

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CITY WALK-URBAN MISSION, INC.,

Petitioner,

vs.

Case No. 21-1262

CITY OF TALLAHASSEE,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on August 9 and 10, 2021, in Tallahassee, Florida, before Garnett W. Chisenhall, a duly designated Administrative Law Judge of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Gary S. Edinger, Esquire  
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For Respondent: Louis Norvell, Esquire  
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### STATEMENT OF THE ISSUE

The issue is whether City Walk-Urban Mission, Inc. (“City Walk”) is entitled to a permit from the City of Tallahassee (“Tallahassee” or “the City”) to operate a transitional residential facility, pursuant to section 10-417 of the Tallahassee Land Development Code (“the Code”), at the property located at 1709 Mahan Drive, Tallahassee, Florida.

### PRELIMINARY STATEMENT

Via a letter dated March 9, 2021, the City notified Renee Miller of City Walk that the City’s Development Review Committee, by a vote of 5-0, denied City Walk’s Type B Site Plan application for failure to satisfy all of the criteria in Section 10-417 of the Code. Because a new transitional residential facility must have Type B Site Plan approval pursuant to Section 10-417, the City further notified Ms. Miller that City Walk’s operation of a transitional residential facility at 1709 Mahan Drive had to cease. City Walk disputed the Development Review Committee’s determination and requested a formal, quasi-judicial proceeding via a Petition dated April 7, 2021.

On April 8, 2021, the City referred this matter to DOAH for formal proceedings regarding the denial of City Walk’s application for a Type B Site Plan. After receiving the parties’ mutual dates of availability, the undersigned issued a Notice scheduling a hearing for June 11, 2021.

On May 25, 2021, City Walk filed an “Unopposed Motion to Continue Final Hearing” and asserted in support thereof that additional time was needed to analyze the documents produced by the City in discovery. Because the aforementioned Motion was supported by good cause, the undersigned issued an Order on May 27, 2021, canceling the hearing and giving the parties until June 8, 2021, to provide mutual dates of availability between July 19 and August 13, 2021. On June 11, 2021, the final hearing

was rescheduled for August 9, 2021. In order to allow time for public testimony, the undersigned issued a Notice on June 24, 2021, scheduling the hearing for August 9 and 10, 2021.

On July 29, 2021, City Walk filed a Motion in Limine seeking to preclude the City from presenting testimony and images regarding a death at the transitional residential facility operated by City Walk at 1709 Mahan Drive. On August 4, 2021, the undersigned issued an Order partially granting the Motion in Limine:

The instant case is before the undersigned based on a “Motion in Limine Regarding Images and Testimony Pertaining to Deceased Resident” (“the Motion in Limine”) filed by Petitioner on July 29, 2021. Respondent filed a Response opposing the Motion in Limine on August 3, 2021. Via the Motion in Limine, Petitioner seeks to preclude the admission into evidence of: (a) any video or photographs of the body of a person who died earlier this year while a resident of Petitioner’s facility; (b) any video or photographs taken during the investigation of the aforementioned person’s death, including body cam footage taken by the investigating police officers; and (c) any testimony concerning the aforementioned person’s death or the investigation of his death.

Section 10-417 of the Tallahassee Land Development Code sets forth the criteria governing consideration of an application to operate a “transitional residential facility,” such as the facility at issue in the instant case. Subsection (f)(3) calls for an assessment of whether the facility in question “will implement adequate security and supervision measures to address the needs of the facility’s residents . . .”

The possibility that inadequate supervision led to a resident’s death at Petitioner’s facility is relevant to the instant case. However, Respondent has failed to demonstrate how video and photographs

pertaining to that resident's death would meaningfully assist the undersigned in making a recommendation regarding the disposition of Petitioner's application. Accordingly, the Motion in Limine is GRANTED, in part, and the undersigned will not consider: (a) any video or photographs of the body of a person who died earlier this year while a resident of Petitioner's facility; nor (b) any video or photographs taken during the investigation of the aforementioned person's death, including body cam footage taken by the investigating police officers. However, Respondent can introduce testimony concerning the aforementioned person's death or the investigation of his death.

The hearing was convened as scheduled on August 9, 2021, with the first three hours that day devoted to hearing testimony from members of the public who testified in person and via Zoom.

City Walk presented testimony from Renee Miller, Angela Lee, Tony Miller, Kathleen Lee, Maureen Halligan, Erick Moody, and Jim Brockett. Petitioner's Exhibits 1 through 13, 15, and 17 were accepted into evidence.

The City presented testimony from Tallahassee Police Department ("TPD") Sergeant Alan Morris, Brian Webb, Sean Nyberg, Gina Graddy, Sarah Portillo, TPD Officer Barbie Malafronte, TPD Officer Nick Roberts, David Raney, Toni Large, Susan Poplin, and Keith Burnsed. Respondent's Exhibits 1 through 16, 24, 26, and 27, were accepted into evidence. Respondent's Exhibit 15 was a composite exhibit of 20 photographs that were the subject of City Walk's Motion in Limine. After having an opportunity to view the photographs, the undersigned accepted the following photographs into evidence: 1 of 20; 2 of 20; 3 of 20; 4 of 20; 5 of 20; 6 of 20; 7 of 20; 9 of 20; 11 of 20; 12 of 20; 13 of 20; and 16 of 20. The remaining photographs were proffered by the City and not accepted into evidence.

The hearing was completed on August 10, 2021, and the Transcript from the hearing was filed on October 5, 2021. The parties filed timely proposed recommended orders that were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, the entire record of this proceeding, and matters subject to official recognition, the following Findings of Fact are made:

##### I. The Homeless Situation in Tallahassee

1. Homelessness has been present in Tallahassee long before the application at issue in this proceeding, and there are at least a few hundred homeless people in the City at any one time.

2. It has not been uncommon for homeless encampments to be in close proximity to the area where City Walk operates a transitional residential facility at 1709 Mahan Avenue (“the Mahan facility”). These encampments can often be found at the following locations: (a) between Park Avenue and the Governor’s Square Mall; (b) in a heavily wooded area behind Kohl’s department store on Blairstone Road; (c) under a bridge on Magnolia Avenue near the building that formerly housed the Tallahassee Democrat; and (d) just west of the Walgreens, McDonalds, and Starbucks on Magnolia Avenue.

3. Homeless encampments can also be found behind the Wal-Marts on Thomasville Road and West Tennessee Street, and in other areas of Tallahassee.

4. Housing in Tallahassee is in short supply for certain groups. Few landlords will lease to people with mental health or substance abuse issues. According to Angela Lee, who operates an organization named Bright Future Behavioral Health that provides mental health and substance abuse services:

[h]ousing is a huge problem in Tallahassee and other areas. It’s very difficult to find landlords that

are willing to accept individuals that have, you know, mental health, substance abuse histories, criminal histories. Many landlords will turn people down even though they're not supposed to. And so finding stable housing is a huge issue, especially affordable housing, because, you know, when you don't immediately have income, you need stable housing in order to have that stability to find employment. It's a huge issue.

## II. Transitional Residential Facilities

5. Section 1-2 of the Code defines “transitional residential facilities” (“TRFs”) as:

facilities or structures, operated, or maintained by a public or not-for-profit corporation or association, religious institution, or government-funded organization to provide shelter for homeless individuals and families on a temporary or transitional basis, with the duration of stay limited to a period not exceeding one year. Normal and customary use of a dwelling unit by a single-family is specifically excluded from the requirements of chapter 10. Transitional residential facilities may also provide services to residents accessory to the provision of shelter, including but not limited to, dining facilities and meal preparation, and referral, counseling and educational programs.

6. One must have a permit to operate a TRF in Tallahassee, and section 10-417 of the Code applies to TRFs. Subsection (a) of the Code states that section 10-417 “is promulgated in response to the needs of the homeless within the community, including emergency shelter, short-term shelter and transitional shelter, for the purpose of providing for the location of transitional residential facilities within the city.” Subsection (b) states that TRFs “may be allowed in any zoning district, with the exception of the industrial district, subject to the limitations and in accordance with the procedures and minimum criteria set forth in this section.” In addition,

subsection (c) specifies that new TRFs “and expansions to existing [TRF]s are subject to type B site plan approval.”

7. Subsection (f) of section 10-417 sets forth the “minimum criteria for the issuance of site plan approval” and mandates that the development review committee (“the DRC”) shall determine whether TRF approval will be granted based on the finding that the following minimum criteria have been satisfied:

(1) The operation and location of the facility as proposed is consistent with the comprehensive plan and applicable land development regulations;

(2) The facility would not create or cause a private nuisance, including but not limited to noise, odor, health hazard, glare and unlawful activities, to adjacent properties;

(3) The facility will implement adequate security and supervision measures to address the needs of the facility’s residents as well as residents of adjacent lands and their property;

(4) The facility is served by or easily accessible to mass transit;

(5) The facility will be of adequate size and design to reasonably accommodate its projected capacity;

(6) The facility and its features are designed to be compatible with the general architecture theme, appearance and representative building types of adjacent properties and uses; and

(7) The intensity of use of the proposed facility does not unreasonably adversely impact upon existing uses or change the character of the area in which it is located. Intensity of the use of the proposed facility shall be determined based upon its size, the number and type of accessory services to be provided, either by itself or in conjunction with other group homes, community residential homes, and transitional residential facilities located within

a 2,400-foot distance of the site boundaries. Adverse impacts shall be evaluated particularly with respect to existing residential uses and districts within 500 feet of the site.

### III. Background on the City Walk Organization

8. City Walk is a private, not-for-profit, nondenominational church that was founded by Renee Miller and her husband, Tony Miller, in 2012. City Walk's mission statement is "[h]ere at City Walk-Urban Mission, our mission is to live out Jesus's command to take care of the least of us." Ms. Miller is an ordained minister, and Mr. Miller is a lay minister. Ms. Miller is City Walk's executive director.

9. City Walk receives no government funding and has an annual budget of \$900,000 derived from private donations and operation of a thrift store on Monroe Street.

### IV. The Search for a Site

10. Ms. Miller retained Jim Brockett of Coldwell Banker to assist with searching for a site for the City Walk-operated TRF. She wanted to spend no more than \$15,000 a month on rent.

11. The search for a site began in October of 2020 and focused on a small number of sites within Tallahassee. The building on Apalachee Parkway that formerly housed a Toys "R" Us was rejected because it lacked the proper zoning and would have required extensive renovations in order to house a TRF. A site on Phillips Road that formerly housed a surgical center was rejected because it was too small and would have needed at least \$500,000 in renovations. A site across from the Home Depot on Capital Circle Northeast was rejected because the facility would have needed an extensive buildout and was too far from medical services and public transportation.

12. Ms. Miller ultimately chose the 29,576 square foot Mahan facility. The building in question was constructed in the early to mid-1980s and had



housed some of the Department of Corrections' administrative operations. By the fall of 2020, the building had been vacant for eight years.

13. The Mahan facility was attractive to Ms. Miller because it was not within a residential neighborhood or a strip mall, medical services were nearby, and it was on a bus route. In addition, the building's owner was willing to spend up to \$250,000 on tenant improvement allowances.

14. While the zoning for the Mahan facility allowed for a TRF, City Walk would need to apply for a change of use. As stated by Ms. Miller,

We felt as though that was the perfect property and location for our church and the services that our church would be providing to the community. It was a great deal and it was laid out with very minimal work that would have to be done, and it was also in the zoning that we would need to be in for [a] transitional residential facility.

15. A 10-year lease for the Mahan facility was completed in November of 2020. However, no one associated with City Walk conferred with Tallahassee's Growth Management Department prior to executing the lease agreement, and City Walk did not apply for a permit to operate a TRF prior to initiating operations. There is no dispute that City Walk is not authorized to operate a TRF without first obtaining approval of a Type B Site Plan.

#### V. Initial Operations at the Mahan Site

16. In contrast to a TRF, a low barrier shelter accepts virtually anyone seeking assistance and conducts no background checks. The Kearney Center in Tallahassee is an example of a low barrier shelter.

17. Prior to signing the lease for the Mahan facility, Ms. Miller learned that the Salvation Army's agreement with the City to provide low barrier shelter services in Tallahassee was coming to an end. Thus, Ms. Miller determined there would soon be an urgent need for a low barrier shelter in Tallahassee:

So COVID had greatly displaced the population experiencing homelessness in our area and it was

to the point of inhumane. And it was one thing to be inhumane in the summertime and during a pandemic. It was a whole other thing to be inhumane and in a pandemic over the winter when absolutely you could pass away with hyperthermia. So we were going into the winter months and late fall, I reached out to – actually Salvation Army social workers and clients both approached us and said we're not going to partner with the city anymore, see if you guys can take over that place. Because all of these people that we're helping have nowhere else to go. The Kearney Center is still closed. There's a huge waiting list for the hotels, and so something's got to be done before winter.

18. In October of 2020, Ms. Miller approached City officials about providing low barrier shelter services. Rather than abandoning the plan to open a TRF, Ms. Miller contemplated City Walk providing low barrier shelter services from December of 2020 through March of 2021 in order to fill an urgent need for such services:

So our board looked over the agreement that the City of Tallahassee had with [the] Salvation Army and we thought, okay, well, is this something – since we want to expand anyway for our transitional facility could we expand this just for the winter. And when we approached the city about kind of picking up where [the] Salvation Army was leaving off, it was for December through March, so December 2020 through March of 2021, and that's all the low barrier we wanted to be ever.

19. Ms. Miller was under the impression that City officials were supportive of her plan, and City Walk ultimately opened a low barrier shelter at the Mahan facility during the week of November 22, 2020.<sup>1</sup>

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<sup>1</sup> Ms. Miller seemed to indicate during her testimony that she expected that the funds that had previously been allocated to the Salvation Army for the operation of a low barrier shelter would be shifted to City Walk or that Big Bend Continuum of Care would help finance the low barrier shelter operations. That did not occur.

20. The relationship between City Walk and the City began to deteriorate in January of 2021. According to Ms. Miller, City officials withdrew their support because the public opposed having a low barrier shelter at the Mahan facility.<sup>2</sup> As discussed in more detail in a subsequent section, the placement of a low barrier shelter at the Mahan facility detrimentally impacted the surrounding neighborhoods and businesses.

21. On February 1, 2021, City Walk transitioned the Mahan facility from being a low barrier shelter to being a TRF. With regard to why that transition was made, Ms. Miller explained that:

[s]o when we did that, again, it was wintertime and people literally would have died and there was no other place for them to go. And so as a matter of conscious, we were going to take you if we at all could and take you in during that. We're not in that same crisis. Also we were waiting on the Kearney Center to open back up. To some degree, they have. And our intention was never – again, it was not part of our strategic plan, if you look at our board documents, to ever be a long-term low-barrier shelter. What we applied for in our Site B type plan was not a low-barrier shelter, although people cannot stop saying that. We applied to be a transitional residential facility, not a low barrier anything.

## VI. Operations at the Mahan Facility Since February 1, 2021

22. The transition from a low barrier shelter to a TRF involved many changes in the Mahan facility's policies and procedures. For instance, there are now three distinct housing programs at the Mahan facility, but none of

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<sup>2</sup> Ms. Miller provided the following testimony: “So on I believe on January – don't quote me on the date. It was at a commission meeting in January where there was a lot of public comment and pressure being put on the commissioners to not allow this to be there. John Dailey who had always been very supportive of myself, personally, and all of City Walk, and even of this project, said: If I had a magic wand, I would shut it down immediately and looked at Reese Goad and said, Mr. Manager, can we just shut them down, and he explained that they couldn't. And the – it was just kind of a – I feel like a show for some people who had donated to their campaigns and they felt very pressured, and so they had to pick a side. And that night, I was just shocked when I was watching that. I went, whoa, like we were friends a week ago.”

them are low barrier shelter programs.<sup>3</sup> Emergency shelter/sanctuary is one program and allows individuals to be admitted for up to two weeks.<sup>4</sup> City Walk also operates a supportive housing program and a transitional housing program. Ms. Miller described City Walk’s supportive housing and transitional housing residents as follows:

So one is supportive housing where someone would have an income, whether it would be SSI, SSDI, or employment and they can just pay a little bit for their expenses, but they don’t have first, last deposit or maybe they can’t live alone for whatever reason in permanent supportive housing. So we’re not permanent supportive housing, but we are support housing.<sup>[5]</sup> The other program is our 12-month reentry and recovery program. This is for men and women who have experienced chronic homelessness, they need more of a group home setting before they live alone, and that’s where we have our work program and it is the 12 months.

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<sup>3</sup> With the exception of domestic violence victims, the Mahan facility had not accepted non-emergent walk-ins for several months preceding the final hearing. While accepting sex offenders is not an explicit aspect of the Mahan facility’s operation, it has housed sex offenders. If a sex offender on probation applies for admission into the Mahan facility, then City Walk personnel meet with that offender’s probation officer. If the probation officer has a concern about the offender being admitted into the Mahan facility, then admission is denied. At the time of the final hearing, the Mahan facility was housing three people on the sex offender registry.

<sup>4</sup> People admitted to the Mahan facility on an emergency basis still must go through the interview/vetting process at City Walk’s Monroe Street facility, and that process is described in detail below.

<sup>5</sup> The rules pertaining to supportive housing state that “[y]ou are entering [a] transitional housing program and are to continue to seek permanent housing solutions. Our social workers will assist as much as possible to help you seek permanent solutions to your housing needs. Program fees must be paid automatically with a card on file on the first of each month. Program fees are \$650 per month or 80% of income, not to exceed \$650 per month.”

People in the transitional housing program are predominantly recovering addicts and those who have recently been released from prison. They need stable housing in order to become productive members of society.<sup>6</sup>

23. The rules governing supportive housing residents are less restrictive than those governing residents in the transitional housing program. For example, supportive housing residents are allowed to leave the Mahan facility for overnight periods, such as vacations. However, they must notify the staff at the Mahan facility prior to leaving. In contrast, residents in the transitional housing program must have permission to stay out past the nightly curfew. Also, leaving the Mahan facility without prior approval is prohibited.<sup>7</sup>

24. Prospective residents of the Mahan facility initially report to City Walk's facility at 1105 Monroe Street for a triage-like assessment of their needs and whether TRF services are appropriate for them. If City Walk determines that it does not provide services appropriate for a particular person, then it refers that person to a provider better able to address that person's needs. Ms. Miller described the process as follows:

So normally they would either call on their own, email on their own, or through a social worker or we would be contacted through, say, law enforcement or one of the hospitals in the area for someone who was either about to be released or discharged. And we would have them fill out a series of documentation. If they were to show up, we just ask that they don't come directly to 1709 Mahan Drive as we no longer take walk-ins and we haven't taken walk-in—you know, people just walking up for services in a long time. It's been

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<sup>6</sup> The Mahan facility also accepts disabled residents and provides hospice services to residents with terminal conditions. There are few if any options for such people in Tallahassee because the Kearney Center only accepts those who are able-bodied.

<sup>7</sup> The rules governing residents in the transitional housing program state that “[i]f you leave without authorization from staff we may prohibit your re-entry. If you decide to walk-off, make sure that's a decision you want to make permanently.”

several months. We ask that they go to 1105 North Monroe Street where our store and work program and outreach program is. And they meet with our executive administrator, Emily. They do a VI-SPDAT, which is a form that social workers use to triage their clients and see what services they are in need of, who maybe has been helping them, what – just where they’re at in the continuum of care and if we can possibly be of service. We’ll do a basic interview with them there and decide from there if this is someone that we feel as though we can help. If not, we would refer to other service providers. From there, they would get basically an admission slip of paper to be able to take with them to the Mahan campus and check in with that. If they don’t have that piece of paper, like they haven’t done Step 1, they’re going to be told that they skipped a step and that they need to have an interview off site prior to coming in. The only time where that – we would allow that step to be skipped would be, for instance, if there was some type of emergency in the middle of the night. Say, for instance, law enforcement found somebody who didn’t know we were there and they brought them over and asked us to help or maybe they took a woman from a domestic violence situation and, you know, nobody else is open, so can they bring her over. We would allow for that type of situation to happen in an emergency type setting.

25. As for why City Walk began requiring prospective residents to undergo a vetting process at its Monroe Street facility, Ms. Miller explained that:

The reason that we are taking people to another location is so that we don’t have walkup traffic and neighbors wondering what’s going on. When we take someone into our care, into our church, we want to know, hey, right now you’re sober, you’re lucid, you know, you’re going – you’ve signed all the things. You understand what’s expected of you, then they can go over there. And we’ve done that so that we aren’t – that’s one thing that makes us not low barrier anymore.

26. Prospective residents must fill out a form notifying them that “[r]esidents at City Walk are participants in a program, and therefore are not guaranteed surety of lease, and must vacate City Walk premises immediately upon expulsion [from the program]. This is not a rental agreement. This is a sober living transitional housing program.”

27. The form requires prospective residents to disclose their name, date of birth, and social security number. Prospective residents must also answer several questions such as: (a) how you learned of City Walk; (b) how did you become homeless; (c) have you been involved in domestic violence; (d) have you been incarcerated due to committing a violent crime; (e) have you ever been incarcerated; (f) if so, why; (g) have you ever used drugs; (h) how often do you drink alcohol; (i) do you consider yourself an addict; (j) do you have any pending legal actions against you; (k) what are your goals; and (l) what is your plan from this point forward.<sup>8</sup>

28. People admitted to the Mahan facility receive a form stating “[w]e welcome you as our guest to receive rest in the presence of the Lord inside of our church sanctuary. We are a private church[,] not a governmental or public program. We open our doors to feed, clothe, and shelter as a tenet of our faith to take care of God’s people.” The form then lists the following rules:

No drugs or alcohol are permitted, even unopened and stored in your belongings are not allowed on our campus. We will not provide services if you are deemed intoxicated.

Your bags are subject to a nightly search.

Respect of staff, fellow guests, church property, and the neighborhood are required. No threats of violence or abusive speech will be tolerated.

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<sup>8</sup> Ms. Miller explained that the Mahan facility is “not a place for somebody to just come and hang out and use our facility and come and go, like we want to know if they got a plan.” City Walk has volunteers and staff members who connect residents to available services in the local area and assist the residents with formulating a life plan.

Do not enter areas of long-term residents or church offices. Do not sleep in areas not designed for sleeping.

Up to three (3) bags/suitcases, can be neatly stored on-site while you are a guest here.

Personal hygiene is required. We provide showers and toiletries for your convenience.

A staff member will go over an intake form and you must cooperate with the interview.

**NO SMOKING INDOORS.** Smoking must take place in the designated smoking area.

Businesses on Mahan Drive and homeowners on nearby streets are not supportive of our services. They do not want any guests from our church on their property for any reason. This especially includes Florida Therapy and Patients First. They have a blanket trespass and TPD and will have you arrested if you step on their property.

**NO LOITERING** – No loitering at bus stops, area businesses, empty lots, intersections, business strip centers.

**NO PANHANDLING** – Anyone seen in the area panhandling, flying a sign, approaching anyone for money will be immediately banned from our property.

Bathrooms are available 24/7 and this is where you must relieve yourself. No outdoor urination or defecation on our property or any neighboring properties.

The residential streets nearby [sic] Mary's Drive, Spotswood, Brookwood are not to be used by guests of our facility. Do not walk through these residential areas. Neighborhood Watch will let us know and you will be banned from this facility.



NO PUBLIC DRINKING – Do not visit the Marathon Station or the Beer store and drink on your way here. Anyone seen drinking in the area will not be permitted to enter our campus.

Do NOT go into area businesses and ask to use the bathroom. Do not go into area businesses and ask for a drink. Do not go into neighboring businesses PERIOD! They do not want you there. They are actively seeking to close our campus because of the traffic of homeless individuals hitting up their businesses and customers.

29. The Mahan facility is a sober living facility. Residents must abstain from all drugs and alcohol use while they are on and off campus. City Walk vigorously enforces this policy, and a violation results in immediate removal. Having an empty liquor bottle on campus is a basis for discharge. Bags can be searched based on the suspicion they contain alcohol.

30. City Walk prohibits its residents from loitering or panhandling. Panhandling results in immediate removal from the Mahan facility. As explained by Ms. Miller, “[w]e want to be good neighbors. If you have the wherewithal and energy to panhandle, we can probably help you find a job and that would be much more desirable to have in our community. We also want to be good neighbors, and so we did not have this as part of our rules when we were acting as a low-barrier shelter, but in February we changed that.”

31. The rule prohibiting residents from traveling through nearby neighborhoods was enacted in response to complaints and as an accommodation to nearby homeowners. Violation of this rule could result in discharge from the Mahan facility.

32. With the exception of residents who are disabled or infirm, City Walk requires residents at the Mahan facility to work. As for residents in the transitional housing program, Ms. Miller explained that:

[w]hen someone comes to us, they are employed from day one, either for us or through us, but they do have to be working. So if someone comes in and they've been chronically homeless or they get out of prison, they're going to go to work the next day, usually at our thrift store on Monroe Street. Every single person that works there is currently or has previously experienced homelessness, and that's a work program. It gets them back into – into being responsible. Also in that program, your money goes into an escrow account. You do not hold it yourself. You get a weekly stipend of \$50 that you can have for, say, your cell phone or if you wanted to get a hamburger or something. But the money that you earn goes into an escrow account for your transition expenses at the end of 12 months. And so there's not, like, oh, well, I'm going to get my – my paycheck at the end of the week and get a six pack, well, then you starting – you're back where you started from. So this – this program keeps all of that. And then when they are ready to graduate, like we saw some graduation pictures, maybe they can put a down payment on a home or they can get a car. We just had a graduate get a car.<sup>[9]</sup>

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<sup>9</sup> The rules pertaining to the transitional housing program state that:

[y]ou are entering a 12-month program. At the end of 12 months, your goals will be evaluated [as] to whether you feel the need to continue. Program fees are \$1000 per month and are automatically paid from your wages. Program fees are not 'rent.' Your program provides you with a private furnished room, transportation, counseling, job training, job placement, and food.

If you do not have a job, your employment will be at City Walk Urban Mission at the rate of \$10.00 per hour. Money management requirements: The remainder of your paycheck will be in an escrow account saved for your transition expenses which will be paid by City Walk Urban Mission.

EXAMPLE: Whatever amount you hold in escrow will be used to pay for housing, utilities, security deposits, and so forth. It is not a lump sum of cash handed out. For instance, if you have \$4000 and your first, last, and security deposit for an apartment is \$2800 and your utility deposit is \$200, City Walk pays \$3000 directly to the landlord and the utility company on your behalf. Anything left under \$1500 is paid to you in cash. It is in your best interest to take as little cash as possible out at the end so you do not have to pay taxes on the income. If you are left with \$1500 cash, you'll probably only get \$1200 after taxes.

33. While curfew at the Mahan facility is 8:00 p.m., Ms. Miller explained that accommodations are made for residents who work night shifts:

So we do have several clients who do have jobs that would sometimes prevent them from being there at 8:00 p.m. So we had a resident that worked at the GATE station. Obviously they're open just about all night long, so if they needed to come in later or leave in the middle of the night for a shift, we would accommodate that. We have people who work at Publix on Mahan Drive, you know, if their shift doesn't get over until the store closes at 10:00 and then they have to clean up, they're not going to get home from work until midnight, and so – and we have another one that works at Wendy's and another one that works at Bojangles and the Four Points hotel – we have two people that work at the Four Points.

34. As for its physical characteristics, the Mahan facility is a two-story building located on two acres. It can accommodate up to 64 residents and was housing 60 residents at the time of the final hearing. Ms. Miller described the facility as follows:

We have two two-story buildings that are attached by an atrium with an L-shaped real estate footprint over two acres. When you face our property at the entrance, you come onto the atrium that's in the middle. And if you were to go to the right up the ramp, you would go into the top floor of the west building, which is our religious facility where we have our Bible Studies and our groups and classes and things like that. And if you were to go up the ramp and to the left, that would be one of the single

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Monthly withdraws from your escrow money are allowed up to \$200. If you do have a job outside of City Walk, your check must be direct deposited into your escrow account.

If you leave the program prior to 12 months or you are removed for violating the program, you forfeit the escrow money. Residents will, upon the receipt of any check or payments, submit copies/proof of pay to the financial officer. The financial officer will assist residents in creating a bank account and budget for them to ensure that they stay current on all obligations to include costs of supervision, restitution, child support, and program fees.

– or transitional housing units for men. We do separate the men and the women. If you were to come onto the property and go kind of – it’s like a split level. So if you were to go down the stairs to the right, it would be for single men supportive housing and to the left would be for single women who are either in our 12-month transitional program or in our supportive housing program.

35. Each resident in transitional and supportive housing has his or her own room. While each resident is able to lock the door to his or her room, City Walk maintains keys to every lock. City Walk is of the opinion that allowing residents to have locks on their doors gives them a sense of control and security over their belongings.

36. The rooms come fully furnished with a bed, linens, a dresser, a nightstand, and a place to hang clothes. The residents have considerable autonomy with regard to decorating their rooms.

37. City Walk provides custodial services to elderly and disabled residents. All others are required to keep their living spaces clean and neat. There is no laundry service, but linens are cleaned on a weekly basis.<sup>10</sup>

38. The Mahan facility has three recreational rooms with puzzles, board games, cards, foosball, air hockey, and table tennis. There is also an art room and a meditation/prayer room. City Walk does not provide televisions, but residents can purchase their own sets. Wi-fi services are provided, and the Mahan facility has libraries on site with books collected from City Walk’s thrift store, book drives, and donations. There are two kitchenettes on every floor, and residents can bring their own food.

39. Residents receive three meals a day, and the Mahan facility employs a food-safe certified chef. The majority of the food comes from donations made by Second Harvest, Farm Share, Publix, Costco, and food drives. The Mahan facility’s cooking operation is inspected, and Ms. Miller explained that:

[F]or any food that we have to cook say where there's meat involved, we do have a commercial food truck that's licensed by the Department of Health. And in order to be able to cook food and get food to cook from Second Harvest, they also inspect that and they also do inspect our food pantries as well. They inspect like how many times you have pest control come out and how the food is stored, the temperatures of all of our refrigeration and freezers. So our food service is definitely highly inspected.

40. The Mahan facility offers Bible studies three times a week and worship services on Tuesdays and Sundays. Ms. Miller explained that the attendees include residents and people from the community:

We do have a lot of people who are experiencing some form of crisis. They've been former residents, they are current residents, they're people who are in some sort of a program, and we do have residents that come, but we also have business owners and homeowners and professionals and people that just work your regular jobs and own their own homes that are also members of our church.

41. The Mahan facility provides office space to two mental healthcare providers: Behavior, Inc. and Bright Future Behavioral Health. The former employs counselors who specialize in veterans' services and trauma therapy. Counseling is also provided for anger management. The latter provider's services are geared more toward substance abuse and vocational rehabilitation. Residents and those outside the Mahan facility can access all of the aforementioned services. Narcotics Anonymous and Alcoholics Anonymous meetings are available to the residents, and Ms. Miller offers religious counseling.

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<sup>10</sup> The Mahan facility currently provides external, propane-powered showers to its residents. Installation of showers inside the Mahan facility is dependent on City Walk obtaining the permit at issue in the instant case.

42. City Walk holds a graduation ceremony and provides diplomas to those who complete the 12-month reentry and recovery program.

#### VII. City Walk's Security Plan and the Death of Christopher Halligan

43. City Walk has a security plan for the Mahan facility. For instance, the agreement signed by the residents is not a lease. Therefore, if a resident does not follow City Walk's rules, then City Walk can immediately expel that resident as a trespasser without engaging in any legal process.<sup>11</sup>

44. As noted above, residents of the Mahan facility are able to keep their rooms locked, but bags are subject to being searched.

45. While there are no cameras in the residents' rooms, the Mahan facility has 19 surveillance cameras covering the interior and exterior of the facility, and those cameras are continuously monitored. The video from the cameras is retained for two weeks.

46. Ms. Miller stated that there are always at least two security personnel on site:

So around dinner and check-in time, there are multiple staff and volunteers that are there. Once everybody's bedded down at 8:00 at night, it might be three or four people. Into the wee hours of like the last four hours of the night before breakfast, we always have two people who are awake. They're out walking the grounds, they're sitting in the office monitoring the cameras, everything's pretty calm, but we do have them staying just in case.

47. Christopher Halligan had been a resident of the Mahan facility since completing a detoxification program at the Apalachee Center in late May of 2021. He typically left the Mahan facility between 3:00 a.m. and 4:00 a.m., rode his bicycle to a construction site, worked all day, and then returned to the Mahan facility around 9:00 p.m. each night. Due to his work schedule, Mr. Halligan was usually not present when City Walk served meals, and it

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<sup>11</sup> When necessary, City Walk requests that law enforcement assist with the removal of residents.

was not unusual for staff at the Mahan facility to not see Mr. Halligan for extended periods.

48. The night of Wednesday, June 16, 2021, was the last time a City Walk staff member saw Mr. Halligan.

49. On June 18, 2021, City Walk personnel detected a noxious odor coming from Mr. Halligan's room. The police were called, and they found Mr. Halligan's body inside his room. While the medical examiner's report had not been issued by the time of the hearing, the state of Mr. Halligan's body suggested that he had been dead for 48 to 72 hours by the time the authorities arrived.

50. With regard to the cause of death, foul play is not suspected. Given Mr. Halligan's history as a chronic alcoholic and the presence of several empty liquor bottles in his room, alcohol poisoning may have played a role in his death. There is no evidence to support a finding that City Walk is to blame for Mr. Halligan's death.

#### VIII. City Walk's Application and Subsequent Denial

51. As mentioned above, City Walk did not obtain any approval from the City prior to initiating low barrier shelter operations at the Mahan facility in November of 2020. Accordingly, the City's Growth Management Office issued a voluntary compliance notice to City Walk on December 16, 2020.

52. The Mahan facility is situated in an area zoned as "office residential 2" or "OR2." The OR2 category allows uses that can be characterized as residential, office, recreation, and community service. However, community services are subject to additional review under the Code. Accordingly, OR2 zoning allows for TRFs, but an application, i.e., a Type B site plan, is required.

53. City Walk submitted its Type B site plan on February 3, 2021. By February 24, 2021, the City had received over 20 written comments from residents in the area around the Mahan facility, and most of the comments opposed City Walk's application. The concerns cited within the comments

included: harassment of neighbors; loitering/congregating/walking through neighborhoods; trespassing/entering businesses; employees of nearby businesses being afraid to enter or exit those businesses; customers being afraid to patronize neighborhood businesses; panhandling; rude behavior; aggressive behavior/fighting; disturbing the peace; property damage; lack of compatibility with surrounding properties; safety; proximity of children/schools/day care; sexual offenders/predators; presence of convicted criminals; alcohol use/drug dealing; urination/defecation; and lack of notice to the surrounding area prior to the opening of the Mahan facility.

54. The Tallahassee-Leon County Planning Department (“the staff”) issued a Memorandum dated March 4, 2021, to the DRC that applied the criteria in Section 10-417(f) of the Code to City Walk’s application and recommended denial. The staff<sup>12</sup> determined that “[t]he applicant has not adequately demonstrated that the proposed facility would not create or cause a private nuisance to adjacent properties. Information provided by TPD, staff contacts to surrounding property owners, and correspondence received from owners and tenants of adjacent and nearby properties, has led to the determination that the facility would cause or create a private nuisance to adjacent properties should it be approved and remain in operation.”<sup>13</sup> The

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<sup>12</sup> Susan Poplin works for the Tallahassee-Leon County Planning Department and authored the staff’s memorandum recommending denial of City Walk’s application. In describing the planning department’s function, she stated that “[o]ne of our responsibilities as a staff planner is to review projects, like this one, for consistency with our Tallahassee-Leon County comprehensive plan. That’s part of our review. And then in the case of type B projects, staff provides analysis and a recommendation to our development review committee member, in this case that’s Mr. Russell Schneider.”

<sup>13</sup> The memorandum stated, “[t]he following are identified as significant issues by residents: 1) safety and concerns about continual trespass through neighborhoods; 2) the housing of sex-offenders within 500 feet of their existing residential neighborhoods; 3) at least one child care center within 550 feet; and 4) a change in the character of their existing neighborhoods. At public hearings residents voiced general safety concerns and identified changes in the community including the continual presence of persons that are panhandling, loitering, producing trash, toileting on private property, and drinking or using drugs. The accounts of additional persons loitering, panhandling and displaying aggressive behavior or mental illness are supported by the TPD records on calls and offenses as discussed elsewhere in this report.”



staff also stated that “[r]ecognizing the potential for these activities to persist with the legal establishment of the facility, the application has not demonstrated how the operation of the facility or physical changes to the site will be sufficient in eliminating the potential for being [a] private nuisance in the future.”

55. The staff’s analysis of data from TPD led to the following comments:

From Attachment 2, Table 1, which is the .25 mile area [in the vicinity of the City Walk shelter], there are notable and substantial increases in Disorderly Conduct, Mentally Ill/Baker Act, Suspicious Persons, and Trespass (over 2000% increase in trespass calls and warnings in an area which had little or no such calls/offenses before the opening of City Walk.; 45-60% increase in disorderly conduct and mentally ill/baker act calls; and 141% increase in suspicious persons/incidents). Again, these calls and offenses are higher than the concentration and number in previous years.

The .5 mile area includes most of the corridor along Mahan Drive to the intersection with Magnolia Drive. Between 1709 Mahan Drive and this intersection, there are a number of small retail businesses and offices.

As shown in Attachment 2, Table 2, there are notable and substantial increases in Assault, Burglary, Disorderly Conduct, Resisting law enforcement, Mentally Ill/Baker Act, Suspicious Persons, Theft and Trespass. Increases are over 1000% for incidences of Resisting law enforcement and Trespass.

Similar analyses breaking down the data in key sections such as disorderly conduct, trespass, assault, theft, suspicious persons, and mentally ill/baker act show that calls in those areas in 2021 are over 10 times those in the previous 2 years for trespass and 11 suspicious persons. If call/offenses continue at the rate experienced in January 2021, they will significantly outpace the last 2 years.

56. Ms. Poplin described concerns with the Mahan facility's security plan as follows:

It's not clear from this security plan what measures are taken to monitor those clients that are not given entry or are discharged from the facility due to the violation of rules or some other reason. And some examples, if you look at a Kearney Center, which is a homeless shelter. They have significant security, they are a secure campus, they have a fence around, there is limited entry. They have to go through – clients have to come in, they have to go through [a] metal detector, and they have to consent to a search. They are in-taken at the facility. I understand you have a different intake process now, but perhaps back then it really wasn't in this application what City Walk was doing. I'm just describing to you some of the experience or some of the information I have about another facility, which is in this case is the Kearney Center which is our primary homeless shelter in the community. So those things, they have some supervision and control over the residents. That's one thing that as a reviewer I did not see in this application for that specific criteria. I don't know if they were options, those options. If there were other options, they were not presented as part of that application or any of the – any of the post discussion from the review, any post discussion of the review . . .

57. The staff also determined that City Walk's application failed to demonstrate that its proposed TRF would not adversely impact existing uses within the area or change the character of the area. In other words, City Walk's application failed to demonstrate that its proposed TRF would not unreasonably adversely impact existing uses in the area or change the character of the area.

58. A February 26, 2021, memorandum from Keith Burnsed, the land use manager in the City's Growth Management Department, described findings similar to those discussed above:

The applicant has not adequately demonstrated that the proposed facility would not create or cause a private nuisance to adjacent properties. Information provided by the Tallahassee Police Department, staff contacts to surrounding property owners, and correspondence received from owners and tenants of adjacent and nearby properties, has led to the determination that the facility would cause or create a private nuisance to adjacent properties should it be approved and remain in operation. In fact, the information collected indicates that the facility has been a private nuisance to adjacent and nearby properties since its establishment at 1709 Mahan Drive. A summary of this information is provided below:

Two properties immediately adjacent to the site, Florida Therapy Services at 1713 Mahan Drive and Rehab Engineering Prosthetics at 1719 Mahan Drive, have reported several instances of harassment of customers and staff, loitering, trash being deposited on their property, and disturbing the peace (see Attachment 1 for comments provided by businesses in response to contact from staff).

Numerous other area businesses report similar issues as those immediately adjacent to the site, as well as panhandling, public urination, defecation, and other impacts.

Calls for Tallahassee Police Department service near the City Walk shelter have increased significantly since the shelter's opening. While this increase is consistent with experience at other existing facilities housing the homeless, the City Walk shelter is located in an area surrounded predominantly by residential properties and small businesses (see Attachment 2 for police calls for service data).

In discussion with staff, Tallahassee Police Department staff responsible for oversight of patrol activities in this area advised that homeless individuals are going into the residential

neighborhood on the north side of Mahan, knocking on doors, and asking for money. The police department has had to shift resources to that neighborhood through their Community Oriented Policing and Problem Solving (COPPS) unit. Police staff also advised that none of these problems existed prior to December 2020. This neighborhood previously had nothing occur that would draw attention.

Public comments received indicate that residences near the site are being subjected to trespassing, trash, public drinking of alcohol and using or dealing illegal drugs, creating camps on private property, panhandling, and other concerns.

59. After meeting on March 8, 2021, the DRC issued a letter dated March 9, 2021, to Ms. Miller stating that:

Following a review of the City Walk Type B Site Plan application, on March 8, 2021 the City of Tallahassee Development Review Committee determined that the application did not meet all of the criteria required by Section 10-417, as well as other pertinent sections of the Tallahassee Land Development Code, and by a vote of 5-0 denied the Type B Site Plan application. As a new Transitional Residential Facility requires Type B Site Plan approval under Section 10-417, a Transitional Residential Facility is not a permitted use at 1709 Mahan Drive. Therefore, effective immediately, the Transitional Residential Facility use must be discontinued.

#### IX. Public Opinion Regarding City Walk's Application

60. When it was operating as a low barrier, cold weather shelter between November of 2020 and February 1, 2021, the Mahan facility would take homeless people in around 7:00 p.m. each day and then discharge them back into the community around 7:00 a.m. the next morning. People would then loiter in the surrounding area over the next 12 hours waiting for the Mahan

facility to readmit them. That circumstance caused a great deal of disruption to the residents and businesses in the surrounding area.

61. Many people who live and work in the area surrounding the Mahan facility presented testimony, and the vast majority opposed the continued operation of the Mahan facility. In support of their opposition to the Mahan facility, members of the public described incidents such as: (a) seeing a man lying down in a gas station parking lot; (b) being afraid to walk, jog, or ride a bicycle in the immediate area; (c) worries about dangerous people being discharged from the Mahan facility and into the surrounding area after noncompliance with rules; (d) employees of surrounding businesses finding homeless people sleeping in or near doorways as they report to work; (e) employees and patrons of surrounding businesses being harassed and/or asked for money; (f) aggressive panhandling; (g) trespassing; (h) loitering; (i) threatening behavior; (j) the presence of sex offenders in close proximity to schools and a daycare; (k) increased trash in the area; (l) finding human waste on private property; (m) parents being afraid to allow their children to play outside without adult supervision; and (n) parents being afraid to allow their children to visit nearby businesses without being accompanied by an adult.

62. Many of the members of the public who testified did not specify when the incident or incidents they were describing occurred. Specifically, they gave no indication as to whether conditions in the area surrounding the Mahan facility improved once City Walk began operating a TRF in lieu of a low barrier shelter. Others who testified described recent incidents and gave an impression that conditions had not improved.<sup>14</sup>

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<sup>14</sup> The residents who testified in opposition to City Walk's application may have been motivated by a fear that conditions in the area would revert back to how they were when the Mahan facility operated as a low barrier shelter. One resident who lives within 1,000 feet of the Mahan facility testified that "[d]ue to what we have seen and experienced because of City Walk being there, we do feel a little less safe in the neighborhood. We strongly believe that if City Walk is approved to stay that we might – I'm sorry, is approved to stay that what we experienced at the beginning of this year could possibly happen again."

63. In contrast, other witnesses indicated that conditions in the area surrounding the Mahan facility had improved and had substantially returned to what had existed prior to the Mahan facility's opening. For example, the City called TPD Sergeant Daryl Morris to testify, and he offered the following testimony on cross examination by City Walk:

Q: In terms of the rate at which you've received calls [for police service], isn't it fair to say they have decreased over time, particularly from February to date?

A: That's correct.

Q: Do you have any reason – do you have any idea why those calls for service have decreased over time?

A: I believe because they opened the Kearney Center up and a lot of people went back to the Kearney Center, because they were moved out to North Monroe. Also, it has to do with some of the presence we've had in getting trespass letters signed by the businesses and getting signs put up in the windows which give officers the authority to have people leave the property.

64. Gina Graddy, the office manager for Rehabilitation Engineering at 1719 Mahan Drive, described how the presence of a low barrier shelter in close proximity to her employer resulted in more trespassing, trash, panhandling, and harassment of clients. Nevertheless, she acknowledged that there has been a decrease in such problems recently.

65. In addition, Mr. Burnsed agreed when he was asked “[i]s it fair to say that a common theme among the more recent complaints post report have been that there are still problems in the community but that the intensity of those problems has decreased over time?”

## X. Data from TPD

66. The City's analysis of City Walk's application was partially based on data regarding calls for service to TPD. The City used that data to conclude that the amount of crime in the area surrounding the Mahan facility had increased in 2021, with the implication that the Mahan facility was responsible for the increased crime. For instance, a summary sheet accompanying the TPD data reports the following increases in particular crimes within a .25 mile radius of the Mahan facility for the first six months of 2021: batteries up 239%; incidents involving mentally ill individuals up 45%; incidents involving suspicious persons/incidents/vehicles up 94%; grand thefts up 45%; the number of trespass warnings up by 1,100%; and the number of trespassing incidents up by 1,131%. Similar increases are reported within a .5 mile radius of the Mahan facility: aggravated assaults up by 256%; batteries up by 248%; incidents involving intoxicated persons up 71%; incidents of lewd and lascivious conduct up 700%; incidents of resisting arrest/obstructing a law enforcement officer up 220%; robberies up 1,500%; incidents involving suspicious persons/incidents/vehicles up 56%; grand thefts up 21%; the number of trespass warnings issued up 589%; and the number of trespassing incidents up 625%.

67. However, an examination of the underlying data indicates that the aforementioned numbers do not give a complete picture. With regard to the crime data pertaining to the area within a .25 mile radius of the Mahan facility for the first six months of 2021, there have been no calls pertaining to aggravated assault; aggravated battery; assault; auto theft; commercial burglary; child abuse; criminal mischief; disorderly intoxication; drug violations; intoxicated persons; lewd and lascivious conduct; loitering/prowling; resisting/obstructing a law enforcement officer; armed robbery; strongarm robbery; or sexual battery.

68. There was a decrease in calls pertaining to disorderly conduct for the area within a .25 mile radius of the Mahan facility. While the yearly average

from 2013 through 2020 was 12.6 incidents, there were only five for the first six months of 2021. As for grand theft, the one call from the first half of 2021 compares to a yearly average of 1.4 calls from 2013 through 2020.

69. As for the large percentage increases in the calls pertaining to certain crimes, there were seven calls for service relating to battery during the first six months of 2021 for the area within a .25 miles radius of the Mahan facility, and the yearly average for the period from 2013 through 2020 was 4.1 calls. There were four calls during the first six months of 2021 pertaining to mentally ill persons, and the yearly average from 2013 through 2020 was 5.5. While the percentage increases are large, the actual numeric values are not.

70. The number of calls pertaining to trespassing and suspicious persons did increase during the first half of 2021, but the pertinent numbers are also small. For example, there were 15 calls about trespassing with warnings being issued, 10 pertaining to trespassing without warnings, and 33 pertaining to suspicious persons. During the 2013 through 2020 time frame, the yearly averages for trespassing with warnings, trespassing, and suspicious activity were 2.5, 1.6, and 34.0 respectively. The increase in calls could be attributable to residents being more alert to such activity following City Walk's operation of a law barrier shelter.

71. As for the area within .50 miles of the Mahan facility, there were no calls pertaining to aggravated battery; assault; child abuse; criminal mischief; disorderly intoxication; loitering/prowling; armed robbery; strongarm robbery; or sexual battery.

72. As was the case with the data pertaining to the .25 mile radius around the Mahan facility, the large percentage increases for certain calls within .50 miles of the Mahan facility was also based on small numbers. For example, there were two aggravated assaults, 20 batteries, three incidents of intoxicated persons, one incident of lewd and lascivious conduct, one incident



of resisting/obstructing a law enforcement officer, and one incident of sudden snatching robbery. The number of batteries, 20, is an outlier.

73. The number of calls pertaining to trespassing and suspicious persons did increase during the first half of 2021 for the area within a .50 mile radius around the Mahan facility, but the pertinent numbers are still small. For example, there were 31 calls about trespassing with warnings being issued, 24 pertaining to trespassing, and 112 pertaining to suspicious persons. During the 2013 through 2020 time frame, the yearly averages for trespassing with warnings, trespassing, and suspicious activity were 9.0, 6.6, and 143.6 respectively. The increases could be attributable to residents being more alert to such activity following City Walk's operation of a law barrier shelter.

74. In addition to the foregoing, the data does not acknowledge the existence of at least one known homeless encampment within .50 miles of the Mahan facility, i.e., the encampment under a bridge on Magnolia Avenue near the building that formerly housed the Tallahassee Democrat. The data also does not acknowledge the multiple other encampments in close proximity to the Mahan facility. Nor does the data link any increases in particular crimes to residents of City Walk's TRF.

75. In sum, the service call data from TPD is inconclusive as to whether the crime rate is worsening in the area around the Mahan facility, and it does not demonstrate that City Walk is responsible for any increase in crime.

## XI. Ultimate Findings

76. The testimony from residents and business owners was compelling with regard to the impact City Walk's low barrier shelter had on the surrounding area. When City Walk was operating a low barrier shelter between November of 2020 and February 1, 2021, it was a nuisance, failed to address the needs of the residents and businesses in the surrounding area, and unreasonably, adversely impacted the character of the surrounding area within the meaning of section 10-417(f). In retrospect, operating a low barrier

shelter at 1709 Mahan Drive was ill advised, and the resulting, detrimental impact on the surrounding area is probably why so many residents are opposed to City Walk operating a TRF at the Mahan facility.

77. However, the focus of the instant case should not be City Walk's operation of a low barrier shelter at the Mahan facility between November of 2020 and the end of January 2021. Instead, the focus should be on City Walk's operation of a TRF at the Mahan facility since February 1, 2021, and the impact thereof on the surrounding community. In that regard, City Walk, by a preponderance of the competent, substantial evidence, presented a prima facie case that it can satisfy the minimum criteria for a TRF set forth in section 10-417(f). Also, the City failed to carry its burden of demonstrating that City Walk cannot satisfy the criteria in section 10-417(f) that served as the basis for the DRC's decision to deny the application. Specifically, the City failed to demonstrate that: (a) the Mahan facility's operation as a TRF will create or cause a private nuisance; (b) that the Mahan facility has failed to implement adequate security measures or address the needs of the residents and businesses in the surrounding area; or that (c) the Mahan facility will unreasonably adversely impact existing uses of the surrounding area or change its character. The testimony from residents and business owners did not persuade the undersigned that the problems in the area resulting from City Walk's operation of a low barrier shelter persisted after the transition to TRF operations. While there is conflicting evidence on this point, the totality of the evidence indicates that conditions in the area surrounding the Mahan Facility have substantially returned to normal following the transition.

78. To whatever extent that homeless people are presently causing problems in the area surrounding the Mahan facility, it is unjustified to automatically assume that a City Walk resident is responsible. First of all, there have been homeless encampments in the surrounding area long before the Mahan facility began operations. The City presented no persuasive evidence that the operation of a TRF on Mahan Drive since February 1, 2021,

has led to an increase in the number of homeless people in the area surrounding Mahan Drive. Furthermore, the residents of the Mahan facility in supportive and transitional housing are gainfully employed, and the City presented no evidence that any resident of City Walk's TRF has committed any crime or caused a resident to place a call for police service. Also, the City's crime data was inconclusive as to whether the pertinent area has experienced an increase in crime since February 1, 2021, and it did not demonstrate that City Walk's presence on Mahan Drive has led to an increase in crime. Thus, the City did not prove that the Mahan facility is a nuisance or that its presence has changed the character of the surrounding area.

79. Despite the tragedy involving Christopher Halligan, the City did not demonstrate that City Walk's security plan is inadequate. Nevertheless, the residents and business owners who testified during the final hearing raised valid concerns. In order to address those concerns, any approval of City Walk's application to operate a TRF at the Mahan facility should include the following conditions:<sup>15</sup> (a) maintain current security protocols which must include camera surveillance monitored in real time with dedicated staff patrolling the grounds; (b) no resident discharges between the hours of midnight and 7:00 a.m.; (c) if there is an urgent need that requires discharge of a resident between the hours of midnight and 7:00 a.m., then City Walk shall obtain the assistance of law enforcement or private security; (d) vigorous enforcement of City Walk's existing prohibitions against panhandling, loitering, traveling through certain neighborhoods, and patronizing certain businesses; (e) no acceptance of anyone who has

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<sup>15</sup> City Walk suggested in its Proposed Recommended Order that any approval could be conditional in nature, and several of the conditions enumerated herein are drawn directly from those suggested by City Walk. Section 9-155 of the City's Land Development Code applies to Type B reviews of new TRFs and indicates that the DRC can attach conditions to an approval. Specifically, section 9-155(10)(j) pertains to DRC review and states that the DRC "shall review the plans at their next regularly scheduled meeting, prepare and submit to the chair a preliminary decision with an itemized list of findings of fact which support approval, approval with conditions, or denial of the application . . ."

been convicted of a sex-related offense; (f) no admission of anyone who is prohibited by statute from residing at the Mahan Facility due to the proximity of schools and daycare facilities; (g) capping the number of full-time residents at 64; (h) no provision of basic necessities such as food and clothing to anyone who is not a resident; (i) maintenance of a resident log in order to assist with ascertaining residents' whereabouts; and (j) implementation of random and routine checks for contraband in the residents' rooms.

#### CONCLUSIONS OF LAW

80. A set of bylaws ("the Bylaws") governs the actions of the Tallahassee-Leon County Planning Commission when it is acting in its capacity as the Planning Commission, the Local Planning Agency, and the Land Development Regulation Commission.

81. Article IX of the Bylaws sets forth procedures governing formal, quasi-judicial proceedings and provides that decisions by the DRC regarding Type B Site Plans are final 15 calendar days after they are rendered unless a party timely files a petition for formal quasi-judicial proceedings:

Decisions of the City of Tallahassee Land Use Administrator, the City of Tallahassee Director of Growth Management or Designee, the City Development Review Committee, and the Leon County Administrator or Designee, which are set forth above, are subject to formal quasi-judicial proceedings by the Planning Commission under this Article IX of Part I. Such decisions shall be final fifteen calendar days (thirty calendar days if the project is located within the City) after they are rendered unless a party timely files a petition for formal quasi-judicial proceedings together with the appropriate filing fee. Should a party petition for formal quasi-judicial proceedings, the decision under review will become proposed action until the final decision is made, after conducting a de novo formal quasi-judicial proceeding.

82. After the Clerk of the Planning Commission transmits a petition for a formal quasi-judicial proceeding to DOAH, and an evidentiary hearing is held, Section 5 of Article IX provides that the Administrative Law Judge’s recommended order,

shall be based upon competent, substantial evidence. Pursuant to F.S. Section 163.3215(4)(f), the standard of review applied by the [ALJ] in determining whether a proposed development order is consistent with the comprehensive plan shall be strict scrutiny in accordance with Florida law.<sup>[16]</sup> The [ALJ] shall not be bound by strict rules of evidence, nor limited to consideration of such evidence as would be admissible in a court of law, but may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. Hearsay evidence will be accepted. However, the [ALJ] shall not make a finding that is based solely on hearsay, unless the hearsay would be admissible in a judicial proceeding under the Florida Evidence Code. The [ALJ] shall rule on any objections made at the evidentiary hearing.

83. As for the burden of proof, Section 5 of Article IX further provides that,

[i]n de novo, formal quasi-judicial proceedings, the initial burden of proof shall be on the applicant. Once the applicant establishes his or her entitlement to approval by submittal of competent, substantial evidence supporting the approval (referred to by the courts of this state as a “prima facie case”), the burden of proof will shift to the petitioner(s) to rebut the evidence submitted by the

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<sup>16</sup> To the extent that resolution of the instant case turns on an interpretation of the Code, the reference to “strict scrutiny” indicates that the DRC’s decision to deny City Walk’s application is entitled to no deference. See *generally Dixon v. City of Jacksonville*, 774 So. 2d 763 (1st DCA 2000)(stating that “[b]ecause we conclude that the issue before us is one that is ‘easily subject to examination for strict compliance with the plan,’ we apply the standard of strict scrutiny to resolve it, a process which involves a detailed examination of the development order for exact compliance with, or adherence to, the comprehensive plan. We reject, moreover, the City’s argument that deference should be given to the City’s interpretation of a law which it administers, thereby requiring its approval so long as its construction falls within the range of possible interpretations. We are instead presented with a question which is purely one of law, and we are not constrained by more deferential standards from substituting our judgment for that of the lower tribunal.”).

applicant. The decision under appeal will be treated as a staff report.

84. While Section 6 of Article IX states that chapter 120, Florida Statutes, does not apply to proceedings such as the instant case, it notes that the following provisions of the Florida Administrative Code do apply: rules 28-106.104 (except subsection (8) thereof), 28-106.108, 28-106.110, 28-106.203, 28-106.211, 28-106.213, and 28-106.215.

85. Furthermore, Section 10(g) of Article IX provides that the Planning Commission, after considering exceptions to the recommended order and responses to those exceptions, shall,

adopt the recommended order, adopt the recommended order with changes, or direct staff to prepare a revised order. The Planning Commission may also remand the recommended order to the [ALJ] if additional findings are necessary. The Planning Commission shall not change any findings of fact reached by the [ALJ] unless after review of the entire record, the Planning Commission finds there is no competent substantial evidence to support the [ALJ]'s findings. The Planning Commission may change conclusions of law if it is found that the administrative law judge did not apply the correct law. If the Planning Commission directs staff to prepare a revised order consistent with its vote, the revised order shall be submitted to the Planning Commission at its next regularly scheduled meeting for final action.

86. With regard to the instant case, City Walk established a prima facie case that its application satisfies the “minimum criteria for the issuance of site plan approval” in subsection (f) of section 10-417. Establishing a prima facie case is not difficult. *See generally Mizell v. Miami-Dade Cnty.*, 342 F. Supp. 2d 1084, 1089 (S.D. Fla. 2004)(noting that demonstrating a prima facie case in the employment discrimination context is not onerous; it requires only that a plaintiff establish facts sufficient to support an inference of discrimination). The focus of this analysis is not City Walk’s operation of a

low barrier shelter from November 2020 through the end of January 2021. Instead, the focus is on whether City Walk can operate a TRF that satisfies the criteria in section 10-417. In the instant case, City Walk has operated a TRF since February 1, 2021, that satisfies that minimum criteria.

87. Accordingly, the burden of proof then shifted to the City to demonstrate by a preponderance of the evidence that the DRC correctly denied the application. *See generally Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833-34 (Fla. 1993)(stating that “[h]aving determined that the proceeding before the Commission is a de novo hearing, we now turn to the placement of the burdens in such a proceeding. The general rule is that, apart from statute, the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal.”); § 120.57(1)(j), Florida Statutes (2021)(providing that “[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.”).

88. The City argued that the Mahan facility does not satisfy section 10-417(f)(2) and amounts to a private nuisance because it acts as a magnet drawing homeless people to the area. However, the City did not carry its burden of proof on this point because homeless encampments have existed in the nearby area for many years. Also, the call for service data from TPD was inconclusive as to whether overall crime in the pertinent area has been trending upward since January 1, 2021, and failed to demonstrate that residents of the Mahan facility were the cause of any crimes. In addition, there was conflicting testimony from residents and business owners on whether the problems caused by City Walk’s operation of a low barrier shelter persisted after the transition to TRF operations. For the same reasons, the City failed to prove that the City Walk application fails to satisfy section 10-417(f)(7) by changing the character of the surrounding area or unreasonably adversely impacting existing uses of the area.

89. The City also failed to carry its burden of demonstrating that City Walk's security plan is inadequate. Nevertheless, the concerns of residents can be addressed through a conditional approval of City Walk's application.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the City of Tallahassee grant the City Walk-Urban Mission, Inc.'s application to operate a transitional residential facility, pursuant to section 10-417 of the Tallahassee Land Development Code, at the property located at 1709 Mahan Drive, Tallahassee, Florida, with the following conditions: (a) maintain current security protocols which must include camera surveillance monitored in real time with dedicated staff patrolling the grounds; (b) no resident discharges between the hours of midnight and 7:00 a.m.; (c) if there is an urgent need that requires discharge of a resident between the hours of midnight and 7:00 a.m., then City Walk shall obtain the assistance of law enforcement or private security; (d) vigorous enforcement of City Walk's existing prohibitions against panhandling, loitering, traveling through certain neighborhoods, and patronizing certain businesses; (e) no acceptance of anyone who has been convicted of a sex-related offense; (f) no admission of anyone who is prohibited by statute from residing at 1709 Mahan Drive due to the proximity of schools and daycare facilities; (g) capping the number of full-time residents at 64; (h) no provision of basic necessities such as food and clothing to anyone who is not a resident; (i) maintenance of a resident log in order to assist with ascertaining residents' whereabouts; and (j) implementation of random and routine checks for contraband in the residents' rooms.



DONE AND ENTERED this 19th day of November, 2021, in Tallahassee,  
Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of November, 2021.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

As provided by the Tallahassee-Leon County Planning Commission Bylaws,  
all parties shall have ten calendar days from service of this Recommended  
Order to file written exceptions with Clerk of the Planning Commission.