MEMORANDUM OF LAW

DATE: March 28, 1995

TO: Councilmember Scott Harvey

FROM: City Attorney

SUBJECT: Residential Care Facilities

This memorandum of law has been prepared in response to your question concerning residential care facilities. You ask whether the City can object to the State issuing a "license" to a residential care facility, with less than six beds, that wants to operate in a residential neighborhood. In addition, you asked us to review Big Creek Lumber Company, Inc. v. County of San Mateo, 95 DAR 450 (Jan. 11, 1995), to determine whether this case affects the City's ability to regulate such facilities. After researching this issue, we have concluded that the City should exercise caution if objecting to the licensing of a residential care facility, and that the Big Creek Lumber Company case offers no assistance with respect to the City's ability to regulate such facilities.

Although a charter city, like the City of San Diego, has police powers over its municipal affairs, a charter city's police powers are still subject to constitutional limitations and "matters of statewide concern." Cal. Const., Art. XI, Section 5. See also Associated Home Builders etc., Inc. v. City of Livermore, 18 Cal. 3d 582 (1976). When it comes to the regulation of residential care facilities the City is restricted by a number of state and federal laws.

Residential care facilities are addressed and protected by the Fair Housing Act ("FHA"). In 1988 the Congress amended the FHA to extend its protection to handicapped persons. (42 USC section 3604.) Since handicapped individuals often reside in residential care facilities, the FHA affects the City's ability to impose restrictions on such facilities. ("Handicapped" for the purposes of the FHA includes "persons with physical impairments, mental illnesses and alcohol and drug addictions.")

Our office has opined in the past that residential care facilities should not be subject to more stringent requirements than other similar types of living arrangements. In addition, the City should be flexible when imposing various zoning and building code restrictions on group homes when reviewing applications for such uses. For a more detailed analysis on the impact of the FHA on the City's ability to regulate

group housing please see the attached Memorandum of Law to Planning Director Ernest Freeman, dated April 13, 1994.

In addition, the state legislature has determined that there is an urgent need to establish a comprehensive statewide service system of quality community care. (Health and Safety Code section 1501.) The state has declared that the establishment of such facilities is a matter of statewide concern. (Health and Safety Code section 1566.)

Under state law, a residential care facility that provides professional services is required to obtain a license from the state prior to being established. (Health and Safety Code section 1508.) This licensing process subjects the facility to the rules and regulations adopted by the state. The licensing process also subjects the facility to state inspection.

Health and Safety Code section 1520.5 currently allows cities to request the denial of a license for a residential care facility (except for foster homes and homes for the elderly) on the grounds that the facility will cause an over-concentration of such facilities that impairs the integrity of the residential neighborhood. Over-concentration is defined as a residential facility which will be located within 300 feet of another such facility.

With respect to small residential care facilities (six or fewer residents), the state requires all local agencies to treat these facilities the same as single-family residences. (Health and Safety Code section 1566.3.) In addition, the California Supreme Court in City of Santa Barbara v. Adamson, 27 Cal. 3d 123 (1980), held that the California Constitution prohibited local communities from distinguishing between blood-related families and self-proclaimed families that were living as a single housekeeping unit. Therefore, some small residential care facilities, such as those having less than six beds, may be considered a single housekeeping unit, regardless of whether any of the individuals are related. This means that such facilities cannot be treated differently than single-family residences.

In conclusion, under Health and Safety Code section 1520.5, the City can object to the licensing of a residential care facility if the facility intends on locating within 300 feet of another similar use. However, some legal commentators believe that provisions such as section 1520.5 may no longer be valid. ("Regulation of Group Homes After AB 2244" by Penny Nakatsu, City Attorney's Departmental Spring Meeting, League of California Cities, May 4-6, 1994, page 9.) As we discussed in the attached Memorandum of Law, some courts have found separation statutes to be invalid. In addition, a local government's refusal to grant an exception to its separation requirement may be considered an FHA violation. Given the current level of scrutiny provided to group homes, we advise that the City take a conservative approach when dealing with residential care facilities. Naturally, we advise against the City taking any action that would have the effect or appearance of

discriminating against persons who reside in residential care facilities.

Finally, the court decision in Big Creek Lumber Company, Inc. v. County of San Mateo, 95 D.A.R. 450 (Jan. 9, 1995), cannot be used to determine whether a city could regulate residential care facilities. In Big Creek Lumber Company, the court held that the County of San Mateo could regulate the location of commercial timber harvesting by the use of local zoning practices.

The Big Creek court reasoned that the legislature, when enacting the Forest Practice Act of 1973, intended on regulating only the conduct of timber operations. The legislature had not intended on regulating zoning activities. In fact, the legislature had specifically stated that local zoning actions were still allowed. Id. at 451.

Residential care facilities require a different analysis. The state has specifically stated that such facilities with six or fewer residents cannot be treated differently than single- family residences for purposes of zoning. In addition, the FHA has attached civil rights protection to these facilities.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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Attachment
ML-95-22