



City of Bunnell, Florida
Agenda Item No. 8

Document Date:	June 3, 2014	Amount:
Department:	Community Development and City Attorney	Account #:
Subject:	Ordinance 2014-XX Amending the Bunnell Code of Ordinances Chapter 14 Businesses regarding Rehabilitation Centers and Residential Prison Diversion Programs.	
Attachments: <i>Please number items as they will appear on the agenda.</i>	1. Proposed Ordinance.	
Agenda Section:	Old Business	
Summary/Highlights: Ordinance 2013-28 enacted a moratorium on rehabilitation centers and residential prison diversion programs. This is a request to amend the Bunnell Code of Ordinances Chapter 14 Businesses.		
Background: This item was heard at the March 18, 2014 meeting and continued to the April meeting. The April 15 th and May 20 th PZA meetings were cancelled. This item was re-advertised for this meeting. Based upon the discussion at the March 18 th meeting and collaboration with the City Attorney, the following changes have been made to the proposed ordinance: <ul style="list-style-type: none">• All references to residential treatment programs have been removed.• The definition for residential prison diversion programs has been revised.• The distance requirement between a single family residence and a residential prison diversion program was increased from 200 to 600 feet.• New location requirements were added. Residential prison diversion programs would be required to be at least 1000 feet from schools, child care facilities, public parks, public playgrounds, and public recreation centers.• Language was added to require reasonable safety measures be utilized or added to each facility.• Language was added to require the program keep documentation that any convicted sex offender living at the facility complies with the registration requirements in accordance with Florida Statutes. All changes to the proposed ordinance made by the PZA Board at the March 2014 meeting have been highlighted in yellow.		
Staff Recommendation: Approval of Ordinance 2014-XX Amending the Bunnell Code of Ordinances Chapter 14 Businesses regarding Rehabilitation Centers and Residential Prison Diversion Programs.		
City Attorney Review: The City Attorney has reviewed this revised ordinance.		
Finance Department Review/Recommendation:		

Approver Name:	Approval Status:	Date:
Patty Larkin, Finance Director		
Sandra Bolser, City Clerk		

<input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Tabled to: _____ <input type="checkbox"/> Continued Date: _____ <input type="checkbox"/> Failed <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Approved with Modifications: _____ <input type="checkbox"/> Other: _____
Motion made by: _____ Seconded by: _____	
Vote: _____	

ORDINANCE 2014-XX

AN ORDINANCE OF THE CITY OF BUNNELL, FLORIDA AMENDING THE BUNNELL CODE OF ORDINANCES CHAPTER 14 BUSINESSES, ARTICLE VII; RESCINDING THE MORATORIUM; PROVIDING REGULATIONS FOR THE LOCATION AND OPERATION OF RESIDENTIAL PRISON DIVERSION PROGRAMS; PROVIDING REQUIREMENTS FOR ISSUANCE OF RESIDENTIAL PRISON DIVERSION PROGRAM REGULATORY LICENSE; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes §166.01, the Municipal Home Rule Powers Act, authorizes cities to establish, co-ordinate and enforce the laws that are necessary for the protection of the public; and

WHEREAS, The City Charter provides the City with the authority to adopt regulations that are designed to promote the public health, safety and general welfare of its citizens; and

WHEREAS, Florida Statutes do not provide regulations for residential prison diversion programs; and

WHEREAS, the City enacted a 1 year moratorium for rehabilitation centers or residential prison diversion programs on November 25, 2013; and

WHEREAS, the Planning, Zoning and Appeals Board reviewed this Ordinance at its March 18, 2014 and _____ meeting and recommends adoption; and

WHEREAS, under its home rule authority the City of Bunnell can pass additional legislative enactments to further regulate rehabilitation centers or prison diversion programs as long as these additional regulations are not preempted in the law and are not inconsistent with statutory provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF BUNNELL:

Section 1.

The Bunnell Code of Ordinances, Chapter 14, Article VII, is hereby amended as follows:

Chapter 14, Article VII, ~~Rehabilitation Centers and~~ Residential Prison Diversion Programs

Sec. 14-141. Findings.

The Bunnell Land Development Code does not specifically provide a definition for, address the location of or provide other regulations for ~~rehabilitation centers or~~ residential prison diversion programs.

~~The impacts associated with allowing a rehabilitation center or residential prison diversion program to be located within the City of Bunnell are not known at this time. To grant special permission to allow one program to operate in any zoning district would create a precedent to allow similar programs to operate in other similar zoning districts throughout the entire city.~~

~~Regulation of rehabilitation centers or residential prison diversion programs requires further study on the potential impact of these types of facilities on the city and whether certain regulations would allow for the operation of these facilities while providing for the health, safety, and welfare of citizens and/or businesses existing in the city~~

The City contains 2.7% of the total population of Flagler County.

The City may adopt, pursuant to its police power, zoning ordinances and regulatory ordinances to protect the public health, welfare and safety that are consistent with the state and federal law, including the Fair Housing Act and the Fair Housing Act Amendments. The adoption of zoning ordinances, regulatory ordinances and land use planning are fundamental functions of local government.

Residential prison diversion programs are designed to provide services to people who have been convicted of a crime, and would have been sent to a correctional facility by a court of law because of that conviction, but have agreed to be court ordered to an alternative program to avoid being sent to a correctional facility. As a result, due to their status of meeting the criteria to be sent to a correctional facility, the people utilizing these programs may pose a danger to the safety of the community and any adjacent residents.

The fundamental precept of the City's Zoning Code provisions relative to residential zones is that individual dwelling units are intended for the occupancy and use of single-families. Accordingly, the City does not allow group residential uses such as boarding or rooming houses, dormitories, motels, and single-room occupancy hotels in residential zoning districts in the City because such uses are frequently transient and institutional in nature and differ in character and create impacts on residential neighborhoods from single house units.

The more on-site services a program offers, the less suitable the program is for a residential setting. With the addition of services, the use becomes more commercial in nature rather than a use that would be appropriate for a residential area. Additionally, the need for easy access to services makes these uses more appropriate for a commercial setting where these services would generally already be located.

The Florida Department of Corrections has reported that 37.3% of persons on parole will be returned to prison each year because they have either been convicted of new crimes or have violated

the conditions of their parole. Residences housing two or more prison diversion candidates or parolees may pose a danger to the safety of the community and adjacent residents, and the City does not intend to permit such uses in residential areas.

Sec. 14-142. Definitions.

For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings:

~~a. *Rehabilitation center.* A residence operated and maintained by a sponsoring private or governmental agency to provide rehabilitation or rehabilitation services to two or more unrelated residents progressing from a relatively intensive residential or treatment facility for behaviors resulting from crime, mental or emotional illness, alcoholism, drug addiction or other conditions requiring a structured environment to deal with such conditions with at least one supervisor living on premises with services being provided such as board, lodging, meals, supervision, controlled administration of medication, counseling, group sessions, therapy, education, job skill training and/or other treatment or services as needed.~~

~~b. *Residential Prison Diversion Program.* A residence operated and maintained by a sponsoring private or governmental agency to provide rehabilitation or rehabilitation services to two or more unrelated residents with at least one supervisor living on-premises, wherein one or more of the residents has been placed in the program via court order or such placement is voluntarily requested by the resident, for the purpose of or with the effect of avoiding being sentenced by a court of competent jurisdiction to confinement in~~ with services being provided such as board, lodging, meals, supervision, controlled administration of medication, counseling, group sessions, therapy, education, job skill training and/or other treatment or services as needed as a means to avoid being sentenced by a Court of Law to confinement in a County Jail, or a state Department of Corrections facility, federal corrections facility, or any other type of detention facility, and wherein the services being provided may include, but not be limited to, one or more of the following: board, lodging, meals, supervision, controlled administration of medication, counseling, group sessions, therapy, education, job skill training and other services as needed.

Sec. 14-143. Moratorium Locational Standards and Program limits.

~~Beginning on November 25, 2013, a moratorium shall exist for one year and expire on November 25, 2014, or sooner as provided herein, during which time the community development department shall not issue any new local business tax receipt to any person for the purpose of engaging in, operating, or managing a rehabilitation center or residential prison diversion program. The community development department is authorized to renew or transfer any local business tax receipt to any person for the purpose of engaging in or managing a rehabilitation center or residential prison diversion program existing on the effective date of this article. The moratorium shall expire upon the earlier of the following:~~

~~(1) On November 25, 2014, one year from the effective date of this article; or~~

~~(2) The effective date of an ordinance, adopted by the Bunnell City Commission, to address engaging in, operating, or managing a rehabilitation center; or residential prison diversion program; or~~

~~(3) At such time as the Bunnell City Commission receives a report from city staff on issues relating to the operation of rehabilitation centers or residential prison diversion program and votes by majority vote to repeal this moratorium.~~

a. Location. Residential prison diversion programs shall be allowed by special exception in the B-1, Business zoning district and by special exception in the L-1, Light Industrial zoning district.

b. Distance requirements.

1. No residential prison diversion program may operate within 1000 feet of any school or licensed child care facility.

2. No residential prison diversion program may operate within 1000 feet of any public park, public playground or public recreation center utilized by juveniles.

3. No residential prison diversion program may operate within 1000 feet of any other residential prison diversion program.

4. No residential prison diversion program may operate within 600 feet of a single family residence.

c. Parking. Parking requirements for residential prison diversion programs shall be in accordance with the city's Land Development Code regarding off-street parking and loading- homes for the aged, sanitariums, convalescent or nursing homes.

d. Program limits. No more than 6 residents may be housed at the program site at one time. This does not include the residential supervisor or awake staff provided as part of the program operations.

e. Property standards. Residential prison diversion programs shall meet the following property standards:

1. The facility shall abide by all fire safety codes for group home living.

2. The facility shall provide a full kitchen.

3. The facility shall provide each resident with adequate personal storage and living space.

4. The facility shall have one sink, one toilet, and one shower for every four people who reside at the facility.

5. The facility shall have laundry services available on-site.

6. The facility shall provide any necessary safety or security measures needed to provide for the safety of the residents and residents on adjacent properties. This may include but is not limited to installing outdoor security lighting, installing an alarm system or security system, or any other reasonable security measure.

f. Good Neighbor standards. Residential prison diversion programs shall provide neighbors to the facility with contact information for the designated person who will address all neighbor complaints even if it is not possible to resolve the issue.

Sec. 14-144. Staff Report Application and Residential Prison Diversion Program Regulatory License.

~~This moratorium has been established for the minimum time period necessary for city staff to analyze the effects of rehabilitation centers or residential prison diversion programs in the city; analyze the criteria for additional standards needed, if any, under the zoning and land use development regulations in connection with the issuance of any development permits, business licenses, or approvals for rehabilitation centers or residential prison diversion programs within the city; analyze any new laws regarding rehabilitation centers or residential prison diversion programs enacted by the Florida Legislature; assess other public health, safety and welfare issues that are associated with location or operation of rehabilitation centers or residential prison diversion programs; and, to make recommendations to the Bunnell City Commission regarding whether there is a need to enact an ordinance regulating rehabilitation centers or residential prison diversion programs so as to better promote the health, safety and general welfare of the citizens of the city. City staff is directed to provide a report to the Bunnell City Commission of its findings and recommendations no later than October 31, 2014.~~

a. Application. No person, private agency or governmental agency shall operate a residential prison diversion program for use by the general public without first obtaining a residential prison diversion program regulatory license. A person desiring to apply for such a regulatory license shall make an application in writing on a form prescribed by the city manager, or designee.

1. The application shall include the following:

(a) A written statement that the person, private agency or governmental agency will take reasonable safety precautions to provide for the safety of the citizens living next to and around the program site.

(b) A copy of any applicable state license(s) and/or documentation that the program has been contracted by an appropriate state agency to provide such services.

(c) Copies of the licenses issued by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling or other professional licensing board for any mental health counselors, social workers, marriage and family therapists, or other licensed professional providing services to the residents at the facility.

(d) Documentation that the program meets all required standards as listed in section 14-143.

b. Residential Prison Diversion Program Regulatory License Issuance. As a prerequisite to the issuance of a residential prison diversion program regulatory license, an inspection shall be made of the premises by the fire inspector and/or the police chief.

c. Number of Residential Prison Diversion Program Regulatory Licenses issued within the City.

The number of residential prison diversion program regulatory licenses issued within the City of Bunnell shall be limited based upon the population of Bunnell. The existence of the total number of residential prison diversion programs shall be limited utilizing the formula of one such program per 1500 citizens living within the City of Bunnell.

Sec. 14-145. Operations and Records.

Each residential prison diversion program shall conform to the following operational and record keeping requirements:

- a. Each program, regardless of whether it is licensed under this article, shall create, establish and maintain a record of all workers of the business. The record shall contain the worker's full legal name and any aliases and all past or current aliases of the worker; his or her date of birth; his or her residential address; his or her telephone number (if any) and all pager numbers and other similar numbers used; his or her driver's license number and a photocopy of the license; his or her state or federally issued identification card number including the workers social security account number; the employment status of the worker including, but not limited to, whether the worker is a salaried employee, an independent contractor, a lessee, a sub-lessee, a subcontractor allowed to work at the establishment, or such other arrangement as may be in place; and a recent photograph of the worker as of the date of association with the business which accurately reflects the date on which the photograph was taken.
- b. The residential prison diversion program regulatory license holder or other designee shall be responsible for ensuring that all staff have the appropriate licenses and training required to perform the work at the program. Documentation shall be kept in the worker file.
- c. The residential prison diversion program regulatory license holder or other designee shall ensure that any resident who is required to register as a sex offender complies with the requirements of registration in accordance with 943.0435 F.S. and keep documentation of registration in the program records.

Section 2. Implementing Administrative Actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules. All development orders shall be issued in a manner consistent with controlling law and rendered in appealable form with the City Clerk. Denials of development approvals shall be issued in accordance with controlling law to include, but not be limited to, Section 166.033, *Florida Statutes*.

Section 3. Codification.

The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Bunnell Code of Ordinance* and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 2, 3, 4, 5, and 6 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

Section 4. Conflicts.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 5. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon enactment.

First Reading: approved on this _____ day of _____ 2014.

Second Reading: adopted on this _____ day of _____ 2014.

CITY COMMISSION, City of Bunnell, Florida.

By: _____
Catherine D. Robinson, Mayor

Approved for form and content by:

Wade Vose, City Attorney

Attest:

Sandra Bolser, City Clerk

Seal: