



LAND USE SERVICES DEPARTMENT
PLANNING STAFF REPORT



HEARING DATE: February 13, 2014

AGENDA ITEM NO: 2

Project Description:

Applicant: Land Use Services Department

Proposal: A Development Code Amendment to amend various land use categories, to amend development standards to accommodate Licensed and Unlicensed Residential Care Facilities, including Sober Living and Alcohol and Drug (A/D) Treatment Facilities, to modify the provisions pertaining to reasonable accommodation, to establish new definitions, and to amend the provisions for bed and breakfasts and short-term private home rentals.

Community: Countywide

JCS: P201300605

Staff: Vernon Jones and Jim Squire

SUMMARY:

The proposed ordinance before the Planning Commission (“Commission”) is a Development Code Amendment (“Amendments”) to revise various chapters and sections of the Development Code (“Code”) to ensure all uses within the Residential land use districts are compatible with the residential character of these zones. Staff has spent considerable time researching relevant data both internally and from outside agencies, meeting with persons and agencies interested in this subject matter, analyzing federal and state legislation, and reviewing recent relevant Court cases. In this research, it is important to note that staff looked at all of the land use categories in all zones to better understand the potential impacts of each use. The proposed Amendments pertain to the following subjects:

- The reorganization of the land use tables for all zones
- Reasonable accommodation provisions
- Bed and breakfast facilities
- Short-term private home rentals
- Definitions
- New provisions for the establishment of Unlicensed Residential Care Facilities (RCF); including sober living facilities
- Establishment of Licensed RCFs including Alcohol/Drug Treatment Homes for seven or more persons

BACKGROUND:

As stated above, the proposed Amendments include new provisions for the establishment of Unlicensed Residential Care Facilities (RCF), including sober living facilities, a use that is not currently addressed in the Code. Since the Code is permissive in nature, unlicensed group home facilities for the disabled are not allowed, absent a reasonable accommodation for the use. With minor exceptions not applicable here, “Any use not specifically allowed shall be prohibited...” [Development Code Subsection 81.02.020(b)]. On April 10, 2012, the Board of Supervisors approved Interim Urgency Ordinance No. 4164, establishing a moratorium on the

Action taken by the Planning Commission on this item may be appealed to the Board. Yes No
Note: Recommendations to the Board of Supervisors are not appealable.

establishment of: (1) alcohol and drug free facilities (sober living homes), of any size; and, (2) alcoholism or drug abuse recovery or treatment facilities (A/D Treatment Homes) treating seven or more persons, to allow time for consideration of appropriate amendments to the Development Code. The proposed Amendments also address the establishment of A/D Treatment Homes for seven or more persons. The moratorium will terminate as soon as the adopted Development Code amendments become effective or on April 6, 2013, whichever occurs first. It should be noted that a request for a reasonable accommodation from the moratorium could be filed so that these uses could be established during the pendency of the moratorium, provided the findings for reasonable accommodation could be met.

On April 4, 2013, the Commission conducted a public hearing to consider these Amendments, as they were then composed. Following public testimony, the Commission recommended approval of the project proposal, as outlined in the staff report for that date. See Attachment 2 for copy of April 4, 2013 Planning Commission Packet (Staff Report with attachments). See Attachment 3 for a copy of the Minutes (Agenda Item 3) of the April 4, 2013 Planning Commission Meeting.

Based upon questions and comments raised at the April 4th hearing, and new information received since the hearing, staff conducted additional research and has updated the proposed Amendments. These Amendments incorporate provisions to ensure compliance with federal and state law concerning housing opportunities for the disabled. It is requested that the Commission review the updated Amendments, conduct a public hearing, and provide its recommendation on the proposed Amendments to the Board.

DISCUSSION / ANALYSIS:

The County's General Plan provides for a wide range of housing opportunities for County residents, ranging from very low density single-family homes to high-density multiple-family residences with living environs that are much more compact. The objective of the General Plan is to provide housing opportunities for all County households, regardless of type, size, or income level. With this objective, the County strives to maintain an environment commensurate with the zone in question – Single Residential (RS) vs. Multiple Residential (RM). The County's current Code contains many regulations to eliminate incompatible uses from single-family and multi-family residential neighborhoods; however, staff has determined that additional amendments are needed to implement the County's vision for these neighborhoods.

In the review of the current Code's Residential land use tables, staff determined that the tables for all of the four different land use groupings need to be refined, not just the Residential land use table. Certain uses are currently listed but are not allowed within any of the land use zoning districts included on a table. Other uses, such as private schools, are listed but have a footnote that states a General Plan Amendment is required to change the zone to the Institutional (IN) Land Use Zoning District even though public schools could be located within those zones without any comment by the County. Also, there are currently multiple sets of footnotes for each table (one set for each page in the Code) when only one set is appropriate. For these reasons, staff is recommending that all of these tables be reorganized and cleaned up.

Further, staff has determined that some of the uses currently allowed, either by right or through some type of permit, are not consistent with the County's objective for each residential zone.

For example, sororities and fraternities clearly are not compatible with single-family neighborhoods, yet they are currently allowed with a Conditional Use Permit. Group residential uses with a higher concentration of persons in closer proximity to each other generally result in potentially greater impacts relative to noise, parking and traffic. These and other transitory group housing uses are compatible within a multiple-family setting where they are permitted. Also, there are currently two definitions in the Code that are almost identical (“Boarding House” and “Rooming or Boarding”). However, only the term “Rooming or Boarding” is included in the land use tables, where it is allowed with a use permit in the RM zone. The proposed Amendments correct potential confusion surrounding this use by consolidating the two terms into one definition, known as “Boarding Houses.” Like its predecessor use “Rooming and Boarding,” a Boarding House will be allowed in the RM zone subject to a Minor Use Permit or a Conditional Use Permit depending on the size of the facility.

Parolee and/or probationer homes constitute a subset of group residential uses that are similar to boarding houses. These uses are not currently addressed in the Code, and staff has determined that they should be included in the County’s regulations. The proposed Amendments would add these uses where other group residential uses are allowed, subject to the approval of a Conditional Use Permit.

Additionally, a definition for “single housekeeping unit” is being added to clearly describe those uses that are permitted in an RS zone. The current Code defines “family”, as a “single housekeeping unit,” however, this term was not specifically defined. The County’s General Plan states that one of the purposes of the RS zone is “to provide areas for single-family homes on individual lots.” Implicit in this purpose is the intent that these uses are being operated as a “single housekeeping units” as opposed to multiple-family units, which generate more impacts in residential areas.

The Code allows some uses in the RS Land Use Zoning District that would be incompatible in the zone but for conditions placed on that use. For example, short-term private home rentals are permitted in the Mountain Region. These rentals require a Special Use Permit that is renewed on a biennial basis. Short-term private home rentals function as “single housekeeping units” in that there is only one rental agreement, and when they are occupied in accordance with the specified standards required by the Code, they do not impact the neighborhood any more than any other single-family use. Short-term rentals may not be operated as Boarding Houses, with multiple agreements for possession of the premises. The regulations for these rentals are being amended to specifically state that they shall be operated as “single housekeeping units” to codify the County’s intent for this use and the current practice.

Similarly, bed and breakfast facilities are also allowed in this RS zone subject to a discretionary permit and separation standards. Again, these uses, when conducted in accordance with the standards and conditions required, do not impact the neighborhoods in which they are located.

Housing occupied by groups of individuals with disabilities, who are not considered a “single housekeeping unit,” is included within the classification of group home uses. This type of housing includes licensed and unlicensed residential care facilities. As described herein, state and federal law extend special protections to persons with disabilities, and the proposed Amendments are designed to provide housing opportunities for the disabled, so they might reside in a residential setting of their choice.

As earlier stated, small unlicensed group homes (with six or fewer residents) are not currently defined or included in the land use tables. This group living use is compatible within an RS zone when the facilities are operated pursuant to established standards. The proposed Amendments require an Unlicensed RCF Permit for small unlicensed group homes with development standards and review procedures to ensure their impacts to a specific neighborhood are minimized. The proposed Amendments include standards such as requiring that: the facility conform to the property development standards of the zone in which it is located; no more than two facilities per block, with an allowance for additional facilities through the reasonable accommodation process; no more than six residents at the facility, not counting house manager; a qualified house manager shall be present and shall be responsible for the day-to-day operation of the facility; there shall be one parking space provided on-site for each bedroom; the property shall be properly maintained at all times; sex offenders are prohibited; and all facilities must comply with a “good neighbor” policy relative to noise and operation of the facility.

The RCF Permit was designed to be a streamlined, relatively inexpensive review process, and the standards incorporated into the Code for these uses were developed to provide a benefit to the disabled residents who will live in these facilities, as well as reduce potential physical impacts on the neighborhood in which the facilities will be located. Permitting these uses to be located within established neighborhoods greatly increases housing opportunities for the disabled in a non-institutionalized setting. Yet, overconcentration of these facilities in a specific area would increase the potential for a de facto “institutional” environment. For this reason staff recommends that there should be no more than two small unlicensed residential care facilities in any block, consistent with the American Planning Association’s *Policy Guide on Community Residences*. Additional facilities may be located through the reasonable accommodation process. Also, there is a potential for increased density with these facilities, resulting in traffic and parking concerns which are addressed through the standards for the RCF permit.

Large residential care facilities serving seven or more residents (licensed or unlicensed) will be allowed subject to a Conditional Use Permit (or a Minor use Permit for smaller facilities) in the following non-residential zones: Resource Conservation (RC), Agricultural (AG), Rural Commercial (CR), General Commercial (CG), Service Commercial (CS), Highway Commercial (CH), Community Industrial (IC), Special Development-Residential (SD-RES) and Special Development-Commercial (SD-COM). In residential zones, they will only be permitted in the RM zone subject to a Conditional Use Permit. This limitation is again to ensure the character of the RS and the Rural Living (RL) zones is maintained. For large licensed facilities, this is identical to current regulations with the exception of the RS and RL zones. However, it should be noted that Large Residential Care facilities may be located in the RS or RL zone when the findings can be made to support a reasonable accommodation. For example, a reasonable accommodation may be warranted for certain facilities in instances where only a few additional beds are added, and the increased density does not have a potential for increasing physical impacts to the surrounding neighborhood.

It should be reiterated that these proposed regulations provide the needed housing opportunities for the disabled, a protected class of people pursuant to federal and state law. And, a waiver of any of the requirements can be provided through the County’s reasonable accommodation procedure.

The proposed Amendments are revising Chapter 84.31 (Reasonable Accommodation in Housing Development for Disabled Individuals) to add provisions and procedures for requests for a reasonable accommodation for any land use modification that may be needed to establish a residential care facility.

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:

- a. Impose “undue financial and administrative burdens” on the municipality; or
- b. Require a “fundamental alteration in the nature” of its zoning scheme.

“The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.” Id.

**CHANGES TO PROPOSED DEVELOPMENT CODE AMENDMENTS AFTER APRIL 4, 2013
PLANNING COMMISSION HEARING**

Many of the changes made to the Amendments since the last Planning Commission hearing are of a clean-up, errata nature. Additionally, the Performance Standards listed in Chapter 84.32 (Small Unlicensed Residential Care Facilities) were revised to (1) establish that a maximum of two RCFs are permitted per block, as recommended in the American Planning Association’s *Policy Guide on Community Residences*, (2) consolidate property maintenance requirements, (3) set the parking requirement at one space for each bedroom in the residence, and (4) require the posting of “House Rules” that are consistent with the suggestions of the California Association of Addiction Recovery Resource’s (CAARR) *Step-by-Step Guide for Sober Living Environment Set Ups*. Other changes to the Amendments since the last hearing include the reorganization of all of the land use tables for the various land use groupings in the Code and the expansion of the definition of a major reasonable accommodation to incorporate an allowance to request a reasonable accommodation for any land use modifications that may be needed to establish a residential care facility.

ENVIRONMENTAL DETERMINATION:

The Proposed Development Code Amendments are exempt from the California Environmental Quality Act (CEQA) because the proposed amendments will not result in a direct or reasonably foreseeable indirect change in the environment (Section 15060(c)(2) of the CEQA Guidelines) and the amendments are covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines); moreover, these code amendments are also exempt from CEQA pursuant to Section 15305 of the CEQA Guidelines (minor alterations in land use limitations).

FINDINGS:

The following findings and evidence to support such findings must be made by the Commission in making its recommendation to the Board to approve the proposed Development Code Amendment:

1. The proposed amendment is consistent with the General Plan and any applicable community plan or specific plan in that the proposed modifications support the primary purpose and intended uses established in the General Plan for each of the affected General Plan land use zoning designations.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the County in that the proposed modifications include safeguards designed to protect the public interest, health, safety, convenience or welfare of the County's residents, including the disabled.
3. The proposed amendment is internally consistent with other applicable provisions of the Development Code in that the proposed modifications ensure land use compatibility within the affected land use zoning designations while accommodating the disabled in single-family neighborhoods.

RECOMMENDATION: Staff recommends that the Planning Commission recommend the following actions to the Board of Supervisors:

- A. ADOPT the proposed ordinance to amend various land use categories, to amend development standards to accommodate Licensed and Unlicensed Residential Care Facilities, including Sober Living and Alcohol and Drug (A/D) Treatment Facilities, to modify the provisions pertaining to reasonable accommodation, to establish new definitions, and to amend the provisions for bed and breakfasts and short-term private home rentals;
- B. ADOPT the findings as contained in the staff report; and
- C. FILE the Notice of Exemption.

ATTACHMENTS:

1. [Proposed Development Code Section Changes \(Red-lined Version\)](#)
2. [April 4, 2013 Planning Commission Packet](#)
3. [Minutes of the April 4, 2013 Planning Commission Hearing](#)

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