

## **ORDINANCE NO. 01-19**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF TEQUESTA, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES AT CHAPTER 78. ZONING; AT SEC. 78-4. DEFINITIONS, BY AMENDING THE DEFINITION FOR “REHABILITATION FACILITY” TO ELIMINATE FUNDING RESTRICTIONS FOR REHABILITATION FACILITY CLIENTS AND OPERATIONS, INCREASE THE MAXIMUM NUMBER OF OUTPATIENT AND FOLLOW-UP CARE CLIENTS TO A NUMBER EQUAL TO 25% OF THE REHABILITATION FACILITY’S TOTAL OCCUPANCY CAPACITY, AND PROVIDE GRAMMATICAL CONSISTENCY THROUGHOUT THE DEFINITION; AND AT SEC. 78-180, MU MIXED USE DISTRICT, SUBSECTION (I) SPECIAL EXCEPTION USES, NUMBER (16) REHABILITATION FACILITIES, TO REPEAL MONTHLY AND ANNUAL REPORTING REQUIREMENTS; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 78. ZONING, SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Village of Tequesta zoning code currently regulates the development of Rehabilitation facilities; and

**WHEREAS**, the Village has been sued in the Federal District Court for the Southern District of Florida by GMH Holdings, LLC, operators of the “Futures” Rehabilitation facility, and has alleged that the Village’s regulations as written and as applied to them are in violation of certain aspects of federal anti-discrimination and fair housing laws, as specifically pled in Case No. 18CV-81164-DMM; and

**WHEREAS**, as a result of successful and early mediation, the parties have agreed to settle the aforesaid litigation, said settlement to include, among other conditions, revising Village code for the regulation of Rehabilitation facilities as set forth in this ordinance; and

**WHEREAS**, the Village Council of the Village of Tequesta believes it to be in the best interests of the health, safety, and welfare of the citizens of the Village of Tequesta that the Village settle the aforesaid litigation and adopt the revisions for the regulation of Rehabilitation facilities as set forth in this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF TEQUESTA, FLORIDA, THAT:**

**Section 1:** Chapter 78. Zoning. of the Code of Ordinances of the Village of Tequesta is hereby amended at Sec. 78-4. Definitions. by revising the definition of “Rehabilitation facility” pursuant to a Settlement Agreement in the case of GMH Holdings, LLC v. Village of Tequesta, Case No. 18CV-81164-DMM; which revisions will eliminate funding restrictions for rehabilitation facility clients and operations, increase the maximum number of outpatient and follow-up care clients to a number equal to 25% of the Rehabilitation facility’s total occupancy capacity, and provide grammatical consistency throughout the definition; providing that Sec. 78-4 shall hereafter read as follows:

**Sec. 78-4. Definitions.**

The following words, terms and phrases, when used in this chapter, unless otherwise specified, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All words used in the present tense include the future; all words in the singular number include the plural and the plural the singular. The word "building" includes the word "structure." The word "shall" is mandatory. The word "person" includes a firm, corporation or Municipal Corporation as well as a natural person. The word "map" shall mean the official zoning map of the village. The term "council" shall mean the Council of the Village of Tequesta and the word "village" shall mean the Village of Tequesta, a municipal corporation of the State of Florida. The word "used" shall be deemed to include the words "arranged, designed or intended to be used," and the word "occupied" shall be deemed to include the words "arranged, designed or intended to be occupied." Any word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization.

*Rehabilitation facility* means a ~~private~~ State of Florida licensed facility that provides Rehabilitation Care for clients ~~patients~~ who are 18 years of age or older. The primary purpose of a rehabilitation facility is to provide treatment for drug and alcohol addiction and eating disorders; however, the rehabilitation facility must be a dual diagnostic facility staffed and equipped to provide treatment for co-occurring disorders. Rehabilitation facilities may also

provide programs that promote client health, wellness and overall lifestyle enhancements ~~for their residents~~. Rehabilitation facilities must provide a structured residential living environment for residential clients which includes the following features: 24-hour on-site security; 24-hour patient supervision by licensed nursing staff; and quality of life services such as swimming pools, garden areas, sport-courts, exterior patios or sitting areas, community living areas, meditation areas, fitness rooms, libraries, recreation rooms, televisions, on-site food preparation, and telephone and internet service. Rehabilitation facilities must provide Rehabilitation Care by means of Short-Term Care Treatment and Extended Care Treatment as needed, and may also provide Follow-up Care Treatment and Outpatient Care Treatment to current residential clients ~~patients of the rehabilitation facility~~, as well as a limited number of non-residential clients ~~patients~~ who were previously admitted to the rehabilitation facility for Short Term Care Treatment or Extended Care Treatment ~~have, at a minimum, successfully completed short term care treatment at the rehabilitation facility~~. Rehabilitation facilities shall not admit or offer any services for individuals with a history of violent behavior or threats to the public health, safety and welfare or the health, safety and welfare of other clients ~~patients~~. The following definitions apply to the definition of rehabilitation facility:

(1) Rehabilitation Care means diagnosis and treatment for drug and alcohol addiction disorders, eating disorders and physical, behavioral, mental or emotional issues that are directly attributed to those disorders. Rehabilitation Care does not include emergency or medical detoxification, which is specifically considered a prohibited use. Should a rehabilitation facility client ~~patient~~ require emergency or medical detoxification, this must be completed at an off-site facility prior to beginning Rehabilitation Care.

~~(2) Private means privately owned and funded with no use of state or federal (including Medicare or Medicaid) funds for the operation of the facility, the treatment of patients, or research work that would require the acceptance and treatment of federally or state funded patients. Private also means that the rehabilitation facility shall not accept third party payments or reimbursements from health maintenance organizations or from pre-negotiated in-network insurance plans for patient care.~~

~~Partial payments from out of network insurance plans may be accepted by the rehabilitation facility for patient care so long as such partial payments are not a pre-negotiated reduced amount meant to constitute full payment for rehabilitation care.~~

(~~2~~ 3) Short-Term Care Treatment means a program of Rehabilitation Care designed for a minimum residential stay of 30 calendar days.

(~~3~~ 4) Extended Care Treatment means an additional program of Rehabilitation Care designed for a minimum residential stay of 30 to 60 calendar days ~~stay in residential treatment~~ after completing ~~the initial~~ Short-Term Care residential Treatment ~~program~~.

(~~4~~ 5) Follow-up Care Treatment means a program of Rehabilitation Care designed for ~~an additional~~ a residential stay of one week ~~stay in residential treatment, after completing either subsequent to the previous completion of the~~ Short-Term Care Treatment or Extended Care Treatment. Follow-up Care Treatment ~~program, and~~ must occur at the same rehabilitation facility where Short-Term Care Treatment or Extended Care Treatment was originally received. Follow-up Care Treatment is for those clients ~~patients~~ who need additional structured ~~follow-up~~ treatment that does not require the clinical intensity of ~~the~~ Short-Term Care Treatment or Extended Care Treatment ~~program~~. At any given time, Follow-up Care Treatment shall not account for more than twenty-five ~~ten~~ percent (25%) of the rehabilitation facility's maximum permitted residential occupancy for all levels of residential care ~~patient clientele~~. Follow-up Care Treatment can also be in the form of electronic correspondence or tele-conferencing, and in such cases has no limit or restrictions regarding the duration of the care, the location of the treatment or the number of participating clients ~~patients~~.

(~~5~~ 6) Outpatient Care Treatment means a regimen of treatment that may include any or all of the following services: group counseling, individual counseling, relapse prevention counseling, and educational lectures. Outpatient Care Treatment may be offered at the following levels: "Day or Night with Community Housing" which provides a minimum of 25 hours of services per patient per week; "Day or Night" which provides 12—24 hours of services per patient per week, "Intensive Outpatient" which

provides 9—11 hours of services per patient per week; and "Outpatient" which provides less than nine hours of services per patient per week. At any given time, outpatient treatment may only be provided to a maximum number of non-residential ~~clients~~ patients equivalent to twenty five percent (25%) of the rehabilitation facility's maximum residential occupancy for all levels of residential care ~~current short term care, extended care and residential follow up treatment clientele~~. Outpatient Care Treatment services can also be provided to the rehabilitation facility's ~~clients~~ patients who are currently receiving Short Term Care, Extended Care or ~~residential~~ Follow-up Care treatment, and in such cases the number of participating ~~clients~~ patients is only limited by the rehabilitation facility's ~~residential~~ occupancy limits as set forth at subsection 78-180(i)(16).

(~~6~~ 7) *Emergency or medical detoxification* means the elimination of toxins such as alcohol or controlled substances from the body of individuals who require acute care and/or may have serious health risks as a result of their substance abuse. Medical or emergency detoxification is performed under the direct supervision of medical doctors and medical support staff, and may include the administration of medication or tranquilizers in order to ease the withdrawal process. Medical or emergency detoxification is a prohibited use in a rehabilitation facility.

**Section 2:** Chapter 78. Zoning. of the Code of Ordinances of the Village of Tequesta is hereby amended at Article VI. Schedule of District Regulations, Division 2. Schedule of Use Regulations, at Section 78-180, MU Mixed Use District, subsection (i) Special Exception Uses, Number (16) Rehabilitation Facilities, to adopt revisions pursuant to a Settlement Agreement in the case of GMH Holdings, LLC v. Village of Tequesta, Case No. 18CV-81164-DMM; which revisions repeal monthly and annual reporting requirements; providing that Sec. 78-180 shall hereafter read as follows:

**Sec. 78-180. - MU mixed-use district.**

[Sections (a) through (h) shall remain in full force and effect as previously adopted.]

(i) *Special exception uses.* Special exception uses in the mixed-use district are as follows:

[Sub-sections (1) through (15) shall remain in full force and effect as previously adopted.]

(16) Rehabilitation facilities, subject to the following conditions:

a. Rehabilitation facilities shall be prohibited from being located within a one-half mile radius of another rehabilitation facility.

b. Ninety percent of the dwelling units shall have a minimum of 575 square feet. The remaining ten percent of the dwelling units may have a minimum of 500 square feet.

c. A maximum of 45 percent of the dwelling units shall be permitted to have two bedrooms. In no case shall a dwelling unit have more than two bedrooms. Two bedroom dwelling units shall have a minimum of 750 square feet.

d. Occupant load for individuals receiving treatment shall not exceed the number of bedrooms. Bedrooms and studio dwelling units shall be for single occupancy only. Overall density for a rehabilitation facility shall not exceed eight dwelling units per gross acre.

e. Dwelling units shall be configured as follows:

1. Studio units, if provided, shall have a one combination bedroom/living area/ kitchen, and a private bathroom.

2. One-bedroom units, if provided, shall have one private bedroom, one private bathroom, private living areas and a private kitchen.

3. Two-bedroom units, if provided, shall have two private bedrooms, two private bathrooms, common living areas and a common kitchen.

f. Dwelling units shall not have separate individual mailing addresses. Rather, the rehabilitation facility shall maintain one master address which all residents shall reside under during their stay at the rehabilitation facility.

g. Rehabilitation facilities must be equipped with a controlled space, effectively screened from public view, for arrivals and departures of patients. This space shall be large enough to accommodate an ambulance for transporting patients in and out of the facility.

h. Rehabilitation facilities shall be surrounded on all sides by a fence or wall located as close to the property lines as is practical. The fence or wall shall be a minimum of six feet in height but may be as high as ten feet, measured from finished grade, in order to ensure privacy for both rehabilitation facility patients and for village residents. The fence or wall shall be constructed in such a manner as to complement and accentuate the principal structures of the rehabilitation facility. Both the interior and exterior sides of the fence or wall shall be landscaped in accordance with the principles set forth at section 22-84 of the Village Code of Ordinances. If a fence, wall or hedge is located on a corner lot or a double frontage lot, a vehicular and pedestrian visibility triangle of a size and dimension which complies with current traffic engineering standards of the American Association of State Highway and Transportation Officials (AASHTO) and the county shall be provided in both directions from the intersection point of the property lines.

i. The rehabilitation facility shall include a backup generator system. The system shall be sized for the building occupancy load and have a fuel source sufficient to operate the facility for a minimum of seven days.

j. The rehabilitation facility shall by separate agreement guarantee payment to the primary fire rescue provider for patient ambulance transport service.

k. In conjunction with the application for special exception use, the rehabilitation facility shall submit a security plan that includes patient off-site visits. The security plan shall be approved by the village council with input from the chief of police.

~~l. Reserved. The rehabilitation facility shall, through its legal counsel or corporate officers, submit monthly reports to the village's community development director no later than the 15th day of the month, that establish and document the previous month's compliance with all rehabilitation facility funding requirements as well as occupancy and treatment requirements and restrictions, with an emphasis on the ratio of the number of patients receiving outpatient treatment to the number of patients receiving short term and extended care services. Additionally, the rehabilitation facility shall provide the village manager with an annual independent audit documenting compliance with those requirements and restrictions during the previous calendar year, no later than June 30 of each year.~~

m. In conjunction with the application for special exception use, the village may, at its discretion, secure an impact analysis study, performed by an independent entity, detailing the proposed rehabilitation facility's projected community wide impacts. This study, if prepared, shall specifically address the rehabilitation facility's potential economic impact to the village, the creation and continuation of jobs, the potential impact on law enforcement and criminal activity, and the potential impact on the village's emergency medical resources. In addition, the study should address the proposed rehabilitation facility's impact on the quality of life for neighboring properties and the village as a whole.

n. In conjunction with the application for a business tax receipt and the annual renewal thereof, a rehabilitation facility shall submit to the village, in the form of a sworn affidavit by the rehabilitation facility's legal representative who is authorized to do so, written documentation that the rehabilitation facility is in compliance with all requirements of this section as well as the definitional requirements of section 78-4. Should the rehabilitation facility's business tax receipt be issued based upon a false affidavit, the village may seek



to impose all penalties allowed by law, pursuant to chapter 70, article II of the village code of ordinances.

o. Should the rehabilitation facility at any time violate any of the requirements of this section or any of the definitional requirements of section 78-4, the village may obtain relief through the code enforcement special magistrate process pursuant to chapter 2, article IV of the village code of ordinances. For purposes of the code enforcement special magistrate process, each day that the rehabilitation facility is found to be in violation shall be considered a separate offense. In addition to the code enforcement special magistrate process, the village may seek any and all relief available to it by law or in equity, including, but not limited to injunctive relief, recovery of money damages, or both.

**Section 3:** Each and every other Section and Subsection of Chapter 78. Zoning. shall remain in full force and effect as previously adopted.

**Section 4:** All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

**Section 5:** Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

**Section 6:** Specific authority is hereby granted to codify this Ordinance.

**Section 7:** This Ordinance shall take effect immediately upon passage.