

**SUMMARY OF ZONING DISTRICT REQUIREMENTS IN WISCONSIN STATUTES FOR  
 COMMUNITY LIVING ARRANGEMENTS AND SIMILAR HOUSING<sup>a</sup>**

Use	One- or Two-Family Residential Districts	Three- or More Family (Multi-Family) Residential Districts
Community Living Arrangement for Eight or Fewer Persons <sup>b,c</sup>	Permitted Principal Use	Permitted Principal Use
Community Living Arrangement for Nine to 15 Persons <sup>b,c</sup>	Conditional Use	Permitted Principal Use
Community Living Arrangement for 16 or More Persons <sup>b,c</sup>	Conditional Use	Conditional Use
Adult Family Home <sup>d</sup>	Permitted Principal Use	Permitted Principal Use
Foster Home <sup>d</sup>	Permitted Principal Use	Permitted Principal Use
Nursing Home	-- <sup>e</sup>	-- <sup>e</sup>
Residential Care Apartment Complex (RCAC)	-- <sup>e</sup>	-- <sup>e</sup>

NOTE: Refer to the attached lists of definitions and locational requirements for additional information.

<sup>a</sup>Citations are based on the Wisconsin Statutes published on January 1, 2015 (updated through 2013 Wisconsin Act 380).

<sup>b</sup>Community Living Arrangements (CLAs) are permitted in each local government without restriction as to the number of facilities, so long as the total capacity of such facilities does not exceed the greater of 25 residents or 1 percent of the population of the local government or an individual aldermanic district. The local government may grant an exception to this requirement upon request. Also see exceptions under Section 62.23(7)(i)(2m) of the Statutes.

<sup>c</sup>Community Living Arrangements include Community-Based Residential Facilities (CBRFs), group homes for children, and residential care centers for children and youth.

<sup>d</sup>The community-wide capacity limits for Community Living Arrangements do not apply to Adult Family Homes or Foster Homes if the foster home is the primary residence of the foster parent.

<sup>e</sup>There are no requirements in the Statutes that Nursing Homes or Residential Care Apartment Complexes (RCACs) be permitted in residential zoning districts.

Source: SEWRPC

# Statutory Requirements for Community Living Arrangements and Similar Housing

## Definitions and Location Requirements<sup>1</sup>

*(Note: All Section numbers refer to the Wisconsin Statutes.)*

### DEFINITIONS

1. **Adult Family Home** (Section 50.01 (1)):
  - (a) A private residence providing care and maintenance above the level of room and board, but not nursing care, by a care provider whose primary domicile is the residence, for three or four unrelated adults; or more than four adult siblings, each with a developmental disability; or, if the home is licensed as a foster home (see definition), care and maintenance provided to children, provided there are no more than four unrelated adults and children, or any number of children and adults if all of the children or all of the adults are siblings.
  - (b) A private residence providing care and maintenance above the level of room and board, and up to seven hours of nursing care per week per person, for three or four adults not related to the operator.
  
2. **Community-Based Residential Facility (CBRF)** (Section 50.01 (1g)) (also referred to as a Community Living Arrangement for Adults):
  - (a) A place providing care and maintenance, and up to three hours of intermediate nursing care per week per person, to five or more adults not related to the care provider or facility administrator.
  - (b) CBRFs do not include convents, facilities for victims of domestic abuse, shelters, specified lodging places/rooming houses, adult family homes (see definition), a residential care apartment complex (see definition), or a private residence that is the home to adults who independently arrange for and receive care, treatment, or services for themselves from a person or agency that has no authority to exercise direction or control over the residence.
  
3. **Community Living Arrangement (CLA)**:
  - (a) A **Community Living Arrangement for Adults**, defined in Section 46.03(22), cross-references and has the same meaning as a CBRF, defined in Section 50.01 (1g).
  - (b) A **Community Living Arrangement for Children**, defined in Section 48.743(1), is a “residential care center for children and youth” or a “group home.”
    - (1) A “group home,” defined in Section 48.02(7), is a facility licensed under Section 48.625 for the care and maintenance of five to eight children.
    - (2) A “residential care center for children and youth,” defined in Section 48.02(15d), is a facility operated by a child welfare agency licensed under Section 48.60 for the care of four or more children at any one time for more than 75 days in any consecutive 12-month period. A residential care center does not include a licensed foster home (see definition) or a licensed group home (see definition).

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<sup>1</sup> Citations are based on the Wisconsin Statutes published on January 1, 2015 (updated through 2013 Wisconsin Act 380).

4. **Foster Home** (Section 48.02 (6)):  
A facility operated by a person licensed under Section 48.62(1) that provides care and maintenance for no more than four children, or, if necessary to keep siblings together, up to six siblings.
5. **Nursing Home** (Section 50.01 (3)):  
  - (a) A place providing care and maintenance to five or more adults not related to the care provider or facility administrator, and who require access to 24-hour nursing services.
  - (b) “Nursing Homes” do not include convents, hospices, or RCACs (see definition).
6. **Residential Care Apartment Complex (RCAC)** (Section 50.01 (6d)):  
  - (a) A place where five or more adults reside that consists of independent apartments with lockable entrances and exits and individual kitchens, bathrooms, sleeping and living areas, which provides up to 28 hours a week of supportive, personal, and nursing services.
  - (b) RCACs do not include nursing homes or CBRFs, but may be physically part of a structure that includes a CBRF or nursing home.

## LOCATION REQUIREMENTS

Section 62.23(7)(i) of the Wisconsin Statutes requires that Community Living Arrangements for Adults (or CBRF), Community Living Arrangements for Children, Foster Homes, and Adult Family Homes located in cities<sup>2</sup> meet the following requirements:<sup>3</sup>

1. Section 62.23(7)(i)(2): CLAs shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such facilities does not exceed the greater of 25 residents or 1 percent of the population of the city or in an aldermanic district. The city may grant an exception to this requirement, at the city’s discretion, upon request. Also see exceptions under Section 62.23(7)(i)(2m).
2. Section 62.23(7)(i)(2m): A foster home that is the primary domicile of a foster parent and an adult family home (both defined above) shall be a permitted use in all residential zoning districts and are not subject to the capacity limits in Section 62.23(7)(i)(2). Foster homes operated by corporations, child welfare agencies, churches, associations, and public agencies are subject to the capacity limits.

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<sup>2</sup> Under Section 61.35, the requirements of Section 62.23 also apply to villages. The requirements of Section 62.23 also apply to towns that have adopted village powers.

<sup>3</sup> Although Section 62.23(7)(i)(1) and 62.23(7)(i)(2r)(a) impose a 2,500 foot spacing requirement between community living arrangements and adult family homes, this requirement has been found to be a violation of the Federal Fair Housing Act in several court decisions (“K” Care v. Town of Lac du Flambeau, 1993; U.S. v. Village of Marshall, 1992; and Oconomowoc Residential Programs v. City of Greenfield, 1998). References to these decisions are included in the citations at the end of Section 62.23 in the Wisconsin Statutes.

3. Section 62.23(7)(i)(2r)(b): An adult family home must be permitted in any residential zoning district, is not subject to the capacity limits in Section 62.23(7)(i)(2), and is exempt from the annual review requirements in Section 62.23(7)(i)(9).
4. Section 62.23(7)(i)(3): CLAs with a capacity for eight or fewer persons that meet the capacity limits in Section 62.23(7)(i)(2) and are licensed by the State may locate in any residential zoning district without any special zoning permission<sup>4</sup> other than the annual review requirements of Section 62.23(7)(i)(9).
5. Section 62.23(7)(i)(4): CLAs with a capacity for nine to 15 persons that meet the capacity limits in Section 62.23(7)(i)(2) and are licensed by the State may locate in any residential zoning district, except districts zoned exclusively for single- and two-family residences, without any special zoning permission other than the annual review requirements of Section 62.23(7)(i)(9). Cities must include provisions in the zoning ordinance for special zoning permission for such facilities to locate in single- and two-family residential districts.
6. Section 62.23(7)(i)(5): CLAs with a capacity for 16 or more persons that meet the capacity limits in Section 62.23(7)(i)(2) and are licensed by the State may apply for special zoning permission to locate in any residential zoning district. Cities must include provisions in the zoning ordinance for special zoning permission for such facilities to locate in residential districts.
7. Section 62.23(7)(i)(9): Between 11 and 13 months after the first licensure of an adult family home or a community living arrangement, and every year thereafter, the common council may make a determination of the effect of the facility on the health, safety, and welfare of city residents, following the procedure in Section 62.23(7)(i)(10). If the facility is determined to be a threat to the health, safety, or welfare of city residents, the common council may order the facility to cease operation unless special zoning permission is obtained. The order is subject to judicial review under Section 68.13. The facility must cease operation within 90 days after the date of the order, the date of final judicial review of the order, or the date of denial of special zoning permission, whichever is later.
8. Section 62.23(7)(i)(9m): The fact that an individual with AIDS or a positive HIV test resides in a community living arrangement with a capacity of eight or fewer persons may not be used under Section 62.23(7)(i)(9) to assert a threat to public health, safety, or welfare.

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<sup>4</sup> *“Special zoning permission” is defined in §62.23(7)(i)(7) as a special exception, special permit, conditional use, zoning variance, conditional permit, and words of similar intent. The term “conditional use” is used most commonly in zoning ordinances adopted by counties and communities in Southeastern Wisconsin.*

9. Section 62.23(7)(i)(10): A determination under Section 62.23(7)(i)(9) shall be made after a hearing by the common council. Thirty days' notice of the hearing must be provided to the adult family home or a community living arrangement. Witnesses may be called by both parties and subpoenas issued by the city (see Statutes for additional procedural requirements). The common council must mail or deliver its written determination to the adult family home or a community living arrangement within 20 days after the hearing.

*Source: SEWRPC*

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