

# Gridley City Planning Commission – Regular Meeting Agenda

Wednesday, August 8, 2018; 6:00 pm

Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

*"Our purpose is to continuously enhance our community's vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. Working together, we develop, share, and are guided by a clear vision, values, and meaningful objectives."*

1. **CALL TO ORDER** – Chairman Wise
2. **ROLL CALL** – Recording Secretary
3. **OFFICERS**
  - A. **Officer Election- Chair and Vice Chair**
  - B. **Change of Planning Commission officers; New Chair presides**
4. **COMMUNITY PARTICIPATION FORUM** - *Members of the public may address the Planning Commission on matters not listed on the agenda. The Planning Commission may not discuss nor take action on any community participation item brought forward by a member of the community. Comments are requested to be limited to three (3) minutes.*
5. **CONSENT AGENDA** - *All items listed under the Consent Agenda are considered routine and acted upon by one motion. Any Planning Commissioner may request that an item be removed for separate consideration. The Planning Commission may only make minor comments; otherwise the item should be removed from the consent agenda and placed as the first item(s) under "Public Hearings".*
  - A. Planning Commission Minutes dated February 12, 2018 and June 16, 2018 ~ Continued to next meeting,
6. **PUBLIC HEARINGS**
  - A. **Conditional Use Permit No. 3-18;** Application for a conditional use permit to allow residential use in the General Commercial (C-2) zoning district located at 1296 Highway 99. (APN: 024-270-001)

City staff respectfully recommends the Planning Commission:

    1. Receive staff report
    2. Open public hearing
    3. Hear public testimony
    4. Close public hearing
    5. Commission discussion

City staff respectfully recommends the Planning Commission:

    1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,

2. Make the required conditional use findings as described within the staff report; and,
  3. Approve Conditional Use Permit 3-18 subject to the conditions attached to the staff report as Exhibit A.
- B. Conditional Use Permit No. 4-18;** Application for a conditional use permit to allow residential use in the General Commercial (C-2) zoning district located at 118 Sycamore Street.  
(APN: 010-152-013)
- City staff respectfully recommends the Planning Commission:
1. Receive staff report
  2. Open public hearing
  3. Hear public testimony
  4. Close public hearing
  5. Commission discussion
- City staff respectfully recommends the Planning Commission:
1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,
  2. Make the required conditional use findings as described within the staff report; and,
  3. Approve Conditional Use Permit 4-18 subject to the conditions attached to the staff report as Exhibit A.
- C. Conditional Use Permit No. 5-18;** Application for a conditional use permit to allow a residential addiction-recovery facility for up to six (6) full time residents in a single family residential unit in the General Commercial (C-2) zoning district located at 118 Sycamore Street.  
(APN: 010-152-013)
- City staff respectfully recommends the Planning Commission:
1. Receive staff report
  2. Open public hearing
  3. Hear public testimony
  4. Close public hearing
  5. Commission discussion
- City staff respectfully recommends the Planning Commission:
1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,
  2. Make the required conditional use findings as described within the staff report; and,
  3. Approve Conditional Use Permit 5-18 subject to the conditions attached to the staff report as Exhibit A.

**D. Conditional Use Permit No. 6-18;** Application for a conditional use permit to allow a height increase from twelve feet to sixteen feet for a monument sign in the General Commercial (C-2) zoning district located at 1646 Highway 99.(APN: 010-210-057)

City staff respectfully recommends the Planning Commission:

1. Receive staff report
2. Open public hearing
3. Hear public testimony
4. Close public hearing
5. Commission discussion

City staff respectfully recommends the Planning Commission:

1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15311, Accessory Structures, Class 11; and,
2. Make the required conditional use findings as described within the staff report; and,
3. Approve Conditional Use Permit 6-18 subject to the conditions attached to the staff report as Exhibit A.

**7. INFORMATIONAL**

A. Planning Commission Regularly Scheduled Meeting Calendar:

- September 12, 2018
- October 10, 2018
- November 14, 2018
- December 12, 2018

**8. REPORTS & COMMUNICATIONS – None**

**9. ADJOURNMENT** - to the regular meeting of the Planning Commission dated September 12, 2018.

**General Notes:**

This agenda was posted on the public bulletin board in the foyer of City Hall at or before 4:00 p.m. on August 3, 2018, in accordance with Government Code Section 54954.2. This agenda along with all attachments, if any, is available for public viewing online at [www.gridley.ca.us](http://www.gridley.ca.us) and at the Administration counter in City Hall, 685 Kentucky Street, Gridley, CA. This is a public meeting and anyone may address the Planning Commission. Any documents that were provided to the Planning Commission after the Agenda packet was distributed are also available for public review during normal business hours.

Meeting facilities are accessible to persons with disabilities. By request, alternative agenda document formats are available to persons with disabilities. To arrange an alternative agenda document format or to arrange aid or services to modify or accommodate persons with a disability to participate in a public meeting, contact the City Clerk by calling 846-3631 (voice). This request should be received at least three working days prior to the meeting in order to accommodate your request. For questions about this agenda, please call the Recording Secretary, Elisa Arteaga, at (530) 846-5695.

**Planning Commission Agenda Item #6A**  
**Staff Report**

**DATE:** August 8, 2018

**TO:** Planning Commission

**FROM:** Donna Decker, Planning Department

**SUBJECT:** **Conditional Use Permit No. 3-18;** Application for a conditional use permit to allow residential use in the General Commercial (C-2) zoning district located at 1296 Highway 99. (APN: 024-270-001)

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### **Recommendation**

City staff respectfully recommends the Planning Commission:

1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,
2. Make the required conditional use findings as described within the staff report; and,
3. Approve Conditional Use Permit 3-18 subject to the conditions attached to the staff report as Exhibit A.

### **SUMMARY**

The applicant is requesting a conditional use permit in order to continue the use of the property as an existing single family residence in the General Commercial (C-2) zoning district. The property was developed with single family residential uses in the late 1940's. This property was rezoned along the Highway 99 commercial corridor although it was still being used as single family residential. Without the Conditional Use Permit, the owner would not be able to replace the unit if damage were to occur, or to make improvements.

### **SITE DESCRIPTION**

The subject site is located on the east side of Highway 99 between Obermeyer Avenue and Sheldon Avenue. The site is approximately one acre in size surrounded by commercial uses (Pacific Motel) to the north, agriculture to the east, single family residential and agriculture uses to the south. The site is bounded by Highway 99 with industrial uses and agriculture to the west of the highway.

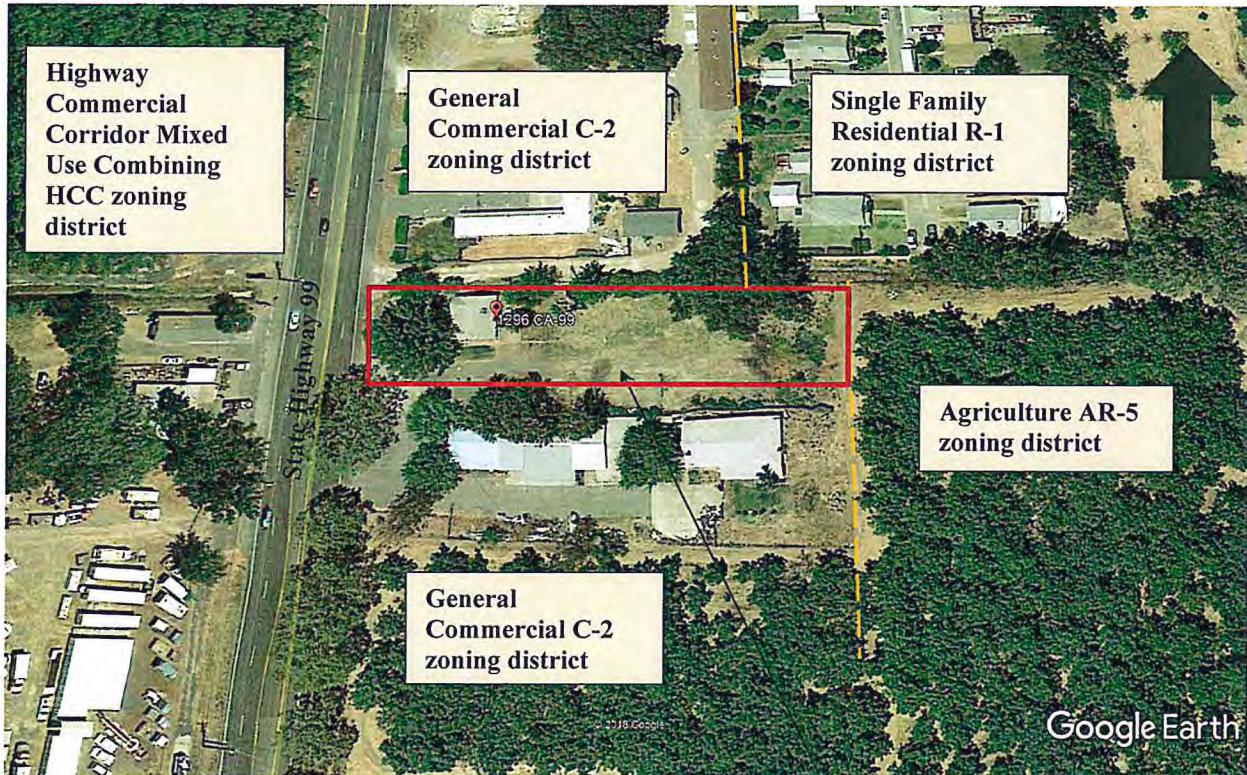


Figure 1: Location Map

Subject Site  
APN 024-270-001

#### DISCUSSION

Conditional use permits (CUP) are entitlements that once activated are tied to the property without expiring unless so conditioned. In order to maintain the ability to continue to reside and/or legally alter or rebuild the structures on the site, a conditional use permit is required to establish the use in the C-2 zoning district. Should the Planning Commission vote favorably, this entitlement will allow the continued residential use.

The Gridley Municipal Code allows residential use in the General Commercial District with a conditional use permit. No limitations are described within the code that would not allow the continued use.



Looking southeast to the property

Figure 2: View looking southeast



Figure 3: View looking east from Highway 99

#### PUBLIC NOTICE

Notices were mailed to the surrounding property owners within a 300-foot radius of the subject site. A notice was also published in the Gridley Herald, posted at City Hall, and on the city website. At the time this report was prepared, no comments had been received.

## FINDINGS

The Planning Commission is required to make the following Findings of Fact for quasi-judicial actions of which this is.

### Conditional Use Permit Findings:

- 1. The proposed use is in accordance with the objectives of the Commercial General Plan land use designation and General Commercial (C-2) zoning district.**

Approval of a conditional use permit will create an allowable use for this parcel in the land use district noted; therefore this finding can be made.

- 2. That the establishment, maintenance, or operations of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use.**

The continued use of the property with a single family residential unit will not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use; therefore this finding can be made.

- 3. That the use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan.**

The use of the property as a single family use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan; therefore this finding can be made.

## ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1.

## CONCLUSION

Approving a conditional use for continued single family residential use will allow the site to maintain its historical use and will allow the reconstruction and general maintenance and improvement of the structure should they be destroyed by fire or other calamity.

## ATTACHMENTS:

1. Exhibit A, Draft Conditions of Approval

**EXHIBIT A**  
**DRAFT CONDITIONS OF APPROVAL**  
Conditional Use Permit No. 3-18  
1296 Highway 99  
(APN 024-270-001)

**Approved Use:**

Conditional Use Permit to allow residential use in the General Commercial (C-2) zoning district located at 1296 Highway 99. (APN: 024-270-001)

**Conditions of Approval:**

1. The approved use for CUP 3-18 shall be substantially as described within this staff report, submitted site plans, narratives, and applications on file in City Hall except as modified by the following conditions. Minor changes to the use, areas, and etc. shall be subject to the review and approval by the Planning Department. Staff may recommend changes to be reviewed by the Planning Commission.
2. The applicant/property owner shall file a Declaration of Acceptance of the Final Conditions of Approval within 30 days of Planning Commission approval.
3. The applicant/owner shall arrange to have Gridley Electric inspect the electrical service and meter at the site to insure current standards are met and to ensure the proper equipment is in place.
4. The residential unit shall be inspected by the Butte County Building Department or the City of Gridley to determine the unit is in good condition, habitable, and that no health or life safety conditions exist.
5. Any modifications or construction for repair, replacement, or enlargement will be required to conform to the currently adopted building code applicable at the time of work.

{End}

**Planning Commission Agenda Item #6B**  
**Staff Report**

**DATE:** August 8, 2018

**TO:** Planning Commission

**FROM:** Donna Decker, Planning Department

**SUBJECT:** **Conditional Use Permit No. 4-18;** Application for a conditional use permit to allow residential use in the General Commercial (C-2) zoning district located at 118 Sycamore Street. (APN: 010-152-013)

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### **Recommendation**

City staff respectfully recommends the Planning Commission:

1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,
2. Make the required conditional use findings as described within the staff report; and,
3. Approve Conditional Use Permit 4-18 subject to the conditions attached to the staff report as Exhibit A.

### **SUMMARY**

The applicant is requesting a conditional use permit in order to continue the use of the property as an existing single family residence in the General Commercial (C-2) zoning district. The property was developed with single family residential uses in the late 1920's. This property was rezoned along the Highway 99 commercial corridor although it was still being used as single family residential. Without the Conditional Use Permit, the owner would not be able to replace the unit if damage were to occur, or to make improvements.

### **SITE DESCRIPTION**

The subject site is located on the west side of Highway 99 on Sycamore Street. The site is located to the west of Bradford Real Estate. The site is approximately 0.15 ac in size surrounded by commercial uses and Highway 99 to the east and south, and single family residential to the west and north.



**Figure 1:** Location Map

**Subject Site**  
**APN 010-152-013**

## DISCUSSION

Conditional use permits (CUP) are entitlements that once activated are tied to the property without expiring unless so conditioned. In order to maintain the ability to continue to reside and/or legally alter or rebuild the structures on the site, a conditional use permit is required to establish the use in the C-2 zoning district. Should the Planning Commission vote favorably, this entitlement will allow the continued residential use.

The Gridley Municipal Code allows residential use in the General Commercial District with a conditional use permit. No limitations are described within the code that would not allow the continued use.



**Figure 2:** View looking north

#### **PUBLIC NOTICE**

Notices were mailed to the surrounding property owners within a 300-foot radius of the subject site. A notice was also published in the Gridley Herald, posted at City Hall, and on the city website. At the time this report was prepared, no comments had been received.

#### **FINDINGS**

The Planning Commission is required to make the following Findings of Fact for quasi-judicial actions of which this is.

##### **Conditional Use Permit Findings:**

1. **The proposed use is in accordance with the objectives of the Commercial General Plan land use designation and General Commercial (C-2) zoning district.**

Approval of a conditional use permit will create an allowable use for this parcel in the land use district noted; therefore this finding can be made.

2. **That the establishment, maintenance, or operations of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use.**

The continued use of the property with a single family residential unit will not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use; therefore this finding can be made.

- 3. That the use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan.**

The use of the property as a single family use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan; therefore this finding can be made.

#### **ENVIRONMENTAL REVIEW**

The proposed project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1.

#### **CONCLUSION**

Approving a conditional use for continued single family residential use will allow the site to maintain its historical use and will allow the reconstruction and general maintenance and improvement of the structure should they be destroyed by fire or other calamity.

#### **ATTACHMENTS:**

1. Exhibit A, Draft Conditions of Approval

**EXHIBIT A**  
**DRAFT CONDITIONS OF APPROVAL**  
Conditional Use Permit No. 4-18  
118 Sycamore Street  
(APN 010-152-013)

**Approved Use:**

Conditional Use Permit to allow residential use in the General Commercial (C-2) zoning district located at 118 Sycamore Street. (APN: 010-152-013)

**Conditions of Approval:**

1. The approved use for CUP 4-18 shall be substantially as described within this staff report, submitted site plans, narratives, and applications on file in City Hall except as modified by the following conditions. Minor changes to the use, areas, and etc. shall be subject to the review and approval by the Planning Department. Staff may recommend changes to be reviewed by the Planning Commission.
2. The applicant/property owner shall file a Declaration of Acceptance of the Final Conditions of Approval within 30 days of Planning Commission approval.
3. The applicant/owner shall arrange to have Gridley Electric inspect the electrical service and meter at the site to insure current standards are met and to ensure the proper equipment is in place.
4. The residential unit shall be inspected by the Butte County Building Department or the City of Gridley to determine the unit is in good condition, habitable, and that no health or life safety conditions exist.
5. Any modifications or construction for repair, replacement, or enlargement will be required to conform to the currently adopted building code applicable at the time of work.

{End}

**Planning Commission Agenda Item #6C**  
**Staff Report**

**DATE:** August 8, 2018

**TO:** Planning Commission

**FROM:** Donna Decker, Planning Department

**SUBJECT:** **Conditional Use Permit No. 5-18;** Application for a conditional use permit to allow a residential addiction-recovery facility for up to six (6) full time residents in a single family residential unit in the General Commercial (C-2) zoning district located at 118 Sycamore Street. (APN: 010-152-013)

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### **Recommendation**

City staff respectfully recommends the Planning Commission:

1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1; and,
2. Make the required conditional use findings as described within the staff report; and,
3. Approve Conditional Use Permit 5-18 subject to the conditions attached to the staff report as Exhibit A.

### **SUMMARY**

The applicant is requesting a conditional use permit in order to use the property as a single family residential unit supporting a small residential recovery facility for alcohol and drug rehabilitation located in the General Commercial (C-2) zoning district. The property was developed with single family residential uses in the 1920's. This property was rezoned along the Highway 99 commercial corridor although it was still being used as single family residential. Without the Conditional Use Permit, the owner would not be able to replace the unit if damage were to occur, or to make improvements.

### **SITE DESCRIPTION**

The subject site is located on the west side of Highway 99 on Sycamore Street. The site is located to the west of Bradford Real Estate. The site is approximately 0.15 ac in size surrounded by commercial uses and Highway 99 to the east and south, and single family residential to the west and north.



Figure 1: Location Map

## DISCUSSION

Conditional use permits (CUP) are entitlements that once activated are tied to the property without expiring unless so conditioned. In order to maintain the ability to continue to reside and/or legally alter or rebuild the structures on the site, a conditional use permit is required to establish the use in the C-2 zoning district. Should the Planning Commission vote favorably, this entitlement will allow the continued residential use.

The Gridley Municipal Code allows residential use in the General Commercial District with a conditional use permit. No limitations are described within the code that would not allow the continued use.



**Figure 2:** View looking north

#### California Statutes

The following description of California Law related to group housing in California is excerpted from "*Select California laws Relating to Residential Recovery Facilities and Group Homes*" authored by Barbara Kautz of the Law Offices of Goldfarb & Lipman LLP. This document was prepared for the Third Annual Fair Housing & Public Accommodations Symposium, Golden Gate University, April 22, 2011.

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services. Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act. This category of disability includes both individuals recovering in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

Licensed group homes serving six or fewer residents must be treated like single-family homes or single dwelling units for zoning purposes.<sup>12</sup> In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be

imposed. The statutes specifically state that these facilities cannot be considered to be boarding houses or rest homes or regulated as such. Staff members and operators of the facility may reside in the home in addition to those served.

*The property is zoned General Commercial (C-2) zoning and requires a conditional use permit to allow residential in a commercial zone. The proposed use having six or fewer persons living at the location as a described "family" meets the description of residential use.*

### **Occupancy limits**

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person. Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.

*The residence is approximately 812 square feet which would accommodate the proposed six persons at this location.*

### **PUBLIC NOTICE**

Notices were mailed to the surrounding property owners within a 300-foot radius of the subject site. A notice was also published in the Gridley Herald, posted at City Hall, and on the city website. At the time this report was prepared, no comments had been received.

### **FINDINGS**

The Planning Commission is required to make the following Findings of Fact for quasi-judicial actions of which this is.

#### **Conditional Use Permit Findings:**

- 1. The proposed use is in accordance with the objectives of the Commercial General Plan land use designation and General Commercial (C-2) zoning district.**

Approval of a conditional use permit will create an allowable use for this parcel in the land use district noted; therefore, this finding can be made.

2. That the establishment, maintenance, or operations of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use.

The continued use of the property with a single family residential unit will not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use; therefore, this finding can be made.

3. That the use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan.

The use of the property as a single family use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan; therefore this finding can be made.

#### **ENVIRONMENTAL REVIEW**

The proposed project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15301, Existing Facilities, Class 1.

#### **CONCLUSION**

Approving a conditional use for single family residential use will allow the site to provide a much needed service, maintain an historic residential use.

The property owner is requesting a conditional use permit to allow residential use to continue in the commercial zone (CUP 4-18). Should that request be approved, the Planning Commission would be able to consider the residential recovery facility to be a single family use. The proposal meets with the requirements of the Gridley Municipal Code. There are case studies where this use may be considered a commercial use, whereas the concern would be in allowing a commercial use in a residential zone. Planning has brought the project to the Planning Commission to provide clarity on these points.

#### **ATTACHMENTS:**

1. Exhibit A, Draft Conditions of Approval
2. Exhibit B, Select California laws Relating to Residential Recovery Facilities and Group Homes

**EXHIBIT A**  
**DRAFT CONDITIONS OF APPROVAL**  
Conditional Use Permit No. 5-18  
118 Sycamore Street  
(APN 010-152-013)

**Approved Use:**

Conditional Use Permit to allow to allow a residential addiction-recovery facility for up to six (6) full time residents in a single family residential unit in the General Commercial (C-2) zoning district located at 118 Sycamore Street. (APN: 010-152-013)

**Conditions of Approval:**

1. The approved use for CUP 5-18 shall be substantially as described within this staff report, submitted site plans, narratives, and applications on file in City Hall except as modified by the following conditions. Minor changes to the use, areas, and etc. shall be subject to the review and approval by the Planning Department. Staff may recommend changes to be reviewed by the Planning Commission.
2. The applicant/property owner shall file a Declaration of Acceptance of the Final Conditions of Approval within 30 days of Planning Commission approval.
3. The applicant/owner shall arrange to have Gridley Electric inspect the electrical service and meter at the site to insure current standards are met and to ensure the proper equipment is in place.
4. The residential unit shall be inspected by the Butte County Building Department or the City of Gridley to determine the unit is in good condition, habitable, and that no health or life safety conditions exist. The structure shall be upgraded to conform to the requirements of the State of California Health and Safety Code, if any.
5. Any modifications or construction for repair, replacement, or enlargement will be required to conform to the currently adopted building code applicable at the time of work.

{End}

# Select California Laws Relating to Residential Recovery Facilities and Group Homes

State Bar of California  
Real Property Law Section  
Fair Housing and Public Accommodations Section

Third Annual Fair Housing and Public Accommodations Symposium  
Golden Gate University  
April 22, 2011

Presented by:

Barbara Kautz  
Goldfarb & Lipman LLP  
1300 Clay Street, Ninth Floor  
Oakland, CA 94612  
510 836-6336  
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## **I. Introduction**

This paper summarizes California statutes and case law regarding planning and zoning requirements applicable to group homes and supportive housing that impose limitations on local governments beyond those imposed by the federal Fair Housing Act and state Fair Employment and Housing Act. The paper first reviews state statutes that protect certain *licensed* group homes and describes provisions of State Planning and Zoning Law that are applicable more generally to both licensed and unlicensed homes. It then explains California case law relating to the right of privacy, which prevents local governments from discriminating between households containing related persons and those comprised of unrelated individuals. It concludes by discussing local regulations that appear to be permissible under State law and fair housing law.

## **II. Statutes Protecting Licensed Facilities**

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

### **A. California Licensing Laws**

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this complex area of law.

#### **1. Community Care Facilities**

Community care facilities must be licensed by the California Department of Social Services (CDSS).<sup>1</sup> A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.<sup>2</sup> Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.<sup>3</sup>

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-

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<sup>1</sup> Cal. Health & Safety Code 1500 *et seq.*

<sup>2</sup> Cal. Health & Safety Code 1502(a).

<sup>3</sup> 22 Cal. Code of Regulations 80001(c)(2).

medical care and supervision for persons 60 years of age or older.<sup>4</sup> Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.<sup>5</sup>

## 2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.<sup>6</sup> Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.<sup>7</sup> This category of disability includes both individuals recovering in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

## 3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.<sup>8</sup> These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled<sup>9</sup> and intermediate care facilities for persons who need intermittent nursing care.<sup>10</sup> Pediatric day health and respite care facilities with six or fewer beds are separately licensed.<sup>11</sup>

# B. Protection from Land Use Regulations for Certain Licensed Facilities

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

## 1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes or single dwelling units for zoning purposes.<sup>12</sup> In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is

<sup>4</sup> Cal. Health & Safety Code 1569.2(k).

<sup>5</sup> 22 Cal. Code of Regulations 87801(a)(5).

<sup>6</sup> Cal. Health & Safety Code 11834.02.

<sup>7</sup> 24 C.F.R. 100.201.

<sup>8</sup> Cal. Health & Safety Code 1265 – 1271.1.

<sup>9</sup> Cal. Health & Safety Code 1250(i).

<sup>10</sup> Cal. Health & Safety Code 1250(e) and 1250(h).

<sup>11</sup> Cal. Health & Safety Code 1760 – 1761.8.

<sup>12</sup> This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to be boarding houses or rest homes or regulated as such.<sup>13</sup> Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.<sup>14</sup>

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.<sup>15</sup>

Because there are no separation requirements for drug and alcohol treatment facilities, ADP has in practice been willing to issue separate licenses for 'small' drug and alcohol treatment facilities whenever a dwelling unit or structure has a separate address. For instance, ADP has issued a separate license for each apartment in one multifamily building, for each single-family home in a six-home compound, and for each cottage in a hotel, in each case creating facilities that in fact serve many more than six residents. No local effort to regulate these facilities as 'large' residential care facilities has been successful in a published case; in other contexts, the courts have determined that the State has completely preempted local regulation of small residential care facilities.<sup>16</sup>

## 2. Facilities Serving More Than Six Residents

Because California law only protects licensed facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.<sup>17</sup> However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.<sup>18</sup>

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<sup>13</sup> For example, see Health & Safety Code 1566.3 & 11834.23.

<sup>14</sup> Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4<sup>th</sup> 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4<sup>th</sup> 1 (1994).

<sup>15</sup> Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

<sup>16</sup> City of Los Angeles v. Department of Health, 63 Cal. App. 3d 473, 479 (1976).

<sup>17</sup> ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

<sup>18</sup> Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997); see also United States v. Village of Palatine, 104 F.3d 300, 304 (9<sup>th</sup> Cir. 1997).

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision adopted as a condition of a special use permit was not consistent with the Fair Housing Act.<sup>19</sup>

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big cities. Although SB 1322 was vetoed by the Governor, changes were later made in Housing Element law to protect certain transitional and supportive housing, as discussed further below.

### 3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.<sup>20</sup> "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.<sup>21</sup>

### 4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,<sup>22</sup> intermediate care facilities, and pediatric day health and respite care facilities,<sup>23</sup> "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.<sup>24</sup>

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<sup>19</sup> Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

<sup>20</sup> Cal. Wel. & Inst. Code 5120.

<sup>21</sup> City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).

<sup>22</sup> Cal. Health & Safety Code 1520.5.

<sup>23</sup> Cal. Health & Safety Code 1267.9.

<sup>24</sup> Cal. Health & Safety Code 1267.9(b)(2).

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.<sup>25</sup>

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.<sup>26</sup>

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

### C. Facilities That Do Not Need a License

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.<sup>27</sup> "Supportive housing" and independent living facilities with "community living support services," both of which provide some services to disabled people, generally do not need to be licensed.<sup>28</sup> Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.<sup>29</sup>

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.<sup>30</sup> Although there is no case on point in California or the Ninth Circuit, ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services could raise fair housing issues, although an argument can also be made that unlicensed facilities are completely unregulated and hence require more local supervision. Some

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<sup>25</sup> Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld. Spacing requirements that have been challenged have required 500-foot separations or more.

<sup>26</sup> See, e.g., Cal. Health & Safety Code 1520.5(d).

<sup>27</sup> Cal. Health & Safety Code 1505(p).

<sup>28</sup> Cal. Health & Safety Code 1504.5.

<sup>29</sup> Cal. Health & Safety Code 1505(i).

<sup>30</sup> North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

communities have explicitly adopted ordinances stating that unlicensed group homes serving six or fewer clients are permitted in residential zones.<sup>31</sup>

Legislation was introduced in California in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. This provision was ultimately removed after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

### **III. California Planning and Zoning Laws**

California Planning and Zoning Law has long contained provisions prohibiting discrimination in land use decisions based on disability. Effective January 1, 2002, state housing element law was amended to require an analysis of constraints on persons with disabilities and to require programs providing reasonable accommodation. Additional protections for supportive and transitional housing became effective on January 1, 2008.

#### **A. Protection from Discrimination in Land Use Decisions**

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) race, sex, lawful occupation, familial status, disability, source of income, method of financing, or occupancy by low to middle income persons.<sup>32</sup> It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.<sup>33</sup>

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.<sup>34</sup> However, federal fair housing law does not specifically limit discrimination based on *income level*,<sup>35</sup> and Section 65008 makes clear that discrimination based on disability is prohibited in local planning and zoning decisions.

#### **B. Housing Elements**

California requires that each city and county adopt a 'housing element' as part of its general plan for the growth of the community.<sup>36</sup> The housing element governs the development of housing in the community. It must identify sites for all types of housing, including transitional housing, supportive housing, and emergency shelters. Beginning in 2002, local housing elements were required to analyze constraints on housing for persons with disabilities and to include programs

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<sup>31</sup> For instance, one community adopted zoning provisions stating that "residential service facilities" serving 6 or fewer clients could be permitted in any residential zone, defining such uses as: "A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care."

<sup>32</sup> Cal. Gov't Code 65008(a) and (b).

<sup>33</sup> Cal. Gov't Code 65008(d)(2).

<sup>34</sup> Keith v. Volpe, 858 F.2d 467, 485 (9<sup>th</sup> Cir. 1987).

<sup>35</sup> Affordable Housing Development Corp. v. City of Fresno, 433 F.3d 1182 (2006).

<sup>36</sup> Cal. Gov't Code 65580 *et seq.*

to remove constraints or to provide reasonable accommodations for housing designed for persons with disabilities.<sup>37</sup> The California Attorney General also sent a letter to local planning agencies in May 2001 urging them to adopt reasonable accommodation ordinances. As a consequence, many cities and counties in the State now have a separate reasonable accommodation ordinance that may be applicable to group homes serving disabled persons, whether licensed or unlicensed.

Amendments to housing element law effective January 1, 2008<sup>38</sup> specifically require cities and counties to include in their housing elements a program to remove constraints so that 'supportive housing,' as defined in the bill, is treated like other residences of the same type. This means that communities must revise their zoning so that the only restrictions that may be applied to supportive housing, as defined in the statute, are those that apply to other residences of the same type (single-family homes, duplexes, triplexes, or fourplexes) in the same zoning district; no conditional use permit or other permit is required unless other residences of that type in the same zone also must obtain the same permit.

However, to qualify for this protection, the supportive housing must meet the definition of "supportive housing" contained in Health & Safety Code Section 50675.14, which is housing that:

- Has no limit on the length of stay.
- Is linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and living and working in the community.
- Is occupied by the "target population," defined as adults *with low incomes* having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health problems; and persons eligible for services under the Lanterman Development Disabilities Act, which provides services to persons with developmental disabilities that originated before the person turned 18.

Should a group home meeting this definition of "supportive housing" require a permit of any type, California's "Housing Accountability Act" will allow it to be denied only under very limited circumstances.<sup>39</sup>

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<sup>37</sup> Cal. Gov't Code 65583(a)(4); 65583(c)(3).

<sup>38</sup> Cal. Gov't Code 65583(a)(5).

<sup>39</sup> Cal. Gov't Code 65589.5(d). Local governments cannot deny supportive housing, or add conditions that make the housing infeasible, unless they can make one of five findings:

- The jurisdiction has met its low income housing needs.
- The housing would have a specific, adverse impact on public health or safety, and there is no feasible way to mitigate the impact.
- Denial is required to comply with state or federal law, and there is no way to comply without making the housing unaffordable.
- The housing is proposed on land zoned for agriculture and is surrounded on two sides by land being used for agriculture, or there is inadequate water or sewer service.
- The housing is inconsistent with both the zoning and the land use designation of the site and is not shown in the housing element as an affordable housing site.

Many privately operated group homes have limitations on the length of stay and are not occupied by adults with low incomes and so do not qualify as "supportive housing" under this definition; but many group homes funded under California's Mental Health Services Act do so qualify.

#### **IV. Protections Provided by the California Right to Privacy**

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."<sup>40</sup> Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Consequently, communities that desire to regulate group homes have attempted to define them as commercial *uses* similar to boarding houses rather than restricting *who* lives there.

##### **A. Families v. Unrelated Persons in a Household**

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.<sup>41</sup> Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *City of Santa Barbara v. Adamson*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other. They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—could be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"<sup>42</sup>

<sup>40</sup> Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4<sup>th</sup> 451, 459-60 (2001).

<sup>41</sup> City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 134 (1980).

<sup>42</sup> Adamson, 27 Cal. 3d at 133.

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.<sup>43</sup> While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.<sup>44</sup>

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.<sup>45</sup>
- Allowed owner-occupied properties to have more residents than renter-occupied properties.<sup>46</sup>
- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.<sup>47</sup>

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.<sup>48</sup>
- Prohibited short-term transient rentals of properties for less than thirty days.<sup>49</sup>

## B. Occupancy Limits

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may

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<sup>43</sup> Housing Rights, Inc., *California Land Use and Zoning Campaign Report* 27-28 (2002). Los Angeles is now considering amendments to its ordinance.

<sup>44</sup> Kim Savage, *Fair Housing Impediments Study* 37 (prepared for Los Angeles Housing Department) (2002).

<sup>45</sup> Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4<sup>th</sup> 451 (2001).

<sup>46</sup> College Area Renters and Landlords Assn. v. City of San Diego, 43 Cal. App. 4<sup>th</sup> 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.

<sup>47</sup> Tom v. City & County of San Francisco, 120 Cal. App. 4<sup>th</sup> 674 (2004).

<sup>48</sup> City of Los Altos v. Barnes, 3 Cal. App. 4<sup>th</sup> 1193 (1992).

<sup>49</sup> Ewing v. City of Carmel, 234 Cal. App. 3<sup>d</sup> 1579 (1991).

not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.<sup>50</sup> Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.<sup>51</sup>

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.<sup>52</sup>

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

## V. Local Regulation of Group Homes

In the past decade, much local concern has been directed at sober living homes, which are typically unlicensed facilities designed to provide support to recovering substance abusers. Because privately operated sober living homes often desire to attract middle- and upper-middle-income residents, and there is a high demand for such facilities, they have often been located in middle- and upper-class areas, and in some cases have experienced local opposition. The League of California Cities has sponsored legislation designed to require licensing or allow more local control, but those efforts have failed. Communities often view such facilities as businesses exploiting a loophole rather than as residences and so seek to be able to distinguish them from residences, often defining them as "lodging houses" or "boarding houses." Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Conversely, sober living homes seek to be classified as "households" or "single housekeeping units" so they may locate in any residential neighborhood without requiring any public notice or needing any use permit.

### A. Defining Unlicensed Facilities as Lodging Houses or Single Housekeeping Units

A 2003 opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.<sup>53</sup> The City of Lompoc defined a lodging house as "a residence or dwelling . . . wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." The Attorney General agreed

<sup>50</sup> Cal. Health and Safety Code 17922(a)(1). See Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).

<sup>51</sup> Briseno, 6 Cal. App. 4th at 1383.

<sup>52</sup> Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

<sup>53</sup> 86 Ops. Cal. Att'y Gen'l 30 (2003).

that a lodging house, while providing a 'residence' to paying customers, could be considered a *commercial* use and so could be prohibited in residential areas. ("There is no question but that municipalities are entitled to confine commercial activities to certain districts [citations], and that they may further limit activities within those districts by requiring use permits."<sup>54</sup>)

The Attorney General further concluded that the ordinance was consistent with *Adamson* because it would allow any owner of property to rent to any member of the public and any member of the public to apply for lodging. The proposed ordinance would be directed at a commercial *use* of property inconsistent with the residential character of the neighborhood regardless of the identity of the users.

Based on the Attorney General's opinion and *Adamson*, then, cities have increasingly defined a "household" or "single housekeeping unit" to have these characteristics:

- One joint lease signed by all residents;
- Access by all to all common areas of the home; and
- Shared housekeeping and shared household expenses.
- No limits on length of residence.
- New residents selected by existing residents, not a manager or landlord.

For instance, the City of Los Angeles proposed an ordinance defining a "single housekeeping unit" as:

One household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses, and maintenance of the premises are shared or carried out according to a household plan or other customary method. If all or part of the dwelling unit is rented, the lessees must jointly occupy the unit under a single lease, either written or oral, whether for monetary or non-monetary consideration.

The same ordinance proposed to define a boarding or rooming house as:

A one-family dwelling, or a dwelling with five or fewer guest rooms or suites of rooms, where lodging is provided to individuals with or without meals, for monetary or non-monetary consideration under two or more separate agreements or leases, either written or oral.

Under these and similar ordinance definitions, many sober living homes operated by private organizations, whether for-profit or nonprofit, are classified as boarding or lodging houses because residents do not sign a joint lease; new residents are selected by a manager; household expenses may not be shared (i.e., residents pay a set fee to the manager); and there may be limits

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<sup>54</sup> *Id.*

on length of residence. In contrast, persons who desire to live together to support each other during recovery and rent a home together would be classified as a "single housekeeping unit."

Enforcement Issues. If a group home is challenged as not constituting a single housekeeping unit, the operator will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., web advertising), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated in part by the neighbors' fears about the residents' mental illness.<sup>55</sup> In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

## **B. Best Practices - Service Providers**

We advise our nonprofit sponsors that if a facility can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.
- Give all residents equal access to all living and eating areas and food preparation and service areas.
- Keep track of, and share, household expenses.
- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.
- Allow all existing residents to select new members of the household.

## **VI. Conclusion**

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on

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<sup>55</sup> Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Since the facilities were unlicensed, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

## **SUMMARY: GROUP HOME ANALYSIS UNDER CALIFORNIA LAW**

### **IF LICENSED:**

#### **6 or fewer clients:**

*Must* be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (e.g., community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

#### **7 or more clients:**

**Psychiatric facilities—both inpatient and outpatient**—must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

**Other licensed facilities** are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements or to obtain modifications to traditional zoning requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

### **IF UNLICENSED:**

#### **Is it operated as a single housekeeping unit (household, family)?**

If so, must be treated like a single dwelling unit.

Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

- Physical access: all have access to common areas: kitchen, laundry, living & family rooms is free.
- No limits on term of occupancy
- All residents on lease or rental agreement [AG's opinion]
- Makeup of the household is determined by the residents rather than a landlord or property manager
- Normal household activities (meals, chores) and household expenses shared (*Adamson*)

There are different *local* definitions of "family" or a single housekeeping unit. (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.) Advocates oppose some of the above characteristics.

**Does it qualify as "supportive housing" under housing element law?**

If so, must be treated like other residences of the same physical type [depending on date of adoption of housing element].

**6 or fewer clients:**

Fair housing argument if treated more strictly than licensed facilities; but no case in California holds this specifically.

**Defined as a boarding house or another use?**

Only the *use* can be regulated, not the *user*.

Group homes for the disabled cannot be treated in a discriminatory fashion from other group homes (boarding houses, dormitories, etc.).

**Planning Commission Agenda Item #6D**  
**Staff Report**

**DATE:** August 8, 2018

**TO:** Planning Commission

**FROM:** Donna Decker, Planning Department

**SUBJECT:** **Conditional Use Permit No. 6-18;** Application for a conditional use permit to allow a height increase from twelve feet to sixteen feet for a monument sign in the General Commercial (C-2) zoning district located at 1646 Highway 99. (APN: 010-210-057)

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### **Recommendation**

City staff respectfully recommends the Planning Commission:

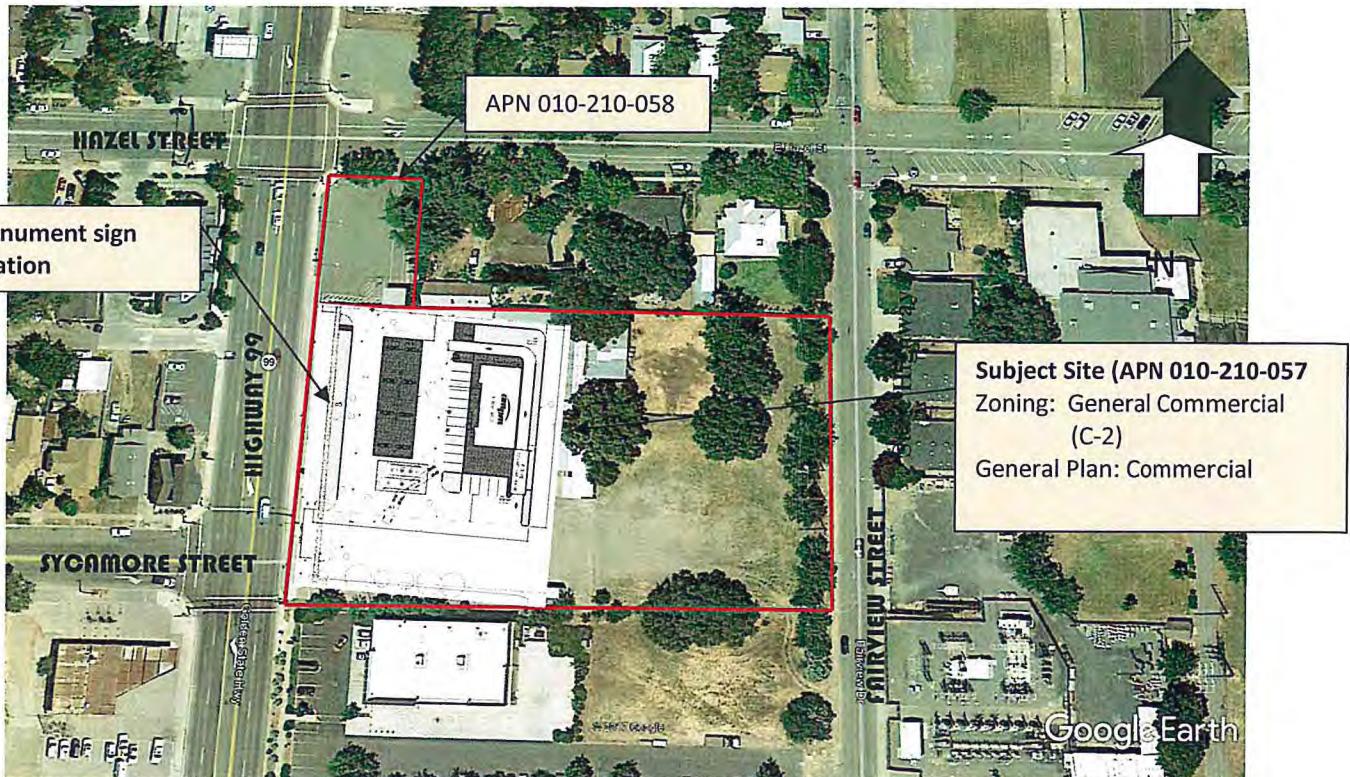
1. Find the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15311, Accessory Structures, Class 11; and,
2. Make the required conditional use findings as described within the staff report; and,
3. Approve Conditional Use Permit 6-18 subject to the conditions attached to the staff report as Exhibit A.

### **SUMMARY**

The applicant is requesting a conditional use permit to increase the allowable height from twelve feet to sixteen feet to accommodate two additional future businesses that would be located to the east of the approved Arco AM/PM Market and Fuel Station, 1646 Highway 99.

### **SITE DESCRIPTION**

The subject site is an approximately 2.74 acre parcel located on the east side of Highway 99 south of Hazel Street. The use of the surrounding properties is commercial adjacent to the west, north and south boundaries with single family residential also located to the north. The parcel is contiguous to Fairview Street at the east property boundary.



**Figure 1:** Location Map  
AM/PM Arco Development

## DISCUSSION

The AM/PM Arco development was approved by both the Planning Commission and the City Council. The owner has advised staff that the property to the east will be developed as discussed at the public hearings and proposes the monument sign be allowed to be four feet taller to accommodate two additional businesses that would be developed on the remainder of the site. The code restricts the height of monument signs along the Highway 99 corridor to twelve feet.

If the conditional use permit were not granted, it is likely that more monument signage would be approved along with directional signage to new businesses on this site. It makes good sense to be forward thinking and to create one monument sign to accommodate the approved use as well as potential future businesses.

## PUBLIC NOTICE

Notices were mailed to the surrounding property owners within a 300-foot radius of the subject site. A notice was also published in the Gridley Herald, posted at City Hall, and on the city website. At the time this report was prepared, no comments had been received.

## FINDINGS

The Planning Commission is required to make the following Findings of Fact for quasi-judicial actions of which this is.

### Conditional Use Permit Findings:

- 1. The proposed use is in accordance with the objectives of the Commercial General Plan land use designation and General Commercial (C-2) zoning district.**

Approval of a conditional use permit will allow the sign to be increased in height; therefore this finding can be made.

- 2. That the establishment, maintenance, or operations of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use.**

The commercial use of the property with a monument sign four additional feet in height will not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use; therefore this finding can be made.

- 3. That the use will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan.**

The commercial use of the property with a monument sign four feet taller than allowed by the Gridley Municipal Code will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city or substantially impede enactment of the comprehensive plan; therefore this finding can be made.

## ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from environmental review pursuant to the California Environmental Quality Act, Section 15311, Accessory Structures, Class 11.

## CONCLUSION

Approving a conditional use to allow a four foot monument sign height increase will not be detrimental, does not constitute a precedent and will function to limit additional signage for future businesses.

## ATTACHMENTS:

1. Exhibit A, Draft Conditions of Approval
2. Exhibit B, Plans

**EXHIBIT A**  
**DRAFT CONDITIONS OF APPROVAL**  
Conditional Use Permit No. 6-18  
1646 Highway 99  
(APN 010-210-057)

**Approved Use:**

Conditional Use Permit to allow a height increase from twelve feet to sixteen feet for a monument sign in the General Commercial (C-2) zoning district located at 1646 Highway 99. (APN: 010-210-057)

**Conditions of Approval:**

1. The approved use for CUP 6-18 shall be substantially as described within this staff report, submitted site plans, narratives, and applications on file in City Hall except as modified by the following conditions. Minor changes to the use, areas, and etc. shall be subject to the review and approval by the Planning Department. Staff may recommend changes to be reviewed by the Planning Commission.
2. The applicant/property owner shall file a Declaration of Acceptance of the Final Conditions of Approval within 30 days of Planning Commission approval.
3. All applicable permits for construction shall be obtained prior to installation.

{End}