



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: MARCH 13, 2018**
FROM: CITY ATTORNEY **WARDS: ALL**
SUBJECT: WORKSHOP ON RESIDENTIAL RECOVERY FACILITIES AND GROUP HOMES

ISSUE:

To receive a presentation from staff on residential recovery facilities and group homes.

RECOMMENDATION:

That the City Council receives staff's presentation.

BACKGROUND:

There is a complex legal framework for regulating congregate living facilities in California. This Memorandum addresses the legal regulations applicable to many of the more prevalent types of group housing in California.

A city's ability to regulate land uses is not unfettered. Cities are prevented from enacting local zoning ordinances directed at state licensed residential care and living facilities serving six or less residents (or more generally "group homes") and sober living homes. These must be treated as single-family dwellings. This includes a prohibition against any conditional use permit, zoning variance, or other discretionary action that is not required of a single family dwelling in the same zone. Furthermore, federal and state fair housing laws further restrict the ability of local government with regards to group homes and supportive housing.

Where a city's zoning code illegally singles out and treats housing for persons with disabilities in an adverse manner, there is intentional discrimination. To prove discriminatory intent, an individual need only show that disability was one of the factors considered by the city or county in making a land use or zoning decision. *Oxford House-C v. City of St. Louis*, 843 F. Supp. 1566 (E.D. Mo. 1994). Additionally, where a zoning code or practice has a disparate impact on people with disabilities, there is disparate impact discrimination. Federal case law has established that a federal fair housing law violation may be proven through a "disparate impact" while California law has established that a liability can be established on the basis of "discriminatory effect." (Government Code Section 12955.8(b); *Broadmoor San Clemente Homeowners v. Nelson*, (2004) 25 Cal. App. 4th 1.

Cities have greater authority to regulate quasi-commercial living arrangements in residential zones where no services are being provided and such regulations are enacted without regard to or discriminating against the protected class of the residential occupants. This would include non-licensed group homes and illegal boarding houses masquerading as sober living homes. In the event of quality of life issues, as with violations at any other single family residence, the City may use its code enforcement tools to require corrections, prosecute violations, and obtain injunctions.

LEGAL FRAMEWORK:

FAIR HOUSING LAWS

All regulations and actions must comply with state and federal fair housing laws. These include the California Fair Employment and Housing Act (Government Code Section 12900 et seq., the federal Fair Housing Amendments Act (42 U.S.C. Section 3601 et seq.), and the American with Disabilities Act (42 U.S.C. Section 12101, et seq.). "Disabilities" include, drug addiction and alcoholism.

Section 12955(l) of the California Government Code, states that it is unlawful to:

" . . .discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law . . . that make housing opportunities unavailable."

The legislative history of the federal housing amendments, at House Report No. 100-711, 100th Cong 2d Sess. 24, states:

"[42 U.S.C.] Section 3604(f)(2)] is intended to prohibit restrictive covenants ... which have the effect of excluding, for example, congregate living arrangements for persons with [disabilities].

. . .

"Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on ... land use in a manner which discriminates against people with disabilities ... These and similar practices would be prohibited."

FACILITIES HOUSING SIX OR FEWER RESIDENTS

Community Care Facilities

In 1973, California enacted what is known as the Community Care Facilities Act (Health and Safety Code Section 1500, et seq.). This Act was created due to the urgent need to establish a statewide system of quality, licensed community care for the mentally ill, developmentally and physically disabled, and socially dependent children and adults. (*McCaffrey v. Preston* (1984) 154 Cal.App. 3d 422, 429)

A community care facility, under Health and Safety Code Section 1502(a) is defined as:

" . . . any facility, place, or building 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 . . . "

These facilities include a residential facility, which is defined as:

" . . . any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. "

Under the Community Care Facilities Act, a local government's ability to regulate residential facilities is restricted (Health and Safety Code Section 1566 et seq.):

"Whether or not unrelated persons are living together, a residential facility which serves six or fewer persons shall be considered a residential use of property. . . .In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

. . .

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone."

Group Homes for Persons with Intellectual or Physical Disabilities

Other similar group homes which do not fall under the Community Care Facilities Act have similar provisions and restrictions against local regulations. Group homes for persons with cognitive or physical disabilities (Welfare and Institutions Code Section 5000 et seq.) are such homes. Under Section 5115 of the Welfare and Institutions Code, the legislature determined that it was the policy of the state that persons with intellectual and physical disabilities are entitled to live in

normal residential surroundings and should not be excluded therefrom because of their disability. The law further clarifies that the use of property for the care of six or fewer "is a residential use of such property for the purposes of zoning." Section 5116 of the Welfare and Institutions Code also confirms that such a use is a permitted use in all residential zones.

Elderly Care Facilities

Elderly care facilities, serving six or fewer, are regulated by Section 1569.85 of the Health and Safety Code, which states that:

"[A] residential care facility for the elderly which serves six or fewer persons shall be considered a residential use of property for this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article . . .

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility for the elderly which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone."

Alcohol and Drug Abuse Recovery or Treatment Facilities

Alcohol and/or drug abuse recovery or treatment facilities are regulated under the Health and Safety Code beginning with Section 11834.01. Section 11834.20 deals directly with local governments. Said section states:

"The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need.

The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purpose of this article, 'six or fewer persons' does not include the licensee or members of the licensee's family or persons employed as facility staff."

These facilities also prohibit local regulation. Section 11834.23 states:

"Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the

purpose of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

. . .

No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone."

Of interest as to the occupancy of these alcohol/drug facilities is the definition of an adult. Health and Safety Code Section 11834.02(b) defines an adult as a mother and their children. Children are not counted separately from their mothers.

Of further note is that alcohol and drug residential homes do not have to be licensed if they do not have onsite treatment. The difference is that licensed facilities are allowed to have onsite treatment. Treatment includes individual and group counseling, educational sessions, recovery or treatment planning, etc. Unlicensed facilities are allowed to exist but are not allowed to conduct any such treatment. Licensed facilities are also regulated by the state and are subject to the state's rules and regulations.

Health Facilities

The state also licenses a variety of residential health care facilities. These including the following:

- Congregate Living Health Facilities, which included inpatient care for terminally ill, ventilator dependent, or catastrophically or severely disabled. (Health and Safety Code Section 1250(i))
- Intermediate Care Facilities, which includes intermediate nursing care. (Health and Safety Code Section 1250(e))
- Pediatric Day Care and Respite Care, which includes providing quality care to medically fragile and terminally ill children and their families. (Health and Safety Code Section 1760 et seq.)

OVERCONCENTRATION

The California legislature recognized that the clustering of group homes can change the character of a residential neighborhood. Because of the potential for overconcentration of community care facilities, Health and Safety Code Section 1520.5 addresses this issue:

"(a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of residential care facilities which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new residential care facility license if the director determines that the location is in proximity to an existing residential care facility that would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued there will be residential care facilities which are separated by a distance of 300 feet or less, as measured from any point upon the outside walls of the structures housing those facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet with the approval of the city or county in which the proposed facility will be located."

NOTE: The above code section does not apply to residential care facilities for the elderly, group homes for persons with disabilities, or to alcohol and drug treatment facilities. There are no statutes or regulations which prevent several of these facilities from locating on the same block. However, in the Riverside Municipal Code at Chapter 19.64.040(S)(2)(g), the separation is 5000 feet between transitional shelter/housing for adult parolees or probationers.

UNLICENSED FACILITIES HOUSING MORE THAN SIX RESIDENTS

Sober Living Homes

Sober living homes are transitional living arrangements, which do not and cannot provide any recovery, treatment or detoxification services to those recovering from alcohol or drug abuse. Sober living homes are not subject to any state licensing regulations and may be regulated by local agencies consistent with federal Fair Housing laws.

Under Riverside Municipal Code Chapter 19.910.020, a sober living home is defined as a residential dwelling, structure or unit used for a cooperative living arrangement to provide an alcohol and drug free environment for persons recovering from alcohol and or drug abuse. Under this code section, a sober living home demonstrates the following identifying characteristics:

- "1. All residents, including live-in managers, operators, or owners, are recovering from alcohol and/or drug abuse;*
- 2. All residents actively participate in legitimate programs, including, but not limited to, Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) programs, and maintain current records of meeting attendance;*
- 3. All owners, managers, operators, and residents observe and promote a "zero tolerance" policy regarding the consumption or possession of alcohol and controlled substances, except for prescription medications obtained and used under direct medical supervision;*
- 4. There is a written policy dealing with the use of drugs or alcohol;*
- 5. Owners, operators, managers and residents do not provide on-site any of the following services...:*
 - a. detoxification;*
 - b. educational counseling;*
 - c. individual or group counseling sessions;*
 - d. treatment or recovery planning;*
 - e. treatment or recovery planning.*

6. *The number of residents subject to the sex offender registration requirements of Penal Code Section 290 does not exceed the limit set forth in Penal Code Section 3003.5, and does not violate the distance provisions set forth in Penal Code Section 3003;*
7. *Residents do not require non-medical care and/or supervision...;*
8. *The operators and/or residents maintain current membership in a recognized nonprofit organization of sober living homes that provide a credible quality assurance service for applicants or members or have received a sober living home certification...; and*
9. *Owners, managers, operators, and residents ensure that the property and its use comply with all applicable state and local laws."*

Parolee/Probationer Homes

Parolee and Probationer homes are not subject to state licensing requirements but are regulated by a number of cities. They require either minor conditional use permits or conditional use permits, and are defined in Riverside Municipal Code Section 19.910.170 as follows:

"Any residential structure or unit, including any hotel or motel except as provided herein, whether owned and/or operated by an individual or for-profit or non-profit entity, that houses two or more parolees/probationers, unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee/probationer and/or any individual or public/private entity on behalf of the parolee/probationer, excluding parolees/probationers who reside in alcohol and/or drug free recovery home as defined in this Title. Notwithstanding this definition or any other provision of the Riverside Municipal Code, hotels and motels with fourteen rooms or less cannot provide transient lodging services or accommodations to more than three parolees during any thirty consecutive-day period regardless of the length of their respective stays; and hotels and motels with fifteen rooms or more cannot provide transient lodging services or accommodation to more than five parolees during any thirty consecutive-day period regardless of the length of their respective stays."

FACILITIES HOUSING MORE THAN SIX RESIDENTS

Local governments may establish zoning regulations upon facilities housing more than six residents. The Riverside Municipal Code, specifically Title 19, provides for such regulation. Section 19.04.162 defines group housing as:

"'Group housing' means any living situation including motels and hotel buildings that are not for temporary use, that accommodates more than six unrelated individuals, and may include but not be limited to the following types of facilities: (1) alcohol and drug treatment facilities; (2) board and care homes for the elderly including convalescent or rest homes and nursing homes; (3) homes for minor children; (4) homes for mental patients; (5) homes for the

developmentally disabled; (6) transitional shelter/housing for homeless persons; (7) transitional shelter/housing for parolees or probationers; and (8) single-room occupancy (SRO) projects. Group housing would typically involve a living arrangement where either support services are provided to the occupants, where cooking, living or support sanitary facilities are shared in common between the occupants or where there is a formal program establishing rules of conduct and purpose of the facility."

Fraternity houses are defined at Section 19.04.145 of the Riverside Municipal Code as follows:

"Fraternity house or sorority house' means a building rented, occupied or owned by a general or local chapter of some regularly organized college fraternity or sorority or by or on its behalf by a building corporation or association composed of members or alumni thereof, and occupied by members of the local chapter of such fraternity or sorority as a place of residence."

The above defined group housing and fraternity houses may be allowed within certain zones of the City, subject to the granting of a conditional use permit. In connection with the issuance of a conditional use permit for group housing, Section 19.064.040(S) of the Riverside Municipal Code requires additional information and restrictions. Some of that information includes the client profile of the facility (i.e. minor children, families, parolees), maximum number of occupants, staffing, rules of the facility, and term of stay. The code also sets for development standards and site location criteria.

In regard to all of the various group homes, fraternity houses, and the like, parking is regulated by the Riverside Municipal Code at Chapter 19.74. Depending on the type of the structure, whether it is a single-family residence or multiple family, fraternity house, motel, etc., will depend on the number of parking spaces required. The number of cars allowed will depend on the particular site and the area designated for parking. Again, Chapter 19.74 goes into specific detail regarding the parking of vehicles in the front and side landscaped yards, the number of parking spaces to be provided, and the standards for the parking spaces.

As for the number of occupants in any given home, there are currently no regulations as to the number allowed. This is inclusive of the California Uniform Building Code and Uniform Fire Code. Because these homes are not commercial structures, the uniform codes do not have applicable occupancy limits.

REASONABLE ACCOMMODATIONS

Cities have an affirmative duty to provide reasonable accommodation in land use and zoning rules, policies, practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing. Flexibility in applying land use and zoning regulations (including in some instances waiving certain restrictions or requirements) may necessary when it is determined to be "reasonable" based on fair housing laws and case law interpreting applicable statutes.

FISCAL IMPACT:

There is no fiscal impact in receiving staff's presentation.

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