



Planning Commission Report

Meeting Date: May 24, 2012

Subject: A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ESTABLISHING DEFINITIONS AND ADOPTING LOCAL APPROVAL REQUIREMENTS FOR EMERGENCY SHELTERS, TRANSITIONAL AND SUPPORTIVE HOUSING, COMMUNITY CARE FACILITIES, SINGLE ROOM OCCUPANCY RESIDENTIAL UNITS AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE.

Recommendation: Direct staff to prepare a resolution recommending that the City Council adopt an ordinance establishing definitions and adopting local approval requirements for emergency shelters, transitional and supportive housing, community care facilities, and single room occupancy residential units. Staff also recommends that the Planning Commission open and continue the public hearing to June 14, 2012.

REPORT SUMMARY

Under State law, all jurisdictions in California are required to periodically update their Housing Elements. The Housing Element is one of the 7 required elements in the General Plan. When the City adopted its new Housing Element on November 15, 2011, it included, as is the law, a timeline for implementing the housing programs included in the element. When the State certified that Housing Element on February 13, 2012, the State certified on the provision that the City adhere to the timeline. The City's adopted Housing Element includes program 12.1, which requires the City to establish regulatory controls over certain housing types targeted towards special needs populations within one year of adoption of the Housing Element. This particular program in the Housing Element is required by State law.

BACKGROUND

The Planning Commission studied the regulation of special needs housing during the development of the City's current Housing Element. The resulting program, Housing Element Program 12.1, describes how the City intends to meet the State's requirements for special needs housing. As part of the Housing Element, Program 12.1 was adopted by the City Council, and was certified by the State Department of Housing and Community Development.

Housing Element Program 12.1 requires the City to establish land use controls for special needs housing that are consistent with State law. Included as attachments to this report are definitions for special needs housing types, a memorandum from the State Department of Housing and Community

Attachment(s):

1. Definitions Applicable to SB 2 As Per H&S Code 50801(E)
2. Categories for State Licensed Residential Care Facilities
3. Multi-Family Congregate Housing for Elderly and Disabled Persons Overlay Land use zone Map
4. Memorandum from the State Department of Housing and Community Development
5. Report from the City of Los Angeles on Sober Living Homes

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Development Department summarizing the requirements of SB 2, and a report from the City of Los Angeles discussing sober living facilities and recommended land use controls.

The City's Housing Program 12.1 requires the following actions:

Housing Program 12.1 Zoning Text Amendments for Special Needs Housing

- Add a definition of "family" which is inclusive and non-discriminatory to the Code.
- Add a "Community Care Facility" category and definition to the Code. List community care facilities with six or fewer occupants as permitted by-right in residentially zoned areas. Permit Community Care Facilities with seven or more occupants in various residentially zoned districts with a conditional use permit.
- Add a Single-Room Occupancy (SRO) definition, use category, and development standards for SRO's to the Code. Permit SRO's with a conditional use permit within the multi-family residential R-4 zoning overlay district where congregate housing for elderly and disabled persons is allowed. Develop standards to regulate SROs.
- Add a definition for Transitional Housing, and Supportive Housing to the Code and treat them as residential uses subject to the same requirements as other residential uses of the same type in the same land use zone.
- Establish an Emergency Shelter definition and use category, and allow as a by-right, permitted use in the multi-family residential R-4 zoning overlay district where congregate housing for elderly and disabled persons is allowed. Shelters will be subject to the same development and management standards as other uses permitted in the specific land use zone. The City will develop written objective standards for emergency shelters to regulate the following as permitted under SB 2:
 - The maximum number of beds/persons permitted to be served nightly;
 - Off-street parking based on demonstrated need, but not to exceed parking requirements for other residential or commercial uses in the same land use zone;
 - The size/location of exterior and interior onsite waiting and client intake areas;
 - The provision of onsite management;
 - The proximity of other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart;
 - The length of stay;
 - Lighting;
 - Security during hours that the emergency shelter is in operation.

DISCUSSION

Housing Element Program 12.1 requires the City to adopt zoning text amendments for special needs housing within one year of adoption of the Housing Element. If the City is not able to maintain this timeline, the State Department of Housing and Community Development (HCD) requires that the City amends its Housing Element to reflect the updated timeline. HCD would review any amendments to the Housing Element and could opt to not certify the amended document if amendments to the Housing Element, including the established timelines were not consistent with State requirements.

Special Needs Housing

Special needs housing is housing designed to meet the needs of community members, individuals and families that, for one reason or another, cannot obtain and keep permanent housing or have lost permanent housing temporarily. Special needs populations include the elderly and the disabled. Special needs populations also include the homeless and victims of domestic violence. Both the Federal and the State governments regulate special needs housing.

- **Federal Regulation**

The Federal government regulates housing for individuals with disabilities, which includes persons with special needs, through the Federal Fair Housing Amendments Act. The Federal Government prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning rules, policies, practices and procedures under the Federal Fair Housing Amendments Act. This Act went into effect in 1988, extending fair housing protections to individuals with disabilities in virtually every housing activity, or transaction (42 U.S.C. §§ 3601 et seq. (Federal Fair Housing Act). The legislative history of the Act specifically recognizes that zoning ordinance provisions have discriminated against people with disabilities by limiting opportunities to live in the community in congregate or group living arrangements.

- **State Regulation**

State Senate Bills 2 (Adopted in 2008) requires jurisdictions to adopt certain provisions for emergency shelters, transitional and supportive housing and single-room occupancy units.

Emergency Shelters, Transitional and Supportive Housing, and Single-Room Occupancy (SRO) Units

(Regulated by Senate Bill 2 - Government Code Section 65583)

Emergency shelters, transitional housing, supportive housing and single-room occupancy (SRO) residential units all play a role in providing permanent housing for special needs populations. As such, these housing types are usually integrated into a system of care giving (referred to as a “continuum of care” or COC), and are typically constructed, owned, and operated by non-profit housing and services providers. A person in need will enter into the COC typically through an emergency shelter, where immediate housing is provided while their immediate needs are assessed. As soon as possible the operator of the emergency shelter will then move the person into transitional housing (length of stay is limited) or into supportive housing (length of stay is unlimited). In transitional and supportive housing, the person’s long-term needs will be assessed, and the service provider works towards meeting those needs. This may include setting the person up on State and Federal assistance, social security, or other forms of public aid. If possible, the service provider works to locate the person in permanent housing, this could be in an apartment where the person pays rent. If the person is capable they may find a job in the community.

The State’s requirement for permitting emergency shelters, transitional and supportive housing, and SRO residential units is presented as follows, along with the means by which staff is recommending that the City meet the State’s requirements:

- **Emergency Shelters.** State law requires every jurisdiction to identify a land use zone or land use zones where emergency shelters are allowed as a permitted use without a conditional use permit or other discretionary permit. As a requirement of certification and to meet State law, staff recommends that emergency shelters with 50 or fewer beds be allowed by right where Multiple-family Congregate Care Housing for Elderly and Disabled Persons would be permitted

(refer to chart on page 8, Map in Attachment 3). Multiple-family Congregate Housing for Elderly and Disabled Persons housing is allowed in the R-4 zone subject to the following (BHMC 10-3-1282):

Article 12.8. Multiple-Family Congregate Housing for Elderly and Disabled Persons

10-3-1282: PERMITTED AREAS:

Multiple-family congregate housing for elderly and disabled persons shall require a conditional use permit and may be permitted in the R-4 zone on sites that satisfy all of the following criteria:

- A. The project site is located in an area with four- or five-story height limits; and
- B. The project site is located adjacent to commercially zoned areas; and
- C. The project site is separated from adjacent commercial areas by an alley; and
- D. The project site is located on a street greater than thirty feet (30') in width.

Parcels that meet these criteria have been identified on the map in Attachment 3.

Emergency Shelter Development Standards. Under State law, shelters are only subject to the development and management standards that apply to residential or commercial development in the particular land use zone where they are permissible. Local governments can, however, apply written and objective standards for emergency shelters. Staff recommends that standards addressing the following be included in the ordinance:

- Maximum number of beds;
 - Maximum number of persons permitted to be served nightly;
 - Number of employees per number of beds;
 - Parking Requirements;
 - Size/location of exterior and interior onsite waiting and client intake areas;
 - Hours during which persons can enter and exit the facility;
 - Provision of onsite management;
 - Proximity of other emergency shelters;
 - Maximum length of stay;
 - Lighting;
 - Security;
 - Annual demonstration of compliance with all standards.
- **Transitional Housing and Supportive Housing.** State law requires jurisdictions to consider transitional housing and supportive housing as residential uses, and to apply the same restrictions to transitional housing and supportive housing that would apply to other housing types. As a requirement of State certification, Housing Element Program 12.1 identifies the land use zones where transitional housing and supportive housing would be permitted. Staff

recommends that the land use zones identified in Housing Element Program 12.1 as presented in the charts on page 8 of this report be included in the Municipal Code.

Transitional housing and supportive housing come in all shapes and sizes, and is designed to meet the needs of both the people to be served and the communities where it is located. Transitional housing or supportive housing and associated services can be located in one building, or can be dispersed in a number of small homes which share a central neighborhood service center. Whatever the configuration, transitional housing and supportive housing allows tenants, who would otherwise be homeless, or utilizing emergency services and institutions to access support services that enable them to live as independently as possible, while reducing the burden on the City's emergency services.

- **Transitional Housing.** Transitional housing is used to facilitate the movement of homeless individuals and families to permanent housing. A person may live in a transitional apartment for up to two-years while receiving services that enable independent living. State law requires jurisdictions to consider transitional housing as a residential use and apply same restrictions to transitional housing that would apply to similar housing types in the same land use zone.
- **Supportive Housing.** Supportive housing is similar to transitional housing; however there is no time limit on a person's stay in supportive housing.
- **Transitional and Supportive Housing Development Standards.** The State requires jurisdictions to allow transitional and supportive housing is a permitted use, subject to the same standards as other housing in the same zone. In other words, the City can require transitional and supportive housing to meet single family development standards in single family residential zones, and multiple family development standards in multiple family residential zones. Transitional and supportive housing would be subject to the City's existing discretionary review processes which would include review by the Design Review Commission in single family residential areas in the Central Area of the City, and review by the Planning Commission and Architectural Review Commission in multiple family residential areas.
- **Single Room Occupancy (SRO) Residential Units:** Senate Bill 2 requires jurisdictions to identify a land use zone where SRO residential units are permitted. SRO residential units are individual rooms that are rented to a one or two person household. SRO residential units are generally small in size and include a sink, closet and toilet. Bathing and kitchen facilities are typically shared by two or more units in the building. State law allows a jurisdiction to permit SRO residential units subject to a Conditional Use Permit (CUP).

Staff recommends that SRO residential units be allowed subject to a CUP, as identified in Housing Element Program 12.1, in the Multiple-Family Congregate Housing for Elderly and Persons with disabilities Overlay Zone as presented in the chart on page 8.

- **SRO Residential Units Development Standards.** Staff is recommending that development standards be developed for the following aspects of buildings with SRO residential units:
 - Minimum and maximum unit sizes;
 - Common area requirements;
 - Management;
 - Parking;
 - Kitchen facilities;
 - Bathroom facilities.

Community Care Facilities (Regulated by the State Community Care Facilities Act)

In addition to the requirements of SB 2, State law also requires jurisdictions to permit community care facilities in certain land use zones. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is that part of California law that sets out the rights and responsibilities of persons with developmental disabilities. The Lanterman Act impacts local zoning ordinances by requiring the use of property for the care of six or fewer disabled persons to be classified as a residential use under zoning. More specifically, a State-authorized, certified or licensed family care home, foster home, or a group home serving six or fewer disabled persons or dependent and neglected children on a 24-hour-a-day basis is considered a residential use that is to be permitted in all residential land use zones. No local agency can impose stricter zoning or building and safety standards on these homes.

There are several types of organizations that are considered Community Care Facilities (Attachment 2). Service providers range from adult daycare programs to school youth programs. The State’s Community Care Facilities Act requires that State licensed residential care facilities for six or fewer persons be treated the same as single-family residences and, in doing so, pre-empts local zoning regulation of these facilities (Heath and Safety Code §§ 1566 et seq.). The Act is designed to move individuals with disabilities out of institutions and into family-like surroundings in residential neighborhoods. State law specifies that for purposes of local zoning codes, these facilities shall not be included in the definition of boards or rooming house, guest home, rest home or other similar term which implies that residential care facilities are a business and different than a family dwelling (Heath and Safety Code § 1566.3.). Pursuant to State law, staff recommends that community care facilities be permitted as proposed in the charts on page 8.

Community Care Facilities Currently Operating in the City of Beverly Hills

Community Care Facilities are licensed by the State and by State law, facilities serving 6 or fewer clients are permitted by-right in all residential zones, while facilities serving 7 or more clients could be regulated. There are several Community Care Facilities currently operating in the City of Beverly Hills. Most of these programs are run by schools and serve school age youth. The licensed Community Care Facilities currently operating in the City are presenting in the chart below:

Facility Type	Name	Address
Residential Care for the Elderly	Sunrise Assisted Living of Beverly Hills	201 N. Crescent Drive
Family Child Care Home (Large)	Ghezzi Family Child Care	No Address Provided
Child Care Center	Beverly Hills Presbyterian Church Nursery School	505 N. Rodeo Drive
	Beverly Hills Preschool Programs	1100 N. Beverly Drive
		624 N. Rexford Drive
		471 S. Roxbury Drive
		8400 Gregory Way
		200 S. Elm Drive
	Gan Yaffa Preschool	177 S. Robertson Boulevard
Good Shepherd Catholic School Pre-K	148 S. Linden Drive	
Hillel Hebrew Academy	9120 W. Olympic Boulevard	

Facility Type	Name	Address
	Nessah Hebrew Academy	142 S. Rexford Drive
	Page School of Beverly Hills	419 S. Robertson Boulevard
	Temple Emanuel	300 N. Clark Drive
School Age Child Care Center	Beverly Vista Adventure Camp	200 S. Elm Drive
	CCLA – Good Shepherd Adeste Program	148 S. Linden Drive
	El Rodeo Adventure Camp	605 Whittier Drive
	Hawthorne Adventure Camp	624 N. Rexford Drive
	Horace Mann Adventure Camp	8701 Charleville Boulevard

SUMMARY

The requirements under State law and how staff recommends that State law be met has been described in the previous section. The following chart summarized the State’s requirements. In the following section, how staff proposes to meet the requirements of State law is presented.

State Requirements for Special Needs Housing

Emergency Shelters	Permitted by right in at least one zone ¹
Transitional and Supportive Housing	Permitted in zones that allow residential uses, subject to the same standards as those residential uses
Single Room Occupancy (SRO) Residential Units	Permitted in at least one zone that allows residential uses; use can be subject to a conditional use permit.
State Licensed Community Care Facilities for six or fewer persons	Permitted in all zones allowing residential uses, subject to the same standards as other residential uses
State Licensed Community Care Facilities for more than seven persons	Permitted in all zones allowing multiple-family uses; use can be subject to a conditional use permit.

PROPOSED CODE AMENDMENTS

Staff recommendation to meet State law for special needs housing is summarized following. With direction from the Planning Commission, staff will return with a resolution and draft ordinance that would amend the zoning code as outlined in this report. Additional information on the State’s requirements is provided as attachments to this report. Based on State law and Housing Element Program 12.1, the following uses would be proposed in single family and multiple family residential

¹ Under State law, emergency shelters with enough beds to meet the housing need of the City’s estimated homeless population should be allowed by-right in at least one zone. The City’s homelessness population is estimated to be approximately 49 persons, and therefore, under State law, emergency shelters with 50 or fewer beds would be required to be permitted by right in at least one zone. Shelters with more than 50 beds can be regulated in that same zone with a Conditional Use Permit.

zones. In instances where the City can regulate the use, a conditional use permit would be required. Absent regulation by the City, uses that could be regulated through a Conditional Use Permit (CUP), such as community care facilities for seven or more persons, are only be subject to licensing by the State.

Draft Land Use Controls Regulating Special Needs Housing

The following charts would establish zones, pursuant to State law, in which special needs housing would be permissible by-right, or subject to a CUP. These zones were proposed in the City’s adopted Housing Element, and were a contingency of State certification.

Single Family Residential Zoning Districts and Zoning District Overlays

	R-1	R-1.X	R-1.5	R-1.5X	R-1.5X2	R-1.6X	R-1.7X	R-1.8X
Transitional and Supportive Housing*								
- Single-Family Structure	<u>P</u>							
Community Care Facility (State Licensed)								
- Small (6 or fewer clients)	<u>P</u>							

P = Permitted Use

* Transitional and supportive housing are permitted in residential zoning districts subject to the same standards as similar residential uses. Thus, if such housing is configured as a single-family structure it is regulated as such, and is subject to all single-family regulations.

Multiple Family Residential Zoning Districts and Zoning District Overlays

	R-4	RMCP*	Multiple-Family Congregate Housing For Elderly And Persons with disabilities Overlay Zone	R-4X1	R-4X-2	R-3	R-4-P
Transitional and Supportive Housing							
- Single-Family Structure	<u>p**</u>	<u>p**</u>			<u>p**</u>	<u>p**</u>	
- Multi-Family Structure	<u>p**</u>	<u>p**</u>			<u>p**</u>	<u>p**</u>	<u>p**</u>
Emergency Shelters (Subject to 10-3-1293)							
- 50 or fewer beds			<u>P</u>				
- Greater than 50 beds			<u>CUP</u>				
Single Room Occupancy Housing (SRO)			<u>CUP</u>				
Community Care Facilities (State Licensed)							
- Small (6 or fewer clients)	<u>P</u>	<u>P</u>			<u>P</u>	<u>P</u>	<u>P</u>
- Large (7 or more clients)	<u>CUP</u>	<u>CUP</u>			<u>CUP</u>	<u>CUP</u>	<u>CUP</u>

P = Permitted Use CUP = Conditional Use Permit

** Transitional and supportive housing are permitted in residential zoning districts subject to the same standards as similar residential uses. Thus, if such housing is configured as a multiple-family structure it would be regulated as such, whereas if it is configured as a single-family structure, it would be subject to single-family regulations.

Pursuant to the City's Housing Element and consistent with State law, emergency shelters that included fewer than 50 beds would be permitted by-right, while emergency shelter with more than 50 beds and single room occupancy (SRO) housing would require a conditional use permit. Transitional and supportive housing would be permitted in both single family and multiple family districts, but only if the use was designed to function in the same manner as other housing in the district. In other words, transitional and supportive housing that was designed as a single family home would be allowed subject to the same requirements as other housing in the single family area. State licensed Community Care Facilities that served six or fewer clients would also be permitted in single family and multiple family neighborhoods, while larger community care facilities would be required to obtain a conditional use permit.

ALCOHOL AND DRUG ABUSE TREATMENT FACILITIES

Alcohol and drug abuse treatment facilities are not uses addressed by Senate Bill 2, or by the City's Housing Element. In past discussions, questions related to alcohol and drug abuse treatment facilities have been posed. To address would be questions, the following summary language regarding alcohol and drug abuse treatment facilities is being provided in this report. Additionally a Report from the City of Los Angeles on Sober Living Homes is provided as Attachment 5. The attached report and the discussion following are provided as information only.

Individuals who are undergoing recovery for substance abuse are classified as disabled under State and Federal law. "Alcoholism or drug abuse recovery or treatment facility" means any premises that provides 24-hour non-medical services to adults who are recovering from problems related to alcohol and/or drug abuse or misuse and who need recovery treatment or detoxification services (Heath and Safety Code § 11834.02.). State-licensed alcohol or drug abuse recovery or treatment facilities for six or fewer persons fall under the purview of the Lanterman Act and are required to be regulated the same as a single-family residential use. The California legislature has enacted a series of laws intended to provide and ensure the accessibility of alcohol and drug recovery, and intervention and prevention services to these individuals (Heath and Safety Code § 1781.). These Alcohol and Drug Recovery Program statutes provide that alcoholism or drug abuse recovery or treatment facilities that service six or fewer person be considered a residential use for purposes of zoning (Heath and Safety Code § 11834.23.). These statutes pre-empt local regulation of state licensed alcohol or drug abuse recovery or treatment facilities servicing six or fewer individuals.

Jurisdictions can distinguish between licensed and unlicensed care facilities through zoning, and may regulate unlicensed facilities as a commercial boarding house. The following State Attorney General opinion supports this distinction:

"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 not an owner, agent, or rental manager is in residence in order to preserve the residential character of the neighborhood." 86 Ops. Atty. Gen. 30 (2003)

In addition, facilities which serve six of fewer individuals shall not be included within the definition of rooming or boarding house, institution or home for the care of minors, the aged or other similar term

that implies that the facility is a business run for profit and differs in any other way from a single-family residence (Heath and Safety Code § 11834.23.). Jurisdictions regulating unlicensed care facilities as boarding houses would, however, be required to make provisions for reasonable accommodation to facilitate such facilities which serve persons considered disabled under the Fair Housing Act.

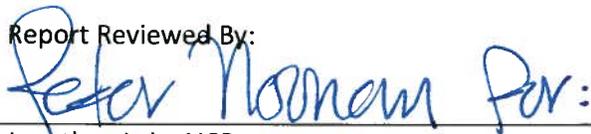
PUBLIC NOTICE

Notice of this public hearing was advertised in the Beverly Hills Courier on May 11, 2012, and in the Beverly Hills Weekly on May 17, 2012. As of the writing of this report staff has not received any public comments.

NEXT STEPS

With direction from the Planning Commission, comments and direction will be incorporated into a draft resolution recommending that the City Council adopt amendments to the City's zoning code regarding special needs housing. The earliest a resolution could return to the Planning Commission for its consideration would be June 14.

Report Reviewed By:

 Peter Noonan For:

Jonathan Lait, AICP

City Planner

Attachment 1

DEFINITIONS APPLICABLE TO SB 2 AS PER H&S CODE 50801(E):

Emergency Shelter: Emergency shelter means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Supportive Housing: Housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Transitional Housing: Transitional housing and transitional housing development mean rental housing operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

STATE REQUIREMENTS:

Emergency Shelters: Every locality must identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones must include sufficient capacity to accommodate the need for emergency shelter as identified in the housing element, EXCEPT that all local governments must identify a zone or zones to accommodate at least one year-round shelter. Adequate sites/zones can include existing facilities that can be converted to accommodate the need for emergency shelters.

Transitional Housing: Transitional housing is a type of supportive housing used to facilitate the movement of homeless individuals and families to permanent housing. A homeless person may live in a transitional apartment for up to two-years while receiving supportive services that enable independent living. Every locality must identify zones that will allow the development of transitional housing. Appropriate sites for transitional housing have the following characteristics:

- **Zoning:** Transitional housing should be subject to the same permitting processes as other housing in the zone without undue special regulatory requirements.
- **Location:** The zoning should include sites located within the boundaries of the jurisdiction and close to public services and facilities, including transportation.
- **Development Standards:** Parking requirements, fire regulations, and design standards should not impede the efficient use of the site as transitional housing.

Supportive Housing: Supportive housing is permanent rental housing linked to a range of support services designed to enable residents to maintain stable housing and lead fuller lives.

Typically, a portion of the housing is targeted to people who have risk factors such as homelessness, or health challenges such as mental illness or substance addiction. Study after study attest to the cost effectiveness of supportive housing. Not only is it significantly less expensive than the institutional alternatives that homeless and disabled people often cycle through – including shelters, institutions and hospitals – it ends tenants' dependence on emergency services for healthcare and treatment. The types of support services that can be provided include medical and mental health care, vocational and employment services, substance abuse treatment, childcare, and independent living skills training.

Most supportive housing is built and managed by non-profit housing developers in partnership with non-profit service providers. However, local governments must play a proactive role in assuring support and providing necessary approvals. The housing element should identify zones that allow supportive housing development

and demonstrate that zoning, local regulations (standards and the permit process) encourage and facilitate supportive housing.

Supportive housing comes in all shapes and sizes, and is designed to meet the needs of both the people to be served and the communities where it is located. It could be a renovated motel offering furnished SRO apartments; a multifamily development where tenants with disabilities live alongside other families with low-incomes; a small, more service-intensive building; or scattered-site apartments. Whatever the configuration, all of the housing allows tenants to access support services that enable them to live as independently as possible.

Single-Room Occupancy (SRO) Units: SROs can provide a valuable form of affordable private housing for lower-income individuals, seniors, and persons with disabilities. An SRO unit usually is small, between 200 to 350 square feet. These units provide a valuable source of affordable housing and can serve as an entry point into the housing market for formerly homeless people.

Many older SROs have been lost due to deterioration, hotel conversions, and demolition. Therefore, in addition to identifying zoning and development standards that will allow and encourage the construction of new SROs, local governments should consider including program actions in their housing elements that commit to preserving and rehabilitating existing residential hotels and other buildings suitable for SROs. Other implementation actions that would encourage both the development of new SROs and the preservation of existing opportunities include:

- **Zoning and permit procedures.** The element could include a program action that commits the local government to amending their zoning and building codes, and permitting procedures to facilitate and encourage new SRO construction. A more streamlined entitlement process helps in providing greater predictability in the approval and development of new SROs. In terms of preservation, local governments could include programs to promote the rehabilitation of older (structurally sound) buildings located in appropriate areas, rather than demolition.
- **Provide regulatory and fiscal assistance.** The element could include a program action that commits the local government to providing funding sources and regulatory relief to assist non-profit developers in constructing and preserving SRO facilities.
- **Implement educational programs.** Include a program to outreach to neighborhood groups, stakeholders, advocates, and local businesses regarding the advantages of providing opportunities for new construction and preservation of SROs.

SPECIFIC HOUSING ELEMENT REQUIREMENTS TO ADDRESS SB2:

- **Needs Assessment**
 - The analysis of the need for emergency shelter must consider the seasonal need in addition to the year-round need.
 - Estimate the daily average number of persons lacking permanent shelter. Where possible, the element should estimate the number of single males and females, families with children and youth.
 - As data allow, describe the percentage of homeless population who are veterans, runaway youth, mentally ill, with substance abuse problems, survivors of domestic violence or any other categories considered significant by the locality.
- **Identify Existing Resources to Address Needs**
 - Identify number and capacity of current emergency shelters and transitional and supportive housing units.
 - Compare number and characteristics of homeless with current available resources to provide a general estimate of unmet need.

- The need for emergency shelters may be reduced by the number of supportive housing units identified in an adopted 10-year plan and for which funding has been identified to allow construction in planning period or are vacant.
- Identify Zoning
 - All cities and counties must identify zone or zones that allow emergency shelters as a permitted use, without a conditional use permit or other discretionary permit.
 - All local governments must identify zoning to allow at least one year-round emergency shelter, regardless of the need identified.
 - The zone or zones must include sufficient capacity to accommodate the need identified in the special needs analysis.
- Analysis of Constraints
 - The element must demonstrate that existing or proposed permit processing, development, and management standards encourage and facilitate the development of, or conversion to, emergency shelters.
 - Shelters may only be subject only to development and management standards that apply to residential or commercial development in the same zone except that local governments may apply written and objective standards that include all of the following:
 - maximum number of beds;
 - off-street parking based upon demonstrated need;
 - size and location of on-site waiting and intake areas;
 - provision of on-site management;
 - proximity to other shelters;
 - length of stay;
 - lighting; and
 - security during hours when the shelter is open.
 - Transitional and supportive housing are to be considered as residential uses and must only be subject to the same restrictions that apply to similar housing types in the same zone.

Attachment 2

Categories of State Licensed Residential Care Facilities

Adult Residential Facilities (ARF)

Adult Residential Facilities (ARF) are facilities of any capacity that provide 24-hour non-medical care for adults ages 18 through 59, who are unable to provide for their own daily needs. Adults may be physically handicapped, developmentally disabled, and/or mentally disabled.

Adult Residential Facility for Persons with Special Health Care Needs

SB 962 (2005) created a pilot program authorizing the Community Care Licensing Division to license and monitor SB 962 Homes to provide 24-hour services for up to five adults with developmental disabilities, who are being released from Agnews Developmental Center, and who have special health care and intensive support needs.

Residential Care Facilities for the Chronically Ill

Residential Care Facilities for the Chronically Ill (RCFCI) are facilities with a maximum licensed capacity of 25. Care and supervision is provided to adults who have Acquired Immune Deficiency Syndrome (AIDS) or the Human Immunodeficiency Virus (HIV).

Residential Care Facilities for the Elderly (RCFE)

Residential Care Facilities for the Elderly (RCFE) provide care, supervision and assistance with activities of daily living, such as bathing and grooming. They may also provide incidental medical services under special care plans.

The facilities provide services to persons 60 years of age and over and persons under 60 with compatible needs. RCFEs may also be known as assisted living facilities, retirement homes and board and care homes. The facilities can range in size from six beds or less to over 100 beds. The residents in these facilities require varying levels of personal care and protective supervision. Because of the wide range of services offered by RCFEs, consumers should look closely at the programs of each facility to see if the services will meet their needs.

Continuing Care Retirement Community

Today's seniors are faced with many attractive options for retirement living. One of these options is a continuing care retirement community, or CCRC. CCRCs offer a long-term continuing care contract that provides for housing, residential services, and nursing care, usually in one location, and usually for a resident's lifetime.

All providers offering continuing care contracts must first obtain a certificate of authority and a residential care facility for the elderly (RCFE) license. In addition, CCRCs that offer skilled nursing services must hold a Skilled Nursing Facility License issued by the Department of Health Services.

The California Department of Social Services (Department), is responsible for the oversight of continuing care providers. The Department's Community Care Licensing Division has two branches that participate in the regulation. The Senior Care Program monitors continuing care providers for compliance with the Community Care licensing laws and regulations regarding

buildings and grounds, accommodations, care and supervision of residents, and quality of service. The Continuing Care Contracts Branch is responsible for reviewing and approving applications to operate a CCRC and monitors the ongoing financial condition of all CCRC providers and their ability to fulfill the long-term contractual obligations to residents.

Social Rehabilitation Facilities

A Social Rehabilitation Facility is any facility that provides 24-hour-a-day non-medical care and supervision in a group setting to adults recovering from mental illnesses, who temporarily need assistance, guidance, or counseling.

Group Homes

Group Homes are facilities of any capacity and provide 24-hour non-medical care and supervision to children in a structured environment. Group Homes provide social, psychological, and behavioral programs for troubled youths.

Attachment 3

MULTI-FAMILY CONGREGATE HOUSING FOR ELDERLY AND DISABLED PERSONS

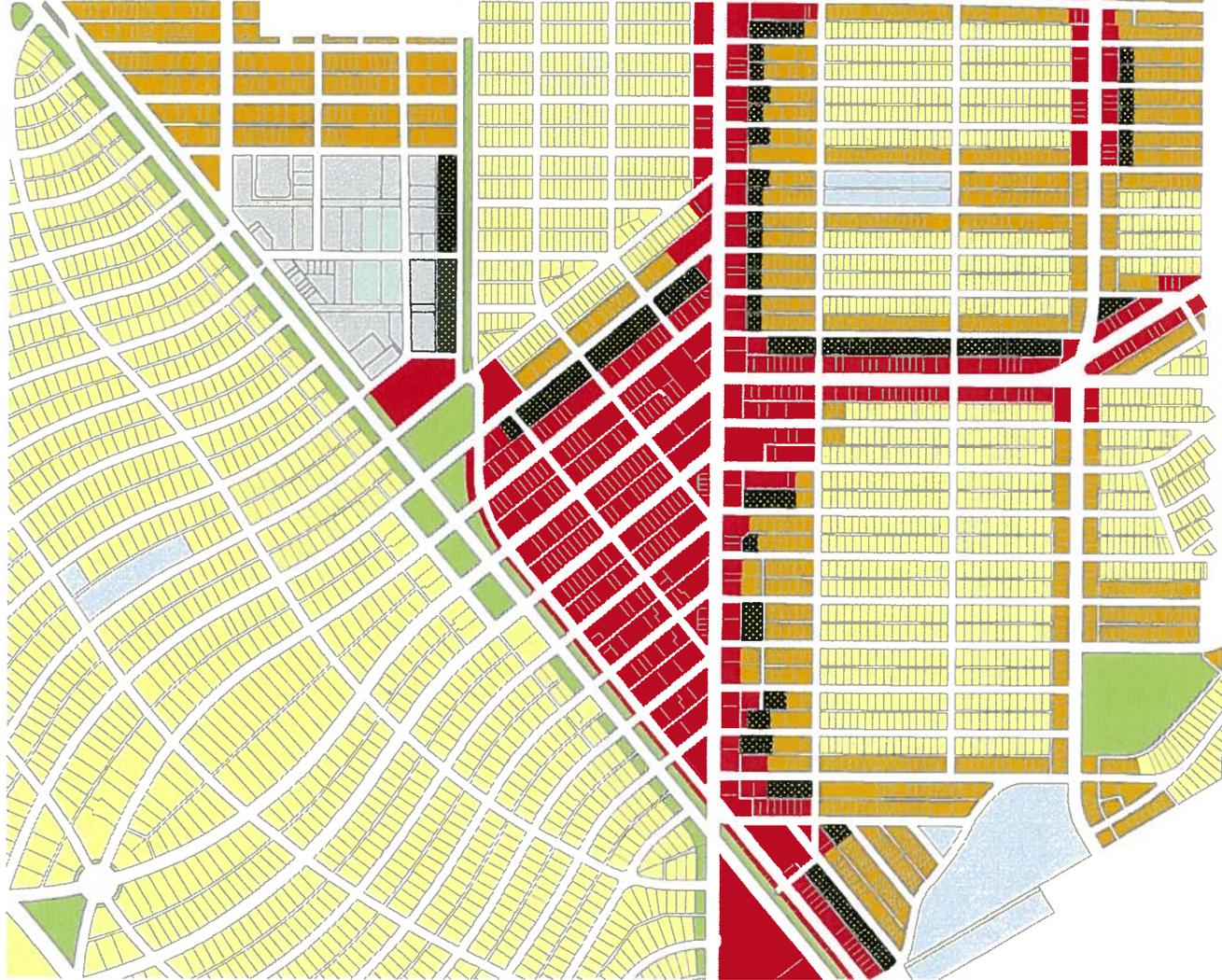
Legend

Multi-Family Congregate Housing for Elderly and Disabled Persons

Multi-family Congregate Housing for the Elderly and Disabled Persons Overlay Zone is located in the R-4 District and must be adjacent to commercial uses

ZONE

- | | |
|---|--|
|  R-1 |  C-3A |
|  R-1.5X |  C-3T-1 |
|  R-1.5X2 |  C-3T-2 |
|  R-1.6X |  C-3T-3 |
|  R-1.7X |  C-5 |
|  R-1.8X |  P-S |
|  R-1.X |  S |
|  T-1 |  OPENSOURCE |



Existing Facilities

Nursing Homes = 2
 Total Residential Units = 269

Net Area
 Parcels = 136
 Acres = 23.1

Gross Area
 Parcels = 172
 Acres = 37.8



City of Beverly Hills
 (Ordinance 87-O-1995, Adopted 8-6-1987)

Attachment 4

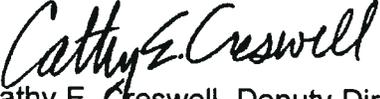
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

1800 Third Street, Suite 430
P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177
FAX (916) 327-2643

**MEMORANDUM**

DATE: May 7, 2008

TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 2 -- Legislation Effective January 1, 2008:
*Local Planning and Approval for Emergency Shelters and
Transitional and Supportive Housing***

Chapter 633, Statutes of 2007 (SB 2) clarifies and strengthens housing element law to ensure zoning encourages and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law will facilitate efforts to address the critical needs of homeless populations and persons with special needs throughout all communities in California. Generally, SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Planning (Government Code Section 65583)

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one year-round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion to emergency shelters.
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provision of onsite management, length of stay and security.
- Includes flexibility for jurisdictions to meet zoning requirements with existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdictional agreement.

Chapter 633, Statutes of 2007 (SB 2)
Page 2

- Transitional and supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Local Approval (Government Code Section 65589.5: Housing Accountability Act)

- Limits denial of emergency shelters, transitional housing or supportive housing by requiring specific findings.
- Some findings shall not be utilized if new planning requirements of SB 2 are not met; such as identifying a zone without a conditional use permit,

Attached is a briefing paper informing local governments of SB 2, providing assistance in evaluating these new provisions to effectively implement this important new State law; in addition to a copy of the legislation. Electronic copies of these can be found on the Department's website at www.hcd.ca.gov or the Senate's website at www.senate.ca.gov. You may also obtain copies of published bills from the Legislative Bill Room by calling (916) 445-2323. If you have any questions, or seek additional technical assistance, please contact Paul McDougall, HPD Manager, at (916) 445-4728.

Attachments

Chapter 633, Statutes of 2007 (Senate Bill 2)

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Introduction

Homeless Needs

Homelessness in California is a continuing and growing crisis. On any given day, there are at least 361,000 homeless individuals in California – or 1.1 percent of the State’s total population. Of this number, two-thirds are estimated to be single adults, while the other third are families. Some 30 percent of California’s homeless – 108,000 – are so-called “chronic” homeless who have been homeless for six months or more. This population tends to be comprised of single adults who face such obstacles as mental illness, substance abuse problems and chronic physical health problems or disabilities that prevent them from working. Homeless individuals and families are without permanent housing largely because of a lack of affordable housing, often compounded by limited education or skills, mental illness and substance abuse issues, domestic violence and the lack of family or other support networks.¹

California’s homelessness crisis demands the effective involvement of both the public and private sectors. A housing element can be an effective and powerful tool in combating homelessness. Passage of SB 2 strengthened the law to increase its effectiveness in addressing the needs of California’s homeless population. The upcoming housing element update presents an important opportunity to make ending homelessness a critical priority.

Purpose and Objectives of SB 2

The framework of SB 2 resulted from a collaborative effort by key stakeholders including housing and homeless advocates and providers, local governments, planners, and the building industry. SB 2 strengthens existing housing element requirements to provide the opportunity for the development of emergency shelters and transitional and supportive housing. SB 2 ensures zoning, development and management standards and permit procedures encourage emergency shelters while allowing flexibility for existing local strategies and cooperative efforts.

SB 2 focuses on the impacts of zoning requirements on the development of emergency shelters. While the new statute requires that every local government zone for the development of emergency shelters, it does not restrict how local governments allocate resources to address local priority needs. For example, nothing in SB 2 prohibits communities from also adopting a “Housing First” strategy to provide homeless persons with housing immediately and then providing services as needed.

¹ *Governor’s Interagency Task Force on Homelessness, Progress Report and Work Plan for 2003.* Health and Human Services Agency and Business, Transportation and Housing Agency, December 2002

Section 1

Planning

(Government Code Section 65583)

Identifying and Analyzing Needs and Resources

Current law, Government Code Section 65583(a)(7), requires an identification and analysis of the needs of homeless persons and families. The analysis is an essential component of an effective housing element; however data sources can be limited and vary in estimates of need. As a result, an analysis should consider a variety of data sources and include proactive outreach with service providers to examine the degree and characteristics of homeless needs in the community and surrounding communities. A thorough analysis includes:

- An estimate or count of the daily average number of persons lacking shelter. Wherever possible, and to better describe the characteristics of needs, this figure could be divided into single males, single females and families (one or more adults with children) as the needs of each subgroup differ significantly.
- As local data or other existing sources permit (see list below), a description of the percentage of the homeless population who are mentally ill, developmentally disabled, veterans, runaway or emancipated foster youth, substance abusers, survivors of domestic violence, and other subpopulations of homeless considered significant by the jurisdiction.
- An inventory of the resources available within the community including shelters, transitional housing and supportive housing units by type. The analysis should estimate the number and type of existing shelter beds, and units of transitional and supportive housing available.
- Assess the degree of unmet homeless needs, including the extent of need for emergency shelters. As part of this analysis, SB 2 now clarifies the need assessment for emergency shelters must consider seasonal and year-round need. In recognition of local efforts to encourage supportive housing, SB 2 allows jurisdictions with 10 Year Plans to End Chronic Homelessness to reduce the need for emergency shelters by the number of supportive housing units identified in an adopted 10-year plan and that are either vacant or funding has been identified to allow construction in the housing element planning period.

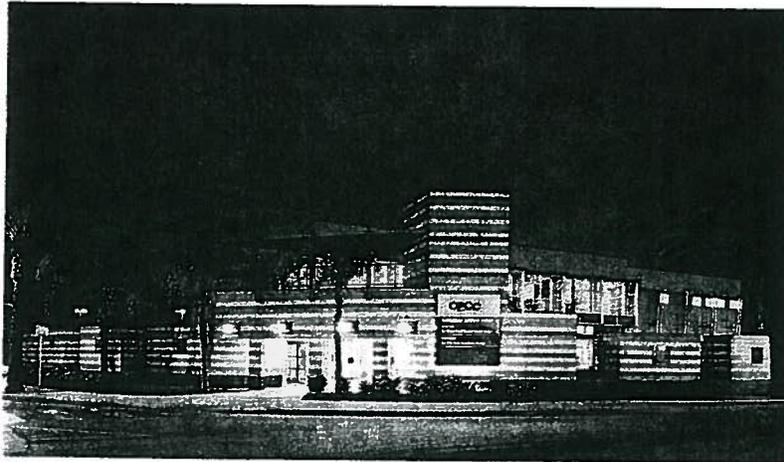
Resources to identify and analyze homeless needs, include:

- Consolidated plans
- Continuum of care plans
- 10 Year Plans to End Chronic Homelessness
- Interagency Council on Homelessness, Guide to Developing Plans and Examples (<http://www.ich.gov/slocal/index.html>)

- Local service providers such as continuum of care providers, local homeless shelter and service providers, food programs, operators of transitional housing programs, local drug and alcohol program service providers, county mental health and social service departments, local Salvation Army, Goodwill Industries, churches and schools, and
- 15 countywide Designated Local Boards certified by the Department's Emergency Housing and Assistance Program (<http://www.hcd.ca.gov/fa/ehap/cntys-with-dlb.html>).

Identifying Zoning for Emergency Shelters

Prior to enactment of SB 2, housing element law required local governments to identify zoning to encourage and facilitate the development of emergency shelters. SB 2 strengthened these requirements. Most prominently, housing element law now requires the identification of a zone(s) where emergency shelters are permitted without a conditional use permit or other discretionary action. To address this requirement, a local government may amend an existing zoning district, establish a new zoning district or establish an overlay zone for existing zoning districts. For example, some communities may amend one or more existing commercial zoning districts to allow emergency shelters without discretionary approval. The zone(s) must provide sufficient opportunities for new emergency shelters in the planning period to meet the need identified in the analysis and must in any case accommodate at least one year-round emergency shelter (see more detailed discussion below).



Cloverfield Services Center – Emergency Shelter by OPCC in Santa Monica, CA
Photo courtesy of OPCC in Santa Monica

When identifying a zone or analyzing an existing zone for emergency shelters, the element should address the compatibility and suitability of the zone. The element should consider what other uses are permitted in the zone and whether the zone is suitable for residential or emergency shelters. For example, an industrial zone with heavy manufacturing may have environmental conditions rendering it unsuitable for residential or shelter uses. In some localities, manufacturing or industrial zones may be in transition, where older industrial uses are redeveloping to residential, office or commercial. Transitioning zones may be compatible

with residential uses and suitable for emergency shelters. Also, a commercial zone allowing residential or residential compatible services (i.e., social services, offices) would be suitable for shelters. For example, Sacramento County permits emergency shelters in its commercial zone along with other residential uses and uses such as retail that are compatible with residential.

SB 2 clarifies existing law by requiring zoning identified for emergency shelters to include sufficient capacity to accommodate the need. The identified zone(s) must have sufficient capacity, when taken as a whole, to meet the need for shelters identified in the housing element, and have a realistic potential for development or reuse opportunities in the planning period. Further, capacity for emergency shelters must be suitable and available and account for physical features (flooding, seismic hazards, chemical contamination, other environmental constraints, and slope instability or erosion) and location (proximity to transit, job centers, and public and community services). The element should also address available acreage (vacant or underutilized) and the realistic capacity for emergency shelters in the zone. For example, if a jurisdiction identifies the public institution zoning district as the zone where emergency shelters will be allowed without a conditional use permit, the element should demonstrate sufficient acreage within the zoning district that could accommodate the actual development of an emergency shelter. The element could also discuss the potential for reuse or conversion of existing buildings to emergency shelters.

SB 2 ensures that each local government shares the responsibility to provide opportunities for the development of emergency shelters. Regardless of the extent of need identified in the element, local governments must provide zoning to allow at least one year round emergency shelter, unless the need for emergency shelters is accommodated through existing shelters or a multi-jurisdictional agreement (see discussion below). This is especially important given the fact that the homeless population is not always visible in the community; is sometimes transitory; data resources are frequently inadequate and the availability and adequacy of services and programs vary significantly by community and can impact the homeless count.

If a local government's existing zoning does not allow emergency shelters without a conditional use permit or other discretionary action, the housing element must include a program to identify a specific zone(s) and amend the zoning code within one year of adoption of the housing element (65583(a)(4)). The only exceptions permitted to the non-discretionary zoning requirement are where a jurisdiction demonstrates their homeless needs can be accommodated in existing shelters; or where the jurisdiction meets all of its need through a multi-jurisdictional agreement (discussed in later sections).

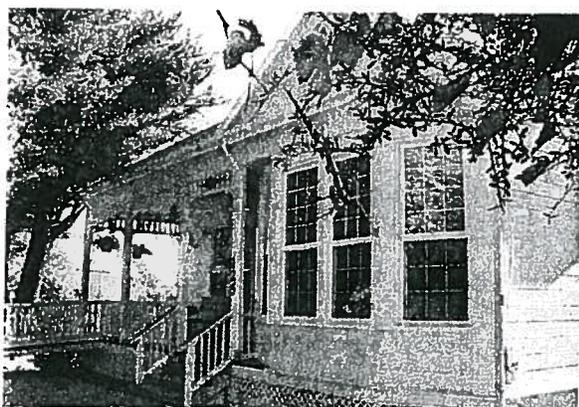
Where a local government has identified a zone and sufficient capacity to encourage emergency shelters consistent with the provisions of SB 2, a local government may also identify additional zones for the development of emergency shelters that require a conditional use permit.

Permitting Emergency Shelters without Discretionary Action

To comply with SB 2, localities must have or adopt a zoning classification that permits emergency shelters in a non-discretionary manner (localities may however apply development standards pursuant to Section 65583(a)(4)). In such zones, permitted uses, development standards and permit procedures must include:

- Objective development standards that encourage and facilitate the approval of emergency shelters.
- Decision-making criteria such as standards that do not require discretionary judgment.
- Standards that do not render emergency shelters infeasible, and only address the use as an emergency shelter, not the perceived characteristics of potential occupants.

Requiring a variance, minor use permit, special use permit or any other discretionary process does not constitute a non-discretionary process. However, local governments may apply non-discretionary design review standards.



Emergency Shelter – Jackson, California
Photo courtesy of Amador-Tuolumne Community Action

A local government should not require public notice of its consideration of emergency shelter proposals unless it provides public notice of other non-discretionary actions. For example, if a local government permits new construction of a single-family residence without discretionary action and public notice is not given for these applications, then a local government should employ the same procedures for emergency shelter applications. The appropriate point for public comment and discretionary action is when zoning is being amended or adopted for emergency shelters, not on a project-by-project basis.

Development Standards to Encourage and Facilitate Emergency Shelters

SB 2 requires that emergency shelters only be subject to those development and management standards that apply to residential or commercial use within the same zone, except the local government may apply certain objective standards discussed on the next page (Government Code Section 65583(a)(4)). For example, a light commercial zone might permit a range of wholesaler, service repair and business services subject to buildable area and lot area requirements. In this case, the emergency shelter may be subject only to the same buildable area and lot area requirements. The same zone might permit residential uses subject to certain development standard (i.e., lot area, heights, and setbacks) requirements. In this case, emergency shelters should only be subject to the same development standards.

To demonstrate that processing procedures and standards are objective and encourage and facilitate development of emergency shelters, the housing element must address how:

- zoning explicitly allows the use (meaning the use is specifically described in the zoning code);
- development standards and permit procedures do not render the use infeasible;
- zoning, development and management standards, permit procedures and other applicable land-use regulations promote the use through objective; and predictable standards.

SB 2 allows flexibility for local governments to apply written, objective development and management standards for emergency shelters as described in statute and below.

- The maximum number of beds or persons permitted to be served nightly by the facility.
- Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- The size and location of exterior and interior on-site waiting and client intake areas.
- The provision of on-site management.
- The proximity to other emergency shelters provided that emergency shelters are not required to be more than 300 feet apart.
- The length of stay.
- Lighting.
- Security during hours that the emergency shelter is in operation.



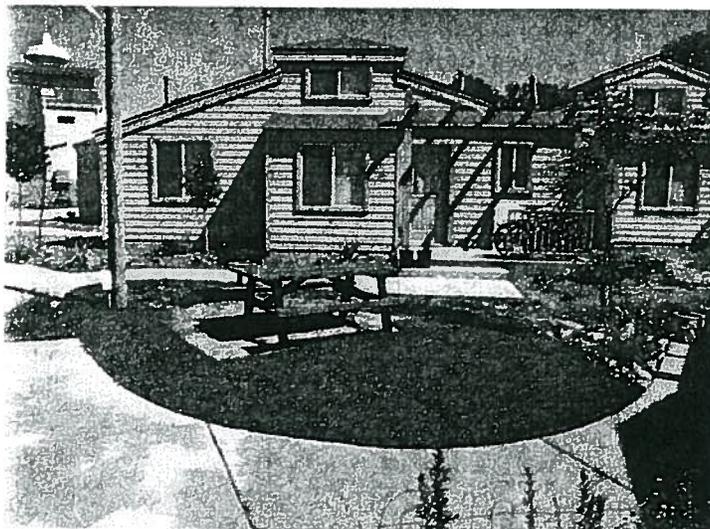
These standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. For example, a standard establishing the maximum number of beds should act to encourage the development of an emergency shelter; local governments should establish flexible ranges for hours of operation; length of stay provision should be consistent with financing programs or statutory definitions limiting occupancy to six months (Health and Safety Code Section 50801) and should not unduly impair shelter operations. Appropriate management standards are reasonable and limited to ensure the operation and maintenance of the property.

Encouraging Multi-Jurisdictional Cooperation and Coordination

SB 2 recognizes and encourages multi-jurisdictional coordination by allowing local governments to satisfy all or part of their obligation to zone for emergency shelters by adopting and implementing a multi-jurisdictional agreement, with a maximum of two adjacent communities. The agreement must commit the participating jurisdictions to develop at least one year-round shelter within two years of the beginning of the housing element planning period. For example, jurisdictions in Southern California Association of Governments (SCAG) region with a statutory due date of June 30, 2008 would need to ensure the development of shelter(s) by June 30, 2010. To utilize this provision, local governments must adopt an agreement that allocates a portion of the new shelter capacity to each jurisdiction as credit towards the jurisdiction's emergency shelter need. The housing element for each participating local government must describe how the capacity was allocated. In addition, the housing element of each participating jurisdiction must describe:

- How the joint facility will address the local governments need for emergency shelters.
- The local government's contribution for both the development and ongoing operation and management of the shelter.
- The amount and source of the funding to be contributed to the shelter.
- How the aggregate capacity claimed by all of the participating jurisdictions does not exceed the actual capacity of the shelter facility.

If the local government can demonstrate that the multi-jurisdictional agreement can accommodate the jurisdiction's need for emergency shelter, the jurisdiction is authorized to comply with the zoning requirements for emergency shelters by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit.

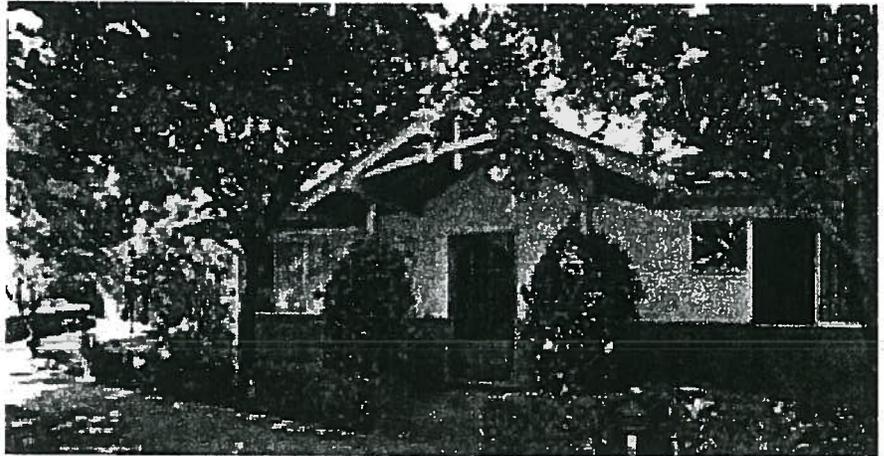


Quinn Cottages, Transitional Housing in Sacramento, CA
Photo courtesy of Cottage Housing, Inc.

Existing Ordinances and Existing Shelters that Accommodate Need

Existing Ordinances Permitting Emergency Shelters

Many local governments have a record of effective actions to address the homeless needs in their community. SB 2 recognizes and provides flexibility for jurisdictions that have already adopted an ordinance(s) that complies with the new zoning requirements. For those local governments with existing ordinances and zoning consistent with



Hendley Circle Apartments – Supportive SRO Housing in Burbank
Photo courtesy of Burbank Housing

requirements of SB 2, no further action will be required to identify zones available for emergency shelters. The housing element must however, describe how the existing ordinance, policies and standards are consistent with the requirements of SB 2.

Existing Shelters That Accommodate the Need for Emergency Shelters

Local governments that can demonstrate, to the satisfaction of the Department, the existence of one or more emergency shelters either within the jurisdiction or pursuant to a multi-jurisdictional agreement that can accommodate the need for emergency shelters identified in the housing element may comply with the zoning requirements of SB 2 by identifying a zone(s) where new emergency shelters are allowed with a conditional use permit. To demonstrate homeless needs can be accommodated in existing shelters, an element must at minimum list existing shelters including the total number of beds and the number vacant. The analysis should support and document the estimate of vacant beds and must consider seasonal fluctuations in the need for emergency shelters.

Transitional and Supportive Housing

Transitional housing is defined in Section 50675.2 of the Health & Safety Code as rental housing for stays of at least six months but where the units are re-circulated to another program recipient after a set period. Transitional housing may be designated for a homeless individual or family transitioning to permanent housing. This housing can take several forms, including group housing or multifamily units, and may include supportive services to allow

individuals to gain necessary life skills in support of independent living. *Supportive housing* as defined at Section 50675.14 of the Health & Safety Code has no limit on the length of stay, is linked to onsite or offsite services, and is occupied by a target population as defined in Health & Safety Code Section 53260 (i.e., low income persons with mental disabilities, AIDS, substance abuse or chronic health conditions or persons whose disabilities originated before the person turned 18). Services typically include assistance designed to meet the needs of the target population in retaining housing, living and working in the community, and/or improving health and may include case management, mental health treatment, and life skills.

SB 2 provides that transitional and supportive housing constitute a residential use. SB 2 requires zoning to treat transitional and supportive housing as a proposed residential use and subject only to those restrictions that apply to other residential uses of the same type in the same zone. For example, if the transitional housing is a multifamily use proposed in a multifamily zone, then zoning should treat the transitional housing the same as other multifamily uses proposed in the zone.

If jurisdictions do not explicitly permit transitional and supportive housing as previously described, the element must include a program to ensure zoning treats transitional and supportive housing as a residential use, subject only to those restrictions on residential uses contained in the same type of structure.

Housing Element Policies and Programs

Effective programs reflect the results of the local housing need analyses, identification of available resources, including land and financing, and the mitigation of identified governmental and nongovernmental constraints.

Programs consist of specific action steps the locality will take to implement its policies and achieve goals and objectives. Programs must

include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, and describe the jurisdiction's specific role in implementation.

Where a jurisdiction does not provide an analysis demonstrating compliance with the provisions of SB 2 through existing zoning, the element must have a program(s) to address the results of that analysis. For example, if the element does not identify an existing zone to permit emergency shelters without a conditional use permit or other discretionary action, the element must include a program to establish the appropriate zoning, unless the jurisdiction has satisfied its needs through existing emergency shelters or a multi-jurisdictional



Gish Apartments – Supportive Housing, San Jose, CA
Photo courtesy of First Community Housing and Bernard Andre

agreement. If development and management standards do not encourage and facilitate emergency shelters or zoning does not treat transitional and supportive housing as a residential use, the element must include a program(s) to amend existing zoning or processing requirements to comply with SB 2.

Programs to address the requirements of SB 2 for emergency shelters must be implemented within one year of adoption of the housing element. Programs to address requirements for transitional and supportive housing should be implemented early in the planning period. Further, since the program for emergency shelters must be implemented within one year of adoption, the housing element should provide analysis to support and assure effective implementation of the program. For example, the analysis should examine the suitability of zones to be included in the program and whether sufficient and suitable capacity is available. The same type of analysis could evaluate development and management standards that will be considered as part of establishing or amending zoning. This analysis should demonstrate the necessary commitment to ensure zoning, permit procedures and development standards encourage and facilitate emergency shelters.

Timing: When SB 2 Applies

In accordance with Government Code Section 65583(e), any draft housing element submitted to the Department after March 31, 2008 will be required to comply with SB 2.

Section 2

Local Approval

(Government Code Section 65589.5)

The Housing Accountability Act

To promote predictability for the development of housing affordable to lower- and moderate-income households, the Housing Accountability Act (Government Code Section 65589.5) prohibits a jurisdiction from disapproving a housing development project, including housing for farmworkers and for very low-, low-, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low-, low-, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

SB 2 adds emergency shelters to the list of uses protected under the Housing Accountability Act. In addition, SB 2 clarifies that the definition of a housing development project includes transitional or supportive housing (see Attachment 1: SB 2 - changes are underlined).

Zoning Inconsistency

Pursuant to the Housing Accountability Act, a local government is prohibited from making the finding regarding zoning and general plan inconsistency (Section 65589.5(d)(5)) to disapprove a development if the jurisdiction identified the site in its general plan (e.g., housing or land-use element) as appropriate for residential use at the density proposed or failed to identify adequate sites to accommodate its share of the regional housing need for all income groups. In addition to extending these provisions to emergency shelters and transitional housing, SB 2 prohibits the use of the zoning and general plan inconsistency finding to disapprove an emergency shelter if the jurisdictions have:

- not identified a zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit,
- not demonstrated the identified zone(s) include sufficient capacity to accommodate the need for emergency shelter, or
- not demonstrated the identified zone(s) can accommodate at least one emergency shelter.

This provision applies to any site identified in any element of the general plan for industrial, commercial, or multifamily residential uses. In any court action, the burden of proof is on the local jurisdiction to demonstrate its housing element satisfies the above requirements of SB 2.

Attachment 1

Statutory Changes to Housing Element Law (*underline version*)

Attachment 1

Changes to State Housing Element Law Chapter 633, Statutes of 2007 (SB 2) *(changes indicated in strikeouts and underlines)*

65582. As used in this article, the following definitions apply:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Emergency shelter" has the same meaning as defined in subdivision (e) of Section 50801 of the Health and Safety Code.

(e) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(f) "Supportive housing" has the same meaning as defined in subdivision (b) of Section 50675.14 of the Health and Safety Code.

(g) "Transitional housing" has the same meaning as defined in subdivision (h) of Section 50675.2 of the Health and Safety Code.

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, ~~and mobilehomes,~~ and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.
(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in

the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph Transitional housing and supportive housing shall be ~~(5)~~ considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

~~(67)~~ An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be ~~(7)~~ assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

(8) An analysis of opportunities for energy conservation with respect to residential development.

(89) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and ~~the~~ the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

- (2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.
- (3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.
- (4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.
- (5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.
- (6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (89) of subdivision (a).
- The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (89) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.
- (7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.
- (d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.
- (2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.
- (3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:
- (A) How the joint facility will meet the jurisdiction's emergency shelter need.
- (B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.
- (C) The amount and source of the funding that the jurisdiction contributes to the facility.
- (4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.
- (e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:
- (1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, whenever a city, county, or city and county submits a first draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, ~~where~~when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

Housing Accountability Act

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. (2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and Environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate- income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional

housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

~~(e) This section does not relieve the local agency (C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.~~

~~(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). This~~ Neither shall anything in this section also ~~does not~~ be construed to relieve the local agency local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

~~(f) This~~ (1) Nothing in this section ~~does not~~ shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. This. (2) Nothing in this section ~~does not~~ shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of either any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in paragraph subdivision (k), the court in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of

preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

Attachment 2

Definitions

Attachment 2

Definitions

Emergency Shelters (Health and Safety Code Section 50801(e))

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Transitional Housing (Health and Safety Code Section 50675.2)(h)

"Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Supportive Housing (Health and Safety Code 50675.14(b))

Housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to on- or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Target Population Definition per HSC 53260(d)

(d) "Target population" means adults with low-income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

Attachment 3

Helpful Links

Attachment 3

Helpful Links

National Alliance to End Homelessness

<http://www.endhomelessness.org/section/tools/tenyearplan>

Interagency Council on Homelessness

<http://www.ich.gov/>

Interagency Council on Homelessness, Guide to Developing Plans and Examples

<http://www.ich.gov/slocal/index.html>

U.S. Department of Health and Human Services, Homelessness Resource Center

[http://www.nrchmi.samhsa.gov/\(X\(1\)S\(axpyp555dhn54z45qhpqvnj4\)\)/Default.aspx?AspxAutoDetectCookieSupport=1](http://www.nrchmi.samhsa.gov/(X(1)S(axpyp555dhn54z45qhpqvnj4))/Default.aspx?AspxAutoDetectCookieSupport=1)

The National Coalition for the Homeless – Local Resources in California

<http://www.nationalhomeless.org/resources/local/california.html>

HCD Selected Bibliography on Homeless Issues

<http://www.hcd.ca.gov/hpd/biblio.html>

Building Blocks for Effective Housing Elements

(links to funding resources, data, policy and research on homelessness)

http://www.hcd.ca.gov/hpd/housing_element/index.html

Attachment 5

MICHAEL LOGRANDE
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

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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.

Honorable Members of the Planning and Land Use Management Committee
July 24, 2008
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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.