



DEPARTMENT OF CITY PLANNING RECOMMENDATION REPORT



CITY PLANNING COMMISSION

DATE: January 28, 2010
TIME: after 8:30AM
PLACE: Van Nuys City Hall
 14410 Sylvan Street
 Council Chamber, 2nd Floor
 Van Nuys, CA 91401

CASE NO: CPC-2009-800-CA
CEQA: ENV-2009-801-ND
LOCATION: Citywide
LOCATION: Citywide
COUNCIL DISTRICT: All
PLAN AREAS: All

PUBLIC HEARING REQUIRED

REQUEST: Amendments to Sections 12.03, 12.05, 12.07, 12.07.01, 12.07.1, 12.08, 12.08.1, 12.08.3, 12.08.5, 12.09.1, 12.10, 12.12.2, 12.21, 12.24, and 14.00 of the Los Angeles Municipal Code (LAMC).

SUMMARY: A proposed ordinance (Appendix A) to bring the LAMC into conformance with the California Community Care Facilities Act and state law regarding Alcohol/Drug Recovery or Treatment Facilities. It adds definitions to LAMC and codifies state law requiring that facilities for six or fewer residents are zoned as single family residences. It also permits facilities for seven or more residents as public benefits in the same zones if the use meets all required performance standards for onsite parking, loading, density, lighting, and noise.

RECOMMENDED ACTIONS:

1. **Adopt** the staff report as its report on the subject.
2. **Adopt** the Findings included in Attachment 1.
3. **Adopt** the Negative Declaration (Attachments 2 and 3) as the CEQA clearance on the subject.
4. **Approve** the proposed ordinance (Appendix A) and recommend its adoption by the City Council.

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ADVICE TO PUBLIC: The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communication may be mailed to the Commission Secretariat, 200 North Main Street, Room 532, Los Angeles, CA 90012 (Phone No. 213/978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent a week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to these programs, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request no later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at 213/978-1300.

STUBBINS 11-08

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EXECUTIVE SUMMARY

The proposed ordinance (Appendix A) recognizes the importance of maintaining the quality of life in the City's single-family neighborhoods while supporting the placement of persons with special needs in residential neighborhoods. For over 40 years, state and federal governments have favored de-institutionalizing persons with disabilities and encouraging their placement in homes in residential neighborhoods. This policy is implemented in California by the Community Care Facilities Act of 1973, which licenses and regulates facilities for persons with special needs, both youth and adults who require personal services, supervision, or assistance essential for sustaining the activities of daily living. This proposed ordinance brings the Los Angeles Municipal Code (LAMC) into conformance with state law.

The proposed ordinance also regulates licensed Alcohol/Drug Recovery or Treatment Facilities, which provide treatment and detoxification services to persons recovering from alcohol and drug addiction. Sober living homes, which offer housing for persons recovering from alcohol or drug addiction **without** providing treatment or supervision, are not licensed by the state and are not regulated by this proposed ordinance.

State law prevents local municipalities from regulating facilities serving six or fewer residents differently from other single-family residences. The proposed ordinance does not change City practice, but brings the LAMC up to date by listing these uses in the agricultural (A), residential (R), and commercial (C) zones, consistent with state law.

State law does not prevent local municipalities from regulating facilities serving seven or more residents. In accord with the City's General Plan, sound zoning principles, and state and federal fair housing laws, the proposed ordinance regulates licensed facilities for seven or more residents as "public benefits" in the A, R, and C zones. Public benefit uses are permitted through a ministerial process that does not require a public hearing or letter of determination.

In preparing this proposed ordinance, Planning Department staff confronted complex issues that resulted in the conclusion that, as a matter of law, practice, and policy, the City should not attempt to regulate sober living homes, unless one is the source of nuisance activity.

This staff report has three components. Part I provides background, chronology and methodology. Part II explains the proposed additions to the LAMC. Part III addresses the issues that complicate the regulation of sober living homes and recommends use of the nuisance abatement procedure to abate and eliminate nuisance activity that negatively impacts a neighborhood.

STAFF REPORT

Request

On **October 24, 2007**, Councilman Greig Smith introduced Motion CF 07-3427 (Smith-Reyes) requesting a report describing the ordinances enacted by Murrieta, Riverside, and other cities in California to regulate sober living homes; and further requesting that the Planning Department and Department of Building and Safety, in consultation with the City Attorney, recommend land use controls that can be enacted citywide to regulate sober living homes (Attachment 4). Councilman Smith was responding to concerns from constituents regarding sober living homes located in residential areas. Residents throughout Los Angeles have raised similar concerns about high occupancy and overconcentration of sober living homes. Further, residents have identified certain homes as the cause of secondhand smoke, panhandling, aggressive behavior, foul language, traffic congestion, parking problems, and excessive noise. On **January 15, 2008**, the Planning and Land Use Management (PLUM) Committee referred the motion to staff.

Part I: Background, Chronology and Methodology

On **July 24, 2008**, the Planning Department released its Report on Sober Living Homes and Recommended Land Use Controls (Attachment 5) to the Planning and Land Use Management (PLUM) Committee.

On **August 5, 2008**, during PLUM's public hearing on the Planning Department's report, a number of local residents spoke about the negative impact sober living homes have on their neighborhoods. Specifically, some were concerned about three and four bedroom houses with 15 to 20 occupants who are noisy, rowdy, and harass the neighbors. They requested that the ordinance prohibit group residential facilities in the A, RA, RE, RS, and R1 zones and that it require 1000 feet between facilities and 2000 feet from facilities to schools. They also requested higher fees for conditional use applications.

Other speakers at the PLUM hearing described the benefits of sober living homes in providing an appropriate means for recovering alcoholics and drug addicts to make a healthy transition from treatment to life at home. Not wanting the City to violate the civil rights of the residents in sober living homes, they pointed out that the Federal Fair Housing Act requires that no restrictions be placed on sober living homes that are not applicable to all homes in the neighborhood.

After much public discussion and consideration, PLUM recommended that Council approve the Planning Department's report.

On **August 13, 2008**, City Council adopted PLUM's recommendation. Specifically, Council instructed "the Planning Department, in consultation with the Department of Building and Safety and the City Attorney, to prepare a comprehensive ordinance that: regulates licensed community care facilities, regulates licensed alcohol and drug abuse treatment facilities, regulates unlicensed group residential uses, regulates unlicensed group residential homes operating as businesses in a residential zone, and is prepared in accordance with sound zoning principles, the Community Care Facilities Act, state and federal law, and case law."

Following the PLUM hearing, the Planning Department, in consultation with the Department of Building and Safety and the City Attorney, met with and received communications from community members, Council offices, the Los Angeles Police Department, Neighborhood Councils, the Los Angeles Housing Department, the network and coalition of Sober Living Homes, community care facility operators, and their representatives and attorneys.

On **February 7, 2009**, Planning Department staff met with the Los Angeles Neighborhood Council Coalition (LANCC).

On **February 14, 2009**, Planning Department staff met with the Neighborhood Council Plan Check.

On **March 26, 2009**, Planning Department staff met at Devonshire House in Chatsworth with representatives from several neighborhood councils.

Comments made at these meetings concerned the overconcentration of licensed and unlicensed facilities and homes and problems of parking, noise and incompatibility with the neighborhood caused by particular facilities. The community also recognized that such an ordinance might impact their own homes as well as sober living homes. For example, they wanted to know if the ordinance would prevent homeowners from renting their homes to tenants.

On **March 17, 2009**, Planning Department staff met with owners and operators of sober living homes, community care facilities, and alcohol and drug recovery or treatment facilities and their representatives.

On **November 11, 2009**, Planning Department staff met with a smaller group of providers and representatives. Meeting attendees generally approved of the Planning Department's proposal to regulate residential facilities and alcohol/drug recovery or treatment facilities serving seven or more residents as public benefits.

Representatives recommended by the LAHD and providers reinforced staff's initial conclusion that the City should not attempt to regulate sober living homes, unless one is the source of nuisance activity. This is because residents of sober living homes living as a family must be treated the same as any other family.

On **November 20, 2009**, Planning Department staff met with the Department of Building and Safety (DBS). Attendees agreed that the definition of family should not be amended, and that facilities for seven or more residents should be regulated as public benefits.

Based on the extensive research and input from all interested parties, stakeholders, and City departments noted above, staff concluded that the proposed ordinance (Appendix A) would best serve the public interest.

Part II: Review of Proposed Ordinance

The four components of the proposed ordinance are: definitions, regulation of facilities serving six or fewer residents, regulation of facilities serving seven or more, and technical corrections.

Definitions

The California Health and Safety Code is the source of the following five definitions added to the LAMC:

- Alcohol/Drug Recovery or Treatment Facility. Any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.
- Community Care Facility. Any facility, place, or building that is maintained and operated to provide nonmedical residential care, including, but not limited to, the physically handicapped, mentally impaired, and incompetent persons. Community Care Facility includes Residential Facility, Foster Family Home, and Small Family Home.
- Foster Family Home. Any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed.
- Residential Facility. Any family home, group care facility, or similar facility for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining activities of daily living or for the protection of the individual, not including facilities for elderly persons.
- Small Family Home. Any residential facility in the licensee's family residence providing 24-hour a day care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

Facilities for six or fewer residents

As mandated by the Community Care Facilities Act and California Health and Safety Code regarding Alcohol/Drug Recovery or Treatment Facilities, the City's current practice conforms to state law by permitting facilities for six or fewer residents in all agricultural (A), residential (R), and commercial (C) zones. The applicable facilities include: Alcohol/Drug Recovery or Treatment Facilities, Foster Family Homes, Residential Facilities and Small Family Homes. The latter three are all classified as "Community Care Facilities." The proposed ordinance will not change City practice, but codifies this practice, clarifies the process for staff and applicants, and facilitates ready access to the correct procedure.

Facilities for seven or more residents

The proposed ordinance adds facilities serving seven or more residents to the "public benefits" section of the LAMC. The applicable facilities include: Alcohol/Drug Recovery or Treatment Facilities and Residential Facilities. Since Foster Family Homes and Small Family Homes serve six or fewer residents, they are not included.

Public benefits are uses permitted through a ministerial process that do not require a public hearing or letter of determination. These uses are permitted in the designated zones if the use meets specified performance standards. If the use does not meet these performance standards, the applicant may seek approval through an alternative compliance process requiring a hearing and Director of Planning's determination similar to the conditional use process.

These facilities provide a benefit to the public by serving members of the City's community who are in need of special care. The advantages of regulating these facilities as public benefits are twofold. First, it holds all such facilities to standards that protect both the community and the residents to ensure that the residential quality of the neighborhood is maintained. Second, it is a ministerial process and thus does not place an undue burden on City staff and permits staff to focus attention on abating and eliminating problems when they do arise.

Recognizing that many homeless people in Los Angeles are mentally or physically disabled, this proposed ordinance serves the City's housing goals and objectives to prevent homelessness by providing appropriate facilities for people who otherwise would be in danger of becoming homeless. The community as a whole benefits by being assured that people in need have a safe regulated environment in which to live and receive services.

These facilities would be held to the following seven performance standards:

- **Parking**
 - Alcohol/Drug Recovery or Treatment Facilities serving seven or more residents must provide one onsite parking space for each resident. Thus, any such facility would have a minimum of seven onsite spaces.

- Residential Facilities serving seven or more residents must provide at least two parking onsite spaces. Since only staff and, typically, not residents have vehicles, the required number of onsite spaces would increase incrementally at the rate of 0.2 per resident. Thus, a facility for seven to 12 residents would require two spaces, a facility with 13 to 17 residents would require three spaces, and a facility with 18 to 22 residents, four spaces, and so on.
- **Access**
 - The use must avoid interference with traffic by providing access through driveways and/or loading docks for deliveries and pickups.
- **Noise**
 - The use must conform to the City's noise regulations; any household noise or music shall avoid disturbing adjacent residents.
- **Residential character**
 - The existing residential character of the building and site shall be maintained, including the exterior façade, landscaping, fences, walls, lawn areas, and driveways.
- **Night Lighting**
 - Security night lighting shall not impact adjacent residential properties.
- **Peaceful enjoyment**
 - The use shall not create disruption or interference with the peaceful enjoyment of adjoining and neighborhood properties.
- **Density**
 - Occupancy is limited to two residents per bedroom. Therefore, facilities for seven or more residents must have at least four bedrooms.

Technical Corrections

Staff recommends deleting two existing LAMC provisions that are redundant, unnecessary, and conflict with state law and the proposed ordinance. The deleted provisions concern foster care homes and the location of "hospitals, sanitariums and clinics for mental, or drug or liquor addict cases" near schools.

Part III: Analysis and Discussion

The Planning Department's report of July 24, 2008 contained an initial finding that "sober living homes can only be regulated as part of a general category of unlicensed group residential homes. A regulation targeted solely at sober living homes would be considered discriminatory and therefore unconstitutional." The report also found that "if an unlicensed group residential home operates as a business in a residential zone then it may be regulated." Based on these initial findings, the Planning Department proposed to review various options, which included "criteria for determining when an unlicensed group residential home is operating as a business" and the feasibility of "a conditional use permit requirement for an unlicensed group residential home operating as a business."

The Planning Department subsequently investigated these options and evaluated their impacts and practicality with outside stakeholders and experts in the field, Zoning Administrators, and enforcement staff with the Department of Building and Safety. As discussed in this third part of staff's report, the Planning Department then concluded that standards could not be developed that would consistently and objectively distinguish between group residential homes operating as businesses and unrelated individuals living in a single dwelling unit as a family. Without objective standards, consistent and effective enforcement is impossible. Furthermore, establishing a conditional use requirement would be cumbersome, extremely costly, and would not address the community's central concern of abating and eliminating nuisance activity.

Part III has the following components: Introduction, Definition of Family, Sober Living Homes, Overconcentration, and Nuisance Abatement.

Introduction

A central principle of land use policy is that the City regulates **how** a property is used, but not **who uses** the property or **who owns** the property. The criteria for land use regulation must be objective and unbiased, applicable to all persons, whether disabled or not, whether related or not, and whether the property is owned by an individual or a corporation.

The City's exclusive concern is whether the dwelling unit is occupied by a family. If so, the use is permitted in any zone in which residential units are permitted.

Definition of Family

For land use and zoning purposes, the definition of family determines the type of household that may reside in a zone permitting residential uses. Definitions of family including a requirement that members of the household are related (whether by blood, marriage or adoption) are illegal. The constitutional right to privacy, which has consistently been upheld by the courts, prevents local governments from requesting information as to whether the residents of a dwelling unit are related or not.

A study commissioned by the City of Los Angeles Housing Department (LAHD) in 2002 stated, "In 1980, the California Supreme Court in *City of Santa Barbara v. Adamson*, struck down a municipal ordinance that permitted any number of related people to live in a house in an R1 zone but limited the number of unrelated people who were allowed to do so to five. . . . The Court held that the residents of the Adamson household were a single housekeeping unit that could be termed an alternative family. . . . As a single housekeeping unit or alternative family, the Adamson household could not be excluded from the single family zone nor made to apply for a conditional use permit" (*Fair Housing Impediments Study: How Land Use and Zoning Regulations and Practices Impact Housing for Individuals with Disabilities, Final Report, 11/2002. Prepared by Kim Savage under LAHD contract*).

When this fair housing report was written, the LAMC's definition of family was "[a]n individual or two or more persons related by blood or marriage, or a group of not more than 5 persons (excluding servants) who need not be related by blood or marriage, living together in a dwelling unit . . ." This was illegal and discriminatory.

In 2006, the definition of family in the LAMC was amended to read as follows: "One or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit."

Staff considered alternative amendments to this definition as a way to regulate sober living homes as unlicensed group residential uses, and found that every alternative definition was fatally flawed. Every alternative considered was illegal, unenforceable, or discriminatory. In particular, some were too broad in their impact, such that several individuals living as roommates would be prohibited. Other definitions, such as ones that require investigation of who uses what rooms or facilities in the household, are unenforceable.

Since the current LAMC definition of family meets all legal criteria and is enforceable, the proposed ordinance does not amend it.

Sober Living Homes

Sober living homes provide group living arrangements for persons recovering from alcoholism or drug addiction but provide no care or supervision and are not licensed by the state. The proposed ordinance would not regulate them for reasons described in the previous section on "definition of family," and also because:

- **The City opposes any discrimination against the disabled.** Persons recovering from alcohol and drug addiction are considered to be disabled and are protected from discrimination by the Americans with Disabilities Act and the Federal Fair Housing Act. Cities may not treat residents of sober living homes differently from or less favorably than those of other group living arrangements. Local governments are explicitly prohibited from administering zoning procedures in a manner that subjects persons with disabilities, such as

residents of sober living homes, to discrimination on the basis of their disability. Thus, any zoning or land use ordinance that treats sober living homes and their residents differently and less favorably than other single family residences in any zone would be discriminatory.

- **Overly broad impacts and enforcement difficulties impede regulation of sober living homes as businesses.** Planning Department staff considered the possibility of regulating sober living homes operating as businesses in residential zones and found no clear and quantifiable way of distinguishing between a single family home and a sober living home with business-like features. Any proposed marker of a business, such as the presence of a live-in caretaker in a group residential home, can also be true of a family that hires a nanny or gardener. Any prohibition against homes operating as businesses in a residential area would have a much broader impact than intended, since homeowners who rent their homes to tenants would of necessity also be regulated or prohibited in order to avoid charges of discrimination against the disabled. Without clear, quantifiable, and measureable distinctions, the Department of Building and Safety has stated that it would be difficult to enforce any amendments of LAMC attempting to regulate sober living homes with business-like features that also may be true of other homes.

Overconcentration

Proliferation and overconcentration of special needs housing is of particular concern to the community. The proposed ordinance recognizes that maintaining and preserving the residential character of the neighborhood is of benefit for all concerned, both the residents of special needs housing and their neighbors.

State law says, "it is the policy of the state to prevent overconcentration of residential care facilities that impair the integrity of residential neighborhoods." This policy, which is enforced by the state, requires that community care facilities must be located more than 300 feet from each other.

State law preempts City regulation, and this proposed ordinance relies on state distance requirements and state enforcement regarding overconcentration.

Administrative Nuisance Abatement

Community members have identified certain sober living homes as the source of problems, such as, excessive noise, panhandling, secondhand smoke, aggressive behavior, foul language, traffic congestion, and parking problems. All concerned parties, including community and providers, agree that communities should not be subject to nuisance activity.

The City's Nuisance Abatement ordinance authorizes, "the City's zoning authorities to protect the public peace, health and safety from any land use which becomes a

nuisance; [and] adversely affects the health, peace or safety of persons residing or working in the surrounding area”

Neighbors may bring complaints that a land use (either commercial or residential) is creating a nuisance to the attention of the Office of Zoning Administration through their Council district office or other means. The Nuisance Abatement Unit is assigned to investigate. If the investigation warrants, the Director of Planning files a case against the owner and operator of this land use. After a public hearing, the Director may impose conditions if he or she finds that the land use is creating a nuisance. In subsequent hearings, the Director has the power to impose stronger conditions and revoke the use if necessary.

The nuisance abatement procedure is far preferable to establishing a new and costly discretionary permitting procedure, since the vast majority of special needs housing uses, both licensed and unlicensed, are well integrated into their surrounding neighborhoods and do not cause problems. A discretionary permitting procedure could be abused to prevent the proper location of well-run special needs housing, which meets important housing needs for a population at risk, and furthermore it would not resolve the problem if such residences become nuisance locations.

The administrative nuisance abatement procedure is the most direct and cost-effective approach to addressing neighborhood concerns should special needs housing contribute to excessive noise, loitering, parking problems or other activities negatively impacting a neighborhood.

The City Planning Department's Administrative Nuisance Abatement Unit has successfully contributed to mitigating and eliminating problems throughout the City. If a particular sober living home is identified as the source of nuisance activity, the nuisance abatement process is recommended as the most effective means to abate or eliminate that activity.

CONCLUSION

The Department of City Planning recognizes the importance of maintaining the quality of life in the City's single-family neighborhoods while supporting the de-institutionalizing of persons with special needs and encouraging their placement in homes in residential neighborhoods as favored by federal and state policy.

The proposed ordinance brings the Los Angeles Municipal Code (LAMC) into conformance with the California Community Care Facilities Act and state law regarding Alcohol/Drug Recovery or Treatment Facilities. It adds definitions to the LAMC and codifies state law requiring that facilities for six or fewer residents are zoned as single family residences. It also permits facilities for seven or more residents as public benefits in the same zones if the use meets all required performance standards, such as requirements for onsite parking, drop off and loading access, density limits, and standards regarding lighting, noise, and exterior appearance.