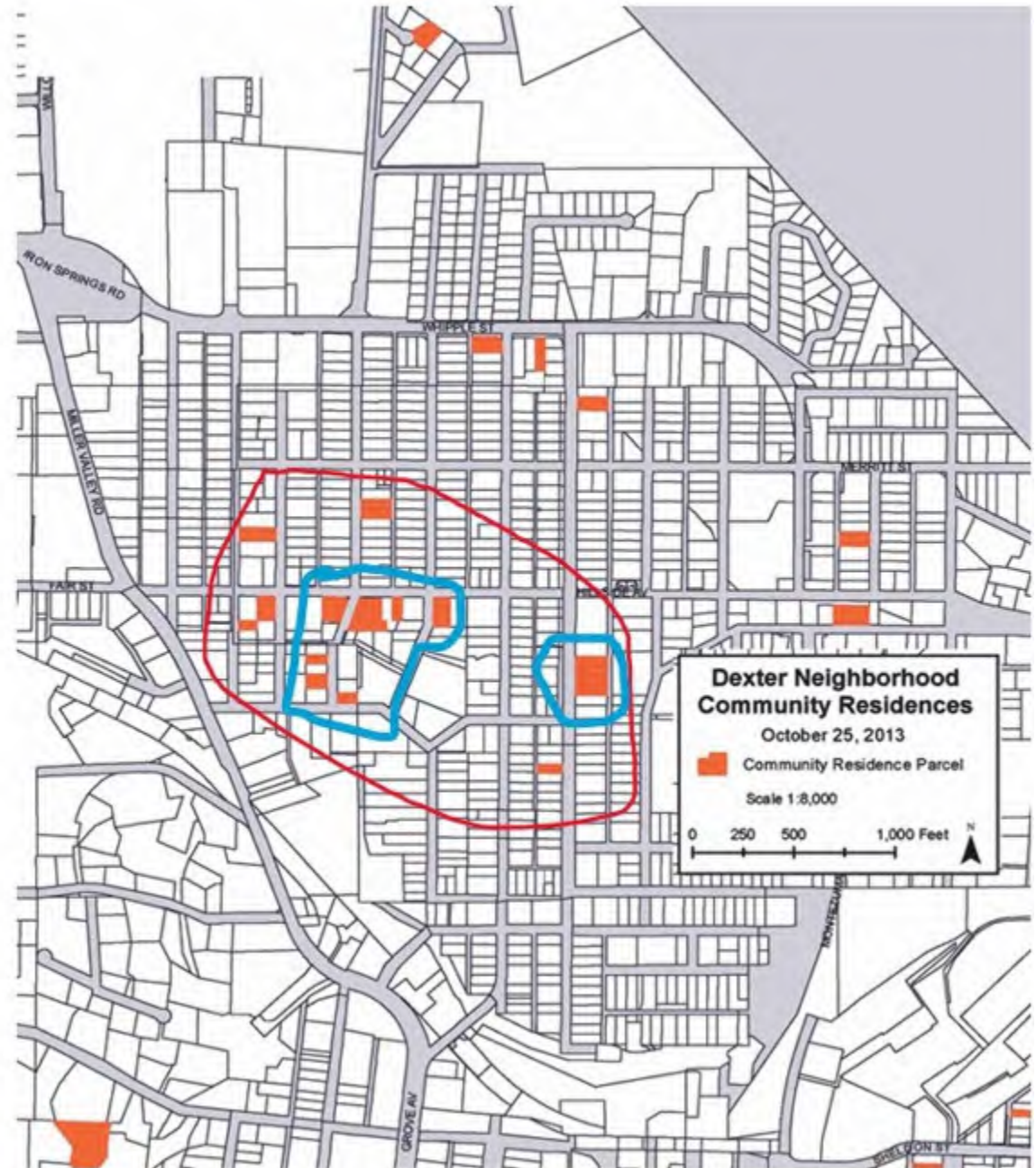
## Concentration:

19

## Clusters:

4 adjacent

9 community residences clustered together on the left dominating the immediate area likely creating a small *de facto* social service district

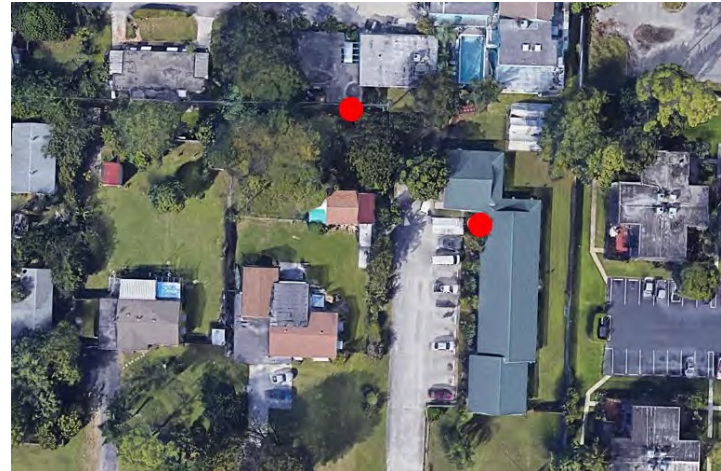


# Recovery Communities

Cities need to define and zone specifically for recovery communities because many operators try to skirt around zoning regulation.

From top to bottom:

- 96 people in 4 adjacent apartment buildings with the darker roofs
- Red dots indicate two adjacent recovery communities with 20 and 26 people operated by the same housing provider
- 28 people in 4 adjacent townhomes





# Recovery Community

## Single-family districts

### Not permitted

*except* an existing recovery community may continue as a lawful nonconforming use if it obtains and maintains state license or certification within 9 months of zoning amendments being adopted

Zoning districts where multi-family or institutional uses are allowed

### Permitted use when:

- ✓ Located outside applicable tiered spacing distance from the closest existing community residence or recovery community
- ✓ State licensed or certified

When located within applicable spacing distance of the closest existing community residence or recovery community:

Apply for a reasonable accommodation (SUP, etc.)

## Example of Tiered Spacing Distance for Proposed Recovery Communities

Number of residents	Spacing distance is the greater of...	
	Minimum number of feet	Minimum number of lots (Treat each street and body of water as at least one lot)
Up to 16 residents	660	9
17 to 30 residents	900	12
31 to 50 residents	1,100	14
51 to 100 residents	1,300	16
100 and more residents	1,500	20

**Download the state of the art draft Clearwater study  
(a work in progress), accessible PDF of this presentation, and more at:**

**<http://grouphomes.law/michigan>**

**or**

**<http://www.planningcommunications.com/michigan>**

**Daniel Lauber, AICP**

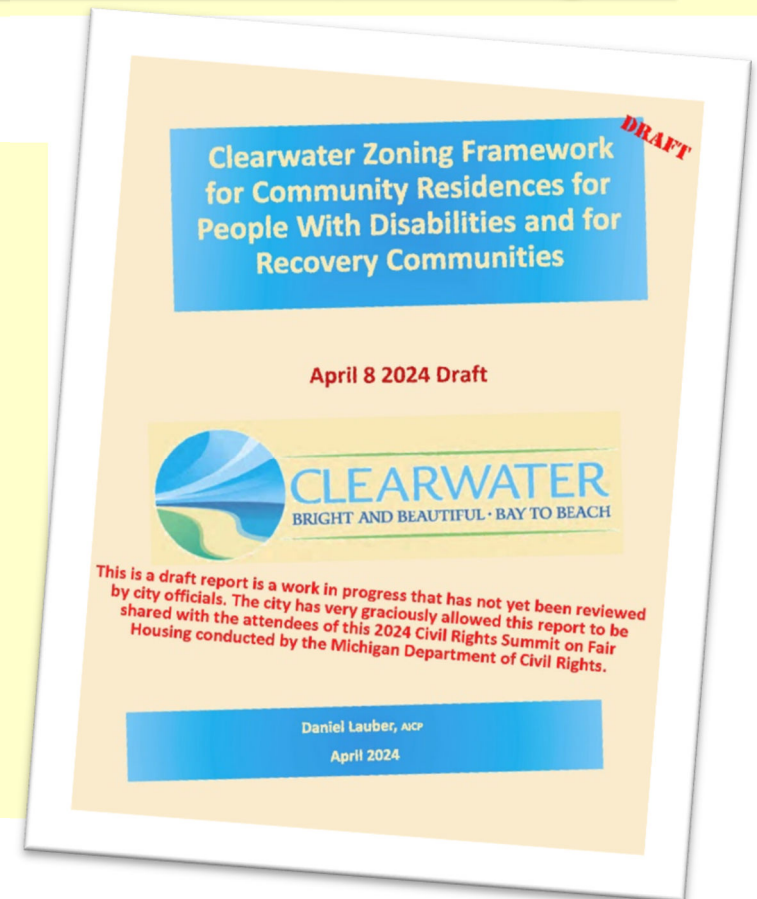
**Law Office of Daniel Lauber**

**River Forest, Illinois**

**<http://www.fairhousing.law>**

**708-366-5200**

**Email: [dan@lauber.law](mailto:dan@lauber.law)**



Copyright © 2024 by Daniel Lauber. All rights reserved.