CITY OF LAGUNA NIGUEL

AGENDA ITEM
CITY COUNCIL — AUGUST 2, 2016

TO: Honorable Mayor and Council Members

FROM: Daniel Fox, Assistant City Manager
Terry E. Dixon, City Attorney

SUBJECT: Adoption of a Temporary Moratorium and Initiation of a Zoning Code Amendment Concerning Congregate Living Facilities in Residential Zoning Districts.

SUMMARY: The Community Development Director and the City Attorney are recommending that the City Council adopt a temporary moratorium on the establishment of congregate living facilities in residential zoning districts. It is also recommended that the City Council concurrently initiate a Zoning Code Amendment to consider various alternatives for regulating such facilities. Over the past year, the City has seen a steadily increasing number of congregate living facilities and corresponding reports of secondary negative impacts to surrounding neighborhoods. Any City regulations adopted to address these issues will need to take into account the complex body of applicable State and Federal law.

BACKGROUND

Over the past year, the City has received a steadily increasing volume of resident complaints concerning the secondary impacts associated with congregate living facilities operating within single-family zoning districts. Such impacts include but are not limited to overcrowding, inordinate amounts of second-hand smoke, noise, loitering, and drug-related activity including facility resident overdoses and discarded drug paraphernalia found on surrounding properties. Some of these impacts may be addressed through enforcement of City nuisance abatement regulations. However, such efforts by the City are time-intensive, do not guarantee a favorable outcome and are generally not as successful as comprehensive front-end regulation of potentially incompatible land uses.

In responding to resident complaints, City Code Enforcement staff have become aware of an increasing number of new congregate living facilities, primarily unlicensed and privately operated for-profit sober living homes, that appear to be the source of the reported disturbances. Broad negative generalizations about such facilities and/or their residents based on the less than reputable business practices of a few operators are unfair and strongly opposed by the City. However, the successful integration of these facilities into single family neighborhoods, with

their highly transient tenant base and related secondary impacts, may not be consistent with the tranquility and character that has been enjoyed by stable neighbors, and is a challenging task that warrants further City consideration and involvement.

Also questions have been raised regarding the adequacy of care and living conditions experienced by individuals residing in the various unlicensed recovery facilities that fall under the congregate living facility umbrella.

Legal Framework

The legal framework for the regulation of congregate living facilities by cities in California is a complex one. Attached is a concise, yet thorough, discussion of how these and similar uses are defined and regulated at the State and Federal levels (Attachment B). In short, cities cannot regulate State licensed residential care and treatment facilities serving six or fewer residents, nor can they regulate living arrangements in which the occupants operate as a "single housekeeping unit." However, cities can, subject to State and Federal limitations, regulate quasi-commercial living arrangements that are being conducted in residential zones (i.e., multiple renters in a single family residence, where no "services" are being provided, and without regard to the protected status of the occupants). In doing so, cities must also be responsive to any reasonable accommodation requests necessary to afford any handicapped persons, including but not limited to persons in alcohol or drug recovery, an equal opportunity to live in the residential setting of their choice.

Regional Response

As part of what appears to be a regional trend, neighboring jurisdictions are also facing a sudden increase in the number of newly established congregate living facilities in residential zoning districts. In response, some cities, including Newport Beach and Costa Mesa, have adopted various regulatory schemes intended to preserve and protect the character of their residential zones while also establishing operational requirements to ensure provision of healthy, structured, and safe environments for facility residents. Opponents of such regulations have filed suit against both cities, with results that have proved costly to cities (a combined settlement and legal fees of approximately $10 million were paid by the City of Newport Beach), while providing little judicial clarification as to extent State and Federal law permit cities to regulate such uses. Other cities, including Aliso Viejo, San Clemente, Dana Point and San Juan Capistrano have followed suit initiating various actions intended to either directly or indirectly regulate operation of such facilities in residential zones.

Alternatives

While the legal framework for regulation of congregate living facilities in residential zoning districts remains unclear and open to legal challenge, the on-going and potential impacts of the current proliferation of newly established unlicensed and unregulated congregate living facilities on the quality of life for Laguna Niguel residents, living both within such facilities and in surrounding neighborhoods, necessitates that the City explore all available avenues of relief.

Therefore, the Community Development Director and the City Attorney are recommending that the City Council adopt a temporary moratorium on the establishment of congregate living facilities in residential zoning districts (Attachment A). Government Code Section 65858 allows a city to adopt a moratorium on land uses by the adoption of an interim urgency ordinance. The moratorium would prohibit the establishment of the land uses being studied. A four-fifths vote of the Council is required for adoption. The ordinance would remain in effect for 45 days and could be extended two times by adoption of extension ordinances at noticed public hearings by the City Council. The ordinance could be extended for ten months and fifteen days, and then extended a second time for an additional year for a total moratorium of two years.

It is also recommended that the City Council concurrently initiate a Zoning Code Amendment to consider various alternatives for regulating such facilities. The City's Zoning Code provides for several methods of initiating zoning code amendments (Zoning Code Section 9-1-117.4) (Attachment C). The Community Development Director may recommend that the City Council initiate the consideration of a Zoning Code Amendment (Zoning Code Section 9-1-117.4(c)(4)). Currently, the Assistant City Manager is the Acting Community Development Director during the process of filling the vacancy for this position.

As a starting point for such discussions, staff recommends consideration of the following:

1) Recent actions of neighboring cities to regulate congregate living facilities and similar uses;

2) The potential interplay between such regulations and the City's recently initiated zoning code amendment to prohibit short term vacation rentals;

3) Expansion of the City's list of activities potentially subject to nuisance abatement; and

4) Adoption of escalating fees to be assessed as a result of multiple City (including police) responses to loud or disruptive parties, gatherings or events.

The initiated amendment would be subject to review and recommendation by the Planning Commission before returning to the City Council for final action.

RECOMMENDATION

That the City Council:

a. Adopt Ordinance 2016-XXXX

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA
IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR
ESTABLISHMENT IN RESIDENTIAL ZONES OF CONGREGATE LIVING
FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION,

TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE

b. Pursuant to Laguna Niguel Municipal Code Section 9-1-117.4(c)(4), initiate a Zoning Code Amendment concerning regulation of congregate living facilities in residential zones; and

c. Direct the Planning Commission to review alternatives for regulation of congregate living facilities in residential zones, including those set forth in this report, and submit to the City Council recommendations, including a proposed ordinance(s), addressing such uses.

PREPARED BY:

(for JO)

Jonathan Orduna
Senior Planner

SUBMITTED BY:

Daniel Fox
Assistant City Manager

SUBMITTED BY:

Terry E. Dixon
City Attorney

REVIEWED BY:

Rod Foster
City Manager

Attachments:

A. Ordinance No. 2016-XXXX
B. Select California Laws Relating to Residential Recovery Facilities and Group Homes
C. LNMC Section 9-1-117.4

ATTACHMENT A

ORDINANCE NO. 2016-XXXX

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA, IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR ESTABLISHMENT IN RESIDENTIAL ZONES OF CONGREGATE LIVING FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION, TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE

The City Council of the City of Laguna Niguel hereby ordains as follows:

SECTION 1. Recitals.

1. Over the last few months, the City has received a steadily increasing number of complaints relating to neighborhood nuisances such as unauthorized construction, invasion of privacy, excessive noise, and second-hand tobacco smoke; and

2. City investigation and follow-up on these complaints has revealed that a large portion of these impacts coincide with a proliferation of congregate living arrangements; and

3. City investigation has also revealed discrepancies in information submitted to state regulatory agencies relating to construction and occupancy of some of these facilities; and

4. City investigations have also raised concern over the welfare and safety of the residents of these facilities; and

5. Existing zoning regulations do not adequately address the establishment of congregate living facilities; and

6. This interim urgency ordinance is necessary to provide City staff time to study and assess various approaches to regulating the subject land uses and to present recommendations to the Planning Commission and City Council. Recommendations may include amendments to the City's Municipal Code addressing establishment of congregate living facilities and complying with State law and including appropriate review procedures; and

7. Without this moratorium ordinance, such transitory residential uses could possibly locate in close proximity to each other, so as to create an overconcentration of such uses and further threaten the health, safety, and welfare of facility residents of the facilities and their neighbors; and

8. As a consequence, there is a current and immediate threat to the public health, safety and welfare if permits or entitlements for congregate living facilities are issued, and such permits or entitlements could result in land uses and developments that

conflict with amendments to the Municipal Code that may be adopted as a result of the study that the City intends to undertake; and

9. The adoption and immediate enactment of this ordinance is necessary for the preservation of the public health, safety, and welfare to prevent establishment of new uses and the expansion or modification of existing uses at locations that might conflict with and be inconsistent with the intended amendment to the Municipal Code; and

10. Minimizing incompatibility of land uses promotes orderly development, which is necessary to encourage quality neighborhoods; and

11. This is a matter of importance to the entire City of Laguna Niguel and is not directed at any particular property.

SECTION 2. California Environmental Quality Act.

The City Council finds that this ordinance is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment nor under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly and so is not a project.

SECTION 3. Definitions.

For purposes of this ordinance, the following terms and definitions are used:

(a) *Congregate living facility* means a residence or dwelling wherein two (2) 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. Such facilities do not include hotels, motels or state licensed residential care facilities when such residential care facilities are serving six (6) or fewer residents. Further, such facilities do not include a residence or dwelling that is operated as a single housekeeping unit.

(b) *Single housekeeping unit* means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient, members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. Additional indications that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property, members of the household have separate, private entrances from other

members, members of the household have locks on their bedroom doors, members of the household have separate food storage facilities such as separate refrigerators.

SECTION 4. Authority.

The City Council hereby enacts this interim urgency ordinance pursuant to section 65858, subdivision (a), of the California Government Code, which allows the City to adopt an interim urgency ordinance by not less than a four-fifths vote, to protect the public safety, health, and welfare by prohibiting any use that may be in conflict with a zoning proposal that the City Council, Planning Commission, or Planning Department of the City is considering or studying or intends to study within a reasonable time.

SECTION 5. Moratorium Established.

Notwithstanding anything to the contrary in existing City law, including but not limited to the Municipal Code and the City General Plan, this ordinance establishes a 45 day moratorium on: the establishment or the approval, issuance, or transfer of any use permit, variance, building permit, or other applicable entitlement for the establishment or operation of a new congregate living facility in the City, as well as the expansion or modification of existing establishments.

Nevertheless, the City may continue to accept and process applications for uses prohibited by this moratorium if so required by State law. Any application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for a congregate living facility may be issued while this moratorium or any extension of it is in effect.

SECTION 6. Reasonable Accommodations.

In compliance with fair housing laws, it is the City's policy to provide reasonable accommodation in the application of this interim urgency ordinance to any disabled person who seeks access to fair housing. The purpose of this Section is to provide disabled individuals with reasonable accommodation in the application of this urgency ordinance, as necessary to ensure equal access to housing and comply with applicable fair housing laws. The words used in this Section 6 shall have the meanings ascribed to them in the federal Fair Housing Act and Americans with Disabilities Act.

(a) Requesting Reasonable Accommodation.

(1) To make specific housing available to a disabled individual, a disabled person or representative may request reasonable accommodation under this Section, relating to the application of this urgency ordinance.

(2) If an individual or representative needs assistance in making a request for reasonable accommodation, or in appealing a determination

regarding reasonable accommodation, the Planning Division will assist as necessary to ensure that the process is accessible to the applicant or representative. The applicant may be represented at all stages of the proceeding by a person designated by the applicant as his or her representative.

(3) A request for reasonable accommodation in the application of this urgency ordinance must be filed on an application form provided by the Planning Division. It must be signed by the owner of the property and must describe exactly what is being requested and why the requested accommodation is necessary. All documentation that supports the request must be submitted with the application. The housing unit for which accommodation is requested must be the primary residence of the person for whom the request is made.

(b) Decision on Application for Reasonable Accommodation.

(1) The Community Development Director shall have the authority to consider and act on any application for a reasonable accommodation. The Director shall issue a written determination within 30 days of the date of receipt of a completed application and may:

(i) grant the accommodation request,

(ii) grant the accommodation request subject to specified nondiscriminatory conditions,

(iii) deny the request, or

(iv) in the alternative, refer the application to the Planning Commission, who shall render a decision on the application.

(2) If necessary to reach a determination on any request for reasonable accommodation, the Director or Planning Commission may request additional information from the applicant consistent with this urgency ordinance. If such a request is made, the time period to issue a written determination is stayed until the applicant reasonably responds to the request.

(3) If, based on all of the evidence presented to the Director or the Planning Commission, the findings required in this urgency ordinance may reasonably be made, the Director or the Planning Commission, as applicable, must grant the request for reasonable accommodation.

(4) A reasonable accommodation that is provided according to this urgency ordinance does not require the approval of any variance as to the reasonable accommodation.

(5) The reasonable accommodation is subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this urgency ordinance to further fair housing. Such conditions may generally include, but are not limited to, the following restrictions:

(i) That the reasonable accommodation only applies to a particular disabled individual or individuals;

(ii) That the reasonable accommodation only applies to the specific use for which application is made; or

(iii) That any change in use or circumstances that negates the basis for the granting of the request renders the reasonable accommodation null and void.

(c) Required Findings. The following findings must be made to approve a request for reasonable accommodation:

(1) The housing that is the subject of the request for reasonable accommodation will be occupied as the primary residence by an individual protected under the fair housing laws.

(2) The request for reasonable accommodation is necessary to make specific housing available to one or more individuals protected under the fair housing laws.

(3) The requested reasonable accommodation will not impose an undue financial or administrative burden on the City.

(4) The requested accommodation will not result in a fundamental alteration of the City's zoning or building laws and/or procedures.

(d) Waiver of Time Periods. The applicant may request additional time beyond that provided for in this Section or may request a continuance regarding the time for any decision or appeal to be made under this urgency ordinance. Any extension of time sought by the applicant shall not be considered delay on the part of the City, shall not constitute failure by the City to provide for prompt decisions on applications, and shall not be a violation of any required time period set forth in this Section.

(e) Appeal of a Land Use Decision. The decision by the Community Development Director to approve or deny any request for reasonable accommodation may be appealed by an interested party to the Planning Commission in accordance with section the City's Municipal Code.

SECTION 7. Severability.

If any section, subsection, subdivision, clause, phrase, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 8. Effective Date.

This ordinance is declared an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated in Section 1 above, and it shall take effect immediately on adoption if adopted by at least a four-fifths vote of the City Council, and it remains in effect for 45 days from the date of adoption unless the City Council extends it under Government Code section 65858. Ten days before this interim urgency ordinance or an extension of it expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this ordinance.

SECTION 9. City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 2nd day of August, 2016.

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Laurie Davies, Mayor

ATTEST:

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Eileen C. Gomez, City Clerk

ATTACHMENT B

Select California Laws Relating to Residential Recovery Facilities and Group Homes

State Bar of California
Real Property Law Section
Fair Housing and Public Accommodations Section

Third Annual Fair Housing and Public Accommodations Symposium
Golden Gate University
April 22, 2011

Presented by:

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I. Introduction

This paper summarizes California statutes and case law regarding planning and zoning requirements applicable to group homes and supportive housing that impose limitations on local governments beyond those imposed by the federal Fair Housing Act and state Fair Employment and Housing Act. The paper first reviews state statutes that protect certain *licensed* group homes and describes provisions of State Planning and Zoning Law that are applicable more generally to both licensed and unlicensed homes. It then explains California case law relating to the right of privacy, which prevents local governments from discriminating between households containing related persons and those comprised of unrelated individuals. It concludes by discussing local regulations that appear to be permissible under State law and fair housing law.

II. Statutes Protecting Licensed Facilities

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

A. California Licensing Laws

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this complex area of law.

1. Community Care Facilities

Community care facilities must be licensed by the California Department of Social Services (CDSS).[1] A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.[2] Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.[3]

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-

[1] Cal. Health & Safety Code 1500 *et seq.*
[2] Cal. Health & Safety Code 1502(a).
[3] 22 Cal. Code of Regulations 80001(c)(2).

medical care and supervision for persons 60 years of age or older.[4] Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.[5]

2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.[6] Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.[7] This category of disability includes both individuals recovering in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.[8] These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled[9] and intermediate care facilities for persons who need intermittent nursing care.[10] Pediatric day health and respite care facilities with six or fewer beds are separately licensed.[11]

B. Protection from Land Use Regulations for Certain Licensed Facilities

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes or single dwelling units for zoning purposes.[12] In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is

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[4] Cal. Health & Safety Code 1569.2(k).
[5] 22 Cal. Code of Regulations 87801(a)(5).
[6] Cal. Health & Safety Code 11834.02.
[7] 24 C.F.R. 100.201.
[8] Cal. Health & Safety Code 1265 – 1271.1.
[9] Cal. Health & Safety Code 1250(i).
[10] Cal. Health & Safety Code 1250(e) and 1250(h).
[11] Cal. Health & Safety Code 1760 – 1761.8.
[12] This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to be boarding houses or rest homes or regulated as such.[13] Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.[14]

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.[15]

Because there are no separation requirements for drug and alcohol treatment facilities, ADP has in practice been willing to issue separate licenses for 'small' drug and alcohol treatment facilities whenever a dwelling unit or structure has a separate address. For instance, ADP has issued a separate license for each apartment in one multifamily building, for each single-family home in a six-home compound, and for each cottage in a hotel, in each case creating facilities that in fact serve many more than six residents. No local effort to regulate these facilities as 'large' residential care facilities has been successful in a published case; in other contexts, the courts have determined that the State has completely preempted local regulation of small residential care facilities.[16]

2. Facilities Serving More Than Six Residents

Because California law only protects licensed facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.[17] However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.[18]

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[13] For example, *see* Health & Safety Code 1566.3 & 11834.23.

[14] Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4th 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4th 1 (1994).

[15] Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

[16] City of Los Angeles v. Department of Health, 63 Cal. App. 3d 473, 479 (1976).

[17] ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

[18] Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997); *see also* United States v. Village of Palatine, 104 F.3d 300, 304 (9th Cir. 1997).

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision adopted as a condition of a special use permit was not consistent with the Fair Housing Act.[19]

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big cities. Although SB 1322 was vetoed by the Governor, changes were later made in Housing Element law to protect certain transitional and supportive housing, as discussed further below.

3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.[20] "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.[21]

4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,[22] intermediate care facilities, and pediatric day health and respite care facilities,[23] "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.[24]

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[19] Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).
[20] Cal. Wel. & Inst. Code 5120.
[21] City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).
[22] Cal. Health & Safety Code 1520.5.
[23] Cal. Health & Safety Code 1267.9.
[24] Cal. Health & Safety Code 1267.9(b)(2).

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.[25]

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.[26]

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

C. Facilities That Do Not Need a License

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.[27] "Supportive housing" and independent living facilities with "community living support services," both of which provide some services to disabled people, generally do not need to be licensed.[28] Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.[29]

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.[30] Although there is no case on point in California or the Ninth Circuit, ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services could raise fair housing issues, although an argument can also be made that unlicensed facilities are completely unregulated and hence require more local supervision. Some

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[25] Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld. Spacing requirements that have been challenged have required 500-foot separations or more.
[26] *See, e.g.*, Cal. Health & Safety Code 1520.5(d).
[27] Cal. Health & Safety Code 1505(p).
[28] Cal. Health & Safety Code 1504.5.
[29] Cal. Health & Safety Code 1505(i).
[30] North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

communities have explicitly adopted ordinances stating that unlicensed group homes serving six or fewer clients are permitted in residential zones.[31]

Legislation was introduced in California in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. This provision was ultimately removed after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

III. California Planning and Zoning Laws

California Planning and Zoning Law has long contained provisions prohibiting discrimination in land use decisions based on disability. Effective January 1, 2002, state housing element law was amended to require an analysis of constraints on persons with disabilities and to require programs providing reasonable accommodation. Additional protections for supportive and transitional housing became effective on January 1, 2008.

A. Protection from Discrimination in Land Use Decisions

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) race, sex, lawful occupation, familial status, disability, source of income, method of financing, or occupancy by low to middle income persons.[32] It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.[33]

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.[34] However, federal fair housing law does not specifically limit discrimination based on *income level*,[35] and Section 65008 makes clear that discrimination based on disability is prohibited in local planning and zoning decisions.

B. Housing Elements

California requires that each city and county adopt a 'housing element' as part of its general plan for the growth of the community.[36] The housing element governs the development of housing in the community. It must identify sites for all types of housing, including transitional housing, supportive housing, and emergency shelters. Beginning in 2002, local housing elements were required to analyze constraints on housing for persons with disabilities and to include programs

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[31] For instance, one community adopted zoning provisions stating that "residential service facilities" serving 6 or fewer clients could be permitted in any residential zone, defining such uses as: "A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care."

[32] Cal. Gov't Code 65008(a) and (b).

[33] Cal. Gov't Code 65008(d)(2).

[34] Keith v. Volpe, 858 F.2d 467, 485 (9th Cir. 1987).

[35] Affordable Housing Development Corp. v. City of Fresno, 433 F.3d 1182 (2006).

[36] Cal. Gov't Code 65580 *et seq.*

to remove constraints or to provide reasonable accommodations for housing designed for persons with disabilities.[37] The California Attorney General also sent a letter to local planning agencies in May 2001 urging them to adopt reasonable accommodation ordinances. As a consequence, many cities and counties in the State now have a separate reasonable accommodation ordinance that may be applicable to group homes serving disabled persons, whether licensed or unlicensed.

Amendments to housing element law effective January 1, 2008[38] specifically require cities and counties to include in their housing elements a program to remove constraints so that 'supportive housing,' as defined in the bill, is treated like other residences of the same type. This means that communities must revise their zoning so that the only restrictions that may be applied to supportive housing, as defined in the statute, are those that apply to other residences of the same type (single-family homes, duplexes, triplexes, or fourplexes) in the same zoning district; no conditional use permit or other permit is required unless other residences of that type in the same zone also must obtain the same permit.

However, to qualify for this protection, the supportive housing must meet the definition of "supportive housing" contained in Health & Safety Code Section 50675.14, which is housing that:

- Has no limit on the length of stay.
- Is linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and living and working in the community.
- Is occupied by the "target population," defined as adults *with low incomes* having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health problems; and persons eligible for services under the Lanterman Development Disabilities Act, which provides services to persons with developmental disabilities that originated before the person turned 18.

Should a group home meeting this definition of "supportive housing" require a permit of any type, California's "Housing Accountability Act" will allow it to be denied only under very limited circumstances.[39]

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[37] Cal. Gov't Code 65583(a)(4); 65583(c)(3).

[38] Cal. Gov't Code 65583(a)(5).

[39] Cal. Gov't Code 65589.5(d). Local governments cannot deny supportive housing, or add conditions that make the housing infeasible, unless they can make one of five findings:

- The jurisdiction has met its low income housing needs.
- The housing would have a specific, adverse impact on public health or safety, and there is no feasible way to mitigate the impact.
- Denial is required to comply with state or federal law, and there is no way to comply without making the housing unaffordable.
- The housing is proposed on land zoned for agriculture and is surrounded on two sides by land being used for agriculture, or there is inadequate water or sewer service.
- The housing is inconsistent with both the zoning and the land use designation of the site and is not shown in the housing element as an affordable housing site.

Many privately operated group homes have limitations on the length of stay and are not occupied by adults with low incomes and so do not qualify as "supportive housing" under this definition; but many group homes funded under California's Mental Health Services Act do so qualify.

IV. Protections Provided by the California Right to Privacy

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."[40] Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Consequently, communities that desire to regulate group homes have attempted to define them as commercial *uses* similar to boarding houses rather than restricting *who* lives there.

A. Families v. Unrelated Persons in a Household

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.[41] Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *City of Santa Barbara v. Adamson*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other. They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—could be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"[42]

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[40] Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4th 451, 459-60 (2001).
[41] City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 134 (1980).
[42] Adamson, 27 Cal. 3d at 133.

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.[43] While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.[44]

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.[45]

- Allowed owner-occupied properties to have more residents than renter-occupied properties.[46]

- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.[47]

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.[48]

- Prohibited short-term transient rentals of properties for less than thirty days.[49]

B. Occupancy Limits

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may

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[43] Housing Rights, Inc., *California Land Use and Zoning Campaign Report* 27-28 (2002). Los Angeles is now considering amendments to its ordinance.
[44] Kim Savage, *Fair Housing Impediments Study* 37 (prepared for Los Angeles Housing Department) (2002).
[45] Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4th 451 (2001).
[46] College Area Renters and Landlords Assn. v. City of San Diego, 43 Cal. App. 4th 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.
[47] Tom v. City & County of San Francisco, 120 Cal. App. 4th 674 (2004).
[48] City of Los Altos v. Barnes, 3 Cal. App. 4th 1193 (1992).
[49] Ewing v. City of Carmel, 234 Cal. App. 3d 1579 (1991).

not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.[50] Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.[51]

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.[52]

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

V. Local Regulation of Group Homes

In the past decade, much local concern has been directed at sober living homes, which are typically unlicensed facilities designed to provide support to recovering substance abusers. Because privately operated sober living homes often desire to attract middle- and upper middle-income residents, and there is a high demand for such facilities, they have often been located in middle- and upper-class areas, and in some cases have experienced local opposition. The League of California Cities has sponsored legislation designed to require licensing or allow more local control, but those efforts have failed. Communities often view such facilities as businesses exploiting a loophole rather than as residences and so seek to be able to distinguish them from residences, often defining them as "lodging houses" or "boarding houses." Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Conversely, sober living homes seek to be classified as "households" or "single housekeeping units" so they may locate in any residential neighborhood without requiring any public notice or needing any use permit.

A. Defining Unlicensed Facilities as Lodging Houses or Single Housekeeping Units

A 2003 opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.[53] The City of Lompoc defined a lodging house as "a residence or dwelling . . . 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." The Attorney General agreed

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[50] Cal. Health and Safety Code 17922(a)(1). *See* Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).
[51] Briseno, 6 Cal. App. 4th at 1383.
[52] Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).
[53] 86 Ops. Cal. Att'y Gen'l 30 (2003).

that a lodging house, while providing a 'residence' to paying customers, could be considered a *commercial* use and so could be prohibited in residential areas. ("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."[54])

The Attorney General further concluded that the ordinance was consistent with *Adamson* because 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 inconsistent with the residential character of the neighborhood regardless of the identity of the users.

Based on the Attorney General's opinion and *Adamson,* then, cities have increasingly defined a "household" or "single housekeeping unit" to have these characteristics:

- One joint lease signed by all residents;
- Access by all to all common areas of the home; and
- Shared housekeeping and shared household expenses.
- No limits on length of residence.
- New residents selected by existing residents, not a manager or landlord.

For instance, the City of Los Angeles proposed an ordinance defining a "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.

The same ordinance proposed to define a boarding or rooming house as:

> A one-family dwelling, 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.

Under these and similar ordinance definitions, many sober living homes operated by private organizations, whether for-profit or nonprofit, are classified as boarding or lodging houses because residents do not sign a joint lease; new residents are selected by a manager; household expenses may not be shared (i.e., residents pay a set fee to the manager); and there may be limits

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[54] *Id.*

on length of residence. In contrast, persons who desire to live together to support each other during recovery and rent a home together would be classified as a "single housekeeping unit."

Enforcement Issues. If a group home is challenged as not constituting a single housekeeping unit, the operator will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., web advertising), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated in part by the neighbors' fears about the residents' mental illness.[55] In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

B. Best Practices - Service Providers

We advise our nonprofit sponsors that if a facility can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.

- Give all residents equal access to all living and eating areas and food preparation and service areas.

- Keep track of, and share, household expenses.

- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.

- Allow all existing residents to select new members of the household.

VI. Conclusion

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on

[55] Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Since the facilities were unlicensed, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

SUMMARY: GROUP HOME ANALYSIS UNDER CALIFORNIA LAW

IF LICENSED:

6 or fewer clients:

Must be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (e.g., community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

7 or more clients:

Psychiatric facilities—both inpatient and outpatient—must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

Other licensed facilities are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements or to obtain modifications to traditional zoning requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

IF UNLICENSED:

Is it operated as a single housekeeping unit (household, family)?

If so, must be treated like a single dwelling unit.
Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

- Physical access: all have access to common areas: kitchen, laundry, living & family rooms is free.
- No limits on term of occupancy
- All residents on lease or rental agreement [AG's opinion]
- Makeup of the household is determined by the residents rather than a landlord or property manager
- Normal household activities (meals, chores) and household expenses shared (*Adamson*)

There are different *local* definitions of "family" or a single housekeeping unit. (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.) Advocates oppose some of the above characteristics.

Does it qualify as "supportive housing" under housing element law?

If so, must be treated like other residences of the same physical type [depending on date of adoption of housing element].

6 or fewer clients:

Fair housing argument if treated more strictly than licensed facilities; but no case in California holds this specifically.

Defined as a boarding house or another use?

Only the *use* can be regulated, not the *user*.
Group homes for the disabled cannot be treated in a discriminatory fashion from other group homes (boarding houses, dormitories, etc.).

ATTACHMENT C

Sec. 9-1-117.4. - Zoning code amendments.

(a) *Purpose.* A zoning code amendment is a discretionary action by the city council to change the text and/or graphics within this zoning code.

(b) *Applicable state law.* It is intended that the provisions of this section shall be fully consistent and in full compliance with section 65853 et seq. of the state government code and that such provisions shall be so construed.

(c) *Who may apply:*

(1) Any resident of or owner of property in the city or the owner's agent (with notarized authorization from the owner) may request that the city council initiate consideration of a code amendment.

(2) The city council, by majority vote, may initiate consideration of a code amendment.

(3) The planning commission, by majority vote, may recommend that the city council initiate consideration of a code amendment.

(4) The community development director may recommend that the city council initiate consideration of a code amendment.

(d) *Review procedures and findings.* code amendments shall be reviewed under the same procedures and required findings as zone changes, per section 9-1-117.3.

(e) *Hearings and appeals.* Public hearings shall be noticed and held in accordance with section 9-1-112.1. Appeals shall be reviewed in accordance with section 9-1-112.2.

(Ord. No. 99-107, § 5, 2-2-99)