

Agenda Report

TO: CITY COUNCIL

DATE: NOVEMBER 30, 1998

FROM: CITY MANAGER

SUBJECT: MODIFICATION OF ZONING CODE AMENDMENTS RELATED TO HOUSING ISSUES AS RAISED BY THE HOUSING COALITION (FAIR HOUSING CODE AMENDMENTS)

CITY MANAGER'S RECOMMENDATION: It is recommended that after a public hearing, the City Council approve the following modifications to the previously approved housing amendments:

1. Require a minor conditional use permit for emergency shelters;
2. Eliminate any amendment to the use classifications, residential care, general, and residential care, limited;
3. Allow transitional housing to be a permitted use in multifamily zoning districts only and be treated the same as a boarding house;
4. Adopt overconcentration guidelines of 300 feet for reviewing conditional use permits for institutional uses as shown in Exhibit 2 within the Northwest Community Plan Area;
5. Exempt single room occupancy residential uses emergency shelters from the hours of operation restrictions.

EXECUTIVE SUMMARY:

The proposed amendments were approved by the City Council last year after a public hearing. The City Council adopted all of the Planning Commission's recommendations. However, through the process of codifying these amendments, staff identified several issues. Staff informed the City Council of these issues and then took them back to the Planning Commission for reconsideration. The Planning Commission reviewed the modifications and their recommendation is contained in Exhibit 1. Approval of staff's recommendation in this report will result in the following changes: 1) Homeless shelters will require a minor conditional use permit rather than being a permitted use within commercial and industrial zoning districts; 2) The distinction between residential care, limited (6 or less persons) and residential care, general (7 or more persons) will remain unchanged. The distinction between the uses will not be based upon the number of habitable rooms; 3) Transitional housing (which includes battered women's shelters) will be treated the same as a boarding house and be permitted within those zoning districts that allow boarding houses (RM-32 and RM-48 districts). This use will not be treated like a single-family use and will

not be permitted in single-family zoning districts; 4) The issue of overconcentration of institutional uses in the Northwest will be handled by the City Council adopting guidelines for overconcentration rather than adopting an overlay zoning district that requires a conditional use permit for residential uses with 7 or more habitable rooms; and 5) Single room occupancy residential uses that are permitted in CG zoning districts will be exempt from the hours of operation.

This report does not effect the remaining amendments approved by the City Council last year. These amendments include: 1) Eliminating conflicts between the State Housing Code and the Zoning Code regarding the number of persons that can occupy a residential unit; 2) Creating a special variance process for requests that are the result of a person's disability; 3) Placing a definition of "disability" within the zoning code; 4) Adding new use classifications to the zoning code that better distinguish between various housing types, these include: dormitories, boarding houses, sororities and fraternities, transitional housing, and emergency shelters; and 5) Eliminating housing uses from the use classification "charitable institutions."

BACKGROUND:

On March 17, 1997, the City Council approved zoning code amendments that were intended to bring the City's zoning code into conformance with the 1988 Fair Housing Act. The amendments had been reviewed by the Planning Commission and were the result of issues that were raised by the Fair Housing Coalition. Since the approval of the amendments, staff has been working with the City Attorney's office to codify the approved amendments. In the process of codifying these amendments a variety of issues have arisen. Some of these issues were not fully addressed at the Planning Commission or City Council public hearings. Staff has informed the City Council of the issues that have arisen and advised the Council that specific issues would be taken back to the Planning Commission to resolve and clarify. The Planning Commission reviewed the following changes at its September 23rd meeting. It voted to recommend to the Planning Commission all of the changes below except the proposed amendment regarding emergency shelters. The Planning Commission voted to recommend allowing emergency shelters by right because they considered an emergency shelter to be a similar use to hotels and motels and should be permitted in the same zoning districts as hotels and motels. A letter from the Planning Commission's detailing as to why it is recommending approval of this amendment is contained in Exhibit 1.

1. EMERGENCY SHELTERS.

At present emergency shelters are required to obtain a conditional use permit as part of the use classification "charitable institutions." In the amendments approved last year, the City Council approved a recommendation to allow this use by right, that is without a use permit. The objective of the approved amendment was to treat "emergency shelters" as a separate use from other "charitable institutions." In the approved amendment, "emergency shelters" will be a permitted use in any commercial district that permits hotels and motels. The intent of this amendment was to treat "emergency shelters" the same as hotels and motels because it was thought that the uses were similar and that the impacts of the uses were the same.

In the codification of this amendment, staff became aware that by codifying this amendment, the City would be allowing “emergency shelters” in the Northwest commercial zoning districts by right. This would appear to conflict with policy 14.6 of the General Plan. Policy 14.6 of the General Plan states:

Institutional uses that are permitted in the Zoning Code will require a Conditional Use Permit. A finding of consistency with the General Plan must be made for approval of a CUP, and may not be made if there is an over concentration of a particular use in an area.

Although the General Plan does not define “institutional uses,” staff has interpreted this to mean uses that are “public, semi-public” as defined within the Zoning Code. Under the current code, “emergency shelters” are considered an institutional use as part of the use classification “charitable institutions;” the new use would continue to be an institutional use under the revised code amendments. In speaking with the City Attorney’s office regarding this issue, it was their opinion that the unique nature and impacts of “emergency shelters” are significantly different from hotels and motels justifying different treatment for zoning purposes. “Emergency Shelters” have different operating conditions from a hotel or motel. “Emergency shelters” are emergency in nature and require a high level of supportive services in comparison to a hotel or motel, and “emergency shelters” are likely to have more pedestrian traffic and less auto traffic than a hotel or motel. “Emergency shelters” could be considered less compatible with adjacent residential areas. In conclusion, “emergency shelters” could be a conditionally permitted use and did not have to be treated the same as the use hotels and motels.

It is recommended that emergency shelters be a minor conditionally permitted use in commercial districts. This would be in the CG, IG districts and those commercial subdistricts of the downtown. This would provide greater protection to the Northwest and continue to implement the General Plan policies.

2. RESIDENTIAL CARE.

The code amendment regarding residential care approved last year would distinguish between “residential care, limited,” and “residential care, general” on the basis of habitable rooms rather than the number of inhabitants of the facility. Residential care uses are facilities that provide twenty-four hour nonmedical care for persons in need of personal services, supervision or protection. Such facilities are licensed by the State. Currently, state law defines the differences between the two uses based on the number of persons. “Residential care, limited” is 6 persons or less while “residential care, general” is 7 or more persons. This distinction in State law is because cities are required to treat facilities of 6 or less persons as a single-family residential use. A city cannot require a conditional use permit for a “residential care, limited” use unless it requires it for single-family uses.

Under the code amendment approved last year, this distinction was to be based upon the number of habitable rooms. If the use has 8 or more habitable rooms then it is classified as “residential care, general” facility and requires a conditional use permit. However, if the use has 7 or less habitable rooms (regardless of the number of occupants) it is treated the same as a single-family

residential use.

Changing the distinction between these uses by basing it upon the number of habitable rooms is likely preempted by State law. For example, if a residential care facility were to be established that had more than 7 habitable rooms but 6 or fewer persons within the facility, under State law this use would be a permitted use within residential districts. Under the approved amendment this would be a conditionally permitted use in multifamily districts and not permitted at all in single-family districts. Thus a use which under State law is permitted becomes not permitted under the approved zoning code amendments. This approved amendment was not the result of issues raised by the Fair Housing Coalition, but was included in the housing amendments because of concerns about basing the distinction upon the number of persons. This specific amendment was not necessary in order to enact the overall approved code amendments or to bring the City in Compliance with the 1988 Fair Housing Act. The City Attorney's office has advised staff that the current distinction is based upon State law and thus is defensible.

It is staff's recommendation that this amendment be eliminated so as not to place the City in potential conflict with State law.

3. TRANSITIONAL HOUSING.

In the zoning code amendments approved last year it was proposed to have a new use classification entitled, "transitional housing." Currently, transitional housing is included within the use classification, "charitable institutions." Transitional housing is a facility that provides housing at no cost for individuals in immediate need of housing in which residents stay longer than overnight. Such housing may include support services such as medical, employment and housing counseling. It is different from emergency shelters in that it is intended to provide housing on more than an overnight basis. However, it is different from a boarding house in that it is operated by a non-profit organization. The intent of the approved code amendment was to treat transitional housing as a house use not as an institutional use.

With the approved code amendments, transitional housing becomes a separate use and "charitable institutions" has a much narrower definition that includes soup kitchens and food banks. The approved code amendment would allow transitional housing in all zoning districts including single-family zoning districts. This amendment has raised concerns with the staff as it was being codified. A question arose as to whether transitional housing is a single-family residential use or is it more like a multifamily use.

As part of this code amendment, there will be a deletion of the current use classification "group residential" and replacement of it with more specific use classifications that clearly define the uses. The new uses would be: fraternities and sororities, boarding houses, and dormitories.

Fraternities and sororities, boarding houses and dormitories are considered multifamily uses as they are permitted only within multifamily zoning districts. As staff reviewed these new use classifications, "transitional housing" appeared to be most similar to a boarding house. The only difference between these uses is that a boarding house operates on a profit basis while transitional housing is operated by a not-for-profit organization.

The intent of the zoning code amendments approved last year were to treat “transitional housing” the same as a single-family use. “Transitional housing” was seen as not all that different from a single-family use. In staff’s opinion, “transitional housing” is more similar to a boarding house and is a multifamily use. Both a “boarding house” and “transitional housing” have residents that change over a relatively short period of time. Additionally, “transitional housing” is likely to have more traffic due to counseling services and other social services offered to the residents.

Staff recognizes that this particular code amendment is simply a policy issue. The City Council may choose to treat transitional housing the same as a single-family residential use or it may choose to treat it the same as a board house. It would be staff’s recommendation that transitional housing be treated the same as a boarding house and be permitted in those districts in which boarding houses are permitted. These districts would be those that have a density of RM-32 (32 units per acre) or RM-48 (48 units per acre) or greater. Thus transitional housing under this recommendation would not be allowed in the RM-16 and RM-12 districts because boarding houses are not permitted in districts with a density less than RM-32.

4. OVERLAY DISTRICT.

The approved amendments creates a new overlay district that requires a conditional use permit for residential and specific institutional uses that expand to more than 7 habitable rooms. The intent of this overlay is to prevent the overconcentration of certain types of uses particularly within the Northwest sector of the City and was based upon policies 14.5 and 14.6 of the General Plan’s Land Use Element. One of the issues with this approach is that it addresses the impacts of these uses but does not address their overconcentration. It does not assist in defining overconcentration and establishing guidelines or thresholds for its determination. Additionally, it requires a conditional use permit for every residential unit and quasi-residential unit that expands to have more than 7 habitable rooms. While staff identified that this proposal would not result in many property owners having to apply for a conditional use permit review, staff had concern that this approach did not fully address the issue of overconcentration.

Staff’s recommendation would be to not proceed with the approved overlay zoning district. Instead, staff recommends defining which uses are of concern in terms of overconcentration and then establish guidelines for approving conditional use permits that factor in overconcentration.

Determining the Uses

In developing a list of “institutional uses” that would be subject to the overconcentration guidelines, staff turned to the General Plan and in particular policy 14.5. The uses that are listed as prohibited in the Northwest or considered sensitive as listed in General Plan Policy 14.5, are:

Group residential/residential hotel, single-room occupancy, adult day care general, convalescent facilities, detention facilities, hospitals, maintenance and service facilities and residential care, general.

This list includes both “public, semi-public uses” as well as “residential” uses. As mentioned

earlier, the use classification, group residential/residential hotel” is being replaced by new use classifications: boarding houses, fraternities and sororities, transitional housing, and dormitories. Since these are residential uses, staff does not recommend that they be uses subject to the overconcentration guidelines. Staff recommends the following “institutional” uses as subject to the overconcentration guidelines: convalescent facilities, detention facilities, hospitals, maintenance and service facilities, residential care, general and charitable institutions.

Guidelines for Evaluating Overconcentration

Staff recommends that to best implement the General Plan Policies that the City Council adopt guidelines for reviewing of conditional use permit for the above uses. These guidelines would allow staff to review the establishment or the expansion of one of the above uses to determine if there are similar uses within the area. If similar uses did exist, then staff would recommend denial of the application. Staff recommends that when a conditional use permit application is proposed, there would be a review of the application in terms of the above uses that are within 300 feet of the use. Staff has chosen 300 feet because this is the same requirement that the State uses to require uses for institutional uses such as residential care facilities.

5. HOURS OF OPERATION.

As part of these housing amendments the use classification, “single-room occupancy residential” is being classified as a commercial use rather than a “residential use” so that it is subject to the commercial development standards not the residential standards. “Emergency shelters” are also being added to the commercial use classifications. Because of this, these uses are now subject to the hours of operation limitations for CG zoning districts; they are not subject to the hours of operation requirements under the present code. Because it is impossible for these uses to not operate during the night because they have people staying overnight, staff is recommending that these uses be exempt from the hours of operation.

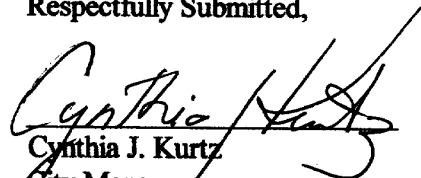
GENERAL PLAN CONSISTENCY: The proposed amendments have been previously analyzed for consistency with the General Plan. The amendments were found to be consistent with policies 15.1 – Sizes and Types; Policy 15.3 – Equitable Distribution; Policy 15.4 – Family Housing and Policy 15.5 – Shelter Beds. The code amendments will provide greater housing options in size and location for a variety of underserved individuals throughout the city. The amendments were also consistent with General Plan policies 13.1 – Support of Organizations; Policy 13.2 – Commitment and Policy; and Policy 13.5 – Anticipate Needs. The City and the Housing Coalition had worked together to resolve issues to improve the quality of life for Pasadena residents now and in the future.

ENVIRONMENTAL ANALYSIS: An initial environmental study recommending a negative declaration was adopted for these code amendments by the City Council on March 17, 1997.

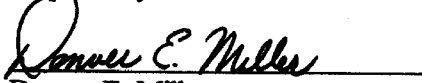
WORKLOAD IMPACT: The workload impact of these changes will be less than what was originally approved. Staff will use guidelines to implement the Northwest Policies and apply them to only those institutional uses as outlined in this report. Residential uses that expand by more than 7 rooms will not be required to get a conditional use permit.

FISCAL IMPACT: The fiscal impact of these code amendments was analyzed back on March 17, 1997. However, the need for conditional use permits for residential uses that expand by more than 7 rooms will not be necessary. Therefore, it is anticipated that there will not be an increase in the number of conditional use permits and the fees that are generated by such use permits.


Respectfully Submitted,


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