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July 24, 2008

Council of the City of Los Angeles
Planning and Land Use Management Committee
200 North Spring Street
Los Angeles, CA 90012

Re: Report on Sober Living Homes and Recommended Land Use Controls
Council File No. 07-3427 (Smith/Reyes)

Honorable Members of the Planning and Land Use Management Committee:

On October 24, 2007, Councilman Greig Smith introduced a motion (CF 07-3427), seconded by Councilman Ed Reyes, requesting a report describing the ordinances enacted by Murrieta, Riverside, and other California cities to regulate sober living homes. The motion also requested that the Planning Department and Department of Building and Safety, in consultation with the City Attorney, recommend land use controls that can be enacted citywide to regulate sober living homes.

In response to this request, the Planning Department has undertaken extensive research of existing ordinances, state and federal law, and case law, in preparation of this report. The following highlights our findings and recommendations:

Findings

1. As defined by the California Health and Safety Code, sober living homes provide group living arrangements for persons recovering from alcoholism or drug addiction where the home provides no care or supervision. They are not licensed by the state.
2. The City of Newport Beach, which has the most comprehensive and legally sound ordinance, will become the touchstone for all similar ordinances in California as court cases determine which of its provisions are upheld and which are not.
3. State codes regulating licensed community care facilities and alcohol and drug abuse treatment facilities do not limit the ability of Los Angeles to regulate and restrict sober living homes.



4. Sober living homes can only be regulated as part of a general category of unlicensed group residential homes. A regulation targeted solely at sober living homes would be considered discriminatory and therefore unconstitutional.
5. If an unlicensed group residential home operates as a business in a residential zone then it may be regulated.
6. The state requires that municipalities treat licensed community care facilities and alcohol and drug abuse treatment facilities with six or fewer residents the same as any other single family residence. Such licensed facilities with seven or more residents are subject to local regulation.
7. If a sober living home or any other use causes a nuisance then the community may seek a remedy through the existing, administrative nuisance abatement process, as set forth in the zoning code.

Recommendations

1. Staff recommends that the Planning Department be instructed to prepare a comprehensive, citywide ordinance that regulates licensed community care facilities, licensed alcohol and drug abuse treatment facilities, and unlicensed group residential homes. The ordinance would also regulate unlicensed group residential homes operating as a business in a residential zone.
2. The ordinance would be prepared in accordance with sound zoning principles, the Community Care Facilities Act, state and federal law, and case law.

For further information, please contact Alan Bell of my staff at (213) 978-1322.

Sincerely,



MICHAEL J. LOGRANDE
Chief Zoning Administrator

ML:AB:TR:CC

Attachment

REPORT ON SOBER LIVING HOMES AND RECOMMENDED LAND USE CONTROLS

BACKGROUND

Responding to community concerns, Councilman Greig Smith introduced a motion (CF 07-3427), seconded by Councilman Ed Reyes, requesting a report describing the ordinances enacted by Murrieta, Riverside, and other cities in California to regulate sober living homes; and further requesting that the Planning Department and Department of Building and Safety, in consultation with the City Attorney, recommend land use controls that can be enacted citywide to regulate sober living homes.

The motion states: "Sober Living Homes (alcohol and drug free houses) were intended to provide a supportive environment for people who are recovering from alcohol and drug addiction. These homes provide shelter for individuals who are transitioning between rehabilitation programs and permanent housing. They are often located in single family houses within single family residential zones."

At the Planning and Land Use Management Committee (PLUM) hearing on May 13, 2008, community members testified to problems they have encountered with secondhand smoke, foul language, traffic congestion, parking problems, excessive noise, and overcrowding.

OVERVIEW

For over 30 years, state and federal governments have favored de-institutionalizing persons with disabilities and encouraging their placement in homes in residential neighborhoods. Laws implementing this policy, such as the Community Care Facilities Act of 1973 (California Health and Safety Code Section 1500), have been upheld by court decisions over the years.

The California Community Care Facilities Act, which provides a statewide system for the licensing and administration of community care facilities, concerns itself exclusively with facilities that are required by the state to obtain operating licenses. The state requires that municipalities treat community care facilities with six or fewer residents the same as any other single family residence. The state also requires that municipalities treat alcohol or drug abuse treatment facilities with six or fewer residents, as defined by Health and Safety Code Section 11834.02(a), the same as any other single family residence. Municipalities may not require a conditional use permit, zoning variance or other zoning clearance for community care or alcohol and drug abuse treatment facilities that are not required of comparable single family dwellings in a zoning district.

On the other hand the Act does allow municipalities to regulate licensed facilities that house seven or more people. Municipalities can restrict these facilities to certain zoning districts and require conditional uses, variances or other zoning clearances.

Sober living homes, as defined by California Health and Safety Code Section 1505(i), provide group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision. They are not licensed by the state.

Persons recovering from alcohol and drug addiction are considered to be disabled and are protected from discrimination by the Americans with Disabilities Act and the Federal Fair Housing Act. Consequently, municipalities cannot treat sober living homes less favorably than other unlicensed group residential homes such as boarding homes or fraternity and sorority houses. Municipalities can, however, restrict and regulate commercial uses. When unlicensed group residential uses operate as businesses, municipalities can regulate where and under what conditions they can operate.

OVERVIEW OF THREE CALIFORNIA ORDINANCES

Newport Beach, CA

Newport Beach, with 70,032 people, 33,071 households, and 16,965 families, is home to several well-known communities including Balboa Island, Corona del Mar, San Joaquin Hills, Santa Ana Heights, and Newport Coast. Newport Beach has a disproportionately high number of licensed and unlicensed group residential uses serving persons recovering from drug or alcohol abuse. A staff analysis found that Newport Beach might have the highest number of residential recovery facilities (licensed and unlicensed) in the state, possessing four times the number of beds needed if beds were to be distributed evenly, per capita, statewide.

After years of complaints from residents, Newport Beach passed an ordinance in January, 2008 to regulate group residential uses serving persons recovering from drug or alcohol use. This is the most comprehensive such ordinance in California and constructively deals with all the legal issues that impair other ordinances. The comprehensive work in preparation of this ordinance, that began intensively over two years ago, included hiring legal firms and sought extensive input from the community, the facility operators, and other stakeholders through committees, workshops, and public hearings.

Recognizing that the law prohibits discrimination against sober living homes as such, Newport Beach decided to regulate them as part of a general category of unlicensed homes for the disabled.

Newport Beach prohibits group residential uses, such as boarding homes and dormitories, in R1 and R2 Zones. However, it permits residential care facilities for disabled persons as a conditional use in those zones. The conditional use permit application is 27 pages and requires detailed maps for transporting clients, floor plans of the number of residents per bedroom, disposal procedures for medical waste, plans to mitigate secondhand smoke, weekly activities schedules for residents, fire safety compliance, and other relevant information, plus a fee of \$2,200.

The Newport Beach ordinance also includes standards and procedures for granting reasonable accommodation for the disabled. These standards and procedures provide a disabled individual with an equal opportunity to use a dwelling unit without deviation from the zoning code. Further, Newport Beach regulates two or more residential care facilities that are under the control and management of the same owner and are integrated components of one operation. These combinations are treated as one facility for purposes of applying federal, state and local law.

After the ordinance was adopted two lawsuits were filed against Newport Beach. One was filed by Sober Living by the Sea, Inc, and other sober living home operators, and the other by Concerned Citizens of Newport Beach, on behalf of residents of the community opposed to the sober living homes in their communities. In May, a federal judge issued a preliminary ruling upholding much of the ordinance.

Murrieta, CA

With more than 85,000 people, Murrieta is one of the five largest municipalities in Riverside County. The Murrieta sober living homes ordinance requires a conditional use permit for boarding houses and sober living homes. It defines a boarding house as a residence where three or more rooms are rented to individuals under separate rental agreements or leases, either written or oral. It defines a sober living home as a “residential unit which houses *two or more persons unrelated by blood, marriage or legal adoption*, in exchange for monetary or non-monetary consideration, who reside in said residential structure or unit for the purpose of recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse....” (*emphasis added*).

The constitutional right to privacy prevents municipalities from requesting information as to whether the residents of a dwelling unit are related or not. This right has consistently been upheld by the courts. Thus, the Murrieta ordinance, which relies on a definition of a sober living home as a “residential unit which houses two or more persons *unrelated* by blood, marriage or legal adoption,” may not be upheld if challenged in court.

Further, this ordinance dictates that sober living homes (as opposed to all boarding houses) may not be located within 1,000 feet of a school. It also requires existing sober living homes (again, as opposed to all boarding houses) to provide information concerning Police Department calls for service and criminal history for the previous 12 months upon application for a conditional use permit. These provisions may also not be upheld if challenged in court.

Riverside, CA

Riverside has a population of 270,000 and is the county seat of Riverside County and is the largest city in one of the fastest growing metropolitan areas in the country. Its ordinance defines an alcohol and drug free residential recovery home

(sober living home) as “any residential structure or unit, which houses two or more persons, *unrelated by blood, marriage, or legal adoption*, in exchange for monetary or non-monetary consideration for persons who are recovering from problems related to alcohol, drug or alcohol and drug misuse or abuse...” (emphasis added)

This ordinance suffers from the same problem as the Murrieta ordinance. The constitutional right to privacy prevents municipalities from requesting information as to whether the residents of a dwelling unit are related or not. This right has consistently been upheld by the courts. Thus, this ordinance, which relies on a definition of sober living homes as a “residential unit which houses two or more persons *unrelated* by blood, marriage or legal adoption,” may not be upheld if challenged in court.

REGULATORY CONTEXT

California State Law Prevails over Municipal Law

The California Constitution states that “[a] county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal.Const.,art.XI,Sect7.) This has been interpreted by *California Veterinary Medical Assn. v. City of West Hollywood* (2007), which states that, “If otherwise valid local legislation conflicts with State law, it is preempted by such law and is void.”

State law specifically regulates substance abuse recovery and treatment facilities, as detailed in Health and Safety Code Section 11834.02(a). It also regulates community care facilities, which are covered by Health and Safety Code section 1502(a). Thus, state law sets the limits and defines the extent to which Los Angeles can restrict and regulate these facilities.

Section 1566.3 of the Community Care Facilities Act of 1973 provides that, “whether or not unrelated persons are living together, a residential facility that serves six or fewer persons shall be considered a residential use for the purposes of this article. In addition, the residents and operators shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of the property pursuant to this article.” Community care facilities and alcoholism or drug abuse recovery or treatment facilities that house six or fewer residents may not be regulated as boarding houses pursuant to Health and Safety Code Section 1566.3(b) and Attorney General Opinion 07-601.

Once a facility’s occupancy exceeds six persons, however, it becomes subject to all local zoning regulations. State licensed facilities with occupancies of seven or more residents are first permitted in the R4 Zone. A request to locate such a facility in a more restrictive zone requires an application for a zone variance. State law also controls over-concentration of licensed community care facilities by denying licenses to facilities located within 300 feet of each other. No such limit is placed on the location of alcoholism or drug abuse recovery or treatment facilities.

In contrast to community care or alcohol and drug abuse treatment facilities, sober living homes do not offer care or supervision and are not licensed or regulated by the state. Consequently, municipalities are not pre-empted by state law from regulating sober living homes, except as limited by state and federal laws prohibiting discrimination against the disabled.

Constitutional Right to Privacy

An individual's constitutional right to privacy prevents local governments from distinguishing between different residential uses through relying on matters that are considered private, such as whether persons in a household are related or not. This is forbidden by *Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, as a violation of the constitutional right to privacy.

Definition of Family

Los Angeles can restrict group residential homes from operating in low density residential zones by defining a "family" in a manner that permits clear and enforceable distinctions between residential uses and businesses without violating the constitutional right to privacy.

A 1998 memo from the Los Angeles City Attorney's office describes factors considered by the courts in determining the definition of a family. These include the transiency of residents, the services provided on premises, the financial arrangements between the owner and occupant, whether the premises are operated as a profit making enterprise or any physical alterations have been made to said premises, and the kind of insurance the owner carries.

Local Governments May Not Discriminate Against the Disabled

Local governments are explicitly prohibited from administering zoning procedures in a manner that subjects persons with disabilities, such as residents of sober living homes, to discrimination on the basis of their disability. *Tsombanidis v. City of West Haven* (2001) 129 F.Supp.2d 136, 151. Those residing in a sober living home are disabled pursuant to 42 U.S.C. §3602(h) and 24 C.F.R. §100.201(a)(2). In addition, local governments must provide "reasonable accommodation" (that is the opportunity for a waiver) from zoning and land use regulations, policies, and practices to allow disabled individuals the opportunity to use and enjoy dwellings as those without disabilities enjoy.

Nuisance Abatement

Section 12.27.1 (Administrative Nuisance Abatement) of the Los Angeles Municipal Code (LAMC) allows "the City's zoning authorities to protect the public peace, health and safety from any land use which becomes a nuisance; [and] adversely affects the health, peace or safety of persons residing or working in the surrounding area" When residents complain that a neighboring land use (either commercial or residential) is the cause of nuisance activity negatively impacting the neighborhood, the Council office or a City agency can bring this

request to the Office of Zoning Administration. The Nuisance Abatement Unit investigates and determines if the issue warrants a case to be filed against the owner and operator of this land use. A public hearing is held and if the Zoning Administrator determines that the land use is creating a nuisance, conditions are imposed on the operation of the use that are monitored through subsequent hearings to review their effectiveness.

RECOMMENDATION

Staff recommends that the Planning Department be instructed, with the assistance of the City Attorney, to prepare a comprehensive ordinance that regulates the following uses citywide: licensed community care facilities, licensed alcohol and drug abuse treatment facilities, and unlicensed group residential homes. The ordinance would specifically regulate unlicensed group residential homes operating as a business in a residential zone. The ordinance would:

- identify which uses in which zones would be permitted by right. For example, in the commercial zones, it may be appropriate to permit some or all of these uses by-right;
- identify which uses in which zones would be prohibited. For example, in the manufacturing zones, it may be appropriate to prohibit some or all of these uses;
- identify which uses in which zones would require a conditional use or other discretionary permit. For example, in the single-family residential zones, it may be appropriate to require a conditional use permit for an unlicensed group residential home operating as a business;
- establish the criteria for determining when an unlicensed group residential home is operating as a business; and
- define key terms.

Staff would review the options stated above and make appropriate recommendations as part of a detailed draft ordinance for the City Planning Commission's review.

CONCLUSION

The Department of City Planning recognizes the importance of maintaining the quality of life in our single-family neighborhoods while upholding state and federal laws prohibiting discrimination against the disabled. Staff's recommendation will provide a comprehensive, citywide ordinance that enacts proper regulations by zone for licensed community care facilities, licensed alcohol and drug abuse treatment facilities, and unlicensed group residential homes.