

# City's ban on rehab centers reversed

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TREASURE ISLAND — A recent federal court verdict could cost the city a million dollars or more and has potentially far-reaching legal implications for other cities in Florida, Georgia and Alabama, and possibly nationwide.

At issue is whether municipalities can ban short-term drug and alcohol residential recovery facilities from operating in mixed-use residential zoning districts that include apartments as well as single family homes.

A federal jury in the U.S. District Court in Tampa ruled last week that Treasure Island, at least, cannot.

"This is an important case. It allows recovering addicts to live in single-family zones and homes," said attorney Ethan Loeb, who represented Matthew Schwarz and his Treasure Island-based Gulf Coast Recovery treatment center.

The case sets a legal precedent for the entire three-state 11th Circuit and could be cited in similar legal actions throughout the country, according to the city's attorney, Maura Kiefer.

"This has implications for the entire country," she said.

However, how the ruling might apply to purely single-family districts is unclear. Also, the verdict can still be appealed by the city and reversed by a higher court — a process that could take years to resolve.

Specifically, the jury found Treasure Island violated the federal Fair Housing Act when it tried to shut down a residential treatment operating out of several houses in the city's RM-15 zoning district.

The jury was asked to decide whether or not the ability of Gulf Coast Recovery clients to live in residential homes on a short-term basis "contributes in a meaningful way to help break addiction and maintain sobriety".

The jury said yes.

Schwarz's battle with the city began in 2004 when the city responded to complaints about drug and alcohol rehabilitation clients living in neighborhood homes.

Adjacent homeowners complained about the often loud backyard group meetings that went on at all hours, even at 3 a.m.

In 2005 the city cited Schwarz for illegal short-term rental of a home and for having too many unrelated people living there at the same time.

The Isle of Capri home that started the dispute later burned down, but not until it was fined some \$160,000 for code violations.

In 2006, the city thought it had won the dispute when U.S. District Court Judge James S. Moody Jr. denied Schwarz's motion to stop the city's code enforcement.

Part of that ruling was overturned, however, in 2008 by the 11th Circuit Court of Appeals in Atlanta which sent the case back to Tampa for trial on the issue of whether it was "necessary" to allow the "recovering substance abusers equal opportunity to use and enjoy the halfway houses".

Schwarz said he is "excited" by the verdict.

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"It has been a long struggle," he said. "This decision will help the recovery and handicapped class throughout Florida and the country."

Because of the result of last week's trial, another federal trial, tentatively set for April, will determine how much the city will have to pay Gulf Coast Recovery in attorney fees and potential damages.

The city has spent only about \$23,000 so far for time Kiefer has put into the case. Most of the costs are covered by a Florida League of Cities insurance policy. That policy has a cap of \$5 million and covers attorneys' fees.

James Yacavone III of Dunedin is being paid by the League to represent the city in federal court.

So far, Schwarz's attorney's fees are "in the high six-figure range," according to Loeb. When asked if that meant close to \$1 million, Loeb said yes. He said he will be pursuing damages, as well. "The case was driven by a lot of xenophobia and it did damage to Schwarz's business," he said.

All attempts by the city to enforce its zoning codes were halted when the lawsuit began and will not be reinstated until the legal case is over, City Manager Reid Silverboard said Tuesday.

Kiefer said the city passed an ordinance last year limiting the amount of turnover in the RM-15 district.

"It was an attempt to clarify the city's zoning scheme," Kiefer said.

However, Schwarz said the recovery program, which was started some six years ago, presently offers both out-patient and residential treatment and is, in fact, still operating out of two single family homes in the city. He declined to identify their locations.

"If city were to preclude recovery clients living in these zoning districts now, that would be another violation of the Fair Housing Act," Loeb warned.

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