



UNLICENSED GROUP HOMES

Community Meeting

July 27, 2011



INTRODUCTION

- **Purpose of Meeting**
 - Information only/decisions
- **What is to be covered**
- **Opportunities for Questions/Comment**
- **What measures are being considered**
- **Next Steps- future meetings**



CURRENT CITY ZONING REGULATIONS

- Definitions for uses and terms
- Regulations for Single-family residential zones (including home occupations)
- Regulations for Residential Care Facilities, Day Care Facilities and Group Homes (licensed and unlicensed)
- Provisions for Reasonable Accommodation (for disabled)



TYPES OF GROUP HOMES

- Residential Care Facility (small & large)
- Day Care Facility/Home (small & large)
- Boarding House
- Club (fraternity/sorority)
- Emergency Shelter(temporary/permanent)
- Transitional and Supportive Housing
- Sober Living Residence (SLE)



LICENSED VS UNLICENSED GROUP HOMES

LICENSED

- Licensed by State of California & City
- 6 or fewer= permitted by right, preempted from local zoning laws
- 7 or more – either permitted or require a City Use Permit
- Residential Care for Disabled – permitted, no Use Permit (small and large)



LICENSED VS UNLICENSED GROUP HOMES

UNLICENSED

- No State licensing
- Some not permitted in certain residential zoning districts or require Use Permit
- Some considered a business requiring a business license
- Some unlicensed homes not addressed



RESEARCH - GROUP HOMES IN SAN RAFAEL

■ Residential Care Facility (small/large)	65
■ Day Care Facility/Home (small/large)	40
■ Boarding House	1
■ Licensed Group Home (adolescent)	1
■ Fraternity/Sorority (Clubs)	0
■ Other:	
Associated with licensed treatment program/agency	8
Independent residences	9



RESEARCH – GROUP HOMES IN MARIN (% in San Rafael)

■ Residential Care Facility (small/large)	173 (37)
■ Day Care Facility/Home (small/large)	133 (30)
■ Boarding house	1 (100)
■ Licensed Group Home (adolescent)	3 (30)
■ Fraternity/Sorority (Clubs)	0 (-)
■ Other:	
Associated with licensed treatment program/agency	16 (50)
Independent residences	14 (64)



RESEARCH – REGULATIONS IN BAY AREA CITIES

Surveyed and contacted nine (9) other cities for unlicensed group home regulations and response:

San Mateo

Santa Rosa

Santa Clara

Walnut Creek

San Jose

Redwood City

Petaluma

Fremont

Hayward



RESEARCH – REGULATIONS IN COMPARABLE CITIES

- Few cities have complaints/issues
- Treat small, unlicensed group homes no different than household in a single-family home
- San Mateo- definitions for “transitional” and “supportive” housing
- Santa Rosa - definitions distinguishing “residential care facility” and “residential service facility”



RESOURCES FOR RESEARCH

SEE MEETING AGENDA



FEDERAL & STATE LAWS AFFECTING GROUP HOMES



FAIR HOUSING ACT

- **Part of Civil Rights Act of 1968**
- **Prohibits housing discrimination based on disability**
- **Applies to local land use decisions**
- **FEHA is State parallel law**



DEFINITION- PERSON WITH DISABILITIES

Includes person who has physical or mental impairments that:

- limit one or more major life activities
- is regarded as having that type of impairment
- has a record of that type of impairment



DEFINITION- PERSON WITH DISABILITIES

Includes:

Recovering drug & alcohol user

Excludes:

Current illegal use of or addiction to a controlled substance

Alcohol is NOT considered a controlled substance so alcoholics are considered to be disabled



INTENTIONAL (FACIAL) DISCRIMINATION

Strict Legal Standard

Will be upheld by Court only if:

- Restriction benefits the disabled; OR
- Ordinance responds to legitimate safety concerns, rather than based on stereotypes



COMMUNITY HOUSE V. CITY OF BOISE

9th Circuit Court of Appeals

- Homeless shelter for men only
- Gender/family status facial discrimination
- Court Struck down because:
 - * No benefit to women & children
 - * Not based on legitimate safety concerns regarding mixed sexes



FACIALLY DISCRIMINATORY LAND USE REQUIREMENTS

Examples:

- Spacing Requirements
- Use Permit required for housing for persons with disabilities only
- Special noticing for permits for drug or alcohol rehab group homes



FACIALLY-NEUTRAL ORDINANCES WITH DISCRIMINATORY INTENT

*Actions that are outwardly-neutral but
adopted with discriminatory intent*

Examples:

- Denial of Use Permit for group home serving disabled on grounds of traffic problems
- Evidence shows action actually motivated by discrimination
- Traffic concerns are a mere pretext



DISCRIMINATORY INTENT LEGAL STANDARD

- Discriminatory reason more likely than not motivated City's decision
- Bona fide health & safety justification?
- Court looks at records including:
 - Discriminatory statements by public officials
 - Citizen comments and letters



REASONABLE ACCOMMODATION

*Affirmative duty to modify local
zoning requirements when:*

- Necessary to provide disabled person equal opportunity for home; and
- Does not impose undue financial and administrative burden; nor
- Fundamentally alter City's zoning



REASONABLE ACCOMMODATION

Examples:

- Elevator in side yard setback
- Wheelchair ramp in front yard setback

But Not:

- Large multi-family structure in single-family neighborhood



LICENSED & UNLICENSED GROUP HOMES



LICENSED GROUP HOMES 6 OR FEWER

- Virtually any *licensed* facility
- Must be treated like a single-family home
- Some separation requirements but:
 - No separation requirements for drug & alcohol rehab facilities or facilities for the elderly*



LICENSED GROUP HOMES 7 OR MORE

May require a Use Permit for 7+ residents or clients but:

Psychiatric facilities must be permitted in a zone that permits nursing homes and hospitals



UNLICENSED GROUP HOMES

What might be an unlicensed group home?

- Boarding house
- SLE (Clean-and-Sober Homes)
- Transitional housing
- Supportive housing
- Groups of students and others



UNLICENSED GROUP HOMES

Cannot limit the number of unrelated people living as a household

(Adamson v. City of Santa Barbara)

- What does it mean to live as a household?
- Regulating use versus the occupants



UNLICENSED GROUP HOMES

Cannot limit the building occupancy
below the Building Code limits

(Briseno v. City of Santa Ana)



UNLICENSED GROUP HOMES

Boarding House or Household?

Some tests:

- Physical design; access to common areas
- All on the lease (86 Ops.Att'y Gen.30)
- No limits on time in the residence
- Shared housekeeping & expenses
- Residents select occupants

Regulating the use or occupants?



PLANNING AND ZONING LAWS



EXERCISING LAND USE POWER

*May Not Discriminate Based On:
(Government Code Section 65008)*

- Disability
- Financing or other government assistance
- Intended occupancy by low- or moderate-income

Local government prohibited from treating affordable housing projects different than market rate projects.



HOUSING ELEMENTS



REMOVING ZONING CONSTRAINTS

- Analyzing constraints on housing for disabled
- Adopting reasonable accommodation ordinances



SUPPORTIVE & TRANSITIONAL HOUSING

Some group homes may be considered to be “supportive” or “transitional” housing

Transitional housing is:

- Rental housing
- Stays of at least six months
- Program calls for recirculation of unit to another at a pre-determined time



SUPPORTIVE & TRANSITIONAL HOUSING

Supportive housing is:

- No limit on length of stay
- Linked to on-site or off-site services
- Occupied by either low-income disabled adults, or
- Occupied by individuals with disabilities diagnosed before age of 18



SUPPORTIVE & TRANSITIONAL HOUSING

In Housing Element constraints section:

“Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject to only those restrictions that apply to other residential dwellings of the same type in the same zone.” (G.C. 65583(a)(5))



HOUSING ACCOUNTABILITY ACT (Former Anti-NIMBY Law)



BOTTOM LINE

- Difficult to deny transitional and supportive housing
- In general, transitional and supportive housing cannot be denied or conditioned to make infeasible



CONCLUSIONS

IF LICENSED:

- Six (6) or under must be treated like a single unit
- Use Permit may be required for seven (7) or more



CONCLUSIONS

IF UNLICENSED:

- Is it a single housekeeping unit or another use?
- Is it treated differently than housing for the non-disabled?
- Is it supportive or transitional housing?
- May *always* request a “reasonable accommodation”



WHAT STEPS ARE BEING CONSIDERED?

BOARDING HOUSE vs. HOUSEHOLD

- Revise definitions of:
- “boarding house” (regulated)
 - Exclusions per State law for “supportive” or “transitional” housing“
- “household” (not regulated)



WHAT STEPS ARE BEING CONSIDERED?

BOARDING HOUSE vs. HOUSEHOLD

Distinguishing factors of household:

- Physical design- access to common areas
- All residents on the lease
- No limits on time in residence
- Residents select occupants
- Not a commercial use



WHAT STEPS ARE BEING CONSIDERED?

HOUSING FOR DISABLED

- Treat licensed/unlicensed with 6 or fewer residents same as single-family residence
- Uniform regulations for licensed/unlicensed with 7 or more
- Review reasonable accommodation procedures and revise as needed



NEXT STEPS & SCHEDULE

- Complete research of laws
- Prepare report with recommendations
- Community Meeting (September)
- Public Hearings with Planning Commission and City Council (October-December)



QUESTIONS AND COMMENTS