

ORDINANCE NO. 01-2024

**AN ORDINANCE OF THE CITY OF ELIZABETHTOWN, KENTUCKY
PROMOTING PUBLIC HEALTH IN THE REQUIREMENT OF
CERTIFICATION OF RECOVERY RESIDENCES PROVIDING
TREATMENT FOR ALCOHOL AND OTHER DRUG ABUSE**

WHEREAS, the City of Elizabethtown (City), acknowledges the need for effective recovery residences to address drug and alcohol abuse as part of a comprehensive addiction recovery services in the City; and

WHEREAS, the lack of minimum operating standards or regulations relating to recovery residences, recovery homes, sober living residences, alcohol, illicit drugs, and other intoxicating substance – free homes for unrelated individuals have created an environment for some operators of such facilities to take advantage of persons in need of such recovery services; and

WHEREAS, over one hundred such recovery residences currently exist within the City, generating complaints by occupants or family members, neighbors, law enforcement and the general recovery community; and

WHEREAS, Section 156b of the Constitution of Kentucky is the enabling constitutional permission for the Kentucky General Assembly to afford cities the power to pass laws which are “in furtherance of a public purpose” and the General Assembly has duly enacted KRS 82.082 generally known as the “Home Rule” authority to cities to promote the health, safety, morals, or general welfare of the people; and

WHEREAS, the Kentucky General Assembly duly enacted KRS 222.500 to 222.510 effective June 29, 2023, providing for a certification program for recovery residences and specifically providing in KRS 222.510 a local government’s authority to regulate the use of property.

NOW THEREFORE BE IT ORDAINED BY THE ELIZABETHTOWN CITY COUNCIL AS FOLLOWS:

A. DEFINITIONS as used in this Ordinance shall have the following meaning:

(1) “Cabinet” means the Kentucky Cabinet for Health and Family Services;

(2) “Certifying organization” means:

(a) The Kentucky Recovery Housing Network;

(b) The National Alliance for Recovery Residences;

(c) Oxford House, Inc.; and

(d) Any other organization that develops and administers professional certification programs requiring minimum standards for the operation of recovery residences that has been recognized and approved by the Cabinet for Health and Family Services;

(3) “Local government” means a city, county, urban-county government, consolidated local government, charter county government, or unified local government;

(4) “Medication for addiction treatment” means the use of pharmacological agents approved by the United States Food and Drug Administration for the treatment of substance use disorders in combination with

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counseling and other behavioral health therapies to provide a whole-patient approach to the treatment of substance use disorders;

(5) "Recovery residence" means any premises, place, or building that:

(a) Holds itself out as a recovery residence, recovery home, sober living residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances;

(b) Provides a housing arrangement for a group of unrelated individuals who are recovering from substance use disorders or to a group of parents who are recovering from a substance use disorder and their children, including peer-to-peer supervision models; and

(c) Is not licensed or otherwise approved by the Cabinet or any other agency of state government to provide any medical, clinical, behavioral health, or substance use treatment service for which a license or other approval is required under state law;

(6) "Recovery support services":

(a) Means activities that are directed primarily toward recovery from substance use disorders and includes but is not limited to mutual aid self-help meetings, recovery coaching, spiritual coaching, group support, and assistance in achieving and retaining gainful employment; and

(b) Does not include any medical, clinical, behavioral health, or other substance use treatment service for which a license or other approval is required under state law.

B. CERTIFICATIONS REQUIRED

(1) (a) Effective March 15, 2024, no individual or entity shall, except as provided in subsection (2) of this section, establish, operate, or maintain a recovery residence, recovery home, sober living residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances or represent, promote, advertise, or otherwise claim to operate a recovery residence, recovery home, sober living residence, alcohol, illicit drug, and other intoxicating substance-free home for unrelated individuals, or any other similarly named or identified residence that promotes substance use disorder recovery through abstinence from intoxicating substances unless that individual or entity has:

1. Been certified by a certifying organization; and

2. Provided proof of certification by a certifying organization to the City in a form and manner prescribed by the City.

(b) The provisions of this subsection shall not apply to:

1. A recovery residence that is recognized as a part of the Recovery Kentucky Program administered by the Kentucky Housing Corporation; or

2. A recovery residence that is:

a. Owned or operated by an entity that is exempt, in part or in whole, pursuant to 42 U.S.C. sec. 3607 or 12187 from compliance with the Americans with

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Disabilities Act, Pub. L. No. 101-336, or the Fair Housing Act, Pub. L. No. 100-430;
and

b. Affiliated with a religious institution that is organized under 26 U.S.C. sec. 501(c) for charitable religious purposes; unless the recovery residence accepts Medicare or Medicaid funds.

(2) Notwithstanding subsection (1) of this section:

(a) A recovery residence operating without certification from a certifying organization on March 15, 2024, shall be permitted to continue to operate until June 30, 2024, if the recovery residence provides the City with proof that it initiated a certification process with a certifying organization prior to March 15, 2024; and

(b) A recovery residence that seeks to begin operating after March 15, 2024, may be permitted by the City to operate for a period of not more than six (6) months if the recovery residence provides the City with proof that it has initiated a certification process with a certifying organization.

C. POWERS AND DUTIES OF THE CITY:

(1) The City shall:

- (a) Require certified recovery residences to provide proof of certification at least annually;
- (b) Require certified recovery residences to notify the City of any change in their certification status, including but not limited to a suspension or revocation of certification by a certifying organization;
- (c) Require separate proof of certification for each recovery residence owned or operated by an individual or entity in the City;
- (d) Post on its website the name, telephone number, and location by local jurisdiction of each certified recovery residence and shall update the list at least quarterly;
- (e) Post on its website the name of each certifying organization approved by the City; and
- (f) Notify the Cabinet of receipt of proof of certification from a recovery residence within thirty (30) days of receipt of proof of certification; and
- (g) Require certified recovery residences to obtain and maintain a City Business License.

(2) The City may:

- (a) In lieu of posting the information required by subsection (1)(d) of this section to its website, post a link to another website that aggregates information on certified recovery residences or other information providers; and
- (b) Promulgate administrative regulations or policies to carry out the provisions of this Ordinance by Executive Order approved by the City Attorney to carry out the provisions of this Ordinance.

(3) The Recovery Residence Compliance Official or the City Code Enforcement Board are hereby granted the authority and legal standing necessary to initiate appropriate legal action to compel a recovery residence that is operating in violation of this Ordinance to cease operating.

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D. REQUIREMENTS FOR RECOVERY RESIDENCES:

(1) A recovery residence shall:

(a) Clearly disclose the following by inclusion in any advertising and by posting such a notice in a conspicuous location inside the residence:

1. Notice that the recovery residence is not a treatment facility;
2. A list of services offered by the recovery residence; and
3. If the recovery residence is exempt from certification pursuant to B.(1)(b) herein, notice that the recovery residence is exempt from certification requirements;

(b) Require residents to abstain from the use of alcohol, illicit drugs, and other intoxicating substances;

(c) Require residents to participate in recovery support services including through a peer-to-peer supervision model; and

(d) Allow individuals who are receiving medication for addiction treatment to continue to receive such treatment while residing in the recovery residence as directed by a licensed prescriber.

(2) A recovery residence shall not, except as permitted under paragraph (b) of subsection (3) of this section, directly provide any medical or clinical services including on-site medication administration.

(3) (a) The requirement that residents abstain from the use of intoxicating substances established in subsection (1)(b) of this section shall not apply to any legally prescribed medication when used by a resident as directed by a licensed prescriber.

(b) Subsection (1)(d) of this section shall not apply to any recovery residence owned or operated by an entity that is exempted, in part or in whole, pursuant to 42 U.S.C. sec. 3607 or 12187 from compliance with the Americans with Disabilities Act, Pub. L. No. 101-336, or the Fair Housing Act, Pub. L. No. 100-430.

(c) The prohibition on the provision of medical and clinical services established in subsection (2) of this section shall not apply to:

1. The self-administration of prescribed medications by a resident as directed by a licensed prescriber within his or her scope of practice;
2. Verification of abstinence from the use of alcohol, illicit drugs, and other intoxicating substances; or
3. The provision of medical and clinical services, including telehealth services and other in-residence services, to an individual residing in a recovery residence by a licensed medical or behavioral health provider provided that:
 - a. The licensed provider is not employed or contracted by the recovery residence;
 - b. The recovery residence has not required or otherwise induced a resident to receive services from a specific provider; and

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c. The licensed provider and the recovery residence shall each, as applicable, comply with 18 U.S.C. sec. 220, 42 U.S.C. sec. 1320a-7b(b), and 42 U.S.C. sec. 1395nn and any amendments thereto.

(4) A recovery residence shall allow entry by the Recovery Residence Compliance Officer or any designee at all reasonable times to conduct inspections and duties under this Ordinance.

E. ADMINISTRATION, ENFORCEMENT AND PENALTIES:

(1) General. The Recovery Residence Compliance Officer (Compliance Officer) shall be appointed by the Mayor and is hereby authorized to exercise peace officer powers. The Compliance Officer is hereby authorized and directed to enforce the provisions of this Ordinance. In accordance with the prescribed procedures of the City and with the concurrence of the Mayor, the Compliance Officer shall have the authority to designate staff members of other City departments. Such employees shall have powers as delegated by the Compliance Officer with the concurrence of the Mayor. The Compliance Officer, member of the Code Enforcement Board or employee charged with the enforcement of this Ordinance, while acting for the City, in good faith and without malice in the discharge of the duties required by this Ordinance or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by the legal representative of the City until final termination of the proceedings. The Compliance Officer or his or her designee shall not be liable for cost in an action, suit or proceeding that is instituted in pursuance of the provisions of this Ordinance.

(2) Interpretations. The Compliance Officer shall have the authority to render interpretations of this Ordinance and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Ordinance and KRS 222.500 to 222.510 as may be amended. Any such interpretation of this Ordinance by the Compliance Officer shall be subject to review/appeal to the Code Enforcement Board.

(3) Right of Entry. The Compliance Officer or his or her designee shall make all of the required inspections or shall accept reports of inspections by approved agencies or individuals to ensure compliance with this Ordinance and all other applicable City ordinances, to include property maintenance codes, building codes, or fire codes. The Compliance Officer or his or her designee shall carry proper identification when inspecting structures or premises in the performance of duties under this Ordinance. If entry is refused, the Compliance Officer or his or her designee shall have recourse to the remedies provided by law to secure entry.

(4) Notices, Citations and Orders. The Compliance Officer or his or her designee shall issue all necessary notices, citations, or orders to ensure compliance with this Ordinance. All notices shall be sent by regular mail to the property owner and posted on the recovery residence. The records of the Hardin County Property Valuation Administrator or City Business License shall be proof of ownership.

(5) Records. The Compliance Officer or his or her designee shall keep official records of all business and activities specified in the provisions of this Ordinance. Such records shall be retained in the official records for the period required for retention of public records.

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(6) Violations.

(a) **Unlawful Acts.** It shall be unlawful for any person, firm, corporation or other legal entity who is the owner(s) of real property in the City as of the date of any notice, citation or order to be in conflict with or in violation of any provision of this Ordinance or KRS 222.500 to 222.510 as may be amended. It is the intention of the City to exercise all legal authority and standing to initiate appropriate compliance activity to compel a recovery residence that is operating in violation of this Ordinance or KRS 222.500 to 222.510 as may be amended, to cease operating as provided in KRS 222.504.

(b) **Notice of violation.** The Compliance Officer or his or her designee shall serve a notice of violation or order in accordance with this Ordinance.

(c) **Prosecution of violation.** Any person failing to comply with a notice of violation or order served in accordance this Ordinance shall be deemed guilty of a misdemeanor or civil infraction or violation as determined by the City or the Code Enforcement Board consistent with state law, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the Compliance Officer or his or her designee shall institute the appropriate proceeding at law or in equity, including, but not limited to, the issuance of a citation, to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Ordinance or of the order or direction made pursuant thereto. Any action taken by the City on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

(d) **Violation penalties.** Any person, who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(e) **Abatement of violation.** The imposition of the penalties herein prescribed shall not preclude the City Attorney from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure, or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

(f) **Notice to person responsible.** Whenever the Compliance Officer or his or her designee determines that there has been a violation of this Ordinance or KRS 222.500 to 222.510 as may be amended or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in divisions (g) and (h) below to the owner(s) or person responsible for the violation as specified in this Ordinance or KRS 222.500 to 222.510 as may be amended. Records by the Hardin County Property Valuation Administrator may be relied upon to determine the identity and address of said owner.

(g) **Form.** Such notice prescribed in division (f) above shall be in accordance with all of the following:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification (address);
- (3) Include a statement of the violation or violations and why the notice is being issued;

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- (4) May include a correction order allowing a reasonable time to make the required compliance activity to bring the premises into compliance with the provisions of this Ordinance; and
- (5) Include a statement of the City's right to issue a citation and/or to file a lien in accordance with of this Ordinance and applicable law.
- (h) Method of service. Such notice shall be deemed to be properly served if a copy thereof is:
- (1) Delivered personally;
 - (2) Sent by electronic email;
 - (3) Sent by regular, first-class mail addressed to the owner of record at the last known address as noted in division (f) above; or
 - (4) Posted in a conspicuous place in or about the structure or premises affected by such notice and then mailing a copy by regular, first-class mail to the owner of record at the last known address as noted in division (f) above.
- (i) Unauthorized tampering. Notices, signs, tags or seals posted or affixed by the Compliance Officer or his or her designee shall not be mutilated, destroyed or tampered with, or removed without authorization from the Compliance Officer or his or her designee.
- (j) Transfer of ownership. It shall be unlawful for the owner of any recovery residence or structure or premises who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure or premises to another owner until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Enforcement Official or his or her designee or the Code Enforcement Board and shall furnish to the Enforcement Official or his or her designee a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.
- (k) Penalty. Any owner(s) operating a recovery residence who fails to furnish any such data, statistics, schedules, or information as required herein, or who files fraudulent returns thereof shall be subject to a fine of not more than five hundred dollars (\$500.00) per day for each day of such non-compliance. Whoever knowingly owns, establishes or maintains a recovery residence without a valid license granted pursuant to this Ordinance or KRS 222.500 to 222.510 as may be amended shall, for the first offense, be subject to a fine of not more than five hundred dollars (\$500.00) for each day of non-compliance and for each subsequent offense by a property owner(s) at the same or different property location by a fine of not more than one thousand dollars (\$1,000.00) per day for each day of non-compliance. The penalty herein is in addition to any other penalty imposed by Federal, Kentucky or City law. It shall be unlawful for any person to violate or fail to comply with any provision of this Ordinance and when no specific penalty is provided, the violation of any provision of this Ordinance shall be deemed a civil violation and shall be punishable by a fine not more than five hundred dollars (\$500.00) per day for each day of violation; provided that, the fine

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for an violation under this Ordinance shall not be less than or greater than, the fine imposed by any state statute for the same violation.

(l) Appeal. Any person directly affected by a decision of the Compliance Officer or his or her designee or a notice or order or citation issued under this Ordinance shall have the right to appeal to the Code Enforcement Board, after the issuance of a citation. An application for appeal shall be based on a claim that the true intent of this Ordinance or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Ordinance do not fully apply, or the requirements of this Ordinance are adequately satisfied by other means. All decisions of the Code Enforcement Board shall become final unless appealed to the Hardin District Court within thirty (30) days of issuance.

F. MISCELLANEOUS.

(1) The facts and recitations set out in the recitals of this Ordinance are adopted and incorporated as a part hereof, and the terms defined in the recitals shall have the same meanings when used herein.

(2) All Ordinances, Orders, Resolutions and Policies, or portions thereof, in conflict with this Ordinance are hereby repealed.

(3) If any part of this Ordinance be held unconstitutional or unenforceable, the remaining parts shall remain in force.

BE IT FURTHER ORDAINED the Mayor of the City of Elizabethtown and/or his designee is authorized and directed to take all steps necessary to perfect this Ordinance.

BE IT FURTHER ORDAINED this Ordinance be published in summary form.

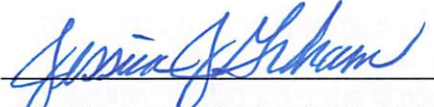
READ the first time this 8TH day of January, 2024.

READ, ADOPTED & APPROVED, this 16th day of January, 2024.

PUBLISHED January 26, 2024.


MAYOR JEFFREY H. GREGORY

ATTESTED TO:


JESSICA J. GRAHAM, CITY CLERK