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March 8, 2012

Council of the City of Los Angeles
Planning and Land Use Management (PLUM) Committee
200 North Spring Street
Los Angeles, CA 90012

**RE: COMMUNITY CARE FACILITIES ORDINANCE
CF 11-0262**

Honorable Members of the Planning and Land Use Management (PLUM) Committee;
Councilmembers Ed Reyes, Jose Huizar, and Mitchell Englander:

For your consideration, this report identifies possible revisions to the proposed Community Care Facilities ordinance. Subsequent to the March 29, 2011 and April 5, 2011 Planning and Land Use Management (PLUM) Committee public hearings and the June 1, 2011 City Council public hearing, Planning Department staff met with various stakeholders, including disability rights advocates, sober living housing providers, licensed Community Care facility operators, and neighborhood organizations, to discuss their concerns with the proposed ordinance.

The items of concern are (1) the definition of *single housekeeping unit*, (2) the number of allowable leases in single family dwellings, (3) regulating licensed facilities for seven residents and over, and (4) the definition of *parolee/probationer home*.

(1) Definition of *Single Housekeeping Unit*

Requiring a *family* to operate as a *single housekeeping unit* limits transient occupancy and business uses in single-family zones. This requirement has been adopted by Oakland, San Diego, San Jose, Los Angeles County, and a number of cities in Orange County. Though not all cities define *single housekeeping unit*, common “markers” found in definitions are listed below.

- Functional equivalent of a traditional family
Newport Beach, Oakland, Pasadena, San Jose
- Relatively permanent or non-transitory
Downey, Fresno, Oakland, Orange, Pasadena, San Jose
- Shared responsibility for household maintenance, chores and expenses
Fresno, Newport Beach, Oakland, Orange, Pasadena, San Diego
- Interaction and shared activities
Fresno, Newport Beach, Orange, Pasadena, San Jose
- Joint use of common areas
Fresno, Orange, Pasadena, San Diego, San Jose
- Members determined by residents as opposed to landlord or third party
Newport Beach

(2) Number of Allowable Leases in Single-Family Dwellings

According to the State Attorney General opinion of March 19, 2003 (see attached), a city may define multiple-lease living arrangements as boarding house businesses. The Department believes that most living situations with multiple leases qualify as boarding houses and as such are permitted only in multiple family and commercial zones. The proposed single-lease limitation for single housekeeping units reinforces the City’s current ban on boarding houses in single-family zones.

However, the proposed ordinance allows a single-housekeeping unit to take on boarders under one lease within single-family zones. Once a single-housekeeping unit takes on boarders under two leases, it is deemed a *boarding/rooming house business* and is no longer permitted in single-family zones. Should the City Council believe that this lease limitation too onerously restricts housing opportunities, it may wish to remove the lease limitation altogether and rely solely on “markers”, similar to the cities listed above, in addition to precluding it from being a *boarding/rooming house business*.

Additionally, the Council may wish to reconsider the minimum number of leases for a *boarding/rooming house business*. The ordinance as proposed defines a *boarding/rooming house* as having two or more leases. As shown below, other cities define boarding house by the number of leases in the dwelling.

City	Number of leases	Definition of Boarding or Rooming House	Zones	CUP Required?
Palmdale	5 or more	Boarding House means the rental of a residence/dwelling, other than a hotel or motel, wherein a room or rooms, with or without individual or group cooking facilities, are occupied by or <u>rented to five or more individuals under separate rental agreements or leases</u> , either written or oral, or implied...	multifamily	Yes
Pasadena	3 or more	Boarding house: A residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are <u>rented to individuals under separate rental agreements or lease</u> , either written or oral, whether or not an owner, agent, or rental manager is in residence.	Multifamily and commercial	Yes
West Covina	3 or more	Boarding house: A residence or dwelling, other than a hotel, motel or rest home, wherein either three (3) or more rooms are rented, or housing is provided to <u>three (3) or more individuals, under three or more separate written or oral rental agreements</u> , lodger agreements, leases or subleases...	All residential	Yes
Newport Beach	2 or more	"Boarding or rooming house" means a residence or dwelling unit, or part thereof, wherein a room or rooms are rented under <u>two or more separate written or oral rental agreements, leases or subleases</u> or combination thereof, whether or not the owner, agent or rental manager resides within the residence. See "Group residential."	Prohibited in all zones.	--

Among cities defining *boarding house* by the number of leases in the dwelling, most define *boarding house* as three or more leases. In addition to Pasadena and West Covina, this threshold has been adopted by the City of Orange, Fontana, Murrieta, Napa and Lompoc.

(3) Regulating Licensed Facilities of Seven Residents and Over

Regulating as Public Benefits

Currently, a variance is needed to locate a licensed facility for seven or more in a residential zone. The proposed ordinance removes that obstacle and expands options for licensed facilities by permitting them by-right as a public benefit in all zones with performance standards, including a limitation of two residents per bedroom.

Density Performance Standard

Limiting residents to two per bedroom conforms to density standards under Section 8, the Americans with Disabilities Act, and the Department of Housing and Urban Development. An alternative compliance procedure (similar to a conditional permit) permits deviations from performance standards when warranted. Operators may still use the variance process to obtain approvals for a licensed facility; the public benefits procedure is simply an additional method by which licensed facilities may operate.

(4) Definition of *Parolee/Probationer Home*

The Planning Department believes that further research and study is necessary to craft a well-balanced approach to *parolee-probationer homes*. As such, the Department recommends that the City Council remove the *parolee/probationer* definition and conditional use from the proposed ordinance and resolve these issues at a later date.

Definition Revisions

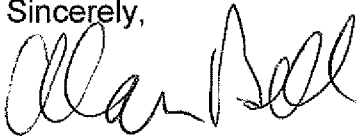
As discussed, the Planning Department recommends the following definition revisions to maintain the intent of the ordinance yet provide added flexibility in housing options.

SINGLE HOUSEKEEPING UNIT. ~~One household~~ The functional equivalent of a traditional family where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses and maintenance of the premises are shared or carried out according to a household plan or other customary method, ~~and the~~ The makeup of the household occupying the unit is stable and semi-permanent and determined by the residents of the unit rather than the landlord, or property manager, or third party. ~~If a resident owner rents out a portion of the dwelling unit, those renters must be part of the household and under no more than one lease, either written or oral. If a non-resident owner rents out the dwelling unit, all residents 18 years and older have chosen to jointly occupy the entire premises of the dwelling unit under no more than one written lease. This does not include a Boarding or Rooming House Business.~~

BOARDING OR ROOMING HOUSE BUSINESS. A one-family dwelling where lodging is provided to individuals with or without meals, for monetary or non-monetary consideration under **[two]** or more separate agreements or leases, either written or oral, or a dwelling with five or fewer guest rooms or suites of rooms, where lodging is provided to individuals with or without meals, for monetary or non-monetary consideration under **[two]** or more separate agreements or leases, either written or oral. A leased bedroom shall be considered the same as a guest room for density and parking requirements. This definition does not include any state licensed facility serving six or fewer persons which, under state law, is not considered a boarding house.

This report identifies possible revisions to the proposed ordinance for the Council's consideration. Should you have any questions about this report, please call Tom Rothmann at (213) 978-1891.

Sincerely,

A handwritten signature in black ink that reads "Alan Bell". The signature is written in a cursive, flowing style.

ALAN BELL, AICP
Deputy Director

AB:TR

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 01-402
	:	
of	:	March 19, 2003
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
ANTHONY S. Da VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE SHARON D. STUART, CITY PROSECUTING ATTORNEY, CITY OF LOMPOC, has requested an opinion on the following question:

May a city prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental manager is in residence?

CONCLUSION

A city may prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence, in order to preserve the residential character of the neighborhood.

ANALYSIS

A city proposes to enact an ordinance prohibiting the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone. A boarding or rooming house business would be defined under the ordinance "as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence."¹ We are asked whether the ordinance would be valid. We conclude that a city may prohibit the operation of boarding house businesses in a low density residential zone in order to preserve the residential character of the neighborhood.

It is now well settled that a city has broad authority to adopt zoning ordinances to protect the public health and general welfare of its residents. (See Cal. Const., art. XI, § 7; Gov. Code, §§ 65800-65912; *Euclid v. Ambler Co.* (1926) 272 U.S. 365, 386-395; *Miller v. Board of Public Works* (1925) 195 Cal. 477, 484-488.) Municipalities may establish strictly private residential districts as part of a general comprehensive zoning plan. (*Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 337-338; *Fourcade v. City and County of San Francisco* (1925) 196 Cal. 655, 662; *Sutter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1131.)² "[M]aintenance of the character of residential neighborhoods is

¹ A rooming house typically does not provide meals or cooking facilities. For our purposes, however, a rooming house business would be subject to the same analysis as a boarding house business and will thus be included in the term "boarding house" throughout this opinion.

² We may assume for purposes of this opinion that the proposed ordinance would be consistent with the city's general plan. (Gov. Code, § 65860; cf. *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1589; see also 81 Ops.Cal.Atty.Gen. 57, 57-61 (1998).) We may also assume that the ordinance would be consistent with state law prohibiting certain group homes from being considered "boarding houses." (See Health & Saf. Code, §§ 1500-1567.9; *Hall v. Butte Home Health, Inc.* (1997) 60 Cal.App.4th 308, 318-322;

a proper purpose of zoning.” (*Ewing v. City of Carmel-by-the-Sea*, *supra*, 234 Cal.App.3d at p. 1590.)

More specifically, the courts of this state have stated that the operation of boarding house businesses may be excluded from a residential zone. (*City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133 [“To illustrate, ‘residential character’ can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc.)”]; *City of Chula Vista v. Pagard* (1981) 115 Cal.App.3d 785, 792; see also *Seaton v. Clifford* (1972) 24 Cal.App.3d 46, 51 [“the maintenance of a commercial ‘boarding house,’ . . . which in essence is providing ‘residence’ to paying customers, is not synonymous with ‘residential purposes’ as that latter phrase is commonly interpreted in reference to property use”].) With respect to zoning matters, “[t]he term ‘residential’ is normally used in contradistinction to ‘commercial’ or ‘business.’” (*Sechrist v. Municipal Court* (1976) 64 Cal.App.3d 737, 746.)

“There is no question but that municipalities are entitled to confine commercial activities to certain districts [citations], and that they may further limit activities within those districts by requiring use permits.” (*Sutter v. City of Lafayette*, *supra*, 57 Cal.App.4th at p. 1131.) “Many zoning ordinances place limits on the property owner’s right to make profitable use of some segments of his property.” (*Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 498.) Here, the proposed ordinance would allow property owners to rent to boarders under one or two separate rental agreements. The owners would not be denied all commercial use of their properties. (See *Ewing v. City of Carmel-by-the-Sea*, *supra*, 234 Cal.App.3d at pp. 1592-1593.)³

In short, preserving the residential character of a neighborhood is a legitimate government purpose that may be reasonably achieved by prohibiting commercial enterprises such as operating a boarding house business. (See *Euclid v. Ambler Co.*, *supra*, 272 U.S. at pp. 394-395; *City of Santa Barbara v. Adamson*, *supra*, 27 Cal.3d at p. 133; *Miller v. Board of Public Works*, *supra*, 195 Cal. at p. 493; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 687; *Ewing v. City of Carmel-by-the-Sea*, *supra*, 234 Cal.App.3d at pp. 1590-1592; *City of Chula Vista v. Pagard*, *supra*, 115 Cal.App.3d at pp. 792, 799-800.)

City of Los Angeles v. Department of Health (1976) 63 Cal.App.3d 473, 477-481; 76 Ops.Cal.Atty.Gen. 173, 175 (1993).)

³ Of course, the proposed ordinance would apply only to the city’s low density residential (R-1) zone and not to multiple dwelling zones or other zoning districts of the city.

The proposed ordinance would not raise constitutional issues of the right of privacy or right of association since it would allow any owner of property to rent to any member of the public and any member of the public to apply for lodging. The proposed ordinance would be directed at a commercial use of property that is inconsistent with the residential character of the neighborhood and which is unrelated to the identity of the users. The courts have approved a distinction drawn that is based upon the commercial use of property by owners in a restricted residential zone. (See *City of Santa Barbara v. Adamson*, *supra*, 27 Cal.3d at pp. 129-134; *Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 460-464; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 686-687; *Ewing v. City of Carmel-by-the-Sea*, *supra*, 234 Cal.App.3d at pp. 1595-1598; *City of Chula Vista v. Pagard*, *supra*, 115 Cal.App.3d at pp. 791-793, 798.)

We reject the suggestion that the relatively few number of boarders prohibited under the proposed ordinance would prevent the ordinance from being upheld by a court. In *City of Santa Barbara v. Adamson*, *supra*, 27 Cal.3d 123, the Supreme Court indicated that operating boarding house businesses could be prohibited to preserve the residential character of a neighborhood without specifying that the businesses had to be of a particular size. (*Id.* at p. 133.) Of course, the greater the number of boarders who would occupy a single family dwelling, the more likely the residential character of the neighborhood would be threatened. (See *Ewing v. City of Carmel-by-the-Sea*, *supra*, 234 Cal.App.3d at p. 1591.) Without question, operating a boarding house for 20 or 30 boarders would undermine a neighborhood's residential character. Here, the proposed ordinance would prohibit a boarding house business operated for only three boarders. And, as previously observed, the proposed ordinance would allow commercial use of a property if only one or two boarders were renting rooms from the owner. What is the standard of review for evaluating such a legislative determination as to the allowable size of a boarding house business in a restricted residential zone?

“ “[A]s is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.” [Citation.]” (*Hall v. Butte Home Health, Inc.*, *supra*, 60 Cal.App.4th at p. 322.) “[C]ourts ordinarily do not consider the motives behind legislation, including local legislation [citations], nor do they second-guess the wisdom of the legislation [citations].” (*Sutter v. City of Lafayette*, *supra*, 57 Cal.App.4th at p. 1128.) “In enacting zoning ordinances, the municipality performs a legislative function, and every intendment is in favor of the validity of such ordinances. [Citations.]” (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460.) The ordinance will be upheld so long as the issue is “ ‘at least debatable.’ ” (*Minnesota v. Clover Leaf Creamery Co.* (1981) 449 U.S. 456, 464; see *Sutter v. City of Lafayette*, *supra*, 57 Cal.App.4th at p. 1133; *Ewing v. City of Carmel-by-the-Sea*,