AGENDA - PUBLIC HEARING

SUBJECT: ZONING CODE AMENDMENT - REGULATION OF GROUP HOMES IN RESIDENTIAL DISTRICTS

DATE: March 25, 2007

MAYOR BOGAARD: "This is the time and place for the public hearing of the City Council of the City of Pasadena on approval of a Zoning Code amendment - regulation of Group Homes in Residential Districts."

1. Clerk reports on publication of hearing notice and correspondence received.

2. Introduce City Manager and hear staff presentation.

3. Hear public comment on the recommendations.

4 Motion to close public hearing.

5. At the close of the Public Hearing, the Council may:

   A. 1. Acknowledge the addendum to the Negative Declaration which was approved by the City Council on December 18, 2006;

      2. Approve a finding of consistency with the General Plan as contained in the agenda report;

      3. Approve the proposed Amendments to Title 17 (Zoning Code) and Title 8 as contained in the agenda report; and

      4. Direct the City Attorney to prepare an ordinance within sixty days amending the Zoning Code definition of boarding houses and Title 8 to require operators of unlicensed group homes to obtain a permit (staff recommendation); or

   B. Approve the staff recommendations with revisions based on public testimony received at this hearing; or

   D. Not approve the staff recommendations.

APPROVED AS TO FORM:

FRANK RHEMREV
ASSISTANT CITY ATTORNEY

00000300-6C74EC1B0PC031-7CL5D4AF73C031.WPD

3/26/07
6.A.
7:30 P.M.

Agenda Report

TO: CITY COUNCIL **DATE:** MARCH 26, 2007

FROM: CITY MANAGER

SUBJECT: ZONING CODE AMENDMENT – REGULATION OF GROUP HOMES IN RESIDENTIAL DISTRICTS

RECOMMENDATION:
It is recommended that the City Council after a public hearing:

1. Acknowledge the addendum to the Negative Declaration which was approved by the City Council on December 18, 2006 (Attachment – A);

2. Approve a finding of consistency with the General Plan as contained in this report;

3. Approve the proposed Amendments to Title 17 (Zoning Code) and Title 8 as contained in this report, and

4. Direct the City Attorney to prepare an ordinance within sixty days amending the Zoning Code definition of boarding houses and Title 8 to require operators of unlicensed group homes to obtain a permit.

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission recommends that the City Council:

1. Acknowledge the addendum to the Negative Declaration;

2. Approve of a finding of consistency with the General Plan as contained in this report; and

3. Approve the proposed amendments but codify the amendments into the Zoning Code and require a conditional use permit (CUP) for the establishment of an unlicensed care facility in the RS, RM-12 and RM-16 districts.

BACKGROUND:
Although certain group type homes are licensed and regulated by the State, others are not licensed. Licensed group homes that contain six or fewer persons provide medical

or therapeutic care and provide care for persons who are developmentally disabled or the elderly. Such uses are regulated by the State and must be treated as a single-family home. A group home for persons who are recovering from drug or alcohol dependency is not licensed by the State and does not provide medical or therapeutic care. It is established with the intent of allowing persons who are recovering to live together and support each other in recovering from their dependency.

On July 31, 2006, the City Attorney presented a report to the Council related to regulating unlicensed group homes in residential zoning districts (See Attachment - B). This report reviewed the City's Zoning Code and concluded that the City could regulate those facilities that are not licensed by the State. The report detailed a State Attorney General's opinion that cities could regulate such uses as long as reasonable accommodation is made for those individuals who are disabled. The definition of disabled includes persons who are recovering from alcohol or drug dependency. Reasonable accommodation means changing the rule that generally applies to everyone so as to make the burden less onerous on the handicap individual. In this instance, an accommodation would be provided because the use is generally prohibited in certain zones but would be allowed in the zone pursuant to a request for a reasonable accommodation.

The purpose of this Zoning Code amendment is to modify the definition of Boarding Houses to make it consistent with the State Attorney General's opinion such that all unlicensed group homes are considered boarding houses. The current Zoning Code does not specifically define unlicensed group homes. Under the Zoning Code, the definition of Boarding Houses best defines a group home that is not licensed by the State.

Additionally, as part of this amendment, Title 8 of the Municipal Code will be amended to establish operational standards for unlicensed group homes. The owner or operator of such facilities will be required to get a permit from the City and meet the requirements of Title 8.

The proposed amendments were reviewed by the Planning Commission on February 14, 2007. The Commission voted to recommend that the review of unlicensed facilities in RS, RM-12 and RM-16 districts be through a conditional use permit and that the operational standards be located in the Zoning Code.

The staff continues to recommend its original proposal to amend the definition of Boarding Houses in the Zoning Code and to amend Title 8 to establish a permit process for unlicensed group homes that are accommodating the disabled. The staff disagrees with the Planning Commission recommendation because the conditional use permit process allows a broader level of discretion than permitted under the Americans with Disabilities Act (ADA). The typical findings for conditional use permit do not apply to residential group homes that are requesting accommodation under the ADA and raise issues as to whether the City is reasonably accommodating the disabled.

Placing the requirements in the Zoning Code and requiring a CUP would result in public hearings. This creates public expectation that the City has wide authority to deny such

applications. The City has limited authority to deny these uses and conducting a public hearing would be misleading the public as the impression would be that the City has broad authority. Also, a CUP approval could result in these uses staying even if the property is sold as the CUP runs with the land.

ANALYSIS:

1. Amendment to the Definition of Boarding Houses

The proposed amendments will modify the definition of boarding houses to conform to the State Attorney General's recommended definition. The intent of this amendment is to broaden this definition to include unlicensed care facilities. The City's current definition of Boarding Houses is as follows:

> **"Boarding Houses (land use).** A dwelling unit or part of a dwelling unit in which, for compensation, three but not more than five rooms are provided for lodging. Meals may be provided; however, no more than one kitchen is allowed. Residents in a boarding house are not a family or single housekeeping unit."

The major change to the definition is to add a provision that rooms can be rented under separate rental agreements or leased, either written or oral, whether or not an owner, agent, or rental manager lives on the site. If more than five rooms are being rented to individuals then the use would be classified as the use Lodging – Hotels, Motels. The revised definition would be as follows (underlined language added, scored language deleted):

> "**Boarding Houses (land use).** A residence or ~~part of a~~ dwelling ~~unit in which, for compensation~~ other than a hotel, where three but not more than five rooms are ~~provided for lodging~~ 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. Meals may be provided; however, no more than one kitchen is allowed. Residents in a boarding house are not a family or single housekeeping unit. If more than five rooms are being rented then use would be classified as the use Lodging – Hotels, Motels."

2. Amendment to Title 8

Title 8 is proposed to be amended to establish a permit process for unlicensed care facilities in which a request is made for accommodation under the ADA. Drug and alcohol recovery homes that are not licensed by the State of California may be regulated by the City. Boarding Houses are allowed in the RM-32 and RM-48 multi-family Zoning Districts, however they are not allowed in the RM-16, RM-12 (multi-family) and RS (single-family) Districts. Only if the unlicensed care facility requests a reasonable accommodation under the ADA can the use be allowed in the RM-16, RM-12 and RS districts.

Therefore, it is proposed to establish standards for those unlicensed group homes and require that they receive approval for their operation from the City. The proposed amendments to Title 8 will require the operators of boarding houses who are seeking

reasonable accommodation to obtain a permit from the City. When an application for such a permit is submitted to Business Licensing it will be routed to other departments for conformance to the following.

A. The permit will:

1. Determine if the persons who reside at the facility are disabled as defined under State and Federal law if a request for reasonable accommodation is made.

2. Require the employees and owner to have a background check to determine whether any such persons have been convicted of a felony or any crime involving moral turpitude.
3. Require that the operator agrees to maintain the facility and that its operation will not result in nuisance activity.

4. Require that the facility does not violate any applicable provisions of City, State or Federal regulations.

B. The permit will be reviewed to determine if the use is more than 250 feet from another unlicensed facility.

C. The application will be reviewed to determine if the facilities are suitable, proper and adequate and comply with applicable laws for fire protection.

In the event that the facility, once in operation, has problems such as public drunkenness, gambling, theft, etc., the City can suspend or revoke the operator's permit after conducting a hearing. Such a decision could be appealed.

ENVIRONMENTAL REVIEW:

An Initial Study and Negative Declaration were prepared and adopted by the City Council on December 18th, 2006. An addendum has been prepared for this initial study which the adoption of the amendment to Title 17 specifying how the City implements Section 65915 involves no potential significant impacts.

GENERAL PLAN CONSISTENCY:

The proposed revisions to the Zoning Code are consistent with the following objectives and policies of the City's General Plan.

The amendments to the Historic Preservation Chapter are supported by Objective 6 in the Land Use Element. This object is as follows: Objective 6 – Historic Preservation: Promote preservation of historically and architecturally significant buildings and revitalization of traditional neighborhoods and commercial areas. The proposed amendments are designed to ensure better protection of neighborhoods.

FISCAL IMPACT:
The recommended City FY-08 operating budget will include resources for the City Prosecutor for various investigation and background searches.

Respectfully Submitted,

CYNTHIA J. KURTZ
City Manager

Prepared by:

DENVER E. MILLER
Principal Planner

Reviewed by:

RICHARD BRUCKNER
Director of Planning and Development

LIST OF ATTACHMENTS

ATTACHMENT A - ADDENDUM TO INITIAL STUDY

ATTACHMENT B - CITY COUNCIL REPORT OF JULY 31, 2006

ADDENDUM TO THE INITIAL STUDY FOR THE SERIES II ZONING CODE AMENDMENTS

The City of Pasadena, as a lead agency pursuant to the California Environmental Quality Act (CEQA), circulated an Initial Environmental Study and Negative Declaration for the Series Ii Code Zoning Code Amendments for public review between October 19, 2006 and November 8, 2006. Since this date, the City has revised this Initial Environmental Study as shown below in strikethrough-underline format. None of these revisions trigger the need to recirculate the Initial Environmental Study and Negative Declaration.

Section I.8 (Project Description): on Page 1 has been revised as follows:

1. Description of the Project: These Zoning Code amendments include the following changes: modification of the standards for home occupation permits and recycling centers. A requirement for a conditional use permit for restaurants and take-out restaurants that have an exterior walk-up window. The amendments include changes to the definition of boarding houses to regulate unlicensed care facilities, as well as Amendments to Title 8 of the Municipal Code to establish local permit procedures/criteria for boarding houses. The amendments also include changes to the fence graphic, add a graphic for accessory structures, make minor amendments which are intended to clarify existing provisions as well as remove inconsistencies to the historic preservation provisions and amend the sign ordinance such that eight inch lettering on an awning valance does not count as one of the two allowable wall signs. The amendments will modify the threshold for the public art requirement, codify interpretations regarding appeals, add a footnote for transition housing in the RS district, amend the definition of commercial land uses to include transportation, communications and utility uses and clarify the density bonus provisions. A number of other corrections are proposed as well as codification of Zoning Administrator interpretations.

CEQA Requirements

The City Council is given the responsibility of approving or denying the proposed project. Pursuant to CEQA, the City of Pasadena is the Lead Agency, and as part of their decision making process, the Lead Agency must consider the project's environmental consequences.

In accordance with CEQA, if changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the Lead Agency shall determine whether to prepare a Subsequent Environmental Impact Report (EIR), a Subsequent Negative Declaration, an Addendum to the Negative Declaration, or no further documentation (State CEQA Guidelines Section 15162[b]).

State CEQA Guidelines Section 15162(a) identifies when additional CEQA documentation requiring public review is required. This section states:

> When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR Shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
>
> (1) Substantial changes are proposed in the project which will require major

revision of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

State CEQA Guidelines Section 15164(b) identifies when an Addendum to an adopted Negative Declaration is appropriate: This section states:

> An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

Environmental Considerations

Staff analyzed the additional changes to the project description and determined that no environmental impacts would occur as a result of the code amendments to the modify the definition of Boarding Houses and to establish local permit procedures/criteria to establish a Boarding House use. There is no new development proposed under this project and no change to the Zoning, General Plan or land use designations.

Therefore, the proposed changes to the project description would not trigger any of the conditions identified in State CEQA Guidelines Section 15162 that require additional CEQA documentation to be circulated for pubic review, and this addendum clarifies the changes to the project that occurred after the Initial Study and Negative Declaration were certified.

Therefore, the proposed changes to the project description would not trigger any of the conditions identified in State CEQA Guidelines Section 15162 that require additional CEQA documentation to be circulated for pubic review, and this addendum clarifies the changes to the project that occurred after the Initial Study and Negative Declaration were certified.

Prepared By: Jennifer Paige-Saeki
Jennifer Paige-Saeki, Senior Planner

Date: 1/25/07

Agenda Report

TO: CITY COUNCIL Date: July 31, 2006

FROM: CITY ATTORNEY

SUBJECT: REGULATION OF GROUP HOMES IN RESIDENTIAL DISTRICTS

RECOMMENDATION

It is recommended that the City Council direct the City Attorney to prepare an ordinance amending the Pasadena Municipal Code to regulate group homes in residential districts to the extent allowed by law.

BACKGROUND

Recently the City has received complaints regarding the incompatibility and impacts of various kinds of group homes in residential zones. These are homes in which persons rent individual rooms for residential purposes. These homes can take the form of boarding houses, sober living facilities, residential care facilities, board and care homes and similar uses. Although certain group type homes are licensed and regulated by the State, others are not licensed and we believe that they may be regulated through local legislation by amending provisions in the Pasadena Municipal Code regarding boarding homes.

MUNICIPAL CODE PROVISIONS

Pasadena Municipal Code ("PMC") Section 17.80.020 defines a "boarding house" as follows:

> "A dwelling unit or part of a dwelling unit in which, for compensation, three but no more than five rooms are provided for lodging. Meals may be provided; however, no more than one kitchen is allowed. Residents in a boarding house are not a family or single housing unit."

Pursuant to PMC Section 17.22.030, boarding houses are not allowed in RS-1 through RS-6; RM-12; and RM-16 zoning districts. Boarding houses are permitted in RM-32 and RM-48 zoning districts. There has been some question whether various types of group homes (such as sober living facilities or homes for the disabled) can fall within the definition of a "boarding house" in local codes.

The Attorney General has opined 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 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 lease, 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." 86 Ops.Cal. Atty. Gen. 30 (2003)

The definition of a "boarding house" in the Attorney General's Opinion referenced above is more detailed than the City's definition and it applies to three or more rooms for rent under separate rental agreements in an R-1 zone. That A.G. Opinion also points out that local laws would have to be consistent with state laws prohibiting certain group homes from being considered "boarding houses"(i.e., various provisions of the State Health and Safety Code). However, those statutes relate to facilities "licensed" by the State and we believe it is therefore possible for the City to regulate the unlicensed facilities.

By establishing provisions in our Code consistent with the Attorney General's Opinion, the City will be able to encompass and regulate *unlicensed* group home type facilities, boarding houses, and other residential properties in which individual rooms are rented without consideration as to who the renters are, to preserve the residential character of neighborhoods. In providing such regulations, the City should also consider providing a mechanism for consideration of those who are protected under relevant federal laws regarding those with disabilities. An ordinance also would have to be consistent with state law prohibiting certain group homes from being treated differently from single family residential uses. However, these state laws relate to facilities "licensed" by the State of California, and it may be possible to regulate the unlicensed facilities.

CALIFORNIA LAW

There are at least two California statutory programs which regulate and license group living facilities. The first is the California Community Care Facilities Act, California Health and Safety Code Section 1500 et seq. The facilities regulated thereunder are licensed by the State and are not intended to be regulated through this proposed amendment, as such regulation is preempted by the State. This Act, however, specifically excludes "recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision". [Health and Safety Code Section 1505(I).]

Clearly state-licensed group homes of six or fewer residents would not be impacted by a law restricting boarding houses in residential zones. State law is quite explicit in exempting such facilities from local definitions of "boarding houses" or " rooming houses," and in prohibiting municipalities from imposing various kinds of zoning clearances. The following language is typical of such statutes:

> **Ca. Health and Safety Section 11834.23**
>
> ...
>
> For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves ***six or fewer persons*** shall not be included within the definition of a boarding house, rooming house, ...or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a family dwelling.
>
> ...
>
> 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*** which is not required of a family dwelling of the same type in the same zone.

Whereas, a licensed group home serving six or fewer residents could not be considered a "boarding house" or "rooming house," no state provisions exempt **unlicensed** group homes from Pasadena's zoning requirements.

The second statutory framework is the California Department of Corrections Alcohol and Drug Programs. This program provides for group living homes for alcohol and drug abuse recovery or treatment facilities. Such licensed facilities that provide "24 hour residential services" and have 6 or fewer persons must be treated under zoning laws as a single family residence. (Health and Safety Code Section 11834.23.) In order to provide "24 hour residential services," these facilities must include certain counseling services.

See Health and Safety Code Sections 11834.02(a), 11834.26, and 11834.30.

The proposed ordinance amendment does not seek to regulate such *licensed* facilities (as they would be exempt from local regulation) but only those which are not licensed. Accordingly, the proposed ordinance amendment would not be in conflict with State law.

GROUP HOMES WITH MORE THAN SIX RESIDENTS

Large group homes and alcoholism and drug abuse recovery or treatment facilities serving more than six (6) persons are not preempted by state law. Consequently, the City can enact regulations pertaining to these group homes.

FEDERAL LAWS

The federal Fair Housing Act (42 USC Section 3601 et seq) ("FHA") prohibits a local government from enacting zoning legislation that excludes or otherwise discriminates against protected persons. Under the Act it is unlawful to utilize land use policies or actions that treat groups of persons with handicaps less favorably than groups of non-disabled persons. The U. S. Supreme Court has held that alcoholism and drug addiction are disabilities for purposes of the FHA. See *City of Edmunds v Oxford House* (1995) 514 U.S. 725. Similarly, the Americans with Disabilities Act prohibits governmental entities from implementing or enforcing housing policies in a discriminatory manner against persons with disabilities.

Although it is acknowledged that certain types of group homes may rent rooms to persons who are deemed disabled, the proposed amendment does not regulate or control who is renting the rooms but rather it is the renting of rooms in homes located in single family residential districts that is being regulated, across the board. Such regulation would apply to *all* who rent rooms without regard as to *who* is renting the room and there is no differential treatment based on a person's status. Therefore, there is no intent to discriminate against individuals based on their disability. The FHA does require that a public entity make "reasonable accommodation" in land use and zoning policies and procedures where such accommodation may be necessary to afford persons with handicaps an equal opportunity to use and enjoy housing. Accordingly, such procedures should be established.

OTHER CONCERNS

The California Supreme Court has ruled that a local government may not limit the number of unrelated persons that want to live together. See *City of Santa Barbara v Adamson*

(1980) 27 Cal 3d 123. Neither can a local government limit the occupancy of a house to a number less than that set forth in the Uniform Housing Code. See *Briseno v City of Santa Ana* (1992) 6 Cal App 4th 1378. Accordingly, the ordinance amendment must focus and regulate the conduct, i.e., the renting of rooms, not the number of tenants or occupancy.

Generally, whatever approach the City undertakes to respond to community concerns regarding group homes in residential zones, the City should keep in mind the Fair Housing Act and insure that regulations that are imposed are not so onerous as to have a disparate impact. As one speaker before the League of California Cities recently stated: "A city should also be mindful of the overall state and federal policies favoring assimilation of the handicapped into local community environs and that cities must reasonably accommodate when such accommodations may be necessary to afford equal opportunity for handicapped persons to use and enjoy a dwelling."

It is our opinion that while not free from doubt, applying the proposed regulations for boarding houses to unlicensed group home facilities should survive a legal challenge, especially if those with disabilities protected under federal laws are provided an opportunity for accommodation under the City's codes.

ENVIRONMENTAL IMPACT

The proposed ordinance amendment would have no environmental impact and would not be subject to CEQA. CEQA Guidelines Section 15061.

FISCAL IMPACT

The proposed ordinance could have a fiscal impact in relation to staff time and in fees depending on whether it is determined that a rooming house use should require a Conditional Use Permit.

Respectfully submitted,

MICHELE BEAL BAGNERIS
City Attorney

Prepared by:

Frank L. Rhemrev
Assistant City Attorney