



San Rafael

Agenda Item No: 4

Meeting Date: March 7, 2011

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

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/s/ RE / LG**

City Manager Approval: /s/ JS

SUBJECT: Consideration of an Ordinance of the City Council of the City of San Rafael Adopted as an Urgency Measure Establishing a Temporary Moratorium on the Establishment and Operation Within the City of San Rafael of Certain Large Group Homes that are Transitory in Nature, and Declaring the Urgency Thereof.

RECOMMENDATION:

Adopt the urgency ordinance.

BACKGROUND:

At its regular meeting on February 22, 2011, and in numerous oral and written communications, the City Council and staff have received messages of concern and inquiry regarding two proposed new "Clean and Sober" homes in residential neighborhoods of the City. The proposed homes are each intended to operate as businesses that house, on a transitory basis, seven (7) or more recovering drug or alcohol addicts at any given time in a supportive living environment.

The operators of the two homes have advised that they will not offer treatment services to tenants/clients and are not required to be licensed by State law. Although the City's zoning ordinance regulates "residential care facilities, large," such facilities are different from the proposed Clean and Sober homes, as they are licensed by the State and the operators provide care and services to tenants/clients. (S.R.M.C. §14.03.030) The Director of Community Development, in consultation with the City Attorney, has determined that the City's zoning ordinance currently does not provide for an unlicensed large group home use, be it a Clean and Sober home, or any other type of group home. Therefore, the proposed unlicensed large group homes would be prohibited under the City's current zoning ordinance.

FOR CITY CLERK ONLY

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Disposition: _____

Based on staff's research, unlicensed large group homes could cause adverse impacts including, but not limited to, local parking impacts, increased traffic, noise impacts, outdoor lighting and outdoor gathering impacts, sanitation and litter impacts, etc. In addition, any such use would implicate existing building and fire code standards. Staff has received approximately 150 emails and many letters from concerned residents objecting to the opening of the two proposed Clean and Sober homes. Some of the letters are attached to this staff report for the Council's information.

ANALYSIS:

The City's zoning ordinance requires that the City foster harmonious and workable relationships among land uses and reduce or remove negative impacts caused by inappropriate location of uses. Therefore the City owes a responsibility to all interested persons -- including the proposed business operators, the potentially affected neighborhoods, and the public at large -- to (1) thoroughly analyze the relevant statutory and case law; and (2) conduct a comprehensive analysis of the City's zoning ordinance to determine how and where an unlicensed large group home use can be permitted within the City.

The City's authority to impose land use regulations on the proposed use is governed by a complex scheme of state and federal statutory and constitutional laws, including the federal Fair Housing Act, applicable to group homes for the disabled as well as to the regulation of unrelated adults living together in general. For example, certain provisions of the law encourage local permitting of sober living facilities in order to promote the recovery of substance abusers and foster their positive and productive integration into society.

The use of land for purposes of operating an unlicensed large group home could implicate numerous provisions contained in the current City zoning ordinance, including the regulations and definitions governing: "Bed and Breakfast Inn," "Boarding House," "Club," "Day Care Facility," "Dwelling Unit," "Residential Care Facility, large," "Residential Care Facility, small," "Household," and "Handicapped." The planning and legal work necessary by City staff to conduct a thorough review of federal and state law and the City's existing zoning regulations, will be considerable.

To afford staff the time necessary to devote to this project, staff recommends that the Council adopt an interim urgency ordinance (moratorium) temporarily prohibiting the operation of new unlicensed large group homes within zoning districts zoned for residential use in the City of San Rafael. Although staff has concluded that such a use currently is not permitted, the moratorium is recommended as a precaution in the event the City is challenged on this point. The proposed moratorium would prohibit during its term the opening and operation of any unlicensed large group home, as defined in the ordinance, in any zoning district within the City zoned for residential use. As proposed, the temporary moratorium would not apply to such homes that are already open and occupied by seven (7) or more tenants/clients, not including on-site managers/operators, on or before the date of adoption of the moratorium, i.e., March 7, 2011, as demonstrated by a notarized declaration under penalty of perjury certifying to such occupancy and submitted to the City upon written demand.

Following the process of legal analysis and planning review, City staff anticipates recommending that the Planning Commission and City Council consider revisions to various zoning ordinance provisions, including the adoption of new regulations governing the location and operation of unlicensed large group homes.

The proposed moratorium must be adopted by a vote of at least four-fifths (4/5) of the members of the Council, and will become effective immediately, expiring 45 days from adoption. If adopted, then, no later than April 11th, the City must publish a status report regarding staff's work on this project pursuant to Government Code Section 65858(d). At the April 18th City Council meeting, it is anticipated that the

Council may be invited to consider whether to extend the moratorium to allow for further research and analysis to be performed by staff.

It is anticipated that both the proposed operators and the community may inquire as to how the City would respond should the proposed use begin operation during the period of a temporary moratorium. In general, it is difficult for staff to provide a meaningful response to speculative "what if" scenarios. Nevertheless, should any operator knowingly violate the clear directive set forth in a temporary moratorium, it is likely that staff would initiate code enforcement proceedings to abate the use.

FISCAL IMPACT:

There will be no direct fiscal impact of the Council's adoption of the attached moratorium ordinance, other than the commitment of City Attorney and Planning staff time to the study and implementation of applicable law.

OPTIONS:

1. Adopt the urgency ordinance.
2. Do not adopt the urgency ordinance, and direct staff to return to the Council with a non-urgency ordinance or other options for addressing the issues raised by the proposed unlicensed large group homes.

ACTION REQUIRED:

Adopt ordinance by at least a four-fifths (4/5) vote.

ATTACHMENTS:

Ordinance
Correspondence from public (partial)