

Attachment #2

Planning Commission Packet April 4, 2013

1. Relevant Federal and State Laws:

The Federal Fair Housing Act, 42 U.S.C. § 3601 et seq. (“FHA”) and the California Fair Employment and Housing Act, Government Code § 12900 et seq. (“FEHA”), prohibit and make it unlawful to discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status and disability through zoning, permits or other land use practices.

There has been a great deal of litigation concerning local agencies’ adoption and enforcement of land use ordinances and policies that regulate group homes for the disabled. While state and federal laws do not pre-empt such zoning laws, the FHA and FEHA prohibit governmental agencies from making zoning or land use decisions that discriminate against individuals with disabilities. Persons with disabilities are individuals with mental or physical impairments which substantially limit one or more major life activities. Examples of disabilities may include blindness, mobility impairment, mental illness, learning disabilities, alcoholism and drug addiction. While individuals in recovery for alcohol or substance abuse are considered to have a disability and are protected from discrimination by federal and state fair housing laws, current users of illegal controlled substances and alcohol are not considered disabled.

The U.S. Department of Justice has provided the following guidance in its paper entitled, “Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *“Group Homes, Local Land Use, and the Fair Housing Act”*”:

“The Fair Housing Act makes it unlawful –

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. “

“Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act.” A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups.” *Group Homes, Local Land Use, and the Fair Housing Act.* http://www.justice.gov/crt/about/hce/final8_1.php

It is important to consider that, regardless of whether these types of facilities are licensed or unlicensed by the State, the residents are considered disabled and, therefore entitled to request a “reasonable accommodation” in the County’s rules and policies, if such accommodation is reasonably necessary, to afford the disabled person an equal opportunity to use and enjoy a dwelling. Whether a particular accommodation is reasonable depends on the facts of each request and will be decided on a case by case basis. An accommodation is deemed “reasonable” so long as it does not:

