

OFFICE OF THE CITY ATTORNEY / CITY PROSECUTOR

TO: City Council

FROM: Michele Beal Bagneris, City Attorney *MBB*

DATE: June 14, 2007

RE: Clarification Regarding Ordinance to Exclude "Residential Care Facilities for the Elderly" From Payment of the Full Residential Impact Fee

RESPONSE TO QUESTION RAISED AT FIRST READING OF ORDINANCE

At its June 11, 2007 regular meeting, a question was raised regarding the proposed amendments to Chapter 4.17, of whether the structure of the residential impact fee and its exclusion of certain senior care facilities from payment of the full fee created a loophole by which all senior care facilities could escape payment of the full fee.

The statutory scheme, and City review process, do not allow for such a loophole.

Section 4.17.030 already provides that certain senior care facilities are exempt from payment of the full fee, as follows:

D. "Skilled nursing unit," for purposes of this Chapter 4.17 only, is defined as a residence within a life/care facility which is reserved and equipped to provide 24-hour medical care to residents who cannot take care of themselves because of physical, emotional, or mental conditions. This care must be supervised by a doctor and regulated by the State of California Health Department. **A skilled nursing unit differs from an independent living unit within a life/care facility in that it has medical staff available onsite 24 hours per day.**

This new ordinance adds a new category of senior care facilities to the exemption from payment of the full fee, as follows:

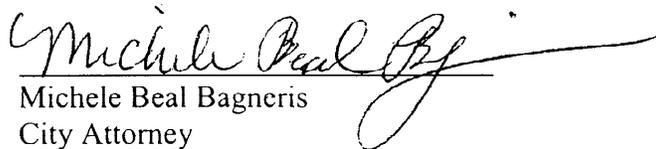
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“F. ‘Residential care facility for the elderly’ is defined as a facility reserved for and equipped to provide 24-hour care to residents who cannot take care of themselves because of physical, emotional, or mental conditions, wherein the care is provided pursuant to order of the resident’s physician, with nursing staff available on-site, 24 hours per day, and is regulated by the State of California Department of Social Services. **Excluded from this definition are any units within the facility which are independent living units.**”

Note the bold language in each section, which makes it clear that independent living units within each facility must still pay the full fee. When reviewing plans for determination of the proper fee, City staff has been trained to look carefully at the level of care provided in each unit, regardless of the level of care labeled by the developer. In at least one instance already, staff has conferred with a senior care facility developer to identify those units within the facility that are subject to the full fee, even where other units qualify for the reduced fee.

Accordingly, through careful drafting of the language in Section 4.17.030, and through awareness of the issue at staff, senior care facilities are paying the fee appropriate for the unit.

Respectfully submitted,


Michele Beal Bagneris
City Attorney

Prepared by:


Theresa E. Fuentes
Deputy City Attorney

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.17 OF THE PASADENA MUNICIPAL CODE RELATING TO DEFINITIONS APPLICABLE TO RESIDENTIAL IMPACT FEES

The People of the City of Pasadena ordain as follows:

SECTION 1. Title 4, Chapter 4.17, Section 4.17.030, is amended by adding a new

Paragraph F as follows:

“F. ‘Residential care facility for the elderly’ is defined as a facility reserved for and equipped to provide 24-hour care to residents who cannot take care of themselves because of physical, emotional, or mental conditions, wherein the care is provided pursuant to order of the resident’s physician, with nursing staff available on-site, 24 hours per day, and is regulated by the State of California Department of Social Services. Excluded from this definition are any units within the facility which are independent living units.”

SECTION 2. Title 4, Chapter 4.17, Section 4.17.050, Paragraph 4.17.050.F(1) is amended as follows:

“Notwithstanding any other provision contained in this chapter, new residences which are rented or sold to persons and families of low or moderate income (as defined in Health and Safety Code Section 50093) pursuant to the city’s inclusionary housing regulations, or which are skilled nursing units, or is a residential care facility for the elderly, or which are student housing residences, shall be assessed a fee of \$756 per unit. This fee may annually escalate at the same percentage as the consumer price index.”

SECTION 3. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published in full text.

SECTION 4. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2007.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its regular meeting held on _____, 2007, by the following vote:

AYES:

NOES:

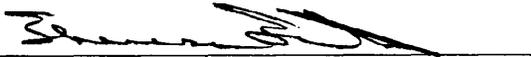
ABSENT:

ABSTAIN:

Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:



Theresa E. Fuentes
Deputy City Attorney