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February 20, 2020

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**Report relative to sober living homes, community care facilities, group homes, and other alcohol and drug rehabilitation facilities; CF 19-0401**

On June 18, 2019, the Planning and Land Use Management Committee (PLUM) directed the Planning Department to prepare a report relative to sober living homes, community care facilities, group homes, and other alcohol and drug rehabilitation facilities to address the following issues:

- a. City, County, State, and Federal laws that define the human and legal rights of drug and alcohol addiction rehabilitation patients or define the rights of the drug and alcohol addiction rehabilitation facilities, licensed, unlicensed, or integrated.
- b. County, State, or Federal laws that allow, restrict, or prohibit a city from regulating or banning these licensed or unlicensed facilities, any aspect of their operations, or any aspect of their impacts on surrounding communities.
- c. County, State, or Federal laws that allow, restrict, or prohibit a city from regulating the overconcentration of licensed and unlicensed drug and alcohol addiction rehabilitation facilities.
- d. Efforts by other cities to regulate drug and alcohol addiction facilities, such as Newport Beach and Costa Mesa, and the outcome of any legal challenges in those cities.
- e. The legality of integral programs and similar associations between licensed and unlicensed facilities.
- f. How the occupancy rules, including but not limited to Uniform Housing Code's Section 503.2 as well as State and local fire codes, relate to the number of patients and workers on-site at a drug and alcohol addiction rehabilitation facility.
- g. Whether 24/7 staff on-site counts towards the practical occupancy rate of a house beyond the occupancy rate outlined in City, State, and Federal laws.
- h. Whether anything in the codes for building and safety address the existence of two dwellings on one property, such as accessory dwelling units and accessory living quarters,

which would allow or prohibit these facilities to circumvent laws related to the number of people living on a property, lot, and/or structure.

- i. The legality of operating a drug and alcohol addiction rehabilitation facility's administrative office on residentially zoned property of a facility, in an accessory dwelling unit, in an accessory living quarter, or in a converted garage unit functioning as a commercial business.
- j. Recommendations for the purpose of determining if licensed or unlicensed drug and alcohol addiction rehabilitation facilities are operating in a manner appropriate to businesses in commercially zoned lots rather than small-businesses permissible in residential lots.
- k. Suggest opportunities and options for what the City can do to address this issue in a more comprehensive manner.
- l. Recommendation on issues related to administrative uses by licensed or unlicensed drug and alcohol addiction rehabilitation facilities within residential zones that are not related to direct patient care.

## Overview

To appreciate the challenges posed by the regulation of drug and alcohol recovery group homes, one must have an understanding of residential group homes in general and the variety of state and federal laws that may or may not apply when a city tries to regulate them. For over 50 years, state and federal governments have favored housing persons with disabilities, including those recovering from drug and alcohol addiction, in group homes located in residential neighborhoods. Group homes provide people in need a safe environment and are most successful when integrated into residential neighborhoods. Although California oversees and regulates group homes where medical treatment is provided through State licensure, there are generally no State or City regulations that pertain to unlicensed facilities that provide non-medical services for those recovering from drug and alcohol addiction. While there are different types of unlicensed, residential group homes – i.e. some house disabled persons (and some others do not), some provide recovery services and others do not – there is generally no State or City oversight for them regardless of the services they provide.

Over the years, some communities have raised issues that both licensed and unlicensed group homes have proliferated in certain neighborhoods and that some have contributed to nuisances to other residents. Because of these issues, in August 2008, the City Council directed City Planning to prepare an ordinance to regulate licensed community care facilities, licensed addiction recovery facilities, and unlicensed group homes. Additionally, from 2013 to 2015, a City Council Ad Hoc Committee on Community Care Facilities also addressed these issues. No ordinance resulted from these efforts.

Because they enforce different sets of regulations, various City departments have different roles and policies regarding residential group homes, which can often complicate a cohesive approach on addressing the various issues. The Los Angeles Fire Department (Fire Department) inspects buildings used commercially, including State-mandated inspections of licensed facilities and complaint driven inspections of other residential group homes. The Los Angeles Department of Building and Safety (DBS) classifies residential group homes (licensed or unlicensed) as an R-3 Building Type (not to be confused with R3 zoning) and can impose occupancy limits when necessary. City Planning often reviews State licensed facilities for seven or more residents

through an application process to determine whether they should be approved as a conditional use for hospitals and sanitariums.

A comprehensive approach to addressing the needs of drug and alcohol addiction rehabilitation facilities is also complicated by the fact that recovering addicts and alcoholics may reside in a variety of group home types, some regulated and others not, including but not limited to licensed state facilities (six or fewer and seven or more), residential group homes, unlicensed group homes for the disabled and unlicensed group homes for others. Although the motion requested answers specifically for drug and alcohol recovery group homes (licensed and unlicensed), a broader discussion is warranted so that overlapping regulations for other facilities are considered regarding potential policy changes.

**a. City, County, State, and Federal laws that define the human and legal rights of drug and alcohol addiction rehabilitation patients or define the rights of the drug and alcohol addiction rehabilitation facilities, licensed, unlicensed, or integrated.**

Federal Law

Federal law protects those recovering from drug and alcohol addiction as disabled. The Federal Americans with Disabilities Act (ADA), 41 USC §12101 et seq., classifies a person recovering from drug and alcohol addiction as disabled, therefore to be treated as any other disabled person. See *Hernandez v. Hughes Missile Systems Co.* (9<sup>th</sup> Cir. 2004) 362 F.3d 564, 568. The Federal Fair Housing Act (FHA), 42 USC §3601 et seq., also classifies a person recovering from drug and alcohol addiction as disabled. See 42 U.S.C. §§ 3602(h), 3604; see also *City of Edmonds v. Washington State Bldg. Code Council* (9<sup>th</sup> Cir. 1994) 18 F.3d 802, 804.

Both the ADA and the FHA prohibit government entities from discriminating against the disabled through land use and/or zoning regulations. See *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment* (3d Cir. 2002) 284 F.3d 442, 459-60; *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch* (9<sup>th</sup> Cir. 1999) 179 F.3d 725, 730-32. These protections would extend to drug and alcohol addiction rehabilitation facilities, whether they are licensed or not, by virtue of the fact that they house individuals considered to be “disabled” under federal law.

The City, County, and State defer to federal law regarding the rights of the disabled. The ADA classifies a person recovering from drug and alcohol addiction as disabled. Accordingly, any regulation that treats housing for the disabled less favorably than any other housing type is discriminatory and unlawful.

State Law

Generally, groups of recovering alcoholics and addicts who choose to live together in unlicensed group homes, i.e. sober living homes, have a right to privacy and may not be treated differently than other families in any residential zone unless the government has a compelling purpose. See *City of Santa Barbara v. Adamson* (1981) 27 Cal. 3d 123.

Further, State licensed facilities housing six or fewer people – whether they are recovering alcoholics and addicts or not – are afforded a variety of State law protections. In 1973, the State of California adopted the Community Care Facilities Act to implement a licensure system for group

homes for the disabled. This Act regulates facilities for disabled persons who require personal services, supervision, or assistance essential for sustaining the activities of daily living. The Act also mandates that facilities with six or fewer residents be permitted where any dwelling unit is a permitted use. Licensed facilities housing six or fewer people are also exempt from certain zoning regulations and permit fees and may not be included in the definition of a “boarding house.” Examples of State licensed facilities include Alcohol and Drug Abuse Recovery or Treatment Facilities (Health and Safety (HS) Code §§ 11834.01, et seq.), Community Care Facilities (HS Code §§ 1500, et seq.), Congregate Living Health Facilities (HS Code §§ 1250(i)), group homes that serve those with mental health disorders (Welfare and Institutions Code § 5116), Intermediate Care Facilities that serve the developmentally disabled (HS § 1250(d)), and Residential Care Facilities for the Elderly (HS Code §§ 1569, et seq.).

Although State law allows municipalities to regulate where licensed facilities for more than six residents are located, Los Angeles does not have a specific zoning mechanism to do so. That being said, objective development standards regarding parking and lighting can be considered to mitigate potential neighborhood impacts. As discussed above, however, the ADA prohibits zoning that could subject persons with disabilities to stricter regulations than other persons. As such, regulations pertaining to drug and alcohol recovery group homes should apply to all types of group homes to avoid conflicting with federal law.

#### Local Law

While there are no local regulations that specifically pertain to drug and alcohol addiction rehabilitation facilities (licensed or unlicensed), the Los Angeles Municipal Code (“LAMC” or “Code”) defines a “family” as one or more persons living together in a dwelling unit with common access to all living, kitchen and eating areas. LAMC § 12.03. Residents of unlicensed homes often interact with each other as “families” or “single-housekeeping units” in dwelling units, which are arguably protected under state privacy laws. While some unlicensed group homes may appear to operate as boarding/rooming houses (banned in single-family zones), making the distinction whether a household operates as a single-housekeeping unit or family subject to the protection of state law or a boarding house is a challenge.

- b. County, State, or Federal laws that allow, restrict, or prohibit a city from regulating or banning these licensed or unlicensed facilities, any aspect of their operations, or any aspect of their impacts on surrounding communities.**

See Response to Subsection “a” above.

- c. County, State, or Federal laws that allow, restrict, or prohibit a city from regulating the overconcentration of licensed and unlicensed drug and alcohol addiction rehabilitation facilities.**

State law states that licensed facilities for six or fewer residents must be treated as any other residential use, thereby allowing them in any zone where single-family homes are allowed. Those licensed facilities for seven or more residents may be conditioned by municipalities, although Los Angeles does not have any regulation on these types of facilities. State law requires that licensed facilities be distanced at least 300 feet from each other (except State licensed Drug/Alcohol Recovery/Treatment facilities and Residential Care facilities for the Elderly).

Unlicensed group homes can fall under a myriad of other governmental regulations/protections, depending on how a municipality defines them.

**d. Efforts by other cities to regulate drug and alcohol addiction facilities, such as Newport and Costa Mesa, and the outcome of any legal challenges in those cities.**

In 2008, Newport Beach adopted an ordinance that banned unlicensed group homes of all types in single-family residential neighborhoods and is enforced on a complaint basis.

In 2014, Costa Mesa passed an ordinance (upheld in 2018 in Federal District Court for the Central District of CA) to regulate all group homes in the following ways:

- bans boarding houses in single-family neighborhoods
- defines “sober living homes” and bans those with more than six residents citywide
- requires a ministerial “special use” permit for sober living homes for up to six residents
- permits reasonable accommodation for facilities for more than six residents
- limits sober living homes to 650 feet of another and from licensed facilities

Distinguishing sober living homes and boarding homes from group living situations is determined through business records, advertisements, and complaints.

The Los Angeles Department of Building and Safety currently performs inspections of residential facilities on a complaint basis. Depending on the concern presented in the complaint, Code Enforcement inspectors determine if construction has been conducted without a permit and/or the underlying use of the building is consistent with its Certificate of Occupancy. If violations are observed, an Order to Comply is issued requiring that the owner repair or return the building to compliance.

On the State level, California Assembly Bill 1779 is winding its way through the legislature and proposes standards for sober living homes that receive State funding. The proposed standards are those currently recommended for certification by the not-for-profit National Alliance Recovery Residences.

Other relevant State bills include:

- AB 919 (2019): Enables the Department of Health Care Services (DHCS) to monitor and enforce sanctions on sober living homes.
- AB 940 (2017): Imposes fines on sober living homes receiving compensation for referring patients to other programs/facilities.

On the Federal level, House Resolution 5724 (the Restoring Community Oversight of Sober Living Homes Act of 2018) was introduced in May 2018 to amend the Fair Housing Act to specify federal anti-discrimination laws do not bar states or cities from prohibiting recovery facilities in residential areas.



**e. The legality of integral programs and similar associations between licensed and unlicensed facilities.**

The State currently does not prohibit the integration of licensed and unlicensed group homes but Senate Bill 992 (approved on September 2, 2018) requires an operator of a licensed facility to disclose ownership in any unlicensed group home. State license regulations would apply to the licensed portion of an integrated facility.

**f. How the occupancy rules, including but not limited to Uniform Housing Code's Section 503.2 as well as State and local fire codes, relate to the number of patients and workers on-site at a drug and alcohol addiction rehabilitation facility.**

State law prohibits zoning restrictions on residential occupancy that discriminate against families. Federal law would prohibit limiting the number of recovering alcoholics and drug addicts residing at an unlicensed group home to the extent that those restrictions discriminate against the disabled. Discrimination under the FHA/ADA can be shown where the regulation at issue constitutes disparate treatment of the disabled, where the regulation was enacted for a discriminatory reason or is facially discriminatory, and/or where the regulation has a disproportionate impact on a particular group. On the other hand, the Department of Housing and Urban Development (HUD) has stated that, in appropriate circumstances, owners and managers may develop and implement reasonable occupancy restrictions based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.

The Uniform Housing Code mandates that a dwelling unit provide at least 70 square feet for the first 2 people and an additional 50 square feet for each additional occupant.

The Los Angeles Building Code uses different occupancy classifications to provide regulatory control over buildings. Government licensed 24-hr care facilities are limited to six clients for occupancy type R-3.1 (not to be confused with the City's R3 Zone regulations). Facilities housing more than six clients are classified as an R-2.1 (not to be confused with the City's R2 Zone regulations) occupancy and thus required to comply with more stringent provisions in the building code. Both occupancy classifications are required to comply with Building Code Section 435 - Special provisions for licensed 24-hour care facilities. Government licensed facilities that provide care for less than 24 hours are classified as R-3 occupancies for six or fewer clients or R-2 for more than six clients.

Unlicensed facilities are classified as R-2 or R-3 occupancies and further defined as boarding houses, group homes, congregate residences, dormitories and/or lodging houses. Buildings or spaces housing 16 or fewer non-transient occupants or 10 or fewer transient occupants are classified as R-3 occupancy. Buildings or spaces housing more than 16 non-transient or more than 10 transient occupants are classified as R-2 occupancies. The R-2 occupancy classification again requires compliance with more stringent provisions of the building code due to the larger quantity of occupants within the building or space.

**g. Whether 24/7 staff on-site counts towards the practical occupancy rate of a house beyond the occupancy rate outlined in City, State, and Federal laws.**

On-site staff of licensed facilities do not count as facility residents but could count toward the State's occupancy limits. City regulations do not place occupancy limits on houses.

**h. Whether anything in the codes for building and safety address the existence of two dwellings on one property, such as accessory dwelling units and accessory living quarters, which would allow or prohibit these facilities to circumvent laws related to the number of people living on a property, lot, and/or structure.**

There are no Building or Residential Code provisions regulating the number of people allowed to reside on a property or even within a dwelling unit. A family may occupy a dwelling (including any legal accessory dwellings) on a single lot but the building code's definition of *family* is very broad, and there are no restrictions on the size of family. Licensed facilities must comply with the State's 300-foot distancing requirement (except for licensed Drug/Alcohol Recovery/Treatment facilities and Residential Care Facilities for the Elderly). Unlicensed facilities within dwelling units for a collection of occupants who do not identify as a family are required to comply with the building code provisions specific to the occupancy classification of the structure depending on the quantity of occupants.

**i. The legality of operating a drug and alcohol addiction rehabilitation facility's administrative office on residentially zoned property of a facility, in an accessory dwelling unit, in an accessory living quarters, or in a converted garage unit functioning as a commercial business.**

Home occupations, permitted in residential zones, have zoning regulations that limit the number of employees and deliveries. City regulations would be preempted should the State allow for more employees at a facility. The City does not have regulations that limit where office functions are situated on a property. Required parking (2 covered off-street spaces per house) may not be replaced for any reason without prior City approval, such as a variance. The City's Accessory Dwelling Unit (ADU) regulations allow the conversion of a garage to an ADU and will no longer require replacement parking. Additionally, the LAMC allows for "supportive services" in residential zones for residents of supportive housing and transitional housing. See LAMC § 12.03. These services do not change the legal use of the property and do not require any additional permits or entitlements.

**j. Recommendations for the purpose of determining if licensed or unlicensed rehabilitation facilities are operating in a manner appropriate to businesses in commercially zoned lots rather than small-businesses permissible in residential lots.**

Licensed and unlicensed recovery homes (rehabilitation facilities) are residential uses and permitted in all residential zones. People living in a house they own or rent are both using the property for the same purpose regardless of ownership. The City's zoning rules do not distinguish on whether a residence is owner-occupied, tenant-occupied through a single owner/landlord, or tenant-occupied through a business entity. Medical treatment may only be provided in State licensed facilities and is therefore banned in unlicensed homes.

How a home is operated will determine if it is being operated in accordance with the City's home occupation regulations.

**k. Suggest opportunities and options for what the City can do to address this issue in a more comprehensive manner.**

Residential uses are allowed throughout most of the City, including most agricultural, residential, and commercial zones. Aside from the State's 300-foot distancing requirement for licensed community care facilities, there is no zoning tool to extend that distance or place limits on dwelling units.

Should the City seek to: (1) limit the number of unlicensed rehabilitation facilities for the disabled in single-family neighborhoods; (2) ban rehabilitation facilities in single-family neighborhoods; (3) limit the number of residents permitted in unlicensed rehabilitation facilities for the disabled; or (4) place distancing requirements on unlicensed rehabilitation facilities for the disabled, it could adopt regulations similar to those of Costa Mesa. Given that rehabilitation facilities provide much needed housing, limiting them may warrant concerns of exacerbating the City's homeless crisis and is in keeping with the City's Housing Element goal of preserving the City's diverse housing stock. Additionally, the City's nuisance abatement process is intended to address any land use that impedes the peaceful enjoyment of its neighbors.

**l. Recommendation on issues related to administrative uses by licensed or unlicensed drug and alcohol addiction rehabilitation facilities within residential zones that are not related to direct patient care.**

Although administrative (or office) uses are not allowed in residential zones, home occupations are permitted. The City's home occupation rules mandate that the property retains its residential character and limit disruption to neighboring properties by imposing limits on the number of employees and deliveries.



Given the State's jurisdiction over licensed facilities, City Planning defers to existing State regulations governing these uses. Given the regulatory complexities regarding unlicensed group living arrangements and the City's commitment to abating the housing crisis, City Planning recommends that several Zoning Code amendments be evaluated to clarify current terminology and rules.

1. Define the following group homes listed below and clarify that all are by-right uses in single-family zones:
  - ***Community Care Facility, licensed.*** As defined in Section 1502 of the Health and Safety Code, any facility, place or building licensed by the State of California that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, abused or neglected children.
  - ***Alcoholism or Drug Abuse Recovery or Treatment Facility, Licensed.*** As defined in Section 11834.02 of the Health and Safety Code, any premises, place or building licensed by the State of California that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug or alcohol and drug misuse or abuse, and who need alcohol and drug recovery treatment or detoxification services.
  - ***Residential Care Facility for the Elderly, Licensed.*** As defined in Section 1569.2 of the Health and Safety Code, a housing arrangement licensed by the State of California chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels of intensities of care and supervision, protective supervision, or personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. A Residential Care Facility for the Elderly, Licensed, may house residents under 60 years of age with compatible needs pursuant to Section 1569.316 of the Health and Safety Code and provide health-related services pursuant to Section 1569.70 of the Health and Safety Code.
2. Require the following development standards for licensed facilities for seven or more residents to ensure neighborhood compatibility:
  - A minimum of two automobile parking spaces must be provided, with 0.2 additional automobile parking space provided for each additional resident over the number seven
  - The facility avoids interference with traffic by providing on-site access through the use of driveways and/or loading docks for deliveries and pickups.
  - The existing residential character of the neighborhood and site are maintained, including the exterior façade, landscaping, fences, walls, lawn areas, and driveways.

- Security night lighting is shielded so that the light source cannot be seen from adjacent residential properties.
- The facility does not create an unreasonable level of disruption or interference with the peaceful enjoyment of adjoining and neighborhood properties.

3. Consider residential capacity limits per the Uniform Housing Code (page 6 of this report) to the definition of *Dwelling Unit*.

Questions regarding this report may be directed to Tom Rothmann of my staff at (213) 978-1891.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning

A handwritten signature in black ink, appearing to read 'Arthi L. Varma', with a long horizontal flourish extending to the right.

ARTHI L. VARMA, AICP  
Deputy Director

VPB:KJK:ALV:TR