11-0262
Item#4

LA COALITION FOR Neighborhoods
Maintaining the Quality of the City's Neighborhoods

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Submitted in plum Committee
Council File No: 11-0262
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TO: COUNCILMEMBER
FROM: LA COLAITION FOR NEIGHBORHOODS
DATED: FEBRUARY 22, 2011
RE: THE CITY'S PROPOSED ORDINANCE REGULATING COMMUNITY CARE FACILITIES AND BOARDING HOUSES, CASE NO. CPC-2009-800-CA

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March 17, 2011

RE: Proposed Ordinance Regulating Community Care Facilities and Boarding Houses
Case No. CPC-2009-800-CA

Dear Councilmember:

We urge you to allow the City to act to stabilize its low density zones by supporting the Proposed Ordinance regulating Community Care Facilities and Boarding Homes.

A. Introduction

1. Who We Are and Who We Represent

L.A. Coalition for Neighborhoods is a non-profit organization that supports, with certain reservations, the City's Proposed Ordinance regulating Community Care Facilities and Boarding Houses. Our membership includes residents from all over the City, from every council district, all of whom support the basic principles of the City's Proposed Ordinance and understand the very serious need to regulate boarding homes in low density neighborhoods.

We believe that the City's Proposed Ordinance is a smart, balanced and thoughtful approach to strengthening the City's existing zoning laws without making any substantive changes in the zoning code in order to maintain the City's low density neighborhoods, while also supporting the de-institutionalization of persons with disabilities.

2. The Widespread Problem of Boarding Houses in Low Density Zones

As is discussed more fully below in Section (D)(9) there is overwhelming evidence of the tremendous burden that boarding houses place on low density zones and the various ways in which they alter the character of those neighborhoods. From our conversations with residents from all over the City from the Westside to Granada Hills to Hollywood and Encino to San Pedro and everywhere in between - we know that there are boarding houses throughout the City housing transient lodgers of all kinds. All of these boarding houses negatively impact and threaten to destroy low density zones. They substantially overburden the City's infrastructure which is not planned to carry the increased burden and threaten to permanently change the character of residential neighborhoods. In recognition of this fact, 25 Neighborhood Councils have joined us in supporting the Ordinance's basic principles.

Further, as is discussed in greater detail below in Section D, the City's legitimate purpose in limiting transient lodging to higher density zones is lawful and appropriate. The City Attorney and Planning Department have gone above and beyond to ensure that the Ordinance will survive all legal challenges.[1]

3. The Ordinance is a Solution that Does Not Prohibit Group Living

It is important to note that we do not seek to discourage people from living together as a family within low density zones. People who come together of their own choosing, who self select one another and are united in their household both in the manner that they engage with one another and in their arrangements for leasing the property in which they live, should be and are entitled to live together in all zones under the Proposed Ordinance. Therefore, for example, the Ordinance does not prohibit students from joining together to live in a rented house, provided they are on one lease. Nor does the Ordinance prohibit people who are disabled by alcohol or drug addiction, from choosing to live together as a family, provided their household is self selected and they govern themselves as a family under one lease.

4. The Ordinance is a Solution that Does Not Prohibit Renting

It is also important to note that we do not seek to discourage homeowners from renting rooms in their homes for whatever reason, whether they seek for example to house a foreign exchange student or rent to someone for extra income in order to help cover their mortgage. Under the Ordinance one lease is permissible under any circumstance. If a homeowner chooses to rent to more than one person, all of the renters must be on one lease. This fosters the purpose of R1 and R2 zones to create neighborhoods for families, rather than to promote commercial enterprises.

5. The Ordinance is a Solution that Does Not Increase Homelessness

Finally, no one wants to see homelessness increased for any reason. We do not believe that the Ordinance will create additional homelessness. All boarding house businesses, including those operated by the Sober Living Industry, have always been and remain permitted in R3 and higher zones where other commercial enterprises are normally allowed. Community Care Facilities which are licensed by the state are permitted under the Ordinance in all zones

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[1] In addition to the other claims discussed below in Section (D), the Ordinance does not violate the right to privacy. At the City Planning Commission hearing on February 10, 2011, City Attorney, Asha Greenberg, stated that the Ordinance was well drafted to ensure that Building and Safety would be charged with investigating objective evidence for zoning violations and does not violate privacy laws. Further, City Attorney, Amy Brothers, noted that the language in the Ordinance mirrors the language in Newport Beach's ordinance and that the court in Pacific Shores noted in interpreting the Newport Beach ordinance that there was nothing on the face of the ordinance that would give rise to a privacy claim. Pacific Shores Properties LLC v. City of Newport Beach, Case No. SACV-08-457 JVS, Oct. 25, 2010.

and therefore will not be forced to close simply because of their location in low density zones.

The Los Angeles County Department of Mental Health (DMH) has made various unverified claims that there are some disabled residents living in "supportive housing" in R1 and R2 zones that will be affected by the Ordinance. We do not believe that this is accurate.

First, the "supportive housing" in R1 and R2 zones referred to by DMH appear to be licensed and may in fact be Community Care Facilities which are not affected by the Proposed Ordinance. In a recent article in the Los Angeles Daily News, Rene Turner of DMH referred to her concern regarding the Ordinance's affect on "licensed clinics." See *Los Angeles Daily News, "Group Home Limits Sent to L.A. City Council"* February 10, 2011. At the City Planning Commission hearing on February 10th, Ms. Turner referred to the existence of "supportive housing" in 30 homes located in R1 and R2 zones housing 180 residents. The numbers suggest that these 30 houses are Community Care Facilities serving 6 residents each. If in fact they are licensed Community Care Facilities serving 6, they would be protected by State law and the Ordinance from being zoned out of any areas and they would be allowed to remain.

Second, we believe that DMH misapplies California law governing "supportive housing." California Health and Safety Code Section 1504.5 provides that "supportive housing" is housing for disabled individuals in which each tenant "holds a lease or rental agreement in his or her own name and is responsible for paying his or her own rent." DMH has interpreted this to mean that the Ordinance would prohibit supportive housing in R1 and R2 zones because of the Ordinance's one lease requirement.

Section 1504.5 requires only that the resident have a lease in his or her own name and not that the lease be a separate lease. In other words, if a resident is listed as a joint tenant, they are still permitted to live in "supportive housing." Furthermore, the Code itself states that a tenant must "be individually responsible for arranging any shared tenancy." Thus, the Code governing "supportive housing" anticipates the need for shared tenancies. In order to comply with the Proposed Ordinance, DMH would simply have to put all of its supportive housing residents in a single housekeeping unit on one lease in order to maintain its housing in R1 and R2 zones. This hardly seems to be an unfair burden, given the important need for protecting low density zones from being overrun by boarding homes and the need to house the disabled.

B. California State Law and The City's Proposed Ordinance in a Nutshell

1. California Statutory Law Creates Licensed Community Care Facilities

Pursuant to California State Law all Community Care Facilities (CCF) must be licensed by the state. See CA Health & Safety Code, Section 1503. Likewise, CCF's providing 24-hour residential non-medical services to people who are recovering from problems related to

alcohol or drugs and who need treatment[2] must be licensed by the California Department of Alcohol and Drug programs. See CA Health & Safety Code, Section 1502; California Department of Alcohol and Drug Programs, www.adp.ca.gov/Licensing/index.shtml.

2. **Licensed Community Care Facilities Serving 6 or Fewer Residents**

California state law does not permit municipalities to regulate licensed CCF's serving 6 or fewer residents differently than they would any other single family dwelling. See CA Health & Safety, Sec. 11834.23. The Proposed Ordinance incorporates this statutory requirement.

3. **The Ordinance Regulates Community Care Facilities Serving 7 or More**

The Proposed Ordinance deems Community Care Facilities serving 7 or more to be a Public Benefit giving them the right to locate in low density neighborhoods and requires them to meet the following 7 performance standards: (1) sufficient parking, (2) access to the facility without interfering with traffic, (3) noise levels must be sufficiently modulated to ensure adjacent residents are not disturbed, (4) the existing residential character of the building shall be maintained, (5) security lighting shall not be seen from adjacent residential properties, (6) prohibits an unreasonable disruption of the peaceful enjoyment of adjoining neighborhood properties, and (7) total occupancy must not exceed two residents for every bedroom.

4. **The Ordinance Clearly Defines "Boarding Houses"**

The Zoning Code currently prohibits boarding houses in single family and R2 (or "duplex zone") zones. See Exhibit 1, Department of City Planning Report, dated October 14, 2010, p. 9. However, the current code fails to adequately define "Boarding Houses" for purposes of enforcement. The Proposed Ordinance's provisions "significantly enhance the City's ability to take enforcement action against boarding or rooming houses operating illegally. These provisions supplement and build upon existing laws and authority." Exhibit 1, Department of City Planning Report, dated October 14, 2010, p. 10. See also Exhibit 2, Department of City Planning Report, dated February 10, 2011.

The Proposed Ordinance defines a boarding house as "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. Boarding or rooming house does not include an alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed; or residential care facility for the elderly, licensed."

[2] "Treatment Services" are defined as "Detoxification, group sessions, individual sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning." Title 9, CCR, Chapter 5, Section 10501(a)(5).

5. The Ordinance Clearly Defines "Single Housekeeping Unit"

The Proposed Ordinance defines "Single Housekeeping Unit" as follows: "One household 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. If a resident owner rents out a portion of the dwelling unit, those renters must be part of the household unit 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 a single written lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

C. LA Coalition's Recommendations for Strengthening the Proposed Ordinance

1. Amend the Ordinance to Include a Reasonable Transition Time for Relocation

Although we do not believe that the Ordinance will create homelessness or destabilize our communities, we are concerned about those residents who may be required to relocate by the passage of the Ordinance. Therefore, we recommend that the Ordinance be amended to provide a reasonable period of time in which to relocate residents in R1 and R2 zones whose lodgings are deemed illegal pursuant to the Ordinance's enactment.

2. Amend the Proposed Ordinance's Definition of "Single Housekeeping Unit" to Require that When an Entity Other Than an Individual Owns a Dwelling Unit, the Owner or Owners Shall be Considered Non-Resident Owners for Purposes of the Definition

The Proposed Ordinance's definition of "Single Housekeeping Unit" provides in part that "If a non-resident owner rents out the dwelling unit, all residents 18 years or older have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

We recommend the following sentence be added to the end of the existing definition in order to prevent entities, such as corporations and limited partnerships, from installing boarding houses in the City's low density neighborhoods: "When an entity other than an individual owns a dwelling unit and rents the dwelling unit, the owner or owners shall be considered non-resident owners for purposes of this definition." (This is consistent with Fannie Mae's, Freddie Mac's and FHA's underwriting guidelines definition of "non-resident owners.")

3. Create a Cause of Action for Individuals

We recommend that the City include a provision which grants an LA City resident the right to bring a civil law suit against the operator or owner of an illegally run boarding house. This provision would be in the best interests of the City as it would relieve the City of some of the financial burden involved in enforcing The Los Angeles Municipal Code ("*L.A.M.C.*").

The California courts have held that legislative bodies, both at the state and municipal level, can provide a private cause of action to efficiently further certain statutory purposes. According to the California Supreme Court, the purpose for creating a private cause of action for violation of a regulatory statute is "to supplement administrative regulation and enforcement." People v. Simon (1995) 9 Cal.4th 493, 516. Thus, a statute or ordinance may expressly state that a person has or is liable for a cause of action for a particular violation. Doe v. Albany Unified School Dist. (2010) 190 Cal.App.4th 668 [118 Cal.Rptr.3d 507, 515-16].

There are numerous examples of State law and Los Angeles Ordinances that expressly provide for a private cause of action:

- 'A person is liable in a cause of action for sexual harassment' when a plaintiff proves certain elements. *Civ.Code* §51.9.
- Protects homeowners facing foreclosure from "equity purchasers." *Civ.Code* §1695-1695.14.
- 'Any person who is detained in a health facility solely for the nonpayment of a bill has a cause of action against the health facility for the detention.' *Health & Saf.Code* § 1285(c).
- 'Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.' *Lab.Code* § 218.
- 'Any person ... may bring an action to enjoin and restrain any violation of this chapter and, in addition thereto, for the recovery of damages.' *Bus. & Prof.Code* §17070.
- 'A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies.' *Bus. & Prof.Code* §6175.4(a).
- 'Any person injured by a violation of this section may bring an action for the recovery of damages, equitable relief, and reasonable attorney's fees and costs.' *Civ.Code* §1748.7 (d).

The LAMC contains numerous provisions providing for private causes of actions in cases of Code violations. The bulk of these provisions can be found in Chapter IV, Public Welfare, Chapter XV, the Rent Stabilization Ordinance, and Chapter XVI, Housing Regulations.

In addition to providing a private cause of action, the state and local legislature can provide "cost of suit" and "attorneys' fees" provisions. Cognizant of the financial burden that

bringing such private actions imposes on potential claimants, and in order to effectively further the regulatory intent and enforcement, legislators have included these types of clauses in many ordinances. *See, e.g. L.A.M.C.* §151.10 (rent stabilization ordinance); §163.06 (tenant relocation assistance program); §§45.55, 45.64, 45.73, 45.89 (remedies for prohibition against discrimination based on age, student status, mobile homes, AIDS patients); §47.06 (civil remedies in tenant relocation assistance in converted apartments); §47.50 (remedies in connection with narcotics and violent crime eviction program).

Recently, in Carter v. Cohen (2010) 188 Cal.App.4th 1038, the Court of Appeal confirmed an award of attorney's fees for the prevailing party in an action for violation of the Rent Stabililization Ordinance ("RSO"). The tenant was entitled to an award of her attorney's fees at trial and on appeal under RSO provision, L.A.M.C. §151.10, authorizing fee awards in actions against landlords who demand rent in excess of the RSO limits.

Therefore, we propose the following language be included in the Proposed Ordinance:

Sec. 19.1 Enforcement

A. **Civil Actions:** Any person who intentionally or negligently violates any provision of this article shall be liable in a civil action brought by the City Attorney, the City Ethics Commission or by any person residing within the City for an amount not more $5,000 per violation.

B. **Injunctive Relief:** Any person residing within the City of Los Angeles including the City Attorney, may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this article.

C. **Costs of Litigation:** The court may award to a party, other than an agency, who prevails in any civil action authorized by this article, his or her costs of litigation, including reasonable attorneys' fees.

4. **Require Public Hearings for all Public Benefits**

The performance standards required by the Proposed Ordinance are of such a public nature that it would behoove the City to require a public hearing in order to include neighborhood comment before deciding whether a particular Community Care Facility serving 7 or more has met the performance standards.

5. **Limit the Proximity of Boarding Houses and Licensed Community Care Facilities Serving 7 or more to within 1000 feet of Sensitive Uses**

In order to maintain the nature of the City's neighborhoods, the Ordinance must limit the proximity of boarding houses and licensed Community Care Facilities serving 7 or more to

within 1000 feet of sensitive uses such as schools, playgrounds, churches and temples. This will protect the quality of the City's neighborhoods and ensure the safety of areas where children congregate.

6. **Limit the Concentration of Boarding Houses and Licensed Community Care Facilities to within 300 feet of Similar Uses**

In order to maintain the nature of the City's neighborhoods and best serve the disabled, the Ordinance must limit the concentration of boarding houses and licensed Community Care Facilities within 300 feet of other similar uses.[3] This will ensure that no area of the City suffers from an over concentration of these houses and facilities. The disabled transitioning into society must not be relegated to a dumping ground, nor should any neighborhood, regardless of its zone, be totally transformed by an over concentration of these houses. A proximity limit on these houses and Community Care Facilities to other similar uses will accomplish these goals.

7. **Prohibit Second Hand Smoke from Burdening Adjacent Properties**

The cumulative cigarette smoke from group homes, including unlicensed and licensed facilities, is an extreme burden on adjacent properties, particularly those which house children and the elderly. While recovering addicts and alcoholics should not be prohibited from smoking where they live, it is appropriate that the effects of their smoking be prohibited from burdening adjacent properties.

In recognition of this impact, we recommend that the Proposed Ordinance be amended to include that "No staff, clients, guests, or any other uses of a community care facility serving seven or more or residents or operators of a boarding house may smoke in an area from which the second hand smoke can be detected on any parcel other than the parcel upon which the facility or boarding house is located." See Newport Beach Ordinance 2008-5, Section 20.91A.050(A).

D. LA Coalition's Response to LA County Sober Living Coalition's Arguments

In this section we address the arguments made by the LA County Sober Living Coalition in its letter dated December 17, 2010, a copy of which is attached hereto as Exhibit 3.

1. **The Sober Living Industry's Insistence that it Successfully Self-Regulates is Unfounded**

The Sober Living Industry argues that it can successfully self-regulate its houses and that the only problem houses are either not sober living houses at all or few and far between. This is

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[3] California Health and Safety Code Section 1520.5 provides that in order to avoid overconcentration, Community Care Facilities cannot be located within 300 feet of one another.

not the experience of many residents living in communities which have sober living houses and other types of boarding houses in their areas.

Many Neighborhood Councils, aware of the problems created by boarding houses in low density zones, have passed motions in support (with some reservations) of the City's Proposed Ordinance. The following is a partial list of Neighborhood Councils and Homeowners Associations that support the City's Proposed Ordinance in principle:

Bel Air-Beverly Crest Neighborhood Council
Brentwood Community Council
Chatsworth Neighborhood Council
Coastal San Pedro Neighborhood Council
Empowerment Congress North Area Neighborhood Development Council
Empowerment Congress West Area Neighborhood Development Council
Encino Neighborhood Council
Granada Hills North Neighborhood Council
Harbor Gateway North Neighborhood Council
La Brea Willoughby Coalition
Neighborhood Council of Westchester/Playa
Northridge East Neighborhood Council
Northwest San Pedro Neighborhood Council
Old Granada Hills Residents Group
Pacific Palisades Community Council
Pacific Palisades Residents Association
Palms Neighborhood Council
Reseda Neighborhood Council
Silverlake Neighborhood Council
Sunland-Tujunga Neighborhood Council
United Neighborhoods Neighborhood Council
West Los Angeles Neighborhood Council
West of Westwood Homeowners Association
Westside Neighborhood Council
Westside Regional Alliance of Councils
Westwood South of Santa Monica Blvd. Homeowners Association

Most of these motions and/or letters are posted on our website at www.LACoalition4Neighborhoods.org under "Documents and Resources."

In addition, many of the City's residents, having long suffered the effects of boarding houses in their low density neighborhoods, have signed LA Coalition for Neighborhoods' petition in support of the City's Proposed Ordinance. The petition is viewable on our website: http://www.ipetitions.com/petition/laneighborhoods/.

Furthermore, at multiple hearings the City has been inundated with evidence of the problems associated with boarding houses, even well-run sober living houses, and they include the following:

- Public urination and indecent exposure
- Public drunkenness and drug use
- Late night noise disturbances requiring police intervention
- Frequent calls for police assistance resulting in several arrests
- Increased calls for ambulances to the neighborhood
- Rat infestation
- Children exposed to residents having sex in the leased property's backyard
- Multiple speeding cars daily
- Increased automobile traffic and street parking
- Cigarette smoke in the front and backyards making adjacent yards unusable
- Increased trash from the number of lodgers living in a single family dwelling
- Significant increase in the number of animals living next door
- Foul language overheard by the adjacent yards and passersby on the streets

Finally, The Sober Living Industry's self-regulation argument again misses the point. The Proposed Ordinance is necessary for the City to effectively regulate boarding houses in low density neighborhoods, not to ensure that sober living homes will be well-run.

2. **The Sober Living Industry's Statement that Sober Living Homes are Not a Commercial Use is Astounding**

Sober Living is a nationwide industry. It is a for-profit business, well-funded and hires paid lobbyists and attorneys to speak at City hearings. A quick review of The Sober Living Network's website, www.soberhousing.net, establishes that these businesses are generating hefty profits. In Los Angeles the rent charged each lodger ranges from $400 to $10,000 per month, with many of the residences charging in the thousands per month. The $2,500 average the Sober Living Network charges in the greater WLA area is the equivalent of a monthly payment on a $500,000 mortgage at 4.75%. This is not affordable housing serving the most needy populations. Each business that rents rooms to ten or more lodgers is generating potentially over $1,000,000. If this is not a commercial enterprise, what is?

3. **The Sober Living Industry's Insistence that Nuisance Abatement is Sufficient Misses the Point of the Proposed Ordinance**

The Sober Living Industry's insistence that Nuisance Abatement is sufficient to address the problems caused by boarding houses in low density neighborhoods misses the point. The mere existence of boarding houses in single family neighborhoods changes the quality and nature of these residential neighborhoods. Nuisance Abatement could only address the so-

called "Bad Apple" boarding houses, but would do nothing to remove all boarding houses from low density neighborhoods.

The City seeks the Proposed Ordinance in order to clarify its definitions of "Family," "Boarding House," and "Single Housekeeping Unit" in an effort to better enforce existing zoning laws. "The proposed ordinance's new and amended definitions significantly enhance the City's ability to take enforcement action against boarding or rooming houses operating illegally." Exhibit 1, Department of City Planning Recommendation Report, October 14, 2010, p. 10.

4. The Sober Living Industry's Fair Housing Act Claims Are Without Merit

None of the cases cited by The Coalition in support of their Fair Housing claims are from California or the Ninth Circuit and are therefore not instructive. The governing case in California is Gamble v. City of Escondido, 104 F.3d 309 (1996). A copy of Gamble is attached hereto as Exhibit 4.

a. Disparate Treatment under the Fair Housing Act

To bring a disparate claim, the plaintiff must first establish a prima facie case that similarly situated non-disabled individuals are treated differently than disabled individuals.[4] "A disparate treatment claim requires plaintiff to show that he has actually been treated differently than similarly situated non-handicapped people." Pacific Shores Properties LLC v. City of Newport Beach, Case No. SACV-08-457 JVS, Oct. 25, 2010, citing Gamble, 104 F.3d at 305. See also Community House, Inc. v. City of Boise, 490 F.3d 1041, 1051 (9th Cir. 2007) and Bay Area Addiction Research and Treatment, Inc. v. City of Antioch, 179 F.3d 725, 735 (9th Cir. 1999).

Under the Proposed Ordinance all people who reside together in a boarding house are treated the same, they are all prohibited in low density zones. Likewise, under the Proposed Ordinance there is no disabled class that is treated differently from non-handicapped people. Therefore, no prima facie case can be established. To ensure that a prima facie case cannot be made in the future, the City needs to be able to produce evidence that it enforces the Proposed Ordinance's single housekeeping unit requirement and prohibition of boarding houses in low density zones, against similarly situated non-disabled persons. For example, evidence that the City equally enforced these provisions against non-disabled students who chose to live together outside the definition of a single housekeeping unit would satisfy this burden.

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[4] While the Sober Living Industry is fond of railing against the City for its purported intentional discrimination, evidence of discriminatory intent is irrelevant in a claim for disparate treatment, in the absence of a discriminatory act. Pacific Shores at 10-11, citing Schwarz v. City of Treasure Island, 544 F.3d 1201, 1216 and Oxford House-C v. City of St. Louis, 77 F.3d 249, 252 (8th Cir. 1996).

Second, assuming somehow that the prima facie case can be established, which we believe it cannot, then "the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its action. Gamble, 104 F.3d at 305.

In evaluating the plaintiff's disparate treatment claim the Ninth Circuit in Gamble concluded that "the reason the City advances for its decision, concern for the character of the neighborhood, is legitimate and nondiscriminatory." Similarly, in 2003, the Attorney General, relying on California case law, opined that "the courts of this state have stated that the operation of boarding house businesses may be excluded from a residential zone." See City of Santa Barbara v. Adamson, (1980) 27 Cal.3d 123; City of Chula Vista v. Pagard (1981) 115 Cal.App.3d 785, 792; Seaton v. Clifford (1972) 24 Cal.App.3d 46, 51; Sechrist v. Municipal Court (1976) 64 Cal.App.3d 737, 746.

Thus, not only is there no prima facie case, the plaintiff's case fails when the City asserts that its legitimate and nondiscriminatory reason for prohibiting boarding houses in R1 and R2 rests on its concern for the character of these neighborhoods. As discussed more fully below in Section (D)(9), the City's legitimate purpose is well founded on a plethora of evidence.

b. Disparate Impact Claims under the Fair Housing Act

"To establish a prima facie disparate impact case, a plaintiff must establish 'at least that the defendant's actions had a discriminatory effect.'" Gamble, 104 F.3d at 306.

Under disparate impact theory, the elements of a Fair Housing Act prima facie case are "(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices." Gamble, 104 F.3d at 306. Further, "A plaintiff must prove the discriminatory impact at issue; raising an inference of discriminatory impact is insufficient." Id.

Admittedly, the Proposed Ordinance is an outwardly neutral practice and thus the first element would be satisfied. However, a claim for disparate impact would fail because there is no proof that the Ordinance produces a significantly adverse or disproportionate impact on persons of a particular type.

The Ninth Circuit has explained that "[t]he relevant comparison group to determine a discriminatory effect on the disabled is other groups of similar sizes living together. Otherwise all that is demonstrated is a discriminatory effect on group living." Gamble, 104 F.3d at 306-307. The Ninth Circuit has specifically stated that a comparison between the disabled group and single families is inappropriate to establish discriminatory effect. Id. at 307.

There is no disabled group that can establish that other groups, similarly situated, are treated differently under the Proposed Ordinance because all that can be demonstrated is that the Ordinance has a discriminatory effect on all group living. To ensure against a successful claim of disparate treatment, the City need only enforce the proposed ordinance evenly against all boarding houses in low density neighborhoods.

c. Reasonable Accommodation under the Fair Housing Act

The Los Angeles Municipal Code provides a process by which the disabled may apply for reasonable accommodation pursuant to the Fair Housing Act. L.A.M.C. Chapter 1, Article 2, Sec. 12.22 provides that any disabled person may apply to the Director of Planning for a reasonable accommodation order. The accommodation may only be granted to an individual with a disability, and is only valid so long as that individual requires the accommodation. Pursuant to the Code, a reasonable accommodation order may not be granted to an individual with a disability if it results in a fundamental alteration of the City's land use and zoning program. There can be no claim for the denial of reasonable accommodation until the City denies such a request without proper justification.

The Sober Living Industry's Fair Housing Act claims are without merit.

5. The Sober Living Industry Misinterprets City of Santa Barbara v. Adamson

In City of Santa Barbara v. Adamson, (1980) 27 Cal.3d 123, the California Supreme Court held that a city may not prohibit persons from living together on the basis that they are unrelated and therefore cannot define "Family" for purposes of its zoning code as limited to only people who are related.

The City's Proposed Ordinance defines "Family" as "One or more persons living together in a dwelling unit as a single housekeeping unit." The Proposed Ordinance defines "Single Housekeeping Unit" as "One household 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. 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."

Neither the definition of "Family" nor the definition of "Single Housekeeping Unit" hinges on whether or not the members of the household are related and therefore do not run afoul of Adamson.

Furthermore, the Court in Adamson, while striking down a city ordinance that prohibited non-related people from living together in a particular zone, noted that "'residential character'" can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc)." City of Santa Barbara, (1980) 27 Cal.3d 123, 133. The Court then noted that a city can impose zoning restrictions on the use of a property and went out of its way to note that a city may appropriately zone-out boarding houses in order to maintain residential character. To suggest that this case prohibits zoning restrictions on boarding houses is absurd. A copy of Adamson is attached hereto as Exhibit 5.

In 2003, the Attorney General, relying on Adamson and other California case law, opined that "the courts of this state have stated that the operation of boarding house businesses may be excluded from a residential zone." See City of Chula Vista v. Pagard (1981) 115 Cal.App.3d 785, 792; Seaton v. Clifford (1972) 24 Cal.App.3d 46, 51; Sechrist v. Municipal Court (1976) 64 Cal.App.3d 737, 746. The City's reliance on the Attorney General's opinion is well-founded. A copy of the Attorney General's opinion is attached hereto as Exhibit 6.

6. The Sober Living Industry's Suggestion that the Single Lease Provision Poses a Problem for Sober Living is Unfounded and Fallacious

The Proposed Ordinance's single lease provision requires joint leases for residents in low density zones. The Sober Living Industry suggests that this requirement is detrimental because individual lease agreements are required to protect property owners, residents, and surrounding neighbors in the event that a disruptive tenant must be evicted. Joint tenancy does not mandate that a landlord initiate eviction proceedings against all of the tenants in order to evict one. In the event of a transgression by one resident, a landlord is not required to evict the entire group, can instead choose to initiate eviction proceedings against only the transgressor and re-write the lease with the remaining tenants. California Code Civ. Proc. § 1164[5].

Furthermore, the Sober Living Industry knows that its insistence that the lease provision is a burden is untrue. At several meetings with City Officials in attendance, we have heard

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[5] "No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant, but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him or her. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by subdivision 2 of Section 1161 of this code, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the suit, shall be bound by the judgment, the same as if he or they had been made party to the action."

members of the Sober Living Industry brazenly declare that if the Proposed Ordinance is enacted they will seek to circumvent it by simply signing a joint lease with all the members of the residence whenever a new resident moves in. This would suggest that the single lease provision does not present a burden at all.

7. **The Sober Living Industry's Argument that Multiple Leases Ensure the Maintenance of a Safe and Healthy Living Environment is Unfounded**

To support the notion that multiple leases are required to ensure a safe and healthy living environment for its residents, The Sober Living Industry offers three ideas: (1) landlords must be able to remove wayward tenants, (2) The Sober Living Industry is able to weed out problem residents and in essence can adequately self regulate and (3) the City has not provided evidence of the need to regulate boarding homes.

First, as stated above in section (D)(6), landlords have the ability to remove a non-complying tenant without evicting complying tenants, even when there is one joint lease. Second, the Sober Living Industry's suggestion that its member homes sufficiently self regulate their homes is contrary to the experience of many Los Angeles residents. The question of self-regulation is more fully discussed in section (D)(1) above. Third, as is discussed more fully in section (D)(1), the City has in fact provided evidence of the negative impacts of boarding houses in low residential districts and there has been ample testimony regarding their negative impacts from residents who have attended the City Planning Commission's hearings on this issue.

8. **The Ordinance Would Not Eradicate Group Homes for Persons with Disabilities**

The Proposed Ordinance would not eradicate group homes for persons with disabilities. Licensed CCF's serving 6 and fewer are permitted in all zones. Licensed CCF's serving 7 or more are permitted in all zones provided they meet the performance standards. Boarding houses have never been permitted in low density neighborhoods. The Proposed Ordinance seeks to strengthen the City's existing laws to relocate boarding houses to higher density zones where the City believes they belong.

9. **The Sober Living Industry's Argument that the Proposed Ordinance's Definition of "Family" Violates Adamson is Without Merit**

In City of Santa Barbara v. Adamson, the California Supreme Court held that a city may not prohibit persons from living together on the basis that they are unrelated and therefore cannot define "Family" for purposes of its zoning code as limited to only people who are related.

The City's Proposed Ordinance defines "Family" as "One or more persons living together in a dwelling unit as a single housekeeping unit." The Proposed Ordinance defines "Single Housekeeping Unit" as "One household 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. 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."

Neither the definition of "Family" nor the definition of "Single Housekeeping Unit" hinges on whether or not the members of the household are related and therefore do not run afoul of Adamson.

10. Sober Living Houses Serve a Purpose if Properly Located

We agree with The Sober Living Industry's claim that sober living houses can, if properly operated, serve a purpose for persons recovering from alcohol or drug addiction. However, we do not believe that these homes must be located in low density neighborhoods to be effective. Zoning is a question of balance. The City has a legitimate interest in maintaining the character of its low density neighborhoods. In order to achieve this goal, the City must limit transient lodging to higher density zones.

In conclusion, the City's Proposed Ordinance is a smart, well balanced approach that takes into account both the needs of the disabled and maintains the character of low density neighborhoods. The Ordinance permits, as it must pursuant to state law, Community Care Facilities serving 6 and under to locate in low density neighborhoods. Further, the Ordinance permits Community Care Facilities serving 7 or more, which meet certain performance standards, to locate in low density neighborhoods, as a matter of right. Finally, the Ordinance permits boarding houses, including sober living houses, in R3 and higher density zones. The limits the Ordinance places on boarding houses is practical, well thought out and serves a legitimate purpose.

Sincerely,

Rebecca Lobl
President
LA Coalition for Neighborhoods
www.LACoalition4Neighborhoods.org
LANeighboorhoods@gmail.com

This letter was prepared by Rebecca Lobl and Fran Vincent in order to help explain the issues and does not represent a legal opinion. Paid for by LA Coalition for Neighborhoods.

DEPARTMENT OF CITY PLANNING
RECOMMENDATION REPORT

CITY PLANNING COMMISSION		**CASE NO:**	CPC-2009-800-CA
DATE:	October 14, 2010	**CEQA:**	ENV-2009-801-ND
TIME:	after 8:30AM	**COUNCIL FILE:**	07-3427
PLACE:	Los Angeles City Hall 200 North Spring Street Room 1010, 10th Floor Los Angeles, CA 90012	**LOCATION:**	Citywide
		COUNCIL DISTRICT:	All
		PLAN AREAS:	All

PUBLIC HEARING REQUIRED

SUMMARY: A proposed ordinance (Appendix A) adding definitions of *Community Care Facility*, *Residential Care Facility for the Elderly*, and *Alcoholism or Drug Abuse Recovery or Treatment Facility* to the LAMC to bring it into conformance with the California Community Care Facilities Act. As mandated by State law, the ordinance permits these State licensed facilities with six or fewer residents in any zone that permits single-family homes. It also permits those with seven or more residents as public benefits, requiring performance standards. The proposed ordinance also amends the definitions of *Boarding or Rooming House* and *Family* to provide clear guidelines for the appropriate enforcement of boarding homes with transient characteristics and prohibits *Boarding or Rooming Houses* in one-family dwellings zoned RD. Lastly, it adds a definition for *Correctional or Penal Institution* to ensure that group homes for parolees are classified as conditional uses.

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.

MICHAEL LOGRANDE
Director of Planning

LINN K. WYATT
Acting Chief Zoning Administrator

ALAN BELL, AICP
Senior City Planner, Office of Zoning Administration

THOMAS ROTHMANN
City Planner, Code Studies
Telephone: (213) 978-1370

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.

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Attachment 7 – Attorney General Opinion No. 01-402, dated March 19, 2003

Acknowledgements:

Gratitude and appreciation are given to the following people for their contributions to this report and ordinance:

- Amy Brothers, Office of the City Attorney
- Hector Buitrago, Department of Building and Safety, retired
- Frank Bush, Department of Building and Safety
- Cynthia Cuza, Department of City Planning, retired
- Gabriela Juarez, Department of City Planning
- Nick Trotta, Department of Building and Safety, retired
- Phyllis Winger, Office of Councilman Greig Smith, Council District 12

EXECUTIVE SUMMARY

For over 40 years, state and federal governments have favored de-institutionalizing persons with disabilities and encouraged their placement in homes in residential neighborhoods. This policy is implemented in California by the Community Care Facilities Act of 1973. This Act regulates facilities for persons with special needs who require personal services, supervision, or assistance essential for sustaining the activities of daily living. This proposed ordinance (Appendix A) brings the Los Angeles Municipal Code (LAMC) into conformance with State law.

Part 1 of this report discusses how the proposed ordinance balances the goals of the Community Care Facilities Act with maintaining the quality of life in single-family neighborhoods by regulating State licensed facilities. Although the proposed ordinance does not change City zoning practice for such facilities with six or fewer residents, it codifies that they are permitted in any zone where single-family uses are allowed, as mandated by State law. However, the proposed ordinance does modify City practice for such facilities with seven or more residents by permitting them as "public benefits". As public benefits in the agricultural, residential, and commercial zones, these State licensed facilities must meet performance standards on an array of land use issues such as parking, noise, and lighting.

Part 2 of this report discusses new terms and provisions that focus on boarding and rooming houses. Specifically, the proposed ordinance creates a clear distinction between group homes inhabited by families and those operating as boarding houses. Since boarding houses are incompatible with lower density residential neighborhoods, this difference will work toward the broader goal of neighborhood protection. Modifying existing definitions of *family* and *boarding/rooming house* and adding the definition of *single housekeeping unit* provides effective tools for the City to enforce its zoning laws with respect to transient types of group homes operating in single-family neighborhoods. This objective is primarily met by defining a *family* as persons living as a *single housekeeping unit* with residents under one lease; at a *boarding/rooming house* lodging is provided to individuals under two or more leases.

Part 2 also summarizes the current *Transient Occupancy Residential Structures* ordinance and the *Administrative Nuisance Abatement* ordinance. Both existing ordinances already enable enforcement against transient residential uses in single-family neighborhoods. This section also describes how the new definition for *Correctional or Penal Institution* to include *group homes for parolees* will prohibit them in single-family neighborhoods. Currently, a group parolee home can operate as a *family* in any single-family zone; however the new definition restricts them, as it does any correctional institution, as a conditional use in all zones. Lastly, this section discusses how the proposed ordinance will preclude group homes from locating in single-family residences within RD Zones.

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).

On August 5, 2008, the Planning and Land Use Management Committee (PLUM) met to hear public comment on the Planning Department's report and recommended that City Council adopt the report (Attachment 5). On August 13, 2008, the City Council adopted PLUM's recommendation (Attachment 6).

BACKGROUND

On **October 24, 2007**, Councilman Greig Smith introduced Motion CF 07-3427 (Smith-Reyes) requesting a report from the Planning Department to recommend land use controls for sober living homes.

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.

Planning Department staff investigated four ordinances enacted by other cities and determined that these ordinances were all flawed in some way, and thus, with the exception of Newport Beach, which was the most comprehensive, were not appropriate models for Los Angeles. Analysis of these ordinances is included in Attachment 5.

Staff also conducted extensive research, reviewed numerous materials and met with representatives of the City Attorney's office, the Department of Building and Safety (DBS), and the Housing Department. This involved extensive examination of state law regarding community care facilities, state and federal fair housing laws, and pertinent court cases.

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 the PLUM hearing, a number of residents spoke about the negative impact sober living homes have on their neighborhoods. Specifically, they 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 A, RA, RE, RS, and R1 zones and that it require 1,000 feet between facilities and 2,000 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 the whole 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 DBS 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.

Input offered 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 the 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 **May 11, 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.

On **November 20, 2009 and May 11, 2010**, an inter-departmental working group that consisted of the DBS, City Attorney and the Planning Department met to further refine ordinance recommendations.

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.

DISCUSSION

The proposed ordinance includes new terms and provisions for licensed community care facilities and boarding/rooming houses. It builds upon existing zoning code provisions that protect the character of established residential neighborhoods. In addition, the ordinance eliminates redundant and unnecessary provisions regarding foster care homes and the "location of hospitals, sanitariums and clinics for mental, or drug or liquor addict cases".

Part 1: Regulating State Licensed Community Care Facilities

The LAMC currently does not address nor define State licensed community care facilities. The proposed ordinance adds definitions of State licensed facilities and includes regulations for facilities that serve six or fewer residents and those that serve seven or more residents.

Definitions

The proposed ordinance adds three definitions to the LAMC. Although the definitions are different, as a general category, all three of these are considered as and may be called "community care facilities."

Alcoholism or Drug Abuse Recovery or Treatment Facility, Licensed - As defined in Section 1502 of the Health and Safety Code, any premises, place, or building licensed by the State of California 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, Licensed - As defined in Section 11834.02 of the Health and Safety Code, any facility, place or building licensed by the State of California that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children.

Residential Care Facility for the Elderly, Licensed - As defined in Section 1569.2 of the Health and Safety Code, a housing arrangement licensed by the State of California chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. A Residential Care Facility for the Elderly may house residents under 60 years of age pursuant to Section 1569.316 of the Health and Safety Code and provide health-related services pursuant to Section 1569.70 of the Health and Safety Code.

Licensed facilities for six or fewer residents

As mandated by State law, any community care facility is currently permitted by right in any zone that allows residential uses. Incorporating these State laws into the City's zoning code will clarify the process for staff and applicants and increase transparency for the community.

Licensed facilities for seven or more residents

The proposed ordinance categorizes those community care facilities serving seven or more residents as "Public Benefits" in the agricultural, residential and commercial zones when meeting all of the required performance standards, including parking, noise and density. A Public Benefit is a use that is permitted through a ministerial process that does not require a public hearing or letter of determination. Public Benefits that do not meet the performance standards may seek approval through an alternative compliance process, which requires a public hearing and Director's determination.

Licensed community care 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.

This proposed ordinance serves the City's housing goals and objectives to prevent homelessness by providing appropriate facilities for people, especially the mentally and physically disabled, 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.

The following seven performance standards will apply to licensed community care facilities with seven or more residents:

- **Parking**

    - *Alcoholism or Drug Abuse Recovery or Treatment Facilities* - one on-site parking space for each resident. Thus, any such facility would have a minimum of seven on-site spaces.

    - *Community Care Facilities* and *Residential Care Facilities for the Elderly* – a minimum of two on-site spaces for each facility, with an additional 0.2 space provided for each resident above the seventh resident. Since only staff and, typically, not residents have vehicles, the required number of on-site spaces would increase incrementally at the rate of 0.2 per resident. Thus, a facility for seven to nine residents would require two parking spaces; a facility with ten to 14 residents would require three spaces, and a facility with 15 to 19 residents, four spaces, and so on.

- **Access**: The facility must avoid interference with traffic by providing access through driveways and/or loading docks for deliveries and pickups.

- **Noise**: The facility must conform to the City's noise regulations pursuant to Chapter 11 of the zoning code; any household noise or music shall be sufficiently modulated to ensure that adjacent residents are not disturbed.

- **Residential character**: In the agricultural and residential zones, 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 be shielded so that the light source cannot be seen from adjacent residential properties.

- **Peaceful enjoyment**: The facility shall not create an unreasonable level of disruption or interference with the peaceful enjoyment of adjoining and neighborhood properties.

- **Density**: Total occupancy must not exceed two residents for every bedroom or guest room. Therefore, facilities for seven or more residents must have at least four bedrooms or guest rooms.

Part 2: Regulating Boarding/Rooming Houses

Boarding/rooming houses are not operated as single housekeeping units. In essence, a single housekeeping unit is one household comprised of individuals occupying a single dwelling unit with all members having access to the entire unit and household chores, meals and maintenance are either shared or carried out according to a mutually agreed upon household plan. Because boarding houses are not operated as single housekeeping units, they tend to be more transient in character, and as such often do not fit into the established character of low-density residential neighborhoods.

During the Planning Department's public outreach, community members identified problems associated with boarding houses that are not operated as single housekeeping units. Some of these boarding houses are sober living homes, which are group living arrangements for persons recovering from alcoholism or drug addiction but provide no care or supervision. As such, they are not licensed and regulated by the State. Since persons recovering from alcohol and drug addiction are considered to be disabled, they are protected from discrimination by the Americans with Disabilities Act and the Federal Fair Housing Act. Thus, any regulation that treats sober living homes less favorably than analogous uses is discriminatory and therefore unlawful. Accordingly, to protect the character of low-density residential neighborhoods, address the community's concerns, and ensure a lawful ordinance, the Planning Department therefore recommends new provisions intended to strengthen the regulation of the broader category of boarding or rooming houses without singling out sober living homes, as such.

New Ordinance Provisions

Definitions of "Family" and "Single Housekeeping Unit"

The definition of family is important to describe permitted uses in residential zones. The constitutional right to privacy prohibits local governments from requiring members of a dwelling unit be related by blood, marriage, or adoption. As such, any definition of family requiring that members of a household be related is illegal. 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." The definition of family was potentially broad enough to include more than a single housekeeping unit.

The proposed definition of *single housekeeping unit* will require members of a single housekeeping unit to occupy a dwelling unit under one lease, whether written or oral. A desire to clearly distinguish a single housekeeping unit from a boarding house served as the impetus for this revision.

The proposed ordinance revises the definition of *Family* to be "One or more persons living together in a dwelling unit as a *single housekeeping unit*." Adding the new term of *single housekeeping unit* within the definition of *family*, defined in larger detail below, provides more detailed parameters for both regulation and enforcement while still respecting constitutional rights to privacy.

Definition of "Boarding/Rooming House"

The zoning code currently prohibits boarding or rooming houses in single-family and the R2 (or "duplex zone") zones. They are permitted by right in the multiple-family zones (including the RD "restricted density" zone) and all commercial zones.

The proposed ordinance establishes a bright line between the definition of boarding or rooming house, on the one hand, and the definition of a family (as a single housekeeping unit in one dwelling unit) on the other. The main distinction that the new ordinance establishes is that if

lodging is provided to individuals under two or more separate leases or agreements, then the facility is a boarding or rooming house. By contrast, all lessees in a single housekeeping unit must be under one lease. Thus, a homeowner may still take in boarders or roommates, but all of the boarders and roommates must be on the same lease or agreement. Likewise, a non-resident homeowner may still lease or rent out his or her home, but everyone living in the house must be on the same lease or agreement. The legal basis for making this bright line distinction comes from a 2003 California Attorney General opinion (see Attachment 7).

In addition to this amended definition, the new ordinance proposes to prohibit the operation of one-family dwellings as boarding or rooming houses on lots zoned RD. The RD zone is an intermediate multi-family zone with lower permitted densities than the R3, R4 or R5 zones but more than the R2 zone. In Los Angeles, many tracts zoned RD are actually improved with single-family homes. To ensure that one-family homes are not converted into boarding or rooming houses in these residential neighborhoods, the new ordinance includes an exception from the RD zone list of permitted uses.

Definition of "Correctional or Penal Institution", New

While the zoning code provides a public process for projects requesting a conditional use permit to build a correctional or penal institution, it does not provide a definition for one. The proposed ordinance adds the definition for *correctional or penal institution* as "any building including a prison, jail, or halfway house used for the housing or provision of services to persons under sentence from a federal, state or county court, or otherwise under the supervision of the State of California Department of Corrections or successor agency." Currently, a group parolee home can operate as a *family*; however the proposed new definition limits them, as it does any correctional institution, as a conditional use in all zones.

Existing Code Provisions

The proposed ordinance's new and amended definitions significantly enhance the City's ability to take enforcement action against boarding or rooming houses operating illegally. These provisions supplement and build upon existing laws and authority, as further discussed below.

Transient Occupancy Residential Structures

About 20 years ago, a problem arose when owners of apartment buildings started converting apartments to rooms for transient residents, thus creating a "hotel" in a building previously occupied by long term tenants. In 1992, the City Council addressed this problem by amending the LAMC to prohibit and regulate transient occupancy residential structures. This ordinance provided DBS with tangible parameters and an enforcement tool to cite any group residential uses where occupancy is transient. Specifically, the ordinance amended the LAMC by:

- adding a definition for *transient occupancy residential structures* as a "residential building designed or used for one or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms wherein occupancy, by any person by reason of concession, permit, right of access, license, or

other agreement is for a period of 30 consecutive days or less, counting portions of calendar days as full days;"

- prohibiting transient occupancy residential structures in the R1, R2, and R3 low-density residential zones; and
- requiring a conditional use permit for transient occupancy residential structures in the R4 and R5 multi-family zones and the C commercial zones, if located 500 feet or less from an A or R zone.

Administrative Nuisance Abatement

The City's *Administrative 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 Planning Department will investigate the complaint and determine whether the Director should file a case against the owner/operator of the subject property. After a public hearing, the Director may impose conditions on the property. In subsequent hearings, the Director may impose additional conditions or revoke the use altogether.

CONCLUSION

The Planning Department 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 addresses regulation and enforcement concerns by filling in the gaps that exist in the current vague definitions and regulations. Adding tangible parameters and creating a set of regulations that do not violate fair housing laws fill in the existing regulation and enforcement gaps especially when applied collectively with existing regulations. The proposed ordinance achieves an equitable solution that maintains the City's priority of neighborhood character preservation through enforceable quantifiable standards while meeting the State's Community Care Facility Act requirements.

APPENDIX A

ORDINANCE NO. ____________

A proposed ordinance amending Sections 12.03, 12.05, 12.07, 12.07.01, 12.08, 12.08.1, 12.08.3, 12.08.5, 12.09.1, 12.09.5, 12.10, 12.12, 12.12.2, 12.21, 12.22, 12.24, and 14.00 of the LAMC adding definitions of *Community Care Facility*, *Residential Care Facility for the Elderly*, and *Alcoholism or Drug Abuse Recovery or Treatment Facility* to the LAMC to bring it into conformance with the California Community Care Facilities Act. As mandated by State law, the ordinance permits these State licensed facilities with six or fewer residents in any zone that permits single-family homes. It also permits those with seven or more residents as public benefits, requiring performance standards. The proposed ordinance also amends the definitions of *Boarding or Rooming House* and *Family* to provide clear guidelines for the appropriate enforcement of boarding homes with transient characteristics and prohibits *Boarding or Rooming Houses* in one-family dwellings zoned RD. Lastly, it adds a definition for *Correctional or Penal Institution* to ensure that group homes for parolees are classified as conditional uses.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 12.03 of the Los Angeles Municipal Code is amended to add or amend the following terms alphabetically:

ALCOHOLISM OR DRUG ABUSE RECOVERY OR TREATMENT FACILITY, LICENSED. As defined in Section 11834.02 of the Health and Safety Code, any premises, place or building licensed by the State of California 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 and drug recovery treatment or detoxification services.

BOARDING OR ROOMING HOUSE – ~~A dwelling containing a dwelling unit and not more than five guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation.~~ 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. Boarding or rooming house does not include an alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed; or residential care facility for the elderly, licensed.

COMMUNITY CARE FACILITY, LICENSED. As defined in Section 1502 of the Health and Safety Code, any facility, place or building licensed by the State of California that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, abused or

neglected children.

CORRECTIONAL OR PENAL INSTITUTION. Any building including a prison, jail, or halfway house used for the housing or provision of services to persons under sentence from a federal, state or county court, or otherwise under the supervision of the State of California Department of Corrections or successor agency.

FAMILY. 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,~~ as a single housekeeping unit.

RESIDENTIAL CARE FACILITY FOR THE ELDERLY, LICENSED. As defined in Section 1569.2 of the Health and Safety Code, a housing arrangement licensed by the State of California chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels of intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. A Residential Care Facility for the Elderly, Licensed, may house residents under 60 years of age pursuant to Section 1569.316 of the Health and Safety Code and provide health-related services pursuant to Section 1569.70 of the Health and Safety Code.

SINGLE HOUSEKEEPING UNIT. One household 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. 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.

Sec. 2. New Paragraph 17 is added to Subsection A of Section 12.05 of the Los Angeles Municipal Code to read:

17. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 3. New Paragraph 15 is added to Subsection A of Section 12.07 of the Los Angeles Municipal Code to read:

15. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 4. New Paragraph 10 is added to Subsection A of Section 12.07.01 of the Los Angeles Municipal Code to read:

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Sec. 5. New Paragraph 10 is added to Subsection A of Section 12.08 of the Los Angeles Municipal Code to read:

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Sec. 6. New Paragraph 7 is added to Subsection B of Section 12.08.1 of the Los Angeles Municipal Code to read:

7. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 7. New Paragraph 8 is added to Subsection B of Section 12.08.3 of the Los Angeles Municipal Code to read:

8. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 8. New Paragraph 6 is added to Subsection B of Section 12.08.5 of the Los Angeles Municipal Code to read:

6. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 9. New Paragraph 12 is added to Subsection A of Section 12.09.1 of the Los Angeles Municipal Code to read:

12. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 10. New Paragraph 7 is added to Subsection B of Section 12.09.5 of the Los Angeles Municipal Code to read:

7. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 11. New Paragraph 13 is added to Subsection A of Section 12.10 of the Los Angeles Municipal Code to read:

13. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 12. New Paragraph 13 is added to Subsection A of Section 12.12 of the Los Angeles Municipal Code to read:

13. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 13. New Paragraph 15 is added to Subsection A of Section 12.12.2 of the Los Angeles Municipal Code to read:

15. Alcoholism or drug abuse recovery or treatment facilities, licensed; community care facilities, licensed; and residential care facilities for the elderly, licensed; for six or fewer residents.

Sec. 14. New Sub-subparagraph (6) added to Subparagraph (d) of Paragraph 4 of Subsection A of Section 12.21 of the Los Angeles Municipal Code to read:

(6) Any alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed; or residential care facility for the elderly, licensed; shall meet the following requirements for automobile parking spaces:

(i) If the alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed; or residential care facility for the elderly, licensed; is for six or fewer residents, then the facility shall meet the requirements for automobile parking spaces set forth in Section 12.21 A 4 (a) of this Code; or

(ii) If the alcoholism or drug abuse recovery or treatment facility, licensed, is for seven or more residents, then one automobile parking space must be provided for every resident; or

(iii) If the community care facility, licensed, or residential care facility for the elderly, licensed, is for seven residents, then a minimum of two automobile parking spaces must be provided, with 0.2 automobile parking space provided for each additional resident over the number seven.

Sec 15. Subsection D of Section 12.21 of the Los Angeles Municipal Code is deleted:

~~D. Location Of Hospitals. No hospital, sanitarium or clinic for mental, or drug or liquor addict 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.~~

Sec. 16. A new Subdivision 30 is added to Subsection A of Section 12.22 of the Los Angeles Municipal Code to read:

30. Boarding or Rooming Houses in the RD Zone. Notwithstanding the provisions of Section 12.09.1 of this Code, any one-family dwelling located on a lot zoned RD shall not be used as a boarding or rooming house.

Sec. 17. Paragraph 9 of Subsection X of Section 12.24 of the Los Angeles Municipal Code is deleted:

~~9. Foster Care Homes. Notwithstanding any other provision of this chapter, any person may, with the express written permission of a Zoning Administrator and subject to the following limitations, use a dwelling unit for the operation of:~~

~~(a) A foster care home occupied by a total of five or six children in the A, R, CR, C1 or C1.5 Zones; provided that the total number of persons (including servants) living in any dwelling unit used as a foster care home shall not exceed eight; or~~

~~(b) Limitations.~~

~~(1) The floor space of any dwelling unit used as a foster care home shall not be increased for that use and the floor space shall not be arranged so that it would reasonably preclude the use of the buildings for purposes otherwise permitted in the zone in which the property is located.~~

~~(2) No permission for the operation of a foster care home shall become valid unless it is licensed for foster care use by the State of California, or other agency designated by the State, and the operation shall not be valid for more than one year.~~

~~(c) Procedures. An application for permission pursuant to this subdivision shall follow the procedures for adjustments set forth in Section 12.28C1, 2 and 3.~~

Sec 18. Subsection A of Section 14.00 of the Los Angeles Municipal Code is amended to read:

A. Public Benefit Projects and Performance Standards. Where not permitted by right or by Conditional Use Permit pursuant to Subsections U, V or W of Section 12.24, the following public benefit uses are permitted in any zone, unless restricted to certain zones or locations. The uses shall meet the following performance standards or alternative compliance measures approved pursuant to Subsection B.

Upon the Director's determination that the public benefit use meets the stated performance standards, the Director shall record a covenant of the determination with the Office of the County Recorder. The covenant shall be valid as long as the property is used as a public benefit. The

covenant must be removed when the land is no longer used as a public benefit.

If the use fails to operate in accord with the stated performance standards the Director may modify the conditions of operation or discontinue the use.

Sec. 19. A new Paragraph 10 is added to Subsection A of Section 14.00 of the Los Angeles Municipal Code to read:

10. Alcoholism or drug abuse recovery or treatment facilities, licensed, community care facilities, licensed, and residential care facilities for the elderly, licensed, for seven or more residents in the A, R, and C zones.

(a) Performance standards:

(1) The facility meets the applicable automobile parking space requirements set forth in Section 12.21A 4 (d)(6);

(2) The facility avoids interference with traffic by providing access through driveways and/or loading docks for deliveries and pickups;

(3) The facility conforms to the City's noise regulations pursuant to Chapter 11 of this Code; any household noise or music shall be sufficiently modulated to ensure that adjacent residents are not disturbed;

(4) In the A and R zones, the existing residential character of the building and site are maintained, including the exterior façade, landscaping, fences, walls, lawn areas, and driveways;

(5) Security night lighting is shielded so that the light source cannot be seen from adjacent residential properties;

(6) The facility does not create an unreasonable level of disruption or interference with the peaceful enjoyment of adjoining and neighborhood properties;

(7) Total occupancy in the facility does not exceed two residents for every bedroom or guest room.

(b) **Purposes:** Alcoholism or drug abuse recovery or treatment facilities, community care facilities, and residential care facilities for the elderly for seven or more residents in the A, R and C zones shall be compatible with the character of the neighborhood and not adversely impact the health, safety and welfare of the persons residing in the facility or the neighborhood. Parking, traffic and transportation impacts shall be insignificant. The operation must comply with state law and must have a state license. The number of residents allowed per facility is limited in order to keep density within acceptable limits.

Sec 20. The City Clerk shall certify ...

DEPARTMENT OF CITY PLANNING
RECOMMENDATION REPORT

CITY PLANNING COMMISSION		**CASE NO:**	CPC-2009-800-CA
DATE:	February 10, 2011	**CEQA:**	ENV-2009-801-ND
TIME:	after 8:30 a.m.*	**LOCATION:**	Citywide
PLACE:	Los Angeles City Hall 200 North Spring Street Room 350 Los Angeles, CA 90012	**COUNCIL DISTRICT:**	All
		PLAN AREAS:	All

PUBLIC HEARING REQUIRED

MATTER CONTINUED FROM MEETINGS OF OCTOBER 14, 2010 and NOVEMBER 4, 2010

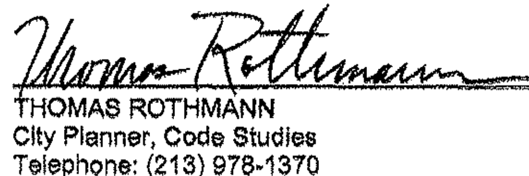
SUMMARY: A proposed ordinance (Appendix B) defining *Community Care Facility, Licensed; Residential Care Facility for the Elderly, Licensed; and Alcoholism or Drug Abuse Recovery or Treatment Facility, Licensed* bringing the LAMC into conformity with State law; regulating these facilities as public benefits; defining *Single Housekeeping Unit* and amending the definitions for *Boarding or Rooming House* and *Family*.

RECOMMENDED ACTIONS:

1. **Adopt** the initial and supplemental staff reports (dated October 14, 2010 and February 10, 2011) as its reports on the subject.
2. **Adopt** the findings in Attachment 1.
3. **Approve** the Negative Declaration as the CEQA clearance on the subject.
4. **Approve** the proposed ordinance in Appendix B and recommend its adoption by the City Council.

MICHAEL LOGRANDE
Director of Planning

ALAN BELL, AICP
Deputy Director



LINN K. WYATT
Chief Zoning Administrator

THOMAS ROTHMANN
City Planner, Code Studies
Telephone: (213) 978-1370

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.

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Appendix B – Proposed Ordinance
Attachment 1 – Findings

SUMMARY

For over 40 years, state and federal governments have favored de-institutionalizing persons with disabilities and encouraged their placement in homes in residential neighborhoods. Such policies are implemented in California through the Community Care Facilities Act of 1973. The Act regulates facilities for persons with special needs who require personal services, supervision, or assistance essential for sustaining the activities of daily living. The proposed ordinance (Appendix B) brings the Los Angeles Municipal Code (LAMC) into conformance with this State law.

The proposed ordinance (Appendix B) recognizes the importance of balancing the goals of the Community Care Facilities Act while maintaining the quality of life in single-family neighborhoods. Although State law prevents cities from regulating licensed facilities serving six or fewer residents differently from other single-family residences, it does allow for some regulation for licensed facilities serving seven or more residents. As such, the proposed ordinance simply categorizes the smaller facilities as by-right uses in all zones that allow single-family residences and regulates the larger facilities as "public benefits" in those zones. Public benefits are permitted through a ministerial process and are subject to parking, density, noise, and other land use based performance standards.

The proposed ordinance also makes a clear distinction between family residences and boarding/rooming houses by defining a family as persons who choose to live together as a single housekeeping unit with residents under one lease and by defining a boarding/rooming house as providing lodging to individuals under two or more leases. As such, a dwelling unit may be regulated as a boarding/rooming house when the residents occupy the dwelling unit under more than one lease. This distinction protects the residential and stable character of single-family neighborhoods by making clear that businesses and transient types of occupancy are not allowed.

STAFF REPORT

BACKGROUND

On October 14, 2010 the Planning Department presented a proposed ordinance (Appendix A) to the City Planning Commission (CPC) to update the Los Angeles Municipal Code (LAMC) regarding various licensed community care facilities and other related items. One primary objective of that ordinance was to place definitions of various licensed community care facilities into the LAMC in order to bring it into conformance with State law. To distinguish boarding/rooming houses from families, the ordinance amended the definitions for *Boarding or Rooming House, Family*, and added the definition of *Single Housekeeping Unit*. In essence, a boarding house is a residential use where rooms are separately rented or leased to individuals and the individuals do not constitute a single household. Appendix A also added a new definition for *Correctional or Penal Institution* to include group homes for parolees, thereby categorizing them as conditional uses in all zones (as explained below, this definition has now been withdrawn).

Over 60 people testified on this item with approximately equal numbers in opposition and in favor, and the matter was continued to November 4, 2010 to allow for additional testimony. Following the hearings, the CPC directed staff to organize a committee comprised of Planning Department staff, a representative from the City Attorney's office, and City Planning Commissioners to address the concerns raised at both hearings regarding potential impacts of the proposed ordinance. The issues focused primarily on the following:

1. What is the rationale for a higher parking requirement for *Alcoholism or Drug Abuse Recovery or Treatment Facilities* versus the other licensed community care facilities?
2. Neighborhoods should be notified of public benefits.
3. The proposed definition changes regarding *Boarding or Rooming House* and *Family* may conflict with permanent supportive housing programs.
4. Will these revisions still allow business owners to place tenants in single-family homes in single-family neighborhoods on a fluid lease?

DISCUSSION

The proposed ordinance (Appendix B) has two main objectives: (1) to update the LAMC to be consistent with the goals of the Community Care Facilities Act; and (2) to create a clear distinction between family residences and boarding/rooming houses.

With regard to the Community Care Facilities Act, the proposed ordinance regulates State licensed community care facilities. Although the proposed ordinance does not change City zoning practice for such facilities with six or fewer residents, it codifies that they are permitted in any zone where single-family uses are allowed, as mandated by State law. However, the proposed ordinance does modify City practice for such facilities with seven or more residents by permitting them as "public benefits", permitted through a ministerial process subject to parking, density, noise, and other land use based performance standards.

With regard to distinguishing between dwelling units inhabited by families and those operated as boarding/rooming houses, the proposed ordinance modifies existing definitions of *family* and *boarding/rooming house* and adds the definition of *single housekeeping unit.* This objective is primarily met by defining a family as persons who choose to live together as a single housekeeping unit with residents under one lease and by defining a boarding/rooming house as providing lodging to individuals under two or more leases. These definitions provide effective tools for the City to enforce its zoning laws with regard to businesses and transient types of occupancy that are not allowed in single-family neighborhoods.

During the Planning Department's public outreach, community members identified problems associated with certain residential uses that are not operated as single housekeeping units but rather as de facto boarding/rooming houses. Some of these residential uses are sober living homes, which are group living arrangements for persons recovering from alcoholism or drug addiction but provide no care or supervision. As such, they are not licensed and regulated by the State. Since persons recovering from alcohol and drug addiction are considered to be disabled, they are protected from discrimination by the Americans with Disabilities Act and the Federal Fair Housing Act. Thus, any regulation that treats sober living homes less favorably than analogous uses is discriminatory and therefore unlawful.

Accordingly, to protect the character of low-density residential neighborhoods, address the community's concerns, and ensure a lawful ordinance, the Planning Department therefore recommends new provisions intended to strengthen the regulation of the broader category of boarding or rooming houses as distinguished from single housekeeping units without singling out sober living homes.

The CPC-initiated subcommittee reviewed the issues raised at the public hearings. The subcommittee met three times with planning staff and the City Attorney. In addition to these meetings, staff met with various mental health care providers, briefed PlanCheck NC, received information from the Los Angeles County Department of Mental Health and the Los Angeles County Probation Department, and reviewed the Mayor's Policy on homelessness titled "Home For Good." Based on the subcommittee and other meetings and other research staff has modified its original recommendations as discussed below.

In response to item #1, the separate parking requirement originally proposed in Appendix A for *Alcoholism or Drug Abuse Recovery or Treatment Facility, licensed*, for seven or more residents has been changed to be consistent with the parking requirements for other licensed community care facilities. Staff did not find any conclusive evidence that residents of these facilities use personal vehicles substantially more than residents of other licensed community care facilities.

In response to item #2, the Planning Department recognizes the importance of stakeholder notification and therefore public notification will now be required of all public benefits. This new requirement will inform adjacent property owners, the applicable neighborhood council, and the City Council district office of the new public benefit. Because public benefits are by-right as long as specified performance standards are met, they cannot be denied or appealed. However, notification of the new use will also inform neighborhood stakeholders of required performance standards and the process for revoking non-compliant public benefits.

In response to item #3, the placement of homeless persons in licensed community care facilities in any zone that permits single-family residences will be allowed, and opportunities for this housing type encouraged, under this proposed ordinance. Based on the information provided by the Mayor's office, the "Home for Good" program, establishing permanent supportive housing for the homeless, will primarily be operating

in multi-family residential and commercial zones. Consequently, there is insufficient justification for carving out any exceptions to the ordinance as proposed.

In response to item #4, the definition of *Single Housekeeping Unit* has been refined to add that the adult residents of this residential use have chosen to live together and determine the makeup of the household rather than the landlord or property manager.

In addition to the issues raised at the public hearing, the Planning Department has removed sections of the proposed ordinance that pertain to *Correctional and Penal Institutions* and *Group Homes for Parolees and Probationers*. Further research is necessary on this issue and a follow-up ordinance will comprehensively address it.

CONCLUSION

Synchronizing the LAMC with the California Community Care Facilities Act reinforces the City's commitment to maintaining the quality of life in single-family neighborhoods while supporting the de-institutionalizing of persons with special needs. The proposed ordinance addresses regulation and enforcement concerns by filling in the gaps that exist in the current vague definitions and regulations. The proposed ordinance achieves an equitable solution that maintains the City's priority of neighborhood character preservation through enforceable quantifiable standards while meeting the State's Community Care Facility Act requirements.

APPENDIX B

ORDINANCE NO. ____________

A proposed ordinance amending Sections 12.03, 12.05, 12.07, 12.07.01, 12.08, 12.08.1, 12.08.3, 12.08.5, 12.09.1, 12.09.5, 12.10, 12.12, 12.12.2, 12.21, 12.22, 12.24, and 14.00 of the LAMC adding definitions of *Community Care Facility, licensed; Residential Care Facility for the Elderly, licensed*; and *Alcoholism or Drug Abuse Recovery or Treatment Facility, licensed* to the LAMC to bring it into conformance with the California Community Care Facilities Act. As mandated by State law, the ordinance permits these State licensed facilities with six or fewer residents in any zone that permits single-family homes. It also permits those with seven or more residents in any zone that permits single-family homes as public benefits, requiring performance standards. The proposed ordinance also amends the definitions of *Boarding or Rooming House* and *Family* to provide clear guidelines for the appropriate enforcement of boarding homes with transient characteristics and prohibits *Boarding or Rooming Houses* in one-family dwellings zoned RD.

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SINGLE HOUSEKEEPING UNIT. One household 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. 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 a single written lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.

Sec. 2. New Paragraph 17 is added to Subsection A of Section 12.05 of the Los Angeles Municipal Code to read:

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(6) Any alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed; or residential care facility for the elderly, licensed; shall meet the following requirements for automobile parking spaces:

(i) If the, licensed; community care facility, licensed; or residential care facility for the elderly, licensed; is for six or fewer residents, then the facility shall meet the requirements for automobile parking spaces set forth in Section 12.21 A4 (a) of this Code; or

(ii) If the alcoholism or drug abuse recovery or treatment facility, licensed; community care facility, licensed, or residential care facility for the elderly, licensed, is for seven residents, then a minimum of two automobile parking spaces must be provided, with 0.2 automobile parking space provided for each additional resident over the number seven.

Sec 15. Subsection D of Section 12.21 of the Los Angeles Municipal Code is deleted:

~~D. Location Of Hospitals. No hospital, sanitarium or clinic for mental, or drug or liquor addict 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.~~

Sec. 16. A new Subdivision 30 is added to Subsection A of Section 12.22 of the Los Angeles Municipal Code to read:

30. Boarding or Rooming Houses in the RD Zone. Notwithstanding the provisions of Section 12.09.1 of this Code, any one-family dwelling located on a lot zoned RD shall not be used as a boarding or rooming house.

Sec. 17. Paragraph 9 of Subsection X of Section 12.24 of the Los Angeles Municipal Code is deleted:

~~9. Foster Care Homes. Notwithstanding any other provision of this chapter, any person may, with the express written permission of a Zoning Administrator and subject to the following limitations, use a dwelling unit for the operation of:~~

~~(a) A foster care home occupied by a total of five or six children in the A, R, CR, C1 or C1.5 Zones; provided that the total number of persons (including servants) living in any dwelling unit used as a foster care home shall not exceed eight; or~~

~~(b) Limitations.~~

~~(1) The floor space of any dwelling unit used as a foster care home shall not be increased for that use and the floor space shall not be arranged so that it would reasonably preclude the use of the buildings for purposes otherwise permitted in the zone in which the property is located.~~

~~(2) No permission for the operation of a foster care home shall become valid unless it is licensed for foster care use by the State of California, or other agency designated by the State, and the operation shall not be valid for more than one year.~~

~~(c) Procedures. An application for permission pursuant to this subdivision shall follow the procedures for adjustments set forth in Section 12.28C1, 2 and 3.~~

Sec 18. Subsection A of Section 14.00 of the Los Angeles Municipal Code is amended to read:

A. Public Benefit Projects and Performance Standards. Where not permitted by right or by Conditional Use Permit pursuant to Subsections U, V or W of Section 12.24, the following public benefit uses are permitted in any zone, unless restricted to certain zones or locations. The uses shall meet the following performance standards or alternative compliance measures approved pursuant to Subsection B.

Upon the Director's determination that the public benefit use meets the stated performance standards, the Director shall record a covenant of the determination with the Office of the County Recorder. The covenant shall be valid as long as the property is used as a public benefit. The covenant must be removed when the land is no longer used as a public benefit. Upon recordation with the Department of City Planning of a covenant affirming the performance standards of a public benefit, notification of the public benefit shall be sent to adjoining and abutting property owners, the applicable certified neighborhood council, and the applicable City Council office. Public notification shall identify the applicable performance standards and a statement that if the

public benefit does not adhere to the performance standards, the Director of Planning can revise the performance standards or discontinue the use.

If the use fails to operate in accord with the stated performance standards the Director may modify the conditions of operation or discontinue the use.

Sec. 19. A new Paragraph 10 is added to Subsection A of Section 14.00 of the Los Angeles Municipal Code to read:

10. Alcoholism or drug abuse recovery or treatment facilities, licensed, community care facilities, licensed, and residential care facilities for the elderly, licensed, for seven or more residents in the A, R, and C zones.

(a) Performance standards:

(1) The facility meets the applicable automobile parking space requirements set forth in Section 12.21A 4 (d)(6);

(2) The facility avoids interference with traffic by providing access through driveways and/or loading docks for deliveries and pickups;

(3) The facility conforms to the City's noise regulations pursuant to Chapter 11 of this Code; any household noise or music shall be sufficiently modulated to ensure that adjacent residents are not disturbed;

(4) In the A and R zones, the existing residential character of the building and site are maintained, including the exterior façade, landscaping, fences, walls, lawn areas, and driveways;

(5) Security night lighting is shielded so that the light source cannot be seen from adjacent residential properties;

(6) The facility does not create an unreasonable level of disruption or interference with the peaceful enjoyment of adjoining and neighborhood properties;

(7) Total occupancy in the facility does not exceed two residents for every bedroom or guest room as shown on the building plans approved by the Department of Building and Safety.

(b) **Purposes:** Alcoholism or drug abuse recovery or treatment facilities, community care facilities, and residential care facilities for the elderly for seven or more residents in the A, R and C zones shall be compatible with the character of the neighborhood and not adversely impact the health, safety and welfare of the persons residing in the facility or the neighborhood. Parking, traffic and transportation impacts shall be insignificant. The operation must comply with State law and must have a State license. The number of residents allowed per facility is limited in order to keep density within acceptable limits.

Sec 20. The City Clerk shall certify ...

ATTACHMENT 1

LAND USE FINDINGS

The City Planning Department recommends that the City Planning Commission, in accordance with Charter Sections 556 and 558, find:

1. In accordance with Charter Section 556, the proposed ordinance (Appendix B) is in substantial conformance with the purposes, intent and provisions of the General Plan in that it supports several of the Goals and Objectives outlined in the Housing Element of the General Plan including:

   Goal 1 of the City's Housing Element to create "a City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy, sanitary, and affordable to people of all income levels, races, ages, and suitable for their various needs" which through implementation of Objective 1.1 which prompts the Department to "plan the capacity and develop incentives for the production of an adequate supply of rental and ownership housing for households of all income levels and needs."

   Goal 3 of the City's Housing Element to create a City where there are "housing opportunities for all without discrimination" by specifically addressing Housing Objective 3.1 to "assure that housing opportunities are accessible to all residents without discrimination on the basis of race, ancestry, sex, national origin, color, religion, sexual orientation, marital status, familial status, age, disability (including HIV/AIDS), and student status" by identifying appropriate zones to locate alcohol/drug recovery or treatment facilities and community care facilities serving the disabled and other persons with special needs; and Housing Objective 3.2 to "promote fair housing practices and accessibility among residents, community stakeholders and those involved in the production, preservation, and operation of housing" by identifying appropriate zones to locate alcohol/drug recovery or treatment facilities and community care facilities serving the disabled and other persons with special needs;

   Goal 4 of the City's Housing Element to create a "city committed to ending and preventing homelessness" specifically addressing Housing Objective 4.1 to "provide an adequate supply of short-term and permanent housing and services throughout the City that are appropriate and meet the special needs of persons who are homeless or who are at high risk of homelessness" by identifying appropriate zones to locate alcohol/drug recovery or treatment facilities and community care facilities for persons who are in danger of becoming homeless through implementation of Policy 4.1.6, which recommends "eliminating zoning and other regulatory barriers to the placement and operation of housing facilities for the homeless and special needs populations in appropriate locations throughout the City" by permitting community care facilities in single-family zones; and

2. In accordance with Charter Section 558 (b)(2), the proposed ordinance (Appendix B) will be in conformity with the public necessity, convenience, general welfare, and good zoning practice in that it supports several goals of the Framework Element of the General Plan.

   Goal 3B of the Framework Element of the General Plan seeks to preserve the City's stable single-family neighborhoods. Appendix B addresses Framework Element Objective 3.5 "to ensure that the character and scale of stable single-family residential neighborhoods is maintained allowing for infill development provided that it is compatible with and maintains the scale and character of existing development" by providing effective tools for the City to enforce its zoning laws with regard to businesses and transient types of occupancy that are not allowed in single-family neighborhoods.

   Goal 3A of the Framework Element of the General Plan, to create "a physically balanced distribution of land uses that contributes towards and facilitates the City's long-term fiscal and economic viability, revitalization of economically depressed areas, conservation of existing residential neighborhoods, equitable distribution of public resources, conservation of natural resources, provision of adequate infrastructure and public services, reduction of traffic congestion and improvement of air quality, enhancement of recreation and open space opportunities, assurance of environmental justice and a healthful living environment, and achievement of the vision for a more livable city." Appendix B addresses Framework Element Objective 3.1 "Accommodate a variety of uses that support the needs of the City's existing and future residents, businesses, and visitors" through implementation of Policy 3.1.9 to "Assure that fair treatment of people of all races, cultures, incomes and education levels with respect to the development, implementation and enforcement of environmental laws, regulations, and policies, including affirmative efforts to inform and involve environmental groups, especially environmental justice groups, in early planning stages through notification and two-way communication."

   Goal 4A of the Framework Element to create "an equitable distribution of housing opportunities by type and cost accessible to all residents of the City" and specifically addressing Framework Objective 4.4 to "reduce regulatory and procedural barriers to increase housing production and capacity in appropriate locations" by identifying appropriate zones to locate alcohol/drug recovery or treatment facilities and community care facilities serving persons with special needs.

ENVIRONMENTAL FINDING

A Negative Declaration, ENV-2009-801-ND, was published on this matter on March 19, 2009, and it was determined that this project will not have a significant effect on the environment. An addendum to the Negative Declaration was issued on November 19, 2009 to address all changes to the proposed ordinance from its original CEQA publication.

Los Angeles County Sober Living Coalition

Date: December 17, 2010

To: Los Angeles County Planning Commissioners, Alan Bell, Tom Rothmann, and Deputy City Attorney Amy Brothers

From: Jeff Christensen, Project Director, Los Angeles County Sober Living Coalition

Attachments: Ordinance 2009-02, An Uncodified Ordinance of the Town of Truckee Regulating the Placement and Permitting of Group and Transitional Housing.

Re: Proposed Boarding House Ordinance: Case Number CPC-2009-800-CA and Council File Number 07-34-27

At the November 4, 2010, Los Angeles City Planning Commission hearing on the proposed Boarding House ordinance, Commissioners specifically requested input on the following three sets of issues:

(1) What specific parts of the ordinance would seriously and negatively impair the ability of sober living homes to continue operating, which for sober living is the single lease requirement?

(2) What case law and other policy issues would help guide the city in its decision making; and

(3) A description of the continuum of recovery from addiction and how sober living fits into this continuum.

The Los Angeles County Sober Living Coalition (LACSLC) has about 200 homes within the City of Los Angeles. LACSLC is a member of the Sober Living Network which has over 500 member homes in Southern California. Both organizations believe our member homes are being put in great peril by this proposed ordinance so we are presenting information in this letter to Planners, Commissioners and the City Attorney's office that addresses these issues.

Section 1: Why a Single Lease Requirement is a Problem for Sober Living Homes

Following are reasons the single lease requirement would impair the ability of quality sober living homes to exist in the neighborhoods of their choice.

A. Members of sober living families need and expect more than secure tenancy.

Leases relate only to the privileges and responsibilities attendant to a dwelling and property. People who seek residence in sober living homes do so for the safety and recovery support they receive there. Homes maintain a recovery-centric environment in part through a set of behavioral requirements with which residents agree to comply as a condition of acceptance

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into the family. The principal but by no means only requirement is that of abstinence from alcohol and drugs. Sober living homes typically address other behavioral rules in individual agreements with residents, such as always exhibiting good citizenship inside and outside of the home. Residents understand that adherence to these rules is a condition of residence privileges, and that they may be asked to leave as a result of violating them.

It makes no sense to require one lease for all residents. If a resident must be evicted under such an agreement all residents must be evicted.

A. Multiple leases ensure the maintenance of a safe and healthy living environment.

A home must be able to remove disruptive or substance abusing residents from the home for the safety of the other residents and the safety of the neighborhood. Traditional families are often faced with the same painful necessity of asking spouses or adult children to move out because they create similarly harmful conditions for other family members. Our experience shows us that our member homes with their individual agreements do an efficient job of removing problem residents than do related families living in the same neighborhoods as our member homes.

Furthermore, it cannot be stated enough that the City of Los Angeles has yet to provide justification that homes in which residents have multiple leases are a bigger threat to community health and safety than are homes without multiple leases. Why this is important will be further addressed in Section 2: Case Law.

B. The means which families employ for equitable sharing of household expenses is not central to their rights to live together as a family.

The test imposed by the ordinance is defended by the City in part by a letter issued by the California Attorney General in 2003 regarding what can be considered boarding houses. The letter references the California Supreme Court decision in *City of Santa Barbara v. Adamson*, in which the court ruled that cities cannot define family differently for related persons than for non-related persons. However, this AG opinion relates to an ordinance from the City of San Luis Obispo, a city that did not, in its definition of boarding house, change the definition of family to exclude people who live together with multiple leases as the City of Los Angeles proposes to do. Neither does the AG opinion suggest that separate financial agreements trump *Adamson's* definition of family. Additionally, the AG opinion applied to commercial use and a sober living home is not considered commercial use. Further, it is simply an advisory opinion, not a ruling.

We strongly disagree that the existence of separate agreements defines a boarding house when other *Adamson* tests of family are met. The residents of the *Adamson* household had multiple payment arrangements for meeting their household expenses as do the residents in our sober living homes.

C. Requiring a single lease will not address in any satisfactory fashion the problems the city wishes to eradicate.

Homes that violate nuisance abatement laws already do not follow the law. If they did they wouldn't be problems. What does it matter to them what new requirement the City might enact, regardless of whether the occupants of these homes live there under one lease or multiple leases?.

Recently there was a case in the news in which an unscrupulous person took possession of a vacant home. He crammed many people into this residence with no leases whatsoever, and did so with no rights to the property. Yet the City was able, within the past few weeks, to shut down that house along with two more problem student rental homes and did so using existing policy. None of these homes were sober living homes. Why do we need another regulation when the existing ones seemed to work fine for closing down problem homes when the City decides to apply its resources?

One thing was highlighted in citizen testimony before the Commission and in several community meetings conducted by the Planning staff—much of the behavior which was the subject of neighbor complaints shouldn't be tolerated in ***any*** neighborhood. The City claims that homes with multiple leases are nuisances, with no evidence whatsoever to support this claim. Even if that were true, why then would the City not want to deal directly with specific problem behaviors and why does the City want to pass on those perceived problems to less affluent and more densely populated residential neighborhoods?

D. This ordinance would eradicate existing group homes for persons with disabilities.

The vast majority of group homes for persons with disabilities are located within low density residential zones, and these are homes that use individual leases per resident. This ordinance would force the relocation of thousands of people now living in them. Los Angeles County Sober Living Coalition member homes in the City of Los Angeles total just under 200 with approximately 2,000 persons residing in them. Best estimates are that LACSLC member homes make up only a quarter of existing sober living homes in the city, so this ordinance would potentially relocate, conservatively, around 7000 people just from sober living. Furthermore, there is an undetermined number of independent living group homes for the mentally ill that are not protected from this ordinance by the state Mental Health Services Act. Other populations of disabled persons also live in group homes with individual leases.

As you will note in Section 2, Case Law of this document, in many fair housing cases the courts have ruled that low density residential zones are where these homes need to be located.

Section 2: Federal Fair Housing Case Law, State of California Case Law, Other Policy Issues

A: Federal Fair Housing: We're providing a few illustrative cases to support our points from a much larger body of case law that we suggest that the City of Los Angeles examine more extensively.

Following are a few examples that apply to both intentional discrimination and discrimination through disparate impact. The City of Los Angeles cannot hide behind a defense of a seemingly facially neutral

ordinance in the wake of its well-documented intent to restrict group homes for sober living and other disabled populations. The material generated from Councilmember Greig Smith's office and the first two drafts of the ordinance (matters of public record, but pulled from the agenda prior to scheduled Planning Commission hearings) clearly document this intent. This current attempt at a facially neutral ordinance is merely a pretext for this intent to limit where these group homes—especially sober living—can be located in the City. Changing the definition of family in a way that doesn't allow group homes with multiple leases to exist in low density residential zones is discriminatory.

Case 1: In the case of *Oxford House v. Township of Cherry Hill, 799 F. Supp. 450 (D. N.J. 1991),* the federal court rejected a state court ruling that residents of a group home for recovering alcoholics were not a single family under the Township's ordinance. The court noted that those handicapped by alcoholism or drug abuse are persons more likely than others to need a living arrangement in which sufficiently large groups of unrelated people live together in residential neighborhoods for mutual support. Furthermore, the Township produced no evidence of non-discriminatory reasons for its position.

Cases 2 & 3: *Horizon House Dev. Serv., Inc. v. Township of Upper Hampton*, 804 F. Supp. 683 (E.D. Pa. 1992) and in *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 523-524 (W.D. Pa. 2007), the courts found finding that enforcement of the "group home" ordinance constitutes disparate treatment where the Borough refused to treat the Sharpvisions residents as a family.

Case 4: The Court in *Dr. Gertrude A. Barber Ctr., Inc. v. Peters Twp.*, 273 F. Supp. 2d 643, 655-657 (W.D. Pa. 2003) Groups of unrelated disabled persons in the City of Gainesville could only live in a general business zone by right. The court found such a statutory scheme to be facially invalid, and to have a disparate impact on groups of disabled persons seeking single family housing.

Case 5: In the case of *United States v. Borough of Audubon,* 797 F. Supp. 353 (D.N.J. 1991) aff'd 968 F.2d 14 (3d Cir. 1992) the court sanctioned the Borough and permanently enjoined it from interfering with the living arrangements of the residents of the home [for a disabled population] and held that when acts are undertaken with improper discriminatory motive, the Act may be violated even though those acts may have otherwise been justified under state law.

We suggest that the City more thoroughly research fair housing reasonable accommodation case law. Should this new definition of family become policy for the City there will be a flood of reasonable accommodation applications. The City will need to establish policies that suspend any application code violations to sober living homes until the reasonable accommodation has been completed. These will be in addition to direct legal challenges.

We would like to remind everyone that the City of Newport Beach, erroneously held by many to have enacted a successful policy for limiting sober living homes, has yet to win a case. Furthermore, it has paid out nearly three million dollars in settlement costs and legal fees. Settlements are not legal precedents.

B: California State Law—Definition of Family, *City of Santa Barbara v. Adamson.* The City has still not justified how it is able to ignore the provisions of this 1980 California Supreme Court decision in which the court ruled that no local government can define family differently for non-related persons than it does for related persons. The City has yet to address how, in light of *Adamson,* it can justify its proposed redefinition of family and single housekeeping unit that severely restricts the way unrelated people can live together in low density residential areas, since the principal means for this type of shared housing is through multiple leases or other individual financial arrangements.

The City refers to the Attorney General's opinion regarding *Adamson* and the City of Lompoc's boarding house ordinance. However, Lompoc did not redefine family in its ordinance in ways that exclude shared living arrangements in group homes for unrelated persons the way the City of LA has done. Furthermore, the AG's opinion is just that—opinion. It is not a legal ruling.

C. Policy Issues

- **Truckee Ordinance: The Truckee ordinance has a separate policy for sober living and does not categorize sober living or other group homes as Boarding Houses.**
  - LA City Planning staff have publicly stated that the City's proposed ordinance was drafted in part based on the Truckee, California ordinance. We find this quite odd. Here's why. Attached is a copy of the most current Truckee **Ordinance 2009-02, An Uncodified Ordinance of the Town of Truckee Regulating the Placement and Permitting of Group and Transitional Housing.** Please note the following section on page 2 relevant to sober living:

    "Section 3 Transitional and Group Homes not licensed by the State and/or serving seven or more clients—Use Permit Required:

    Any transitional or group home or similar facility determined by the Community Development Director located within the Town which services seven or more persons, and/or is not licensed to operate by the State of California shall obtain a use permit for its operation with written notice to adjoining properties and the imposition of appropriate conditions of approval as authorized by the Town Development Code Chapter 18 76 unless otherwise prohibited by the Development Code."

  Three people, two sober living homes owners and Deborah Parker, recently contacted the Town of Truckee Community Development Department. They identified themselves as sober living home providers or advocates for same, stating that they wanted to clearly understand what regulations an eight bed sober living home proposing to locate in a Town of Truckee single family residential zone would be subject to. In all three instances, they were referred to the above referenced ordinance. When asked specifically if they would be classified as a boarding house they were told no. City officials further explained that they enacted this 2009 ordinance to deal specifically with sober living homes.

[Please note that this Town of Truckee ordinance would not prevail if this ordinance were challenged by a provider, which has not yet occurred. Volumes of case law and research by the City of Los Angeles Planning Department and documented in the January 28, 2010 Staff Report confirms that such measures cannot meet the legal challenge.]

- **Legal Challenges:**
  - If this ordinance passes, the City of Los Angeles will face legal challenges to it.
  - Fair housing laws require that local governments which enact policies restricting access to housing for persons with disabilities must demonstrate that these policies are necessary. *Such evidence is to be objective and applied equally across the entire jurisdiction* that clearly demonstrates that (in this case) housing with multiple leases are more of a threat to community health and safety than housing with no more than one lease. The City has offered no such evidence. NIMBY complaints are not accepted by the courts as justification for such ordinances. Discriminatory motive has been noted in the preceding sample case law section.
  - Members of the Planning Commission have posited that this ordinance might be offered to counter failed enforcement of nuisance abatement laws by the City. Sober living homes and many neighbors strongly agree that the City has not done its job in proper nuisance abatement. However, as was pointed out Section 1, part D of this document, the City can if it applies its resources.
  - The homes that neighbors say generate most of their complaints do not appear to be legitimate group homes for persons with disabilities, yet they are often referred to as sober living homes. However, what neighbors call sober living we sober living providers would call party houses, crack houses or flop houses.

Section 3: Continuum of Addiction Recovery

A. Background

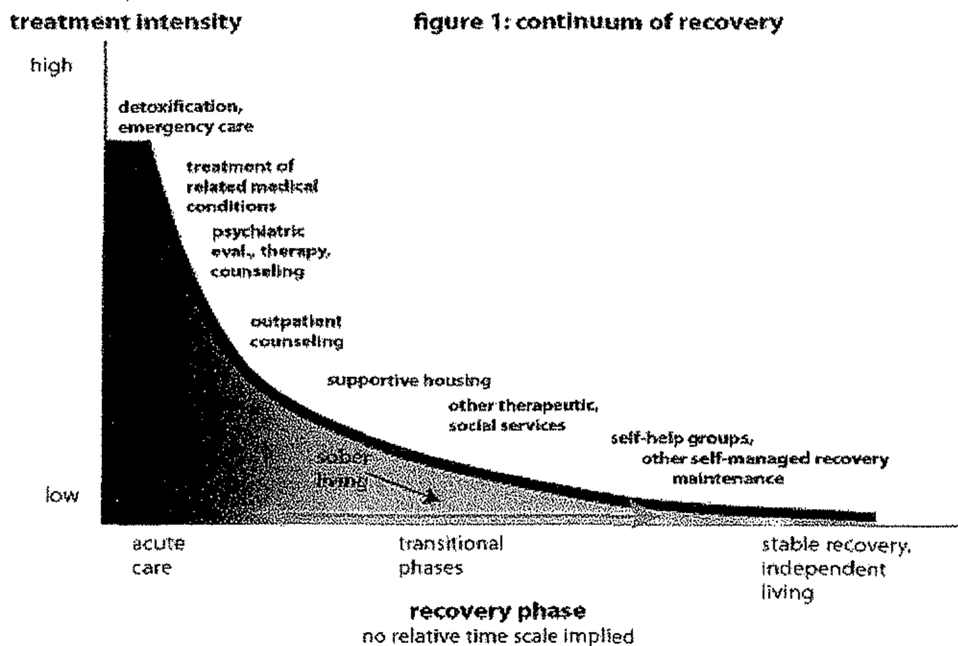
Medical authorities agree that addiction is a bona fide disease, a complex one which is in the relapsing/remitting category of health problems. As with other relapsing/remitting diseases such as diabetes, heart disease, and COPD (chronic obstructive pulmonary disease) addiction is a complex condition, having both acute and chronic components. All relapsing/remitting diseases develop in stages. Successful intervention is rarely if ever achieved solely by single brief interventions of clinical treatment however intense.

In all of these diseases the combination of genetics, learned family behaviors, and environmental factors culminating over time contribute to the onset and perpetuation of the disease. In the past few decades there has been an increasing amount of public dialogue about known contributory factors. For instance, smoking and pollution are primary causes of COPD and lung cancer, as well as contributory to heart disease. An increase in a high sugar and high fat diet contribute as well, coupled with a decline in exercise. And, of course, these also are chief culprits in Type II diabetes development. Understanding the conditions surrounding these diseases has lead to increased public policy considerations and decisions that have lead to policies that begin to address these factors.

Medical professionals emphasize that relapse is a key component of all relapsing/remitting diseases. Successful treatment and recovery is a process which occurs over time. For all relapsing/remitting diseases, detection, intervention and recovery require support of family, friends and community. Health experts state that approximately two thirds of persons with alcohol and drug addiction have a good chance of recovery and leading normal lives. This is the same percentage of those with other relapsing/remitting diseases who are able to successfully manage their conditions.

Those are also important factors for recovery from addiction, but the primary factor is strong peer support and a healthy alcohol and drug free environment in which residents model and support good citizenship. Those who do not bond and associate with others in recovery have a very poor chance of maintaining recovery.

A services delivery concept known as the continuum of recovery describes how different services and living environments are appropriate depending on an individual's condition upon entering recovery, and progression through recovery stages. Figure 1 (below) is an illustration of the basic idea.



Time spent in phases of recovery is a variable across individuals, as noted above. These are some typical durations of recovery phases. Note that more than one treatment or recovery support service may be utilized by an individual at the same point in time (e.g. outpatient care and sober living):

Phase	Time in Phase
Detox (only needed for 20%)	2-5 days
Evaluation and Treatment –Residential	30 days
Evaluation and Treatment—Outpatient (12-16 hrs/week)	8-12 weeks
Supportive Housing	1-3 years
Other supportive services (mental health, job training, medical)	1-5 years
Peer support, self help groups and peer contacts	Ongoing

B. Brief overview of sober living and its role in recovery

"Treatment" with respect to substance abuse is a widely misunderstood and misused term. Many not familiar with recovery from addiction believe that formal treatment is essential for recovery but that is not accurate. It is healthy peer interaction that is the most essential component. A substantial number of people who have been clean and sober for years never received formal treatment. Their primary means of recovery began with peer-based services such as twelve step programs or introduction to sober housing where they are introduced to other programs. Unlike many types of mental illnesses, individuals with addiction and other substance use disorders can and do actually recover without further treatment.

While "treatment" accurately describes the majority of mental health services, it fails to accurately describe the recovery process from addiction, chemical dependency and other substance use disorders. In this document, "treatment" for these disorders refers only to a small and resource-intensive phase of the recovery process that many alcoholics and addicts do not require. It is not the proper term to describe the majority of an individual's recovery process, nor is it an accurate characterization of the majority of the services recovering individuals participate in through the continuum of recovery.

Sober living homes provide housing and supportive environments and resources to people in recovery from addiction. Sober living has been an integral part of recovery since the first successful model for addressing addiction, Alcoholics Anonymous, was created in 1934. For two and a half decades, as the numbers of recovering people exploded, the only means for recovery were AA meetings and informal sober housing established by recovering people for others in recovery. It was and still is an essential component of recovery for many people.

Increasing cuts to existing treatment programs continue to reduce the number of treatment services and the residential capacity available, making the maintenance of sober living homes in our residential communities essential to health for alcoholics and addicts and safety for all communities.

Because of the different ways people enter sober living, and the variety of physical, psychological and emotional damage they may have suffered from their families of origins and as a result of their drug use, the length of stay in a sober living environment is indeterminate. It is neither permanent nor transient and generally is determined by how long the resident requires the environment that meaningfully supports them in making progress toward independent living. At times this support may direct them to a structured treatment for a while after which they can return to sober living. What's more, it's often impossible to determine upon entry into sober living how long someone may want or need to remain there.

Many sober living residents express that this is the first time they have experienced a healthy family environment. The reason for this is that while addicted individuals make up between 10-15% of the general population, more than 50% come from families with addiction disorders. Many recovering people not only have to learn to manage their disease but learn a whole new set of values, unlike those with other relapsing/remitting disorders.

The family characteristics of sober living homes are important for several reasons. Residents learn values of trust and self-esteem through such simple things as sharing household responsibilities and being accountable to others. Due to the fact that many alcoholics and addict are products of dysfunctional families of origin, they derive an additional benefit of learning cooperative living skills which they never acquired growing up. Peer reviewed research also shows that members of sober living families develop bonds which in many cases are stronger and healthier than bonds with families of origin or with others developed prior to beginning the recovery process.

C. What does this mean for the City of Los Angeles?

Based on national data, about 9% of adults had a treatable substance abuse disorder in 2009.[1] Based on population, these data suggest that over 280,000 Los Angeles residents similarly suffer. These results are remarkably similar year after year, despite current levels of spending of all kinds on prevention and remediation.

As bad as the problem is, only a fraction of those people receive help. Based on a related 2008 study[2], only about 17,000 adult Angelenos received any licensed treatment for their addiction. The vast majority did not. Since sober living is not treatment, its residents are not captured in the statistics about the recovery services people receive. As noted above, many of those in both the "received treatment" and "did not receive treatment" categories of individuals with substance abuse problems find recovery support in sober living.

The results derived from living in a good sober living home are remarkable. In a peer reviewed two-year study conducted by researchers at DePaul University[3], 150 individuals in Illinois were randomly assigned to either sober living or to outpatient treatment and self-help groups. At a two-year follow-up point, the sober living population exhibited significantly lower substance use (31.3% vs. 64.8%), significantly higher monthly income ($989.40 vs. $440.00 [*Illinois, 1996 dollars*]), and significantly lower incarceration rates (3% vs. 9%).

These results, across a population of over 2,000 recovering alcoholics and addicts in Sober Living Coalition homes in the City of Los Angeles, suggest significant benefits to the City and to its communities provided by well-managed sober living homes, assuming the City permits these homes and their residents to exist there.

We would be glad to have further discussions with you on any of these subjects.

Sincerely,

Jeff Christensen, Project Director
Los Angeles County Sober Living Coalition

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[1] Substance Abuse and Mental Health Services Administration. (2010). Results from the 2009 National Survey on Drug Use and Health: Mental Health Findings (Office of Applied Studies, NSDUH Series H-39, HHS Publication No. SMA 10-4609). Rockville, MD.

[2] Metro Brief, Substance Abuse Treatment in Metropolitan Areas, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Substance Abuse and Mental Health Services Administration, Office of Applied Studies (2008), http://oas.samhsa.gov/metro/LosAngeles/508PDF_LosAngeles.pdf

[3] See *Communal Housing Settings Enhance Substance Abuse Recovery*, Leonard A. Jason, Olson, B., Ferrari, J, American Journal of Public Health, Vol. 95, No. 10, October 2006 for research findings summary and complete citations.

Westlaw

104 F.3d 300, 19 A.D.D. 740, 9 NDLR P 214, 97 Cal. Daily Op. Serv. 263, 97 Daily Journal D.A.R. 473
(Cite as: 104 F.3d 300)

United States Court of Appeals,
Ninth Circuit.
John GAMBLE; Fie A. Gamble; Life Care Residences, Inc., doing business as Oak Hill Residential Care, Plaintiffs-Appellants,
v.
CITY OF ESCONDIDO, Defendant-Appellee.
No. 95-56019.

Submitted Oct. 10, 1996.

The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir.R. 34-4 and

Decided Jan. 10, 1997.

Landowners sued city for alleged violations of Fair Housing Act (FHA), equal protection, and due process in denying conditional use permit to construct complex for physically disabled elderly adults in single-family residence area. The United States District Court for the Southern District of California, , J., granted city's motion for summary judgment. Landowners appealed. The Court of Appeals, , Circuit Judge, held that: (1) landowners failed to state claims for disparate treatment, disparate impact, and reasonable accommodation under FHA, and (2) denial of permit survived rational basis scrutiny, and thus equal protection and due process claims also failed.

Affirmed.

West Headnotes

Federal Courts 170B ⚷776

Federal Courts
Courts of Appeals
Scope, Standards, and Extent
In General
k. Trial de novo.

Court of Appeals reviews grant of summary judgment de novo.

Civil Rights 78 ⚷1075

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. In general.
(Formerly 78k131)
Court of Appeals applies Title VII discrimination analysis in examining Fair Housing Act (FHA) discrimination claims; thus, plaintiff can establish FHA discrimination claim under a theory of disparate treatment or disparate impact. Civil Rights Act of 1964, § 701 et seq., ;
Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Plaintiff may sue under Fair Housing Act Amendments ("FHAA") if local municipality refuses to make reasonable accommodations for handicapped housing. Civil Rights Act of 1968, § 804(f)(3)(B), as amended,

Civil Rights 78 ⚷1403

Civil Rights
Federal Remedies in General
Presumptions, Inferences, and Burdens of Proof
k. Property and housing.

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(Formerly 78k240(3))
Court of Appeals analyzes disparate treatment claims under Fair Housing Act (FHA) and Fair Housing Act Amendments (FHAA) using Title VII's three-stage *McDonnell Douglas/Burdine* test. Civil Rights Act of 1964, § 701 et seq., ; Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1081

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Public regulation; zoning.

(Formerly 78k131)
Prima facie case of disparate treatment under Fair Housing Act (FHA) requires establishing following elements: plaintiff is member of a protected class, plaintiff applied for conditional use permit and was qualified to receive it, conditional use permit was denied despite plaintiff being qualified, defendant approved conditional use permit for a similarly situated party during a period relatively near the time plaintiff was denied its conditional use permit. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1403

Civil Rights
Federal Remedies in General
Presumptions, Inferences, and Burdens of Proof
k. Property and housing.

(Formerly 78k240(3))
Under three-stage test for analyzing disparate treatment claims under Fair Housing Act (FHA) and Fair Housing Act Amendments (FHAA), plaintiff must first establish prima facie case; if plaintiff does so, burden shifts to defendant to articulate a legitimate nondiscriminatory reason for its action, and if defendant satisfies its burden, plaintiff must prove by preponderance of evidence that the reason asserted by defendant is a mere pretext. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1075

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. In general.
(Formerly 78k131)
Proof of discriminatory motive is crucial to a disparate treatment claim under Fair Housing Act (FHA). Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1395(3)

Civil Rights
Federal Remedies in General
Pleading
Particular Causes of Action
k. Property and housing.

(Formerly 78k235(4))
Landowners' complaint against city regarding denial of conditional use permit to construct complex for physically disabled adults in single-family residential area did not present prima facie case of disparate treatment under Fair Housing Act (FHA), where it failed to allege that city granted a permit to a similarly situated party relatively near the time the city denied the permit in question. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of

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handicap, disability, or illness.
(Formerly 78k131)
City was not liable to landowners on disparate treatment claim brought under Fair Housing Act (FHA) for denying conditional use permit to build complex for physically disabled elderly adults in single-family residential area, even assuming landowners established prima facie case; reason advanced by city for denying application, namely, concern for character of the neighborhood, was legitimate and nondiscriminatory, and landowners presented no colorable evidence that city's proffered reason for denying permit was a mere pretext for discrimination, or that city showed intent or motive to discriminate. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Fact that city forced landowner to go through conditional use permit process with respect to proposed building of complex for disabled elderly adults in single-family residence area did not constitute evidence of intent or motive to discriminate, for purposes of disparate treatment claim under Fair Housing Act (FHA) based on denial of permit; city could have denied landowner's original application as being out of character for the neighborhood even if landowner never applied for conditional use permit. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1075

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. In general.
(Formerly 78k131)
To establish prima facie disparate impact case under Fair Housing Act (FHA), plaintiff must establish at least that defendant's actions had a discriminatory effect. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1075

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. In general.
(Formerly 78k131)
Elements of prima facie Fair Housing Act (FHA) case under a disparate impact theory are the occurrence of certain outwardly neutral practices, and a significantly adverse or disproportionate impact on persons of a particular type produced by defendant's facially neutral acts or practices. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1075

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. In general.
(Formerly 78k131)
Demonstration of discriminatory intent is not required in Fair Housing Act (FHA) claim under disparate impact theory; however, plaintiff must prove the discriminatory impact at issue, and raising an inference of discriminatory impact is insufficient. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General

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Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Landowners failed to establish prima facie case of disparate impact under Fair Housing Act (FHA) in connection with city's denial of conditional use permit to construct residence and day-care center for physically disabled elderly adults, as they presented no proof that city's permit practices had significantly adverse or disproportionate impact on housing for physically disabled or elderly; absence of an adult day health care facility in the community, by itself, was not actionable. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Argument in support of challenge to city's denial of conditional use permit to build complex for physically disabled elderly adults in single-family residence area, that physically disabled persons required group housing to be financially solvent and that such houses generally had to be larger than single-family residences, did not establish prima facie claim of disparate impact under Fair Housing Act (FHA); there was no evidence that discriminatory effect occurred, and furthermore, relevant comparison group was not single families, but other groups of similar sizes living together. Civil Rights Act of 1968, § 801 et seq., as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Landowners failed to state reasonable accommodation claim under Fair Housing Act (FHA) against city that denied conditional use permit to construct complex for physically disabled elderly adults, though complex would serve in part as residence, where significant portion of proposed building would be devoted to health care facility for which accommodation was not required under the statute. Civil Rights Act of 1968, § 804(f)(3)(B), as amended,

Civil Rights 78 ⚷1083

Civil Rights
Rights Protected and Discrimination Prohibited in General
Housing
k. Discrimination by reason of handicap, disability, or illness.
(Formerly 78k131)
Fair Housing Act (FHA) affirmatively required that city make reasonable accommodations for handicapped residences; statute did not, however, require reasonable accommodation for health care facilities. Civil Rights Act of 1968, §§ 802(b), 804(f)(3)(B), as amended,

Constitutional Law 92 ⚷3073(1)

Constitutional Law
Equal Protection
In General
Levels of Scrutiny
Particular Classes
Disability and Disease, Physical or Mental
k. In general.

(Formerly 92k213.1(2))
Physically disabled are not a protected class for purposes of equal protection under Fourteenth

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Amendment; thus, rational basis scrutiny is appropriate for analyzing equal protection claims by members of that group.

Constitutional Law 92 ⚷4095

Constitutional Law
Due Process
Particular Issues and Applications
Property in General
Zoning and Land Use
k. Adult-oriented uses.

(Formerly 92k278.2(1))
Rational basis scrutiny was appropriate for claim that city's denial of conditional use permit to construct complex for physically disabled elderly adults violated their right to due process.

Constitutional Law 92 ⚷3861

Constitutional Law
Due Process
In General
k. Relationship to equal protection guarantee.
(Formerly 92k3007, 92k213.1(2))

Constitutional Law 92 ⚷3877

Constitutional Law
Due Process
Protections Provided and Deprivations Prohibited in General
k. Reasonableness, rationality, and relationship to object.
(Formerly 92k251.3)
Rational basis test is identical under the two rubrics of equal protection and due process.

Constitutional Law 92 ⚷3512

Constitutional Law
Equal Protection
Particular Issues and Applications
Property in General
Zoning and Land Use
k. In general.

(Formerly 92k228.2)

Constitutional Law 92 ⚷4095

Constitutional Law
Due Process
Particular Issues and Applications
Property in General
Zoning and Land Use
k. Adult-oriented uses.

(Formerly 92k278.2(1))

Zoning and Planning 414 ⚷1360

Zoning and Planning
Permits, Certificates, and Approvals
In General
Architectural and Structural Designs
k. Family or multiple dwellings.
(Formerly 414k391)
City's denial of conditional use permit to construct complex to house up to 15 physically disabled elderly adults and also serve as adult day-care center in single-family residential area survived rational basis scrutiny, for purposes of equal protection and due process challenges; permit denial was rationally related to achieving city's zoning goals, and applicant failed to substantiate allegation that city would have granted permit to another, nondisabled group.

***303** Law Offices of Charles D. Nachand, Escondido, California, for the plaintiff-appellant.

, City Attorney, Escondido, California, for the defendant-appellee.

Appeal from the United States District Court for the Southern District of California,
, District Judge, Presiding. D.C. No. CV-94-00637-EJS.

Before: , and , Circuit Judges.

OPINION

, Circuit Judge:

John Gamble, Fie Gamble, and Life Care Residences, Inc. ("Gamble") sought to construct a complex for physically disabled elderly adults in a single-family residence area in Escondido, California. The City of Escondido ("City") denied the building permit application because the proposed building was too large for the lot and did not conform in size and bulk with the neighborhood structures. The district court granted the City summary judgment on the Fair Housing Act, equal protection, and due process claims. We affirm.

BACKGROUND

Fie and John Gamble own several parcels of land in Escondido, California. In 1987, the City granted the Gambles a conditional use permit for one of their parcels of land allowing construction of up to six facilities to care for the physically disabled, with each facility having a capacity maximum of twelve persons. Only two buildings, each of approximately 5,000 square feet in size, have been erected.

Gamble proposed to construct a 10,360 square foot, eight bedroom, twelve bathroom structure for the physically disabled elderly on a different parcel of land. The upper ***304** portion of the building was designed to house fifteen elderly disabled adults; the lower to serve as an adult day care facility. Day care patients from throughout Escondido would be transported to and from the center each day by van. A ten-car lot would provide parking. Surrounding homes in the neighborhood were significantly smaller than the proposed complex.

The City Planning Department concluded that the building would not be typical for a single-family residence and notified Gamble that the proposed size of the structure and number of occupants required a conditional use permit. Gamble then applied for a conditional use permit and simultaneously sought to increase the capacity for his previously authorized care facilities.

The size and bulk of the proposed structure continued to be an issue in the permit review process. The City's Design Review Board considered Gamble's application at two meetings and recommended denial. The Planning Commission held a public hearing, after which it recommended denial of the application based on the size of the structure, the design, the lack of amenities, and the inadequacy of parking. Gamble appealed the Planning Commission's decision to the City Council which referred the application back to the Design Review Board to allow Gamble an additional opportunity to redesign the building.

Gamble revised the building elevations and site plan, but the building size and capacity remained the same. The Design Review Board reviewed the revised application, but still recommended that the application be denied. The Planning Commission held a hearing on the matter and again recommended denial of the conditional use permit.

Gamble appealed to the City Council, which held a public hearing. After a significant number of people testified movingly about the need for facilities for the physically challenged, the City Council voted to approve the application. However, in response to the concerns voiced by neighbors, the City Council agreed to reconsider the matter at a subsequent hearing. At this hearing, the City Council denied Gamble's conditional use permit application for the proposed new building and approved Gamble's application to increase the capacity of his other residence care facilities.

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Gamble filed suit in the Southern District of California alleging violations of the Fair Housing Act, the Equal Protection Clause, and the Due Process Clause. The district court granted summary judgment. Gamble appeals.

ANALYSIS

We review a grant of summary judgment de novo.

, *cert. denied,*

. Summary judgment is appropriate when the movant shows "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." . "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."

. A dispute about a material fact is genuine if "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party."

I. THE FAIR HOUSING ACT CLAIMS

We apply Title VII discrimination analysis in examining Fair Housing Act ("FHA") discrimination claims. "Most courts applying the FHA, as amended by the [Fair Housing Act Amendments], have analogized it to Title VII of the Civil Rights Act of 1964, , which prohibits discrimination in employment."

; *see*

("We may look for guidance to employment discrimination cases.").

Thus, a plaintiff can establish an FHA discrimination claim under a theory of disparate treatment, ***305**

, or disparate impact, Additionally, a plaintiff may sue under of the Fair Housing Act Amendments ("FHAA") if a local municipality refuses to make reasonable accommodations for handicapped housing.

, *aff'd sub nom.*

. Gamble alleges claims of discrimination under each of these theories.

A. *Disparate Treatment under the Fair Housing Act*

We analyze FHA and FHAA disparate treatment claims under Title VII's three-stage *McDonnell Douglas/Burdine* test.

see

;

To bring a disparate treatment claim, the plaintiff must first establish a prima facie case. Adapted to this situation, the prima facie case elements are: (1) plaintiff is a member of a protected class; (2) plaintiff applied for a conditional use permit and was qualified to receive it; (3) the conditional use permit was denied despite plaintiff being qualified; and (4) defendant approved a conditional use permit for a similarly situated party during a period relatively near the time plaintiff was denied its conditional use permit. *See*

See also

, *cert. denied,*

(formulating the "relatively near to the time" fourth prong in a tenure denial case).

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Second, if the plaintiff establishes the prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its action.

see also

(same, in the employment discrimination context).

Third, if the defendant satisfies its burden, the plaintiff must prove by a preponderance of evidence that the reason asserted by the defendant is a mere pretext.

see also

(same, in the employment discrimination context).

"Proof of discriminatory motive is crucial to a disparate treatment claim."

(importing an employment discrimination standard into a housing discrimination case), *aff'd,* . *See also* (observing, in the employment discrimination context, that "[o]n summary judgment, the existence of a discriminatory motive for the employment decision will generally be the principal question").

Initially, we note that on its face, Gamble's complaint does not present a prima facie case because he does not allege that the City granted a permit to a similarly situated party relatively near the time the City denied his permit. Gamble does allege the existence of other large structures in the vicinity, such as an apartment complex, a mobile home park, and a multistory church. Neither the complaint nor the record, however, informs us of the dates on which permits for these structures were granted, or whether other factors, such as the composition of the city council or the related zoning ordinances, had changed since the prior permits were granted.

However, we do not need to determine whether Gamble has presented a prima facie case because his claim fails under subsequent steps in the *McDonnell Douglas/Burdine* analysis. For the purposes of this examination, we move to stage two and conclude that the reason the City advances for its decision, concern for the character of the neighborhood, is legitimate and nondiscriminatory.

***306** At stage three, the burden shifts to Gamble to present evidence that this reason is pretextual, which he fails to do. Gamble presents no colorable evidence that would suggest that the City's proffered reason for denying his permit was a mere pretext for discriminating against the handicapped or elderly.

Further, the record is devoid of any evidence of intent or motive to discriminate. Gamble's argument that discrimination was evidenced by the City forcing him to go through the conditional use permit process lacks merit because the City could have denied Gamble's original application as being out of character for the neighborhood even if he never applied for the conditional use permit.

cert. denied,

;

Therefore, because Gamble presents no evidence that the City's stated reason for denying his permit was pretextual or that demonstrates the existence of discriminatory motive, we hold the district court appropriately granted summary judgment on Gamble's intentional discrimination claim.

B. *Disparate Impact Claims under the Fair Housing Act*

To establish a prima facie disparate impact case, a plaintiff must establish " 'at least that the defendant's actions had a discriminatory effect.' " (quoting , *cert. denied,*). The *Pfaff* court, by analogy to Ninth Circuit age discrimination law, identified the following

elements of an FHA prima facie case under a disparate impact theory: "(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices." *Id.* (quotation and modifications of the quotation omitted). Demonstration of discriminatory intent is not required under disparate impact theory. *Id.* at 745-46, 746 n. 2. However, a plaintiff must " 'prove the discriminatory impact at issue; raising an inference of discriminatory impact is insufficient.' " *Id.* at 746 (quoting

).

Gamble fails to establish a prima facie case because he has presented no statistics or other proof demonstrating that the City's permit practices have a significantly adverse or disproportionate impact on the physically disabled or elderly.

Gamble argues that there is a great need for an adult day health care facility in the community, and thus the permit denial causes a significantly adverse effect on the disabled. A great community void may exist for lack of a health facility, but that absence alone is not actionable. It is only for discriminatory housing practices that the FHA provides a remedy. *See id.* at 744 (noting that the FHA's "stated policy" is " 'to provide, within constitutional limitations, for fair housing throughout the United States' " (quoting)(1968)). Gamble has provided no statistical or other evidence demonstrating that the lack of an adult health care facility results in discriminatory housing for the physically challenged.

Gamble further argues that the physically disabled require group housing to be solvent financially and that such group houses generally must be larger than other single family residences to accommodate the greater numbers. Therefore, he reasons, denial of permits for large houses on small lots in single family neighborhoods disproportionately and significantly affects the physically challenged.

This argument also fails to establish a prima facie case. First, Gamble has advanced no evidence that such a discriminatory effect occurs or that it occurs significantly. "Under the disparate impact theory, a plaintiff must prove actual discriminatory effect, and cannot rely on inference." *Id.* at 747 n. 3. Second, the position relies on a comparison between physically disabled groups and single families to establish the discriminatory effect. The relevant comparison group to determine a discriminatory effect on the ***307** physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living. *See*

("We agree that the fact that the ordinance will have an impact on group homes established for abused women does not alone establish discriminatory effect, because the resident limitations would have a comparable effect on males if the transitional dwelling was established for a different group, such as, for example, recovering male alcoholics."). No evidence has been presented suggesting that the City's permit denial practices disproportionately affect disabled group living as opposed to other kinds of group living.

> If a significant correlation exists between being disabled and living in group houses, a disparate impact on group housing could conceivably establish a prima facie disparate impact claim. No evidence has been presented, however, that establishes a significant correlation between being disabled and living in group housing.

C. *FHA Reasonable Accommodation Claims*

A municipality commits discrimination under of the FHA if it refuses "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [the physically disabled] equal opportunity to use and enjoy a dwelling." A dwelling is defined as "any building, structure, or

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portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof."

These portions of the statute affirmatively require the City to make reasonable accommodations for handicapped residences. *See*

The statute does not, however, require reasonable accommodation for health care facilities. The record establishes that a significant portion of the building size is devoted to the proposed adult health care facility. It occupies nearly half the square footage of the building and the bottom floor of the two-story building.

If the health care facility were necessary to house the physically challenged living in the building, reasonable accommodation might be construed to include the health care complex. *See* (holding that if a deaf tenant needed a hearing dog to live in a building, could require the building owner to relax the rule prohibiting animals). Gamble has not alleged, however, that this health facility is required in order to house the physically challenged on the upper level. Instead, Gamble has touted the health care facility as a community-wide resource to be used during the day by the physically disabled of Escondido at large.

Therefore, we find that Gamble has failed to state a claim under because the accommodation demanded is due in significant part to the adult day health care facility for which accommodation is not required under the statute.

II. EQUAL PROTECTION AND DUE PROCESS CLAIMS

The physically disabled are not a protected class for purposes of equal protection under the Fourteenth Amendment.

Thus, rational basis scrutiny is appropriate. Rational basis scrutiny also is appropriate for Gamble's due process claim. "[T]he rational basis test is identical under the two rubrics [of equal protection and due process]...."

The City's actions satisfy rational basis scrutiny. Zoning concerns are recognized as legitimate governmental goals, *see* , and the City's permit denial practices were rationally related to achieving its zoning goals.

***308** Gamble maintains that if another, non-disabled group had applied for a conditional use permit the City would have granted its permit application, and thus the rational basis test has not been met. The record is devoid of any evidence that would support Gamble's supposition. Therefore, we decline to grant relief on this claim.

The judgment of the district court is AFFIRMED.

C.A.9 (Cal.),1997.
Gamble v. City of Escondido
104 F.3d 300, 19 A.D.D. 740, 9 NDLR P 214, 97 Cal. Daily Op. Serv. 263, 97 Daily Journal D.A.R. 473

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[L.A. No. 31126. Supreme Court of California. May 15, 1980.]

CITY OF SANTA BARBARA, Plaintiff and Respondent, v. BEVERLY ADAMSON et al., Defendants and Appellants

(Opinion by Newman, J., with Bird, C. J., Tobriner and Mosk, JJ., concurring. Separate dissenting opinion by Manuel, J. with Clark and Richardson, JJ., concurring.)

COUNSEL

Meaney & Bycel, Benjamin Bycel and Bruce William Plebuch for Defendants and Appellants. [27 Cal.3d 126]

William A. Resneck, Reed & Resneck, Fred Okrand, Mark O. Rosenbaum and Terry Smerling as Amici Curiae on behalf of Defendants and Appellants.

Frederick W. Clough, City Attorney, Anthony C. Fischer, Assistant City Attorney, and James O. Kahan, Deputy City Attorney, for Plaintiff and Respondent.

Burt Pines, City Attorney (Los Angeles), Claude E. Hilker and William B. Burge, Assistant City Attorneys, Ann Hayes, Deputy City Attorney, Robert W. Parkin, City Attorney (Long Beach), Arthur Y. Honda, Deputy City Attorney, Donald S. Greenberg, City Attorney (San Buenaventura), Elwyn L. Johnson, City Attorney (Modesto), George D. Lindberg, City Attorney (Chula Vista), William C. Marsh, City Attorney (Monterey), Stanley E. Remelmeyer, City Attorney (Torrance), James M. Ruddick, City Attorney (Marysville), Robert R. Wellington, City Attorney (Marina, Del Rey Oaks), John W. Witt, City Attorney (San Diego), and D. Dwight Worden, City Attorney (Del Mar), as Amici Curiae on behalf of Plaintiff and Respondent.

OPINION

NEWMAN, J.

"All people ... have inalienable rights", proclaims the California Constitution in the first sentence of article I. The second sentence reads: "Among these [inalienable rights] are enjoying ... life and liberty, ... possessing ... property, and pursuing and obtaining ... happiness, and privacy." fn. 1

Appellants argue that Santa Barbara and the trial court have violated those rights because the court, on request of the city, ordered appellants to comply with a city ordinance which requires, in the zone where appellants and other individuals live together, that all occupants of houses like that in which they reside be members of a family. [27 Cal.3d 127]

Section 28.10.030 of the ordinance commands that no premises be used "in any manner other than is permitted in the zones in which such ... premises are located." Other sections describe the zones; those most directly involved here are the one-family, two-family, and

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multiple-family residence zones. The trial court concluded that appellants may not reside in such zones because they and individuals with whom they wish to live are not within the ordinance's definition of "family":

"28.04.230 Family.

"1. An individual, or two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit ....

"2. A group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit."

The record shows that appellants are three residents of a house in a single-family zone where the minimum lot-size is one acre. They and other individuals form a group of 12 adults who live in a 24-room, 10-bedroom, 6-bathroom house owned by appellant Adamson. The occupants are in their late 20's or early 30's and include a business woman, a graduate biochemistry student, a tractor-business operator, a real estate woman, a lawyer, and others. They are not related by blood, marriage, or adoption.

They moved into the house after Adamson acquired it on December 1, 1977. On February 9, 1978, following warnings, the city attorney sued for a temporary restraining order, preliminary injunction, and permanent injunction. A restraining order was issued on March 7, 1978; a preliminary injunction on March 29, 1978.

Appellants' household illustrates the kind of living arrangements prohibited by the ordinance's rule-of-five. (§ 28.04.230, subd. 2, supra.) They chose to reside with each other when Adamson made it known she was looking for congenial people with whom to share her house. Since then, they explain, they have become a close group with social, economic, and psychological commitments to each other. They share expenses, rotate chores, and eat evening meals together. Some have children who regularly visit. Two (not including Adamson) have contributed over $2,000 each to improving the house and defraying costs of this lawsuit. Emotional support and stability are provided by the members to each other; they enjoy recreational activities such as a trip to Mexico together; [27 Cal.3d 128] they have chosen to live together mainly because of their compatibility.

Regarding physical environment, the house has 6,231 square feet of space and is hidden from the street by trees and a fence. It has off-street parking for at least 12 cars. Appellants have built a wall around part of the property and a new, private driveway to help isolate them from neighbors' houses. There is no evidence of overcrowding though, after appellants had arrived, some neighbors did notice a larger number of cars parked on the property and an understandable increase in the number of residents.

Appellants say that they regard their group as "a family" and that they seek to share several values of conventionally composed families. A living arrangement like theirs concededly does achieve many of the personal and practical needs served by traditional family living. It could be termed an alternate family. It meets half of Santa Barbara's definition because it is "a single housekeeping unit in a dwelling unit." It fails to meet the part of the definition that requires residents, if they are more than five and are not servants, to be related by blood, marriage, or adoption.

The Ordinance's Restrictions

Valid laws can, of course, be written to help promote and protect values that family life enhances. The question in this case is whether that kind of law may deny to individuals who are not family members certain benefits that family members enjoy.

The ordinance at issue is 93 pages long. The words "family" and "families" are used at least 85 times. Because of various phrases in which the words are used it appears that, in Santa Barbara, appellants and their associates are denied the right to reside together in a one-family, two-family, or multiple-family dwelling, a "garden apartment development," and "a trailer or cabana or combination thereof." Other possible abodes not adaptable to their

needs include hotel ("the more or less temporary abiding place of individuals who are lodged"), tourist court ("designated for ... [use] temporarily by automobile tourists or transients"), and auto trailer ("designed ... to travel on the public thoroughfares at the maximum allowable speed limit"). [27 Cal.3d 129]

Where then, according to the ordinance, might they reside together? Apparently nowhere, with three exceptions: First, if any five or less of them were acceptable as masters, perhaps the others then could sign on as servants. (See § 28.04.230, which in part defines family as any "group of not to exceed five (5) persons, excluding servants ..."; cf. § 28.04.180: "all necessary servants and employees of such family." The legality of such clauses has not been argued here, but they appear to present equal protection questions.)

Second, if appellants could meet the requirements of section 28.94.001 they then might obtain from the Planning Commission a conditional use permit to maintain a boarding house in another zone, unlike where they now reside. (See § 28.94.030, subd. 17; also § 28.04.100, stating that a boarding house is "[a] building where meals and/or lodging are provided for compensation for six (6) or more persons by pre-arrangement for definite periods.")

Third, they might apply for a variance pursuant to chapter 28.92 of the ordinance. (We discuss below this suggestion of the city attorney, as well as his "boarding house" suggestion.)

Do the ordinance's restrictions, with those three exceptions, respect the commands of the California Constitution concerning people's rights to enjoy life and liberty, to possess property, and to pursue and obtain happiness and privacy?

Our leading precedent on privacy is White v. Davis (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222], where this court observed that "the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief ...." (Id., pp. 773-774; and see fn. 10 regarding "the wide variety of contexts in which the constitutional privacy analysis has been employed"; Bostwick, A Taxonomy of Privacy: Repose, Sanctuary, and Intimate Decision (1976) 64 Cal.L.Rev. 1447, 1450: "Prosser, as a specialist on torts, focused his analysis on harm-causing activities that were proscribed rather than on zones to be protected. The [United States] Supreme Court rapidly outpaced his summary of the law of privacy and a new attempt at classification became necessary." See too Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89, 98 [130 Cal.Rptr. 375], re ban against unmarried cohabiting adults.) [27 Cal.3d 130]

The court in White v. Davis quoted these words from "a statement drafted by the proponents of the provision [that added 'privacy' to the California Constitution] and included in the state's election brochure" (13 Cal.3d at pp. 774-775): "The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose .... [¶] The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need ...."' (Italics added.)

That ballot argument evidenced the voters' intent in 1972 to ensure a right of privacy not only in one's family but also in one's home. fn. 2 The question now is whether that right comprehends the right to live with whomever one wishes fn. 3 or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption. [27 Cal.3d 131]

Ends and Means

[1] As was indicated in the foregoing excerpt from the 1972 ballot pamphlet and stressed by the unanimous court in White v. Davis, supra, "the amendment does not purport to prohibit all incursion into individual privacy but rather that any such intervention must be justified by a compelling [public] interest." (13 Cal.3d at p. 775.) Has Santa Barbara demonstrated that,

in fact, such an interest does underlie its decision to restrict communal living?

The over-all intent of the ordinance, according to section 28.01.001, is "to serve the public health, safety, comfort, convenience and general welfare and to provide the economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for future growth and development of said City." By themselves those words hardly justify the restrictions that appellants contest here.

A more specific intent, underlying the setting-up of two-family and multiple-family zones, as well as "garden apartment," "planned residence," and "planned unit" developments, is "to establish, maintain and protect the essential characteristics of the district, to develop and sustain a suitable environment for family life, and to prohibit activities of a commercial nature and those which would tend to be inharmonious with or injurious to the preservation of a residential environment." (See §§ 28.18.001, 28.21.001, 28.21.005(1), 28.30.032, 28.33.030, and 28.36.030.) [27 Cal.3d 132]

For one-family zones, section 28.15.005 specifies additionally the kind of family life "where children are members of most families." ("These zones are restricted residential districts of low density in which the principal use of land is for single-family dwellings; together with recreational, religious and educational facilities required to serve the community. The regulations for these districts are designated and intended to establish, maintain and protect the essential characteristics of the district, to develop and sustain a suitable environment for family life where children are members of most families, and to prohibit all activities of a commercial nature and those which would tend to be inharmonious with or injurious to the preservation of a residential environment.")

Does the ordinance's rule-of-five truly and substantially help effect those goals? Looking first at the final two words in section 28.15.005 (just quoted), is a "residential environment" in fact dependent on a blood, marriage, or adoption relationship among the residents of a house? Is transiency, for example, determined by lack of any biological or marriage relation among the residents? We are not persuaded by facts presented here.

Regarding "low density" (in the first sentence of § 28.15.005) the ordinance limits only the number of unrelated residents. It does not limit the number of related residents, or of servants. It does not appear to have been designed to prevent overcrowding, which may be a legitimate zoning goal. It proscribes some groups that in their homes are not crowded; yet, simply because the members are related, it leaves uncontrolled some groups that are crowded.

The city argues that related groups tend to have a natural limit, making a legal limit unnecessary; and data on average-size families are presented. Comparable data have not been presented, however, on the average sizes of unrelated groups who live as single housekeeping-units; and, at best, density control is achieved quite indirectly, if at all, by regulating only the size of unrelated households.

Other aims of the ordinance's restrictions are to maintain "the essential characteristics of the districts" and "a suitable environment for family life where [in single-family zones only] children are members of most families." But the rule-of-five is not pertinent to noise, traffic or parking congestion, kinds of activity, or other conditions that conceivably [27 Cal.3d 133] might alter the land-use-related "characteristics" or "environment" of the districts.

The rule-of-five might reflect an assumption that an unrelated group will be noiser, generative of more traffic and parking problems, or less stable than a related group of the same size. "But none of these observations reflects a universal truth. Family groups are mobile today, and not all family units are internally stable and well-disciplined. Family groups with two or more cars are not unfamiliar." (City of Des Plaines v. Trottner (1966) 34 Ill.2d 432 [216 N.E.2d 116, 119]; see also State v. Baker (1979) 81 N.J. 99 [405 A.2d 368, 372].)

Is another assumption behind the rule, perhaps, that groups of unrelated persons hazard an immoral environment for families with children? That implied goal would not be legitimate.

(See Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89, 97 [130 Cal.Rptr. 375], holding invalid an irrebuttable presumption in a public housing regulation that unmarried cohabitation is immoral, irresponsible, or demoralizing to tenant relations; U.S. Dept. of Agriculture v. Moreno (1973) 413 U.S. 528, 534-535, fn. 7 [37 L.Ed.2d 782, 788, 93 S.Ct. 2821] ("hippies"); cf. Willemsen, Justice Tobriner and the Tolerance of Evolving Lifestyles: Adapting the Law to Social Change (1977) 29 Hastings L.J. 73.)

Finally, could not each of the city's stated goals be enhanced by means that are less restrictive of freedom than is the rule-of-five? To illustrate, "residential character" can be and is preserved by restrictions on transient and institutional uses (hotels, motels, boarding houses, clubs, etc.). Population density can be regulated by reference to floor space and facilities. Noise and morality can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements. In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users. (Cf. Shepard v. Woodland Tp. Committee & Planning Bd. (1976) 71 N.J. 230 [364 A.2d 1005, 1015-1016].)

Some courts, confronting restrictions similar to the rule-of-five here, have redefined "family" to specify a concept more rationally and substantially related to the legitimate aim of maintaining a family style of [27 Cal.3d 134] living. For example, in New Jersey a valid regulation of single-family dwellings would be "a reasonable number of persons who constitute a bona fide single housekeeping unit." (Berger v. State (1976) 71 N.J. 206 [364 A.2d 993, 1003]; see also State v. Baker, supra, 405 A.2d 368, 371-372: "The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimizes many uses which defeat that goal .... As long as a group bears the 'generic character of a family unit as a relatively permanent household,' it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors. City of White Plains [v. Ferraiolo (1974) 34 N.Y.2d 300, 306 (357 N.Y.S.2d 449, 313 N.E.2d 756)]." (Cf. Incorp. Village of Freeport v. Association, etc. (1977) 94 Misc.2d 1048 [406 N.Y.S.2d 221, 223]. fn. 4)

We do not here address the question, How many people should be allowed to live in one house? (Cf. § 28.87.030(4b) of the ordinance, which concerns density and prohibits "increase in the intensity of ... [a] nonconforming use," including "[i]ncrease in the number of persons ... which has a detrimental effect on the surrounding community.") We merely hold invalid the distinction effected by the ordinance between (1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons.

Conditional Use Permit?

[2] Santa Barbara contends that appellants might preserve their life style by moving out of the one-family zone and seeking a permit in a two- or multiple-family zone for a boarding house ("[a] building where meals and/or lodging are provided for compensation for six (6) or more persons by pre-arrangement for definite periods" -- § 28.04.100).

Boarding-house use is described as one of the uses that "possess characteristics of unique and special form ... [which] make impractical their [27 Cal.3d 135] being automatically included in classes of use as set forth in the various zones herein defined." (§ 28.94.001.) The permit may issue only if the boarding house "is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Comprehensive General Plan; and ... it is determined that such [use] will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood"; also, "the Planning Commission may impose other conditions and restrictions upon the proposed use consistent with the Comprehensive General Plan and may require bonding ...." (Id.)

The city's contention that, pursuant to those and other rules, appellants should seek a permit lacks merit. Troubling questions arise with respect to (1) the justification for requiring that permit procedures be "exhausted" when the constitutional attack on the ordinance is meritorious (cf. State of California v. Superior Court (1974) 12 Cal.3d 237, 250-251 [115 Cal.Rptr. 497, 524 P.2d 1281]), (2) the reasonableness of requiring that appellants not reside in a one-family zone, (3) the great breadth of city officials' discretion to deny the permit, and (4) the rationality of presuming that Ms. Adamson in fact does operate a "boarding house." fn. 5 (See too People v. Perez (1963) 214 Cal.App.2d Supp. 881, 885 [29 Cal.Rptr. 781] (re permit procedure: "To be valid it should be limited to those uses only for which it is difficult to specify adequate conditions in advance").) Those questions have not been addressed persuasively in the briefs submitted by the city attorney and amici who support his contentions here.

Variance?

[3] Chapter 28.92 of the ordinance contains these sections: "28.92.010 Variances.

"When practical difficulties, unnecessary hardships or results inconsistent with the general purposes of this chapter occur by reason of a [27 Cal.3d 136] strict interpretation of any of the provisions of this chapter, either the Planning Commission or City Council may upon its own motion, or the Planning Commission upon the verified application of any property owner or authorized agent shall, in specific cases, initiate proceedings for the granting of a variance from the provisions of this chapter under such conditions as may be deemed necessary to assure that the spirit and purposes of this chapter will be observed, public safety and welfare secured, and substantial justice done. All acts of the Planning Commission and City Council under the provisions of this section shall be construed as administrative acts performed for the purpose of assuring that the intent and purpose of this chapter shall apply in special cases, as provided in this section, and shall not be construed as amendments to the provisions of this chapter or map. Individual economic circumstances are not a proper consideration for the granting of a variance."

"28.92.013 Necessary Conditions.

"Before a variance may be granted all of the following shall be shown:

"1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity.

"2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity in which the property is located.

"3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by other property in the same zone and vicinity.

"4. That the granting of such variance will not adversely affect the Comprehensive General Plan."

The city attorney argues as follows (in his letter-brief dated Jan. 11, 1980): "Assuming that an Applicant can demonstrate that a group of more than five unrelated persons will not be adverse to the purposes of the Zoning Ordinance due to measures taken by the Applicant in establishing and regulating the group, the proposed use would have the extraordinary circumstances or conditions sufficient to allow more than five unrelated persons." [27 Cal.3d 137]

Further (as to the requirement that city officials find the variance necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by other property in the same zone and vicinity), "[t]his finding can be made by a showing that owners of other homes and lots in the same zone and vicinity can use the home by [sic?] an unlimited number of related persons."

Finally, "[t]he second and fourth findings will depend upon the precise site selected, the information developed as part of the review process and whether conditions on the approval could be devised to remove any inconsistency with the findings. For example, an investigation may reveal that the area has adequate public parks, utilities, street capacity, or that a condition mitigating the injurious impact may be imposed. If water availability is a problem, it may be possible to require water conservation. If street capacity is a problem, a limit on average daily trips may be possible."

Those arguments are erratically remote from the significant facts of this case. Also, again, questions arise as to (1) the appropriateness of requiring here that administrative procedures be "exhausted," and (2) the breadth of city officials' discretion. (Cf. Judge Renfrew's comment in Dahl v. City of Palo Alto (N.D.Cal. 1974) 372 F.Supp. 647, 649: "It is highly improbable that a variance would, or legally could, be granted ..."; and see Cow Hollow Improvement Club v. Board of Permit Appeals (1966) 245 Cal.App.2d 160, 178 [53 Cal.Rptr. 610] (to allow an R-2 use in an R-1 zone is "tantamount to an amendment of the zoning regulations in the guise of granting a variance"); § 28.87.030(2) of the ordinance ("amendment after a recommendation ... from the Planning Commission"); Cal. Zoning Practice (Cont.Ed.Bar. Supp. 1978) § 7.54, p. 152 ("[c]ities may expect rigorous review of variances even if zoning is enacted under their charter powers"); Moore v. East Cleveland (1977) 431 U.S. 494, 512-513 [52 L.Ed.2d 531, 545-546, 97 S.Ct. 1932] (conc. opn. of Brennan, J.): "[T]he existence of the variance procedure serves to lessen neither the irrationality of the definition of 'family' nor the extent of its intrusion into family life-style decisions ... We have now passed well beyond the day when illusory escape hatches could justify the imposition of burdens on fundamental rights.")

Conclusion

The order granting the preliminary injunction is reversed. The case is remanded for further proceedings consistent with this opinion. [27 Cal.3d 138]

Bird, C. J., Tobriner J., and Mosk, J., concurred.

MANUEL, J.

I dissent.

The majority opinion, casting the City of Santa Barbara -- and presumably the at least 37 other cities which have similar zoning ordinances fn. 1 -- in the sinister role of antagonist to the "alternate family," radically distorts the meaning, purpose, and intention of the provisions we here consider. The Santa Barbara ordinances, it must be emphasized, do not preclude or impede the establishment of communal living arrangements in the single-family zones of the city. On the contrary they expressly permit such arrangements, simply imposing a numerical limitation thereon. Thus, the ordinances provide, a "family" for zoning purposes is either a traditional family (i.e., one composed of persons related by blood, marriage, or legal adoption), or what the majority terms an "alternate" family -- one which, in the language of the ordinance, comprises "[a] group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit." (§ 28.04.230.) [27 Cal.3d 139]

The majority, perceiving in these provisions some sort of dark animus against nontraditional living arrangements, fn. 2 concludes that here at stake is "the right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption." (Majority opn., ante, at p. 130; fn. omitted.) As I read the ordinances, that right is expressly granted. The question before us, then, is whether those ordinances, insofar as they limit the number of unrelated persons who may live in a single dwelling unit, violate any cognizable constitutional rights.

It is clear that no rights guaranteed by the federal Constitution are offended. In the comparatively recent case of Village of Belle Terre v. Boraas, supra 416 U.S. 1, the United States Supreme Court addressed a challenge to the constitutional validity of an ordinance which, like that here before us, permitted unrelated persons to live together "as a single

housekeeping unit" in a single-family zone but placed a numerical limit on such "alternate" arrangements. The ordinance was challenged on a number of constitutional grounds, including due process, the right to travel, and the rights of free association and privacy. The court held, however, that the case involved "no 'fundamental' right guaranteed by the Constitution. ..." (Id., at pp. 7-8 [39 L.Ed.2d at p. 803].) Therefore, the court concluded, the test to be applied in determining whether the legislative body had exceeded the scope of its constitutional power was that normally applied to "economic and social legislation" of this kind -- i.e., whether it bore a rational relationship to [27 Cal.3d 140] a permissible state objective. (Id., at p. 8 [39 L.Ed.2d at p. 803].) This, in the view of the high court, it did. Dismissing the contention that the numerical limit (two in that case) on "alternative" family groups was arbitrary, fn. 3 it went on to say: "The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area sanctuary for people." (Id., at p. 9 [39 L.Ed.2d at p. 804].)

The high court expanded on this theme in the case of Moore v. East Cleveland (1977) 431 U.S. 494 [52 L.Ed.2d 531, 97 S.Ct. 1932]. There the zoning ordinance in question defined "family" in restrictive terms, excluding not only "alternate" family arrangements but members of the extended natural family as well -- in this case a woman's grandson. This, the court held, was impermissible. Justice Powell, speaking for a plurality of the court, distinguished Belle Terre, noting that whereas the ordinance in that case promoted family needs and values, the East Cleveland ordinance had "chosen to regulate the occupancy of its housing by slicing deeply into the family itself." (Id., at p. 498 [52 L.Ed.2d at p. 537].) Thus, the court suggested, whereas the demands of due process do not trench upon the power of a city to limit and tailor the use of family zones by persons other than those having natural family ties to one another, the situation is quite different when the zoning power was utilized so as to impinge unreasonably on natural family relationships. "When a city undertakes such intrusive regulation of the family, neither Belle Terre nor Euclid [v. Ambler Realty Co. (1926) 272 U.S. 365 (71 L.Ed. 303, 47 S.Ct. 114, 54 A.L.R. 1016)] governs; the usual judicial deference to the legislature is inappropriate." (Id., at p. 499 [52 L.Ed.2d at p. 537].)

Justice Brennan, joining in the plurality opinion but adding a word in concurrence, stated the distinction thus: "Indeed, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), the case primarily relied upon by [the city], actually supports the Court's decision. The Belle Terre ordinance barred only unrelated individuals from constituting a family in a single-family zone. The village took special care in its brief to emphasize that its ordinance did not in any manner inhibit the choice of related individuals [27 Cal.3d 141] to constitute a family, whether in the 'nuclear' or 'extended' form. This was because the village perceived that choice as one it was constitutionally powerless to inhibit." (Id., at p. 511 [52 L.Ed.2d at pp. 544-545], final emphasis added.) The implication of this statement, in light of the express holding in Belle Terre, is clear.

The distinction drawn by the Belle Terre and Moore cases has never been better expressed than it was in a case which, although antedating them by some four years, clearly anticipated their rationale. In Palo Alto Tenants Union v. Morgan (N.D.Cal. 1970) 321 F.Supp. 908, affd. (9th Cir. 1973) 487 F.2d 883, the court confronted a challenge to a city zoning ordinance similar in all relevant respects to that here before us. It was urged that because an ordinance placing restrictions on the use of an R-1 zone by "traditional" families might be deemed "highly suspect," the ordinance there at bench -- placing numerical limitations on "alternate" family arrangements in such a zone -- should be viewed with the same suspicion. The court disagreed: "[T]here is a long recognized value in the traditional family relationship which does not attach to the 'voluntary family'. The traditional family is an institution reinforced by biological and legal ties which are difficult, or impossible, to sunder. It plays a role in educating and nourishing the young which, far from being 'voluntary', is often compulsory. Finally, it has been a means, for uncounted millennia, of satisfying the deepest emotional and physical needs of human beings. A zoning law which divided or totally excluded traditional families would indeed be 'suspect'. [¶] The communal living groups represented by plaintiffs share few of the above characteristics. They are voluntary with fluctuating memberships who have no legal obligations of support or cohabitation. They are

in no way subject to the State's vast body of domestic relations law. They do not have the biological links which characterize most families. Emotional ties between commune members may exist, but this is true of members of many groups. Plaintiffs are unquestionably sincere in seeking to devise and test new life-styles, but the communes they have formed are legally distinguishable from such traditional living groups as religious communities and residence clubs. The right to form such groups may be constitutionally protected, but the right to insist that these groups live under the same roof, in any part of the city they choose, *is* not. To define 'association' so broadly ... would be to dilute the effectiveness of that special branch of jurisprudence which our tradition has developed to protect the truly vital interests of the citizenry." (321 F.Supp. at pp. 911-912, fn. omitted.) [27 Cal.3d 142]

The majority, faced with the authorities delineated above, quite understandably chooses to shift their focus away from the protections offered by the federal Constitution. Turning instead to the comprehensive terms of article I, section 1 of the state Constitution, and seizing upon certain expansive general passages to be found in White v. Davis (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222], they quickly and without significant discussion conclude that the right of privacy set forth in that provision "comprehends the right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption." (Majority opn., ante, at p. 130, fn. omitted.) Having thus discovered the "fundamental" right they seek, they then proceed to set in motion the mighty engine of strict scrutiny. The ordinance, needless to say, does not survive its batterings.

In my view the majority have proceeded a bit too hastily. The necessary condition precedent to the application of strict scrutiny, and the search for a "compelling state interest" which it entails, is the determination that the right at stake is one lodged in the fabric of our Constitution. That determination, in the context of the instant case, requires that we find that right to be one comprehended within the guarantee of privacy set forth in article I, section 1. The relevant authorities, in my view, do not support the conclusion that "the right to live with whomever one wishes or, at least, to live in an alternative family with persons not related by blood, marriage, or adoption" is one enjoying that status.

The leading case of White v. Davis, supra, was one involving a police department's covert intelligence gathering activities, which activities were challenged as an infringement of the then newly adopted state privacy guarantee. There, noting that "the full contours of the new constitutional provision have as yet not even tentatively been sketched" (13 Cal.3d at p. 773), we went on to provide such a sketch by indicating, through reference to election materials indicating the voters' intent, the broad area of concern within which the more detailed draftsmanship of judicial precedent was to occur. "Although the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief," we noted, "the moving force behind the new constitutional provision was a more focussed privacy concern relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society. The new provision's primary purpose is to afford [27 Cal.3d 143] individuals some measure of protection against this most modern threat to personal privacy." (Id., at pp. 773-774; italics added, fn. omitted.) We also noted "the principal 'mischiefs' at which the amendment is directed." They are: "(1) 'government snooping' and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party; and (4) the lack of a reasonable check on the accuracy of existing records." (Id., at p. 775.)

In the recent case of People v. Privitera (1979) 23 Cal.3d 697 [153 Cal.Rptr. 431, 591 P.2d 919] it was contended that the state constitutional guarantee of privacy encompasses "a right to access to drugs of unproven efficacy." (Id., at p. 709.) We held that it did not, pointing out that no such right was comprehended within the zone of privacy concern in which the amendment was designed to have effect. "In the absence of any evidence that the voters in amending the California Constitution to create a right of privacy intended to

protect conduct of the sort engaged in by defendants, we have no hesitation in holding that section 1707.1 does not offend that constitutional provision." (Id., at pp. 709-710.) (See also People v. Davis (1979) 92 Cal.App.3d 250, 260 [154 Cal.Rptr. 817].)

Similarly, I find no evidence of any kind that the voters, when they added the privacy provision found in article I, section 1, intended to establish a "right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption" (majority opn., ante, at p. 130) -- such right to be preserved from all infringement except in those cases where a city can shoulder the unenviable burden of demonstrating some "compelling state interest" which justifies doing so. Accordingly, I conclude that the majority, in conferring "fundamental" constitutional status to the right it so describes, are in error. If the courts, in interpreting the privacy provision of our state Constitution, are to take upon themselves the function of determining when the wishes and desires of a particular group of people are to be accorded "fundamental" status -- and thus invoke strict judicial scrutiny of legislation affecting such rights -- the constitutional balance of our government will be radically dislocated. I do not believe that such a dislocation was intended by the voters of this state when they, out of a manifest concern for the excesses of governmental surveillance, adopted article I, section 1. [27 Cal.3d 144]

The familiar dictum of Chief Justice Marshall (McCulloch v. Maryland (1819) 17 U.S. (4 Wheat.) 316, 406 [4 L.Ed. 579, 601]) bears renewed emphasis in cases of this kind. We deal here not with legislative wisdom but with constitutional principle. It may well be that an enlightened municipality, alert to the flow of social currents and the development of wholesome and valuable communal living arrangements outside the framework of the traditional family structure, might wish to tailor its zoning requirements in such a manner as to accommodate such arrangements on an essential parity with those of family groups. The City of Santa Barbara, to a significant extent, has done so, permitting such arrangements to coexist with family groups in its single-family zone, but placing a numerical limit on the size of such "alternate" groups -- clearly with a view to imposing some limit on the size of living groups within the zone which are not subject to the normal biological and social limits of the natural family. It might well be that a legislator having the wisdom of Solomon would remove all such limits. That, however, is not the question before us. The question before us is whether the failure to remove them is unconstitutional. In my view, and as the cases which I have discussed above make clear, the answer to that question is decidedly no.

I would affirm the order.

Clark, J., and Richardson, J., concurred.

FN 1. The full text of article I, section 1 is as follows: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Regarding "happiness" see the concurring opinion of Field, J. in Butchers' Union Co. v. Crescent City Co. (1884) 111 U.S. 746, 754, 759 [28 L.Ed. 585, 589, 592, 4 S.Ct. 652] ("to secure to every one the right to pursue his happiness unrestrained, except by just, equal, and impartial laws"); cf. Ex parte Drexel (1905) 147 Cal. 763, 764 [82 P. 429]; State v. Cromwell (1943) 72 N.D. 565 [9 N.W.2d 914, 918].

FN 2. Cf. article 12 of the Universal Declaration of Human Rights: "No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 16(3) reads: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 17(1): "Everyone has the right to own property alone as well as in association with others."

See too article 29(2): "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just

requirements of morality, public order and the general welfare in a democratic society."

FN 3. Cf. Justice Marshall's dissenting opinion in Village of Belle Terre v. Boraas (1974) 416 U.S. 1, 16 [39 L.Ed.2d 797, 808, 94 S.Ct. 1536]: "The choice of household companions -- of whether a person's 'intellectual and emotional needs' are best met by living with family, friends, professional associates, or others -- involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution."

Even if Justice Douglas's majority opinion in Belle Terre still does declare federal law, the federal right of privacy in general appears to be narrower than what the voters approved in 1972 when they added "privacy" to the California Constitution. (See Cal. Const., art. I, § 24; White v. Davis, supra, 13 Cal.3d at pp. 774-775.)

Concerning uncertainty as to current federal law see Tribe, American Constitutional Law (1978) § 15-18, p. 974, § 15-21, p. 989; Carlin, Moore v. City of East Cleveland: Freedom of Personal Choice for the Extended Family (1978) 10 Sw.U.L.Rev. 651; Perry, Modern Equal Protection: A Conceptualization and Appraisal (1979) 79 Colum.L.Rev. 1023, 1073; Comment (1978) 91 Harv.L.Rev. 1427, 1576-1578.

See also Williams & Doughty, Studies in Legal Realism: Mount Laurel, Belle Terre and Berman (1975) 29 Rutgers L.Rev. 73, 74: "The New Jersey Supreme Court is beginning to deal realistically with major problems of the mid-1970's; the United States Supreme Court, rather surprisingly, is still merely repeating what were the fashionable liberal shibboleths of the mid-1930's."

For us the question is one of first impression. (Cf. Justice Tobriner's majority opinion in Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604, fn. 22 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], which observes that "both the majority and the dissenting opinion in [Village of Belle Terre v.] Boraas support our conclusion" but does not examine rights of privacy or article I, section 1 of the California Constitution. (See too Palo Alto Tenants Union v. Morgan (N.D.Cal. 1970) 321 F.Supp. 908, 911.)

Concerning the possible breadth of the phrase "single family dwelling" see Justice Tobriner's opinion in Brady v. Superior Court (1962) 200 Cal.App.2d 69, 77-82 [19 Cal.Rptr. 242]. (Cf. conc. opn. of Stevens, J. in Moore v. East Cleveland (1977) 431 U.S. 494, 513, 516-519 [52 L.Ed.2d 531, 546, 547-550, 97 S.Ct. 1932]; and see Smith, "Burning the House to Roast the Pig": Unrelated Individuals and Single Family Zoning's Blood Relation Criterion (1972) 58 Cornell.L.Rev. 138, 161.)

FN 4. Owners with aims like those of Ms. Adamson are, of course, subject to many restrictions applicable to lessors generally. See, e.g., in the Fair Housing Law, Health and Safety Code section 35710, subdivision (d): "The term 'discrimination' does not include refusal to rent or lease a portion of an owner-occupied single-family house to person as a roomer or a boarder living within the household, provided that no more than one roomer or boarder is to live within the household." (Italics added.)

FN 5. Cf. section 28.04.170, which states that a boarding house is not a "dwelling."

Even more meritless than the boarding-house proposal are (1) the proposal that Ms. Adamson seek a room-rental permit under section 28.94.030(1), and (2) the suggestion that her and her associates' relationship is akin to membership in a social club or fraternity. Cf. section 28.04.150 ("the purpose of [a club] ... is to render a service customarily rendered for members and their guests"); section 28.94.030(12) ("[n]ormal clubhouse facilities"); section 28.94.034 ("clubs providing primarily indoor recreation facilities rather than outdoor facilities are prohibited"); section 28.94.031(21) ("Fraternity and sorority houses in the R-2 Zones").

FN 1. Amicus curiae City of Los Angeles advises us in its brief that the following California cities have adopted a definition of "family" in their zoning ordinances which is identical to

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that adopted by Santa Barbara:

1. Auburn: Municipal Code section 9-4.137

2. Azusa: Municipal Code section 19.04.300

3. Baldwin Park: Municipal Court section 9426(f) 1

4. Bell: Municipal Code section 9211(F)2

5. Burlingame: Municipal Code section 25.08.260

6. Camarillo: Municipal Code section 19.04.310

7. Carlsbad: Municipal Code section 21.04.145

8. Chula Vista: Municipal Code section 19.04.092

9. Colusa: Zoning Ordinance No. 191, section 4.25

10. Corte Madera: Municipal Code section 18.09.105

11. Crescent City: Zoning Ordinance section 30-700.36

12. Davis: Municipal Code section 24-1, article 4

13. Del Mar: Municipal Code, Chapter 30, section 30-32

14. Del Rey Oaks: Municipal Code section 11-217.1

15. Downey: Municipal Code section 9104.96

16. El Cajon: Municipal Code section 17.04.390

17. Hidden Hills: Municipal Code 47, section 1.17

18. Long Beach: Municipal Code section 9120.2

19. Los Angeles: Municipal Code, chapter 1, article 2, section 12.03

20. Manhattan Beach: Municipal Code, section 10-3.234

21. Modesto: Municipal Code section 10.2.502(d)1

22. Montebello: Municipal Code section 9202.6(F)1

23. Monterey: City Code section 2.08, appendix A

24. Monterey Park: Municipal Code section 21.04.275

25. Palos Verdes Estates: Municipal Code section 18-2.17

26. Richmond: Municipal Code section 15.04.040

27. Riverside: Municipal Code section 19.04.138

28. San Diego: Municipal Code section 101.0407 (B1-85); section 101.0101.20

29. San Francisco: Municipal Code, part II, chapter II section 102.8

30. Santa Barbara: Municipal Code section 28.04.230(2)

31. Santa Cruz: Municipal Code section 24.10.354; section 24.16.300-341

32. Simi Valley: Zoning Ordinance No. 8170-25

33. Thousand Oaks: Municipal Code section 9-4.230

34. Torrance: Municipal Code section 91.2.24(b)

35. Vallejo: Municipal Code section 16.04.170

36. Vista: City Code, appendix A, Zoning Ordinance section 238

37. Whittier: Municipal Code section 9111.(f)2

FN 2. Indeed it is even suggested, albeit by rhetorical question, that one motive underlying Santa Barbar's zoning ordinances might have been a fear "that groups of unrelated persons [might] hazard an immoral environment for families with children' (Majority opn., ante, at p. 133.) I have difficulty understanding the relevance of such an observation in a case where the subject ordinances explicitly permit "groups of unrelated persons" to live together in a single-family zone. (See also Village of Belle Terre v. Boraas (1974) 416 U.S. 1, 8 [39 L.Ed.2d 797, 803-804, 94 S.Ct. 1536].)

FN 3. "It is said, however, that if two unmarried people can constitute a 'family,' there is no reason why three or four may not. But every line drawn by a legislature leaves out some that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function." (Village of Belle Terre v. Boraas, supra, 416 U.S. 1, 8 [39 L.Ed.2d 797, 803-804], fn. omitted.)

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

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[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,*

supra, 234 Cal.App.3d at pp. 1587-1588; *Cotati Alliance for Better Housing v. City of Cotati* (1983) 148 Cal.App.3d 280, 291-292.) In *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d 1579, the court summarized the applicable principles with respect to drawing lines of distinction in adopting zoning regulations:

> ". . . Line drawing is the essence of zoning. Sometimes the line is pencil-point thin—allowing, for example, plots of one-third acre but not one-fourth; buildings of three floors but not four; beauty shops but not beauty schools. In *Euclid*, the Supreme Court recognized that 'in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.' (*Euclid v. Ambler Co., supra,* 272 U.S. at p. 389.) Nonetheless, the line must be drawn, and the legislature must do it. Absent an arbitrary or unreasonable delineation, it is not the prerogative of the courts to second-guess the legislative decision. [Citations.]" (*Id.* at p. 1593.)

It is "at least debatable" that prohibiting boarding house businesses operated for as few as three boarders in a low density residential zone is a reasonable exercise of legislative power. Given that boarding house businesses may be prohibited in low density residential zones, we cannot say, in the abstract, that the proposed ordinance would be "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." (*Euclid v. Ambler Co., supra,* 272 U.S. at p. 395; cf. *Ewing v. City of Carmel-by-the-Sea, supra,* 234 Cal.App.3d at pp. 1591-1592.) The line as to the number of allowable boarders must be drawn somewhere, and here the city council may prohibit the operation of boarding house businesses with three or more boarders in order to preserve the residential character of the neighborhood.

We conclude that 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 agent is in residence, in order to preserve the residential character of the neighborhood.

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