


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and
Members of the City Commission
Jimmy L. Morales, City Manager

FROM: Raul J. Aguila, City Attorney 

DATE: October 31, 2017

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONCILIATION AGREEMENT/VOLUNTARY COMPLIANCE AGREEMENT BETWEEN THE CITY AND NORMANDY LIVING, LLC, IN THE MATTERS ENTITLED: (1) NORMANDY LIVING, LLC V. CITY OF MIAMI BEACH UNDER UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) UNDER CASE NUMBERS: 04-17-7816-8; 04-17-7816-4 AND 04-17-7816-9; AND (2) NORMANDY LIVING, LLC, V. THE CITY OF MIAMI BEACH, ET AL., UNDER CASE NO.: 17-2060-CA-10; CURRENTLY PENDING IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.**

BACKGROUND

On May 4, 2016, Normandy Living, LLC ("Normandy Living") filed an Application with the City to modify an existing conditional use permit ("CUP") to allow it operate an adult congregate living facility ("ACLF" or "ALF") at 1904 Marseille Drive and 7100 Rue Granville, and to expand the use onto 1915 Normandy Drive in Miami Beach, Florida (the "Property"). The proposed ALCF was actually a "detox" facility use, which facility is used as the first step in coming off of narcotics or alcohol. The intended use would be for the first 4 to 14 days of a person addicted to drugs or alcohol detoxify at the above location.

On August 31, 2016, the City issued an Administrative and Jurisdictional Determination ("Determination") as to Normandy Living's Application, and found that it did not meet the City's definition of an ALCF. Normandy Living appealed the City's Determination to the

Planning Board, which upheld the findings contained in the Determination that it did not meet the City's definition of an ACLF. After the Planning Board upheld the City's Determination, Normandy Living initiated a related civil action styled *Normandy Living, LLC, v. The City of Miami Beach, et al.*, Case No.: 17-2060-CA-10, in the Eleventh Judicial Circuit in and for Miami Dade County, Florida.

Normandy Living's Complaint alleges monetary damages against the City, the Planning Board, and individual members of the administration due to the decision that the use proposed for the Property, did not meet the City's definition for an Adult Congregate Living Facility (ACLF). Normandy Living argues that the City, and individual employees, should be estopped from allowing the use and should be required to pay monetary damages.

Subsequent to the filing of the above circuit court action, on April 17, 2017, Normandy Living also filed a separate complaint with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice. Normandy Living alleges, based upon the foregoing history, that the City discriminated against it under the Fair Housing Act, Rehabilitation Act, Housing and Community Development Act, and the American with Disabilities Act.

Specifically, Normandy Living alleges the City discriminated against it as it relates to failing to make a reasonable accommodation for dwelling purposes, to persons with a disability (persons withdrawing from drug or alcohol addictions). Normandy Living also alleges the City has discriminated in its application of zoning laws and, in particular, by the Planning Director finding that the conditional use permit application filed by Normandy Living for a detox center was not an ACLF. Moreover, Normandy Living alleges that the Planning Board discriminated against it for the same purposes, by rejecting their appeal of the Planning Director's determination.

Without admitting fault, liability, or responsibility for Normandy Living's alleged damages, the City Attorney's Office believes it would be in the City's best interest to voluntarily settle this controversy and resolve this matter without the necessity of an evidentiary hearing or other judicial process available under the laws cited above. The federal claims against the City are not covered by Section 768.28, Florida Statutes, which statute would have limited the City's exposure to liability to \$200,000, per claim, per person, for certain state law torts. As this sovereign immunity limitation is unavailable to the City, the City's exposure to liability may be unlimited. Normandy Living issued a demand letter to U.S. HUD seeking \$29,000,000, plus attorney's fees. This claim was exclusive of the damages sought in the civil action. Additionally, a finding of a violation of federal law could put the City's federal grant funding at risk (the City would be required to return the federal funds). In addition to the pending HUD complaint possible federal enforcement suit, or federal civil suit, the state court action raised allegations that would expose the City to potential lost profits damages and extensive discovery and depositions disrupting the operations of the City. The City faces extensive litigation costs associated with defending both the federal action and the circuit court action. Finally, more cases in Florida have settled or had judgments entered far in excess to the proposed settlement with similar issues of fact and law.

On September 25, 2017, and October 18, 2017, the Mayor and City Commission held Closed Attorney-Client Sessions and discussed litigation strategy and settlement. Pursuant to those discussions, parties have entered into a tentative settlement, subject to approval by the Mayor and City Commission and US HUD, which settlement agreement is memorialized in the Conciliation Agreement/Voluntary Compliance Agreement attached as Exhibit 1 to the Resolution accompanying this Agenda item.

The material terms of the Conciliation Agreement are as follows:

1. With no admission of liability, the City is to pay Normandy Living, within 10 days from the effective date of the Agreement, \$500,000.
2. Dismissal of all Actions, with prejudice.
3. Normandy Living shall be required to dismiss, covenant, waive, and release all claims against the City, its boards, elected officials or employees; and agrees to indemnify and hold the City harmless for any claims thereafter.
4. The City is to provide to U.S. HUD a copy of the City's medical use ordinance, which is currently scheduled for first reading before the City Commission on October 31, 2017. The ordinance addresses the various medical uses that are permitted under state law but were never contemplated within the City's zoning code. HUD will review the draft ordinance to ensure compliance with federal law as it relates to "reasonable accommodation" and "disability". HUD may comment upon the ordinance and provide direction relating to same. HUD is aware that the ordinance is currently pending before the City Commission, and that second reading of the ordinance is anticipated for December 13, 2017.
5. Within six (6) months of the effective date, the City Attorney's office shall be required to provide the Planning Department with training on the Federal Fair Housing Act, Section 504 of the Rehabilitation Act, and Section 109 with a particular emphasis on reasonable accommodation and reasonable modifications. Training of Planning Department staff is tentatively scheduled for November 2, 2017.

RECOMMENDATION

Approval of the attached Resolution authorizing the Mayor and City Clerk to execute the attached Conciliation Agreement/Voluntary Compliance Agreement.