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May 23, 2011

Council Member Richard Alarcon
Los Angeles City Council
City of Los Angeles
200 North Main Street, Room 470
Los Angeles, California 90012

Via Electronic Mail

Re: "Community Care Facilities Ordinance"
Council File: 07-3427
Case No. CPC-2009-800-CA

Dear Council Member Alarcon:

This office represents developers and providers of housing for individuals with disabilities within the City of Los Angeles including state licensed facilities and independent living residences. In addition to assisting organizations and individuals who develop much needed housing for persons with disabilities, technical assistance is often provided to local governments within the state to ensure compliance with civil rights laws.

In the proposed ordinance, the City of Los Angeles has recognized the importance of easing barriers to siting housing for persons with disabilities, specifically state licensed facilities. However, the City has also proposed zoning provisions that will restrict the location of a wide range of independent living arrangements for persons with disabilities with some far reaching negative consequences that may not have been anticipated. It is hoped that after considering the effect of the proposed changes the Commission will send the proposed ordinance back to the Planning Department for further review and revision.

Amendments As To State Licensed Facilities

The proposed ordinance will incorporate in the Los Angeles zoning code the state law definitions of: community care facilities (Health & Safety § 11834.02); Alcohol and Drug Program (ADP) (Health & Safety § 1502) and; Residential Care Facility for the Elderly (Health & Safety §1569.2). This will be beneficial by providing a uniform definition and clarifying that the state law provisions are applicable to municipal zoning. Likewise, it is also helpful to both the public and City staff to conform the City's zoning code to the state pre-emption statutes that authorize state licensed homes (the three above) for six or fewer residents to locate by right in any

zone in which families are permitted. No conditional use permit or variance may be required for siting of these small homes in residential zones.

Of even greater benefit is the City's proposal regulating state licensed homes for seven or more residents as "public benefits" in residential (R), agricultural (A) and commercial (C) zones. State licensed homes that meet the performance standards may be permitted without a variance or conditional use permit, entitlement processes that are costly, time consuming and often volatile due to community opposition that is overly influential in the decision-making process. This proposed provision is an affirmative step on the part of local government to further housing opportunities for persons with disabilities while also setting reasonable standards for state licensed facilities within designated zones.

In regard to the specific standards, however, there are two concerns. First, there is no basis for distinguishing between parking requirements for Alcohol and Drug Programs and Community Care Facilities. As currently proposed, ADP's would be required to provide one parking space for each resident while Community Care Facilities would be required to provide a minimum of two spaces and an additional 0.2 spaces for each additional resident. There is no legal basis for regulating households differently based on the actual or perceived disabilities of those residing in the homes. There is also no factual basis that would justify this distinction, requiring greater parking for state licensed substance abuse rehabilitation homes. In fact, the majority of ADP's prohibit their residents from having cars when they enter the home. The parking requirements should be the same for all state licensed facilities and the proposed CCF standard is recommended.

Second, the proposal provides a density restriction for state licensed homes of two per bedroom. While this density standard is found in state law, both Community Care Licensing and ADP grant exceptions when sought by a provider. Again, the City has not provided evidence or any rationale as to why it would impose its own regulations when the state has pre-empted the field as to most matters related to the operation and standards of the homes it licenses. Furthermore, by not allowing for flexibility in this two per bedroom standard, the City's proposed density regulation is more restrictive than state law and impermissible. The density performance standard should be eliminated. In all other respects, classifying state licensed facilities as public benefits would be a sound and significant advancement for licensed programs.

<u>Revised Definition of "Family" and Addition of "Single housekeeping Unit"</u>

In an apparent response to complaints about sober living homes, the City has proposed revising the definition of "family" and adding the related term, "single housekeeping unit" to narrowly restrict the households that are permitted to reside in low density (R1 and R2) zones. Amending the definition of "family" that was carefully drafted and passed by the City Council in 2005 to comply with fair housing laws, this new proposed definition requires a single lease agreement for any dwelling unit in order for the household residents to constitute a "family."

> Proposed definition of "family" - "One or more persons living together in a dwelling unit ~~with common access to, and and common use of all living, kitchen and~~

~~eating areas within the dwelling unit~~ as a single housekeeping unit."

Proposed definition of "single housekeeping unit" - One household where all 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. If all or part of the dwelling unit is rented, the lessees must jointly occupy the unit under a single lease, either written or oral, whether for monetary or non-monetary consideration. (emphasis added)

Read together, these definitions mean that if there is more than one lease agreement for the dwelling unit, either single family or within a multi-family dwelling unit, the City will presume a boarding house use, a use that is prohibited in low density residential zones.

The single lease agreement, proposed by the City to be a "bright line" for distinguishing between a family use and a boarding house use, is flawed for several reasons. This approach is an attempt to circumvent City of Santa Barbara v. Adamson in which the California Supreme Court on privacy grounds rejected the municipality's definition of family which distinguished between related and unrelated individuals and limited the number of unrelated persons who could reside together to constitute a family. While the City might argue that it is not limiting the number of unrelated persons that may reside together, merely the number of contractual relationships for purposes of siting in low density residential zones, there remains an interference with privacy rights that is unjustified both factually and legally. While the proposed language may be neutral on its face, the staff reports are transparent in motive: the City has repeatedly tried to regulate sober living homes (without substantiation of a problem) but legally could not do so because it singled out a particular group of persons with disabilities, those in recovery. This motive cannot be ignored and provides evidence of the City's continuing intent to regulate a specific type of living arrangement for persons with disabilities.

While the City in regulating zoning is justified in distinguishing a family use from a boarding house use, the indicia of a "single housekeeping unit" or, alternate family, does not rest exclusively on contractual arrangements but on a much more intangible set of considerations as the Court recognized in City of Santa Barbara v. Adamson. The City's current definition of "family" was drafted with input from the Department of Building and Safety which wanted a legal definition of "family" that would not be burdensome for its inspectors to enforce. The language addressing physical access to the entire dwelling as indicating a familial use from a boarding house use was agreed upon as workable solution. Inspectors have the ability to go to a home in response to a complaint and view the premises. It is unlikely that the City will want to now require the production of lease documents as part of its use determination and enforcement procedure. There could also be resistance on the part of providers and residents to produce lease documents due to a number of concerns including confidentiality.

The proposed definition of "family" requiring a single lease agreement per dwelling is highly suspect under federal and state fair housing laws because it effectively eliminates in R1 and R2 zones housing opportunities for persons with disabilities who frequently reside together and function like a family but with individual lease agreements. Regardless of neutral language or motive, the proposed provision has an adverse impact on housing for persons with disabilities; unintentional discrimination that is not remedied creates liability.

The proposed definition conflicts with the Americans with Disabilities Act (ADA) which requires that individuals reside in the least restrictive setting. Often referred to as the "integration mandate," Title II of the federal law requires that a wide range of housing opportunities be available to people with disabilities including independent living residences for those who do not require institutionalization or even a state licensed facility. This State's innovative Mental Health Services Act, which provides "shared housing" is specifically designed to provide independent living arrangements for people with mental disabilities, would be devastated by the proposed changes to the definition of "family." Jointly administered by the California Housing Finance Agency and the Department of Mental Health, the State's "shared housing" model permits one to four unit housing developments that may include the use of single family dwellings, duplexes, triplexes, four-plexes and condominiums. Each resident has his or her own bedroom with a locking door and shares the rest of the dwelling with the other household members. While there are multiple lease agreements, the residents function in a family-like way, deriving significant support from one another. However, under the City's current proposal, the MHSA's share housing programs, which is permanent supportive housing, would be classified as a boarding house and prohibited from residing in single family homes and duplexes in R1 and R2 zones.

Sober living home residences often require individual lease agreements pursuant to California landlord-tenant laws for the protection of property owners and residents as well as to the benefit of surrounding neighbors should one individual be disruptive and need to be evicted. Under a single lease agreement, a property owner would be required to evict the entire household to be rid of a single problem tenant. As stated earlier, production of lease agreements raises potential confidentiality concerns. And, in any independent living arrangement, a resident's right to seek a fair housing reasonable accommodation based on disability would potentially be impaired without an individual lease agreement.

The Planning Commission should reject both the proposed revision of the definition of "family" and the addition of "single housekeeping unit" and continue to use the current definition of "family." The nuisance abatement process provides an effective mechanism for enforcing zoning violations and problem residences where there is a problem.

<u>Regulation of Boarding/Rooming Houses</u>

The definition is amended to include both a one family dwelling and a dwelling with multiple guest rooms/suites with two or more leases or agreements, either written or oral (regardless of whether meals are provided or rent is paid). The boarding house use has been prohibited from R1 (single family) and R 2 (duplex) zones and it is now proposed that this use would also be prohibited from RD (restricted density) zones. As noted above, while the City

should regulate a boarding house use and prohibit it from low density residential zones, relying on the number of lease agreements to determine whether the use is a boarding house is flawed in that it reaches independent living arrangements for persons with disabilities.

Eliminates Illegal Spacing Requirement

The City is to be commended for eliminating the discriminatory distance requirement imposed specifically on mental health treatment and rehabilitation programs. "No hospital, sanitarium or clinic for mental, or drug or liquor addicted cases shall be established or maintained on any property within 600 feet of the property on which an elementary or high school is being maintained." The provision has acted as a significant barrier to locating critically need treatment programs within the community to ensure access to those in need.

Thank you for your consideration of the foregoing concerns regarding the impact of the proposed ordinance on the provision of housing for persons with disabilities. I would look forward to continuing to work with the City on proposed revisions.

Sincerely,

Kim Savage

Kim Savage
Attorney At Law