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**
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> ...
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> 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.
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> ...
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> 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,

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