ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

STAFF REPORT

TO Members of the Alameda County Planning Commission
RE Housing Element Implementation-**Addendum**
HEARING DATE March 5, 2012

GENERAL INFORMATION

This report is intended as an addendum to the previous staff report that was sent to the Commission.

STAFF RECOMMENDATION

Staff requests that the Commission consider the revised Ordinance Amendments.

STAFF ANALYSIS

Transitional and Supportive Housing
Staff has revised the Ordinance amendments that were initially sent to the Planning Commission in advance of the March 5 meeting. These revisions were necessary to address concerns regarding the treatment of transitional and supportive housing. Staff from the County's Department of Housing and Community Development (County HCD) requested that Planning staff clarify that regulations for transitional and supportive housing would be applied solely to licensed facilities and not to other formal or informal housing arrangements. Staff interpreted the original amendment language as being applicable only to facilities licensed by the California Department of Social Services, Community Care Licensing Division. However, County HCD was concerned that the definition might be broadly applied in the future and lead to possible violations of state and federal housing law and state privacy laws-- leaving the County open to litigation. Attachment B was drafted by the law firm Goldfarb & Lipman and analyzes how the local jurisdictions may regulate licensed facilities and the limitations of regulated group housing or other types of living arrangements that are unlicensed. Currently, there is no clear direction as to how the County might regulate unlicensed care that operates in a manner similar to a transitional or supportive housing development, as such Planning staff has concluded that the changes are consistent with its interpretation of the Ordinance amendments in that they clarify the intent of the amendments, and that the proposed revisions would not violate any state or federal housing laws.

County HCD also requested that staff revise the amendments to state that limitations on the number of persons that may be housed in a licensed care environment is applied per dwelling unit and not per parcel. These changes are reflected in the revised amendments.

Density Bonuses
At the February 6, 2012 Commission hearing, Commissioner Jacob questioned staff about limiting the sale of housing units to seniors, as he believed that such limitations may violate the federal Fair Housing Act. He suggested that the term "senior" be changed to "moderate income" as local jurisdictions are empowered to restrict units on the basis of income. Attachment C provides information about the Housing for Older Persons Act of 1995 (HOPA). Under this federal law, qualified housing for older persons may be exempt from the Fair Housing Act, and so the purchase of a dwelling may be restricted to persons 55 years or older. To be certain, there are several steps that must be taken to demonstrate that a housing development qualifies under this law; however, it is legally possible to limit the sale of a dwelling within a qualified community (per HOPA) for older persons.

Staff has revised Sections 17.106.090 and 17.106.100 to ensure that the sale of restricted units may be accomplished for both senior and moderate income households.

CONCLUSION

At this time staff requests that the Planning Commission consider the proposed revisions.

ATTACHMENTS

A. Revised Ordinance Amendments
B. Briefing from Goldfarb Lipman
C. Information regarding the Housing for Older Persons Act

PREPARED BY:	Angela C. Robinson Piñon, Planner
REVIEWED BY:	Elizabeth McElligott, Assistant Planning Director

ORDINANCE 2012-_____

AN ORDINANCE AMENDING TITLE 17 OF THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA ADDRESSING AGRICULTURAL EMPLOYEE HOUSING, MOBILEHOME PARKS, DENSITY BONUSES, TRANSITIONAL AND SUPPORTIVE HOUSING, RESIDENTIAL AND MEDICAL CARE FACILITIES, EMERGENCY SHELTERS AND SINGLE ROOM OCCUPANCY FACILITIES IN ORDER TO IMPLEMENT THE ALAMEDA COUNTY HOUSING ELEMENT (2009-2014) AND TO CONFORM WITH STATE LAW

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 17.04.010 of Title 17 of the General Ordinance Code of the County of Alameda is amended reflect the following additions, revisions and deletions:

17.04.010 – Definitions.
"Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

"Agricultural employee housing" means any living quarters or accommodations of any type, including mobilehomes, which comply with the building standards in the State Building Standards Code or an adopted local ordinance with equivalent minimum standards for building(s) used for human habitation, and buildings accessory thereto, where accommodations are provided by any person for individuals employed in farming or other agricultural activities, including such individuals' families. The agricultural employee housing is not required to be located on the same property where the agricultural employee is employed.

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person.

~~"Family Emergency Homeless Shelter" means a short-term residential facility adequately staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 500 feet, measured from property line to property line, from schools, parks and day care facilities, nor closer than 1000 feet from :~~

- ~~Alcohol outlets~~
- ~~Medical marijuana dispensaries~~
- ~~Other Emergency Homeless Shelters~~

~~"General Emergency Homeless Shelter" means a short-term residential facility adequately~~

~~staffed during operating hours with minimal supportive services providing lodging and meals for up to six months to homeless persons, not including families with minor children, pending attempts to find more permanent housing and referred to the shelter by partner social service agencies or similar organizations the offices of which are not located on the premises of the shelter, and where no meals or other services are provided to non-residents of the shelter. Such shelters shall be located within ¼ mile of transit lines and no closer than 1000 feet, measured from property line to property line, of the following uses:~~

- ~~Schools~~
- ~~Day care facilities~~
- ~~Parks~~
- ~~Alcohol outlets~~
- ~~Medical marijuana dispensaries~~
- ~~Other Emergency Homeless Shelters~~

"Medical or residential care facility" means a residential care homes as licensed by State Department of Social Services, Community Care Licensing Division. This term also includes group living quarters housing persons placed by an authorized agency for rehabilitation purposes and is funded by or licensed by or is operated under the auspices of an appropriate federal, state or county governmental agency.

“SRO (single room occupancy) facility” means a building containing six or more SRO units or guestrooms, designed for occupancy of no more than two persons, and which is intended, designed, or is used as a primary residence by guests.

“SRO (single room occupancy) unit” means a room that is used, intended or designed to be used by no more than two persons as a primary residence, but which lacks either or both a self-contained kitchen or bathroom.

“Supportive housing” means housing with no limit on length of stay, that is occupied by the “target population”, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

"Target population" means persons with Low Income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (California Welfare and Institutions Code, section 4500 et seq.) and may include, among other populations, adults, emancipated youth, families, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

“Transitional housing” and “transitional housing development” mean buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

SECTION II

Section 17.06.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.06.030 - Permitted uses.

The following principal uses are permitted in an A district:

A. On a building site, one one-family dwelling or one-family mobilehome either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;

B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture;

C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;

D. Grazing, breeding or training of horses or cattle;

E. Winery or olive oil mill;

F. Fish hatcheries and rearing ponds;

G. Public or private riding or hiking trails;

H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:

1. The secondary dwelling unit shall be on the same building envelope as the primary unit;

2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;

3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and

4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220.A, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required.

I. Occupancy of agricultural caretaker dwelling(s) subject to a site development review as provided in Section 17.06.090, when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her family.

J. Boarding stables and riding academies subject to the following requirements:

1. The boarding stable shall be subject to site development review pursuant to Sections 17.06.090 and 17.54.210 et seq., except as follows:

   a. The appropriate board of zoning adjustments shall decide applications for site development review under this section, and a public hearing is required.

   b. Where the holder of an existing conditional use permit is found to be in compliance with all conditions of the existing conditional use permit, the planning director shall recommend approval of a site development review for the facility Alameda County Ordinance Code, Title 17, Zoning Ordinance with no new conditions except as allowed by the county policy for equine facilities in the A (agricultural) district, to the appropriate board of zoning adjustments.

   c. The planning director may modify the requirements of Section 17.54.230 consistent with the provisions of the county policy of equine facilities in the A (agricultural) district; and specifically may waive the requirement that the site plan be prepared by licensed civil engineer, land surveyor, architect, landscape architect, or a registered building designer.

2. The boarding stable shall be subject to and consistent with the provisions of the county policy for equine facilities in the A (agricultural) district.

3. Site development reviews under this section shall not have an expiration date. However, they shall be subject to a periodic review for compliance with conditions of approval of the site development review and with relevant county ordinances, including all water quality rules and regulations. Such reviews shall occur every five years at minimum, or as needed to ensure compliance.

4. Any changes in the scope of the boarding stable operation shall require a modification to the site development review.

5. Site development review approval under this section shall not be construed to confer upon a boarding stable any exemption from any health, nuisance, or public safety ordinances or their subsequent enforcement or confer any other unique privileges upon a stable.

K. Agricultural employee housing consisting of not more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a single family or household subject to a site development review as described provided in Section 17.06.090 (Agricultural Districts--Site Development Review—When Required), 17.60.100 (Agricultural Districts—Agricultural Employee Housing), and 17.54.210 (Site Development Review).

SECTION III

Section 17.06.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.06.040 - Conditional uses—Board of zoning adjustments.

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

A. Outdoor recreation facility;

B. Animal hospital, kennel;

C. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;

D. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;

E. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;

F. Flight strip when accessory or incidental to a permitted or conditional use;

G. Hog ranch;

H. Drilling for and removal of oil, gas or other hydrocarbon substances;

I. Radio and television transmission facilities;

J. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;

K. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;

L. Administrative support and service facilities of a public regional recreation district;

M. Privately owned wind-electric generators;

N. Remote testing facility;

O. Winery or olive oil mill related uses; and

P. Agricultural employee housing for 37 or more beds in group quarters or 13 units or spaces designed for use by a single family or household.

SECTION IV

Section 17.06.090 of Title 17 of the General Ordinance Code of the County of Alameda is

amended to read as follows:

17.06.090 - Site development review—When required.

Site development review pursuant to Section 17.54.210 shall be required for:

A. Every new dwelling or addition to existing dwelling exceeding five hundred (500) square feet or thirty (30) feet in height hereafter placed on a parcel in the A district;

B. Agricultural caretakers dwelling(s), when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her/their family(ies); subject to the following provisions:

1. Initial site development review shall include submittal of required applications and materials and completion of an agricultural caretaker dwelling report, signed by the property owner.

2. The agricultural caretaker dwelling report submitted under Paragraph 1 above shall include a description of the agricultural use on the site, a description of the commercial/economic viability of the agricultural use, a discussion of the personnel necessary to implement or oversee the agricultural use, and a description of the proposed agricultural dwelling and/or housing. If the agricultural use is intended primarily for private interest rather than commercial viability, or if the dwelling unit is intended for a use not otherwise related directly to commercially viable agriculture on the site, such as onsite security, the report shall provide this information.

3. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.

4. The planning director may extend initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural caretaker dwelling report, signed by the property owner.

5. During the effective period of the site development review, any changes relating to the information contained in the agricultural caretaker dwelling report (including changes to the dwelling unit itself, changes in maximum occupancy requirements, and/or changes in the size/nature/ scope of the agricultural use being served by the presence of the caretaker onsite) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

6. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural caretaker dwelling report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.

7. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.

8. The approval of a site development review for an agricultural caretaker dwelling of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.

9. The agricultural caretaker dwelling is intended to remain only as long as necessary to support either onsite security or the primary agriculture use on the site, and when the need for this support terminates the dwelling must be completely removed or converted to another legal use.

10. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

C. Boarding stables and riding academies subject to the provisions of Section 17.06.030J of this chapter; and

D. Agricultural employee housing subject to the provisions of Section 17.06.100 of this chapter.

SECTION V

Section 17.06.100 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

17.06.100 – Agricultural Districts—Agricultural employee housing.
Agricultural employee housing is subject to site development review pursuant to Sections 17.06.060 (Agricultural Districts--Site Development Review—When Required) and 17.54.210 (Site Development Review) et seq. and to the following provisions:
A. The site development review shall include submittal of required applications and materials including an agricultural employee housing report, signed by the property owner.
B. The agricultural employee housing report submitted under Paragraph 1 above shall include the following information:
1. Entity responsible for housing maintenance and up-keep;
2. Description of whether the housing will be used on a permanent, temporary, and/or seasonal basis;
3. Total number of people to be housed on-site at any one time;
4. Description of the housing, including whether the structures will be permanent and/or temporary, intended as units for families, one person, or several persons, and cost of the units and utilities to the agricultural employees;
5. Location(s) where the agricultural employees will work;
6. There must be adequate water and sewer available to service the development, as determined by the Department of Environmental Health;
7. The housing must be located off prime and productive agricultural land, or on the parcel where no other alternatives exist on site, on the least viable portion of the parcel;
8. The development shall incorporate proper erosion and drainage controls; and
9. Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings).
C. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.
D. The planning director may extend the initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural employee housing report, signed by the property owner.
E. During the effective period of the site development review, any changes relating to the information contained in the agricultural employee housing report (including changes to the dwelling unit itself, and changes in maximum occupancy requirements) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.
F. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural employee housing report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.
G. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.
H. The approval of a site development review for an agricultural employee housing of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site

status.
I. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.

SECTION VI

Section 17.08.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.08.030 - Permitted uses.
The following principal uses are permitted in an R-1 district:
A. One one-family dwelling;
B. Field crop, orchard, garden;
C. Medical or residential care facility for up to six (6) persons per unit; and
D. Licensed transitional or supportive housing for up to six (6) persons per unit.

SECTION VII

Section 17.08.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.08.040 - Conditional uses.
In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-1 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:
A. Community facility;
B. Community clubhouse;
C. Parking lot, only when established to fulfill the residential parking requirements of this title for a use on an abutting lot or lots;
D. Plant nursery or greenhouse used only for the cultivation and wholesale of plant materials;
E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
F. Licensed transitional or supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);and
G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION VIII

Section 17.10.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.10.020 - Permitted uses.
The following principal uses are permitted in an R-2 district:
A. One or two one-family dwellings, or one two-family dwelling;
B. Field crop, orchard, or garden;
C. Medical or residential care facility for up to six (6) persons per unit; and
D. Licensed transitional or supportive housing for up to six (6) persons per unit.

SECTION IX

Section 17.10.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.10.030 - Conditional uses.
In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-2 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:
A. Community facility;
B. Community clubhouse;
C. Parking lot, subject to the same limitations as in Section 17.08.040C;
D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
F. One dwelling or a dwelling group containing altogether not more than three dwelling units, where the lot has an area not less than seven thousand five hundred (7,500) square feet.;
G. Licensed transitional or supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
H. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION X

Section 17.12.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.12.030 - Permitted uses.
The following principal uses are permitted in any R-S district:
A. One-family dwelling, two-family dwelling, multiple dwelling or dwelling group;
B. Field crop, orchard, garden;
C. Medical or residential care facility for up to six (6) persons per unit; and
D. Licensed transitional or supportive housing for up to six (6) persons per unit.

SECTION XI

Section 17.12.040 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.12.040 - Conditional uses—Board of zoning adjustments.
In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in R-S districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:
A. Community facility;
B. Community clubhouse;
C. Parking lot, as regulated in Section 17.08.040C;
D. Plant nursery or greenhouse used only for the cultivation of plant materials;
E. Medical or residential care facility for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
F. Mobile home parks, as regulated by Chapter 17.52, Sections 1000-1065, of this title; and

G. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities).

SECTION XII

Section 17.14.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.14.020 - Permitted uses.
The following principal uses are permitted in an R-3 district:
A. One-family dwelling, two-family dwelling, multiple dwelling, or dwelling group, up to a total not to exceed four dwelling units;
B. Field crop, orchard, garden;
C. Medical or residential care facility for up to six (6) persons per unit; and
D. Licensed transitional or supportive housing for up to six (6) persons per unit.

SECTION XIII

Section 17.14.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.14.030 - Conditional uses—Board of zoning adjustments.
In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in R-3 districts, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:
A. Community facility;
B. Community clubhouse;
C. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
D. Plant nursery, or greenhouse used only for the cultivation of plant materials;
E. Parking lot, as regulated in Section 17.08.040C;
F. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
G. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION XIV

Section 17.16.020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.16.020 - Permitted uses.
The following principal uses are permitted in an R-4 district:
A. All uses permitted in R-3 districts, pursuant to Section 17.14.020;
B. Multiple dwelling or dwelling group, provided that on any building site with an area which equals or exceeds five times the area for one dwelling unit, every dwelling unit placed on such building site shall be subject to site development review pursuant to Section 17.54.210; and
C. Emergency shelter provided in accordance with Section 17.52.1165 (Emergency Shelter-

Regulations)

SECTION XV

Section 17.16.030 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.16.030 - Conditional uses—Board of zoning adjustments.
In addition to the uses listed for Sections 17.52.480 and 17.52.580, the following are conditional uses in an R-4 district, and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:
A. Community facility;
B. Parking lot, as regulated in Section 17.08.040C;
C. Clubhouse;
D. Medical or residential care facility for seven (7) or more persons as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities);
E. Boarding house;
F. Fraternity or sorority house, accredited by an institution of higher learning;
G. Single room occupancy facility subject to the provisions of 17.54.134 (Conditional Uses- Single Room Occupancy (SRO) Facilities);
H. Licensed transitional and supportive housing for seven (7) or more persons per unit as regulated in Section 17.54.133 (Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities); and
I. Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065.

SECTION XVI

Table 17.52.910 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

Table 17.52.910 Parking Spaces Required for Residential Buildings	
Use	Number of Spaces Required
Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation	2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest
Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities	2 plus 1 for each bedroom available for sorority; accommodating guests a paying guest
Medical or residential care facility, and transitional and supportive housing developments	2 plus 1 for each 6 beds for persons not related to the resident family or manager
Hospital	2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1

	per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings
Mobilehome park	2 for each mobilehome site; other provisions of this title notwithstanding, the access to one of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites
Recreational vehicle park	1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites
Emergency shelter	3 plus 1 per each 10 individual beds.
Agricultural employee housing	1 space per unit, or 1 for each 4 beds

SECTION XVII

Section 17.52.1020 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.52.1020 - Mobilehome parks—Density.
Except as otherwise provided in a combining district or specific plan, the number of dwelling units permitted on a building site in a mobilehome park shall not exceed the number obtained by dividing the area in square feet of the building site by five thousand (5,000), disregarding any fraction.

SECTION XVIII

Section 17.52.1065 of Title 17 of the General Ordinance Code of the County of Alameda is amended to read as follows:

17.52.1065 - Mobilehome parks—Parking.
Pursuant to Section 17.52.910 (Parking spaces required—Residential buildings), every mobilehome site shall have two parking spaces. A mobilehome park shall also provide 1 parking space for every 10 mobilehome sites.

SECTION XIX

Section 17.52.1160 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

17.52.1160 – Standards for Emergency Shelters —Purpose.
The purpose of this Section is to establish the development standards for Emergency Shelters

SECTION XX

Section 17.52.1165 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

17.52.1165 – Emergency Shelter —Regulations.
Emergency Shelters shall be subject to the following regulations and development standards:

A. An Emergency Shelter shall obtain and maintain in good standing all required licenses, permits, and approvals from County and State agencies or departments. An Emergency Shelter shall comply with all County and State health and safety requirements for food, medical, and other supportive services provided on-site;
B. No Emergency Shelter facility shall have more than sixty (60) beds;
C. Each resident shall be provided a minimum of fifty (50) gross square feet of personal living space, not including space for common areas;
D. Bathing facilities shall be provided in quantity and location as required in the California Plumbing Code (Title 24 Part 5), as amended, and shall comply with the accessibility requirements of the California Building Code (Title 24 Part 2), as amended;
E. No individual or family shall reside in an Emergency Shelter for more than 180 consecutive days;
F. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area, to the satisfaction of the Planning Director;
G. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities, to the satisfaction of the Planning Director;
H. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
I. The facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
J. Onsite management shall be provided twenty-four (24) hours a day, seven (7) days per week. All facilities must provide a management plan to the satisfaction of the Planning Director that shall contain policies, maintenance plans, intake procedures, tenant rules, and security procedures;
K. The facility is no closer than three hundred (300) feet from other emergency shelters unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
L. On-site parking shall be provided in accordance with Section 17.52.910;
M. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties.
N. Required yards shall conform with the R-4 zoning district yard requirements; and
O. A waiting and client intake area of not less than one hundred (100) square feet shall be provided inside the main building.
P. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters17.58 and 17.59 of this title.

SECTION XXI

Section 17.54.133 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

17.54.133 – Conditional Uses- Residential, Medical Care, Transitional and Supportive Housing Facilities.
In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 (Conditional Uses) and 17.54.140 (Conditional Uses--Action), a conditional use permit for any conditionally permitted residential or medical care facility, transitional housing

facility, or supportive housing facility may only be granted upon determination that the proposal conforms to all of the following additional use permit criteria:
A. Staffing of the facility shall at all times remain in compliance with any State Licensing Agency requirements;
B. The operation of buses or vans to transport residents to or from off-site activities shall not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area;
C. The on-street parking demand generated by the facility due to visitors shall not be substantially greater than that normally generated by the surrounding residential activities;
D. Arrangements for delivery of goods shall be made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
E. That the facility's program shall not generate noise at levels that will adversely affect the livability of the surrounding properties, and shall at all times maintain compliance with the County Noise Ordinance;
F. Onsite management shall be provided twenty-four (24) hours a day, seven days per week. Prior to operation, all facilities must provide to the Planning Director a management plan that shall contain policies, maintenance plans, rental procedures, tenant rules, and security procedures;
G. In accordance with sections 1267.9 and 1520.5 of the California Health and Safety Code, no facility shall be closer than three hundred (300) feet from other similar activities or facilities unless findings can be made that such an additional facility would not have a negative impact upon residential activities in the surrounding area;
H. Parking shall be provided in accordance with Section 17.52.910 (Parking Spaces required—Residential buildings);
I. The facilities shall provide exterior lighting in the parking lot, on building exteriors, and pedestrian accesses. All exterior lighting shall be down-cast and shall not illuminate above the horizontal. No light source shall be exposed above the horizontal, nor visible from neighboring residential use properties; and
J. Yards shall conform to the zoning requirements established for the district in which it is located.

SECTION XXII

Section 17.54.134 of Title 17 of the General Ordinance Code of the County of Alameda is added to read as follows:

17.54.134 – Conditional Uses- Single Room Occupancy (SRO) Facilities.
Single Room Occupancy Facilities shall be subject to the following regulations and development standards:
A. Excluding the bathroom area and closet(s), the Single Room Occupancy unit must be a minimum of one hundred and fifty (150) square feet in floor area and the maximum size shall be not more than four hundred (400) square feet. Each unit shall be designed to accommodate a maximum of two people.
B. Each Single Room Occupancy Unit must include a closet and may contain either kitchen facilities or bath facilities but not both.
C. Complete common cooking facilities/kitchens must be provided if any unit within the SRO Facility does not have a kitchen. One complete cooking facility/kitchen shall be provided within the SRO Facility for every twenty (20) SRO units or portion thereof that do not have kitchens, or have one kitchen on any floor where SRO Units without kitchens are located.
D. Common bathrooms must be located on any floor with any unit that does not have a full bathroom. Common bathrooms shall be either single occupant use with provisions for privacy or

multi-occupant use with separate provisions for men and women. Common bathrooms shall have shower or bathtub facilities at a ratio of one for every seven (7) units or fraction thereof. Each shared shower or bathtub facility shall be provided with an interior lockable door.
E. Each SRO Facility shall have at least ten (10) square feet of common usable area per unit; however no SRO facility shall provide less than two hundred (200) square feet of common outdoor area and two hundred (200) square feet of common indoor area. Maintenance areas, laundry facilities, storage (including bicycle storage), and common hallways shall not be included as usable indoor common space. Landscape areas that are less than eight (8) feet wide shall not be included as outdoor common space.
F. A SRO Facility with twelve (12) or more units shall provide twenty-four (24) hour on-site management, and include a dwelling unit designated for the manager. All SRO Facilities must have a management plan approved prior to occupation by the Alameda County Department of Housing and Community Development. The management plan shall contain management policies, maintenance plans, rental procedures, tenant rules, and security procedures.
G. Single Room Occupancy Facilities shall include laundry facilities.
H. A cleaning supply storeroom and/or utility closet with at least one (1) laundry tub with hot and cold running water must be provided on each floor of the SRO Facility.
I. Parking shall be provided in accordance with Section 17.52.910.

SECTION XXIII

Chapter 17.56 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby repealed.

SECTION XXIV

Chapter 17.106 (Density Bonus) of Title 17 of the General Ordinance Code of the County of Alameda is hereby added to read as follows:

Chapter 17.106- DENSITY BONUS

17.106.010- Title.
This chapter shall be called the density bonus ordinance of the county of Alameda.

17.106.020 – Purpose.
This chapter establishes policies which facilitate the development of affordable housing for very low and lower income households and senior households within the unincorporated area of Alameda County, through the provision of a density bonus, and additional financial incentives if necessary for affordability, to applicants who agree to meet the requirements established by this chapter.

17.106.030 – Definitions.
For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

Affordable Housing Agreement: "Affordable housing agreement" means the agreement made between the applicant and the county governing the regulation and monitoring of the affordable units.
Amenities: "Amenities" means interior amenities including, but not limited to, fireplaces, garbage disposals, dishwashers, cabinets and storage space and bathrooms in excess of one.
Applicant: "Applicant" means any person, firm, partnership, association, joint venture,

corporation, or any entity or combination of entities which seeks a density bonus or incentives or both under this chapter.

Base Units: “Base Units” means the number of units that would be allowed under the General Plan land use designation and zoning ordinance for the subject site before calculation of the Density Bonus.

Child Care Facility: “Child Care Facility” means a facility, other than a day care home, licensed by the State of California to provide non-medical care to children under 18 years of age in need of personal services, supervision or assistance on less than a 24-hour basis. “Density Bonus” means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation taking into account all applicable limitations.

Density Bonus: "Density bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation.

Density Bonus Unit: "Density bonus unit" means a residential dwelling unit authorized as a result of the granting of a density bonus.

Household: "Household" means one person living alone or two or more persons sharing a residential dwelling.

Housing Development: “Housing Development” means a project providing residential units including, without limitation, a subdivision, a planned unit development, multifamily dwellings, or condominium project. Housing developments consist of development of residential units or creation of unimproved residential lots and also include either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units.

Incentive: An "Incentive” may include any of the following:

1. Approval of a mixed-use development if commercial, office, industrial, or other land uses will help to offset the costs of the housing development. A mixed-use development will be approved only if the commercial, office, industrial, or other land uses are compatible with the surrounding land uses, the county general plan, and applicable specific plans;
2. Government-assisted financing, including, but not limited to, mortgage revenue bonds issued by the county;
3. A reduction in site development standards, but only if the overall quality of the development is not lessened. All developments must also meet any design guidelines codified by the county at a future date;
4. Other incentives proposed by the developer or the county which result in identifiable cost reductions, including but not limited to:
    a. Waiver or reduction of certain county fees applicable to restricted units in a housing development,
    b. Reduction of interior amenities,
    c. Priority processing of a housing development which provides restricted units. Upon certification that the application is complete and eligible for priority processing, the housing development will be reviewed by the planning director in advance of all nonpriority items. The housing development review will be completed and a

recommendation will be made by the planning director whether to approve the housing development within one hundred twenty (120) days of receipt of the completed application. The planning director may give written approval to extend the one hundred twenty (120) day period.

Lower Income Household: "Lower income household" means a household whose gross income is eighty (80) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5; if the Health and Safety Code definition is amended, this definition shall be deemed to be amended to the same effect.

Maximum Allowable Residential Density: "Maximum allowable residential density" means the density allowed under the General Plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project. Maximum allowable residential density takes into account limitations to density pursuant to General Plan policies and Zoning Ordinance regulations.

Median Income: "Median income" means the median income for Alameda County, published by the United States Department of Housing and Urban Development.

Moderate Income Household: "Moderate Income Household" means a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the Median Income, adjusted for household size.

Qualifying Unit: "Qualifying Unit" means a dwelling or dwellings designated for occupancy by very low, low, or moderate income households, within a housing development, which make the housing development eligible for a Density Bonus.

Resale controls: "Resale controls" means a resale restriction placed on restricted units by which the price of such units and/or the age or income of the purchaser will be restricted to ensure affordability and occupancy by very low or lower income households or senior households.

Restricted Unit: "Restricted unit" means a residential dwelling unit to be sold or rented at a price or rent affordable to a very low, lower, or moderate income household, or sold or rented to a senior household.

Senior Citizen Housing Development: "Senior Citizen Housing Development" means a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in California Civil Code Sections 51.3 and 51.12.

Senior Household: "Senior household" means as established by California Civil Code Section 51.3, a household in which at least one member is at least sixty-two (62) years of age.

Term of Affordability: "Term of affordability" means the time during which restricted units in a housing development must remain as restricted units.

Unit Type: "Unit type" means a dwelling unit with a defined floor area and a designated number of bedrooms.

Very Low Income Household: "Very low income household" means a household whose gross

income is fifty (50) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5.

17. 106.040 - Density bonus qualifications.

In order to qualify for a density bonus and one or more incentives under this chapter, a housing development must consist of five or more dwelling units and meet one or more of the following criteria:

A. Agrees to construct and maintain at least five (5) percent of the base units for very low income households;

B. Agrees to construct and maintain at least ten (10) percent of the base units for lower income households;

C. Agrees to construct and maintain at least ten (10) percent of the base units in a condominium project or planned development project dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;

D. Agrees to construct and maintain a senior citizen housing development;

E. Converts an existing apartment or multifamily dwelling to a condominium development as described in Section 17.106.050.I (Density Bonus—Density Bonus Calculations).

17.106.050 - Density bonus calculations.

A. In accordance with state law, the granting of a Density Bonus or an incentive(s) shall not be interpreted, in and of itself, to require a General Plan amendment, specific plan amendment, rezone, or other discretionary approval.

B. An applicant must choose a Density Bonus from only one applicable affordability category of this Chapter and may not combine categories, with the exception of a Child Care Facility or land donation. The Child Care Facility or land donation may be combined with an affordable housing development for an additional Density Bonus up to a combined maximum of thirty five (35) percent.

C. Any Density Bonus and/or Concession/Incentive awarded shall apply only to the Housing Development for which it was granted.

D. In determining the number of density bonus units to be granted pursuant to 17.56.040 Section 17.106.040 (Density Bonus Qualifications), the maximum residential density for the site shall be multiplied by 0.20 for subsections A, B, and D of that section and 0.05 for subsection C of that section, unless a lesser number is selected by the developer.

1. For each one percent increase above ten percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent.

2. For each one percent increase above five percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent.

3. For each one percent increase above ten percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent up to a maximum of 35 percent.

E. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

F. The density bonus units shall not be included when determining the number of qualifying units required for a density bonus. When calculating the required number of qualifying units, any calculations resulting in fractional units shall be rounded to the next larger integer.

G. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required qualifying units pursuant to Section 17.106.040 (Density bonus qualifications) above. Regardless of the number of qualifying units, no housing development may be entitled to a density bonus of more than thirty-five percent.

H. The following table summarizes this information:

Density Bonus Summary Table

Income Group	Minimum % Qualifying Units	Bonus Granted	Additional Bonus for Each 1% Increase in Qualifying Units	% Qualifying Units Required for Maximum 35% Bonus
Very Low Income	5%	20%	2.5%	11%
Low Income	10%	20%	1.5%	20%
Moderate Income (Condo or PD only)	10%	5%	1%	40%
Senior Citizen Housing Development	100%	20%	—	—

I. An applicant for an apartment conversion to a condominium project that provides at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of Low or Moderate Income, or fifteen (15) percent of the total units of the project to Lower Income households, and agrees to pay for the reasonable necessary administrative costs incurred by the County, qualify for a twenty-five (25) percent Density Bonus or other incentives of equivalent financial value. An applicant shall be ineligible for a Density Bonus or other incentives if the apartments proposed for conversion constitute a housing development for which a Density Bonus or other Incentives were previously granted under the provisions of this chapter.

17.106.060 – Density Bonus--Eligibility and application requirements for incentives.

A. A housing development qualifying for a density bonus is entitled to at least one incentive in addition to the density bonus. Incentives are available for qualifying housing developments as follows:

1. One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five (5) percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a condominium or planned development.
2. Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a condominium or planned development.
3. Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a condominium or planned development.

B. The appropriate authority for the housing development shall grant the incentive unless the appropriate authority makes a written finding, based upon substantial evidence, of any of the following:

1. That the incentive is not necessary in order to provide for affordable housing costs; or
2. The concession or incentive would have a specific adverse impact, as defined in California Health & Safety Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or

avoid the specific adverse impact without rendering the development unaffordable to very low, lower and moderate income households.

C. In accordance with Government Code Section 65915 (p), an applicant qualifying for a density bonus may request, inclusive of handicapped and guest parking, the following parking ratios:

1. Zero to one bedrooms: One onsite parking space
2. Two to three bedrooms: Two onsite parking spaces
3. Four or more bedrooms: Two and one-half parking spaces

These standards may be applied in addition to any other incentives for which the housing development qualifies as specified in this section. If the total number of parking spaces for the development is other than a whole number, the number shall be rounded up to the next whole number. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

17. 106.070 - Qualifications for restricted units.

A. The applicant shall execute an affordable housing agreement with Alameda County, which shall be recorded and shall run with the land.

B. The affordable housing agreement shall describe household types, number, location, size and construction scheduling of restricted units and any other information required by the county to determine the applicant's compliance with the conditions.

C. Restricted units shall be constructed concurrently with or prior to the construction of nonrestricted units, shall be dispersed throughout the housing development, and shall include all unit types represented in the housing development and shall be in the same proportions as nonrestricted unit types.

17. 106.080 - Term of affordability.

The applicant shall agree to, and the County shall ensure, the continued availability of the Qualifying Units and other Incentives for a period of at least 30 (thirty) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

17. 106.090 - Requirements for rental housing developments.

A. All restricted units shall be occupied by the household type specified in the affordable housing agreement.

B. The applicant shall be responsible for obtaining and verifying information with respect to the qualifications of prospective and current tenants, including, but not limited to, information relating to tenants' incomes, and eligibility, in a form satisfactory to the planning director. The applicant shall maintain a list of qualified applicants for the duration of the program and shall allow the planning director to inspect such information upon reasonable notice. The applicant may contract with another entity to perform these functions subject to the approval of the planning director.

C. The applicant shall submit reports annually certifying that the restricted units are occupied by the household types specified in the affordable housing agreement. The annual reports shall include the number of persons and income for each household in the restricted units.

D. If the affordable housing agreement is violated, the applicant shall pay to the county as liquidated damages the maximum sum of five thousand dollars ($5,000.00) for each restricted unit that is in violation of the affordable housing agreement. This amount may be required for each month of violation. Any unpaid liquidated damages may be recorded as a notice of violation of the affordable housing agreement against the title of the property. In addition to the liquidated damages, if a very low income, moderate income or lower income household in a restricted unit is charged a rent that exceeds the rent specified in the affordable housing

agreement, the applicant must pay to the tenant the difference in the rent charged and the allowable rent for the months that the tenant was overcharged. If a restricted unit is rented to a household with an income exceeding that specified in the affordable housing agreement, in lieu of the liquidated damages mentioned above, the first vacant nonrestricted unit must be made a restricted unit and rented to a household that qualifies under the affordable housing agreement.

17. 106.100 - Requirements for owner-occupied housing.

A. The home buyer shall verify on a form provided by the planning director that the restricted unit being purchased is for use as the buyer's principal residence and that the buyer is either a moderate income household, lower income household, very low income household or a senior household. If the restricted unit ceases to function as the owner's principal residence, it shall be sold according to the requirements of the resale controls. If evidence is presented to the planning director that the owner is unable to continuously occupy the restricted unit because of illness or incapacity, the planning director may approve rental of the restricted unit to a senior, very low income, lower income, or moderate income household.

B. The resale controls will place limits on the resale price of a restricted unit and on the income of the new buyer. The resale price of a restricted unit will be limited to the original price of the restricted unit, plus a factor of appreciation equal to the annual increase in the median income, plus the appraised value, at time of sale, of any documented capital improvements. In addition, when an owner sells a restricted unit, the sale must be to a moderate income household, very low income household, lower income household, or senior household.

C. Resale controls shall be recorded as part of the declaration of covenants, conditions, and restrictions on the restricted unit. The resale controls will remain in effect for the term of affordability.

D. The following transfers of title or any interest therein are not subject to the provisions of this section, provided, however, that the resale controls shall continue to run with the land following such transfers: transfers by gift, devise, or intestate succession to the owner's spouse or children, and transfers of title to a spouse as part of a dissolution of marriage proceeding or in conjunction with marriage.

17. 106.110 - Application procedure.

A. An applicant may submit to the planning director a preliminary proposal for a housing development pursuant to this chapter prior to the submittal of any formal housing development application. The planning director shall, within ninety (90) days of receiving a preliminary proposal, provide the applicant a written preliminary evaluation of the housing development.

B. In addition to the county's usual development requirements, formal application for a housing development under this chapter shall include the following information:

1. A written statement specifying the desired density increase, incentive requested, and the number, type, location, size and construction schedule of all dwelling units;
2. If necessary for the planning director to evaluate the financial need for additional incentives, the applicant shall submit a report that contains housing development costs and revenues, including but not limited to land, construction, and financing costs, and revenues from restricted units, unrestricted units, and density bonus units. Such other information as the planning director needs to evaluate the housing development may be requested by the planning director. The planning director may retain a consultant to review the financial report. The cost of the consultant shall be borne by the applicant; and
3. Any other information requested by the planning director to implement this chapter.

C. Housing developments that meet the requirements set forth in Section 17.106.040 (Density bonus qualifications) above shall qualify for a density bonus and at least one incentive, unless the planning director adopts a written finding that the incentive is not required to achieve the economic feasibility of the restricted units. The planning director may also provide an incentive

in place of a density bonus that is of equivalent value to the density bonus. Such incentive shall be calculated in a manner determined by the planning director.

17.106.120 – Density Bonus--Child Care Facilities.

A. When an applicant proposes a housing development that is eligible for a density bonus under this chapter and includes a child care facility on the premises or adjacent to the housing development, the applicant shall receive an additional density bonus that is in an amount of square feet of residential space that is equal to the square footage of the child care facility; or the applicant may receive another incentive that contributes significantly to the economic feasibility of the construction of the child care facility, provided that, in both cases, the following conditions are incorporated in the conditions of approval for the housing development:

1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the restricted units are required to remain affordable pursuant to the terms of the affordable housing agreement executed between the County and the developer.
2. Attendance of children at the child care facility shall have an equal or greater percentage of children from very low, low, and moderate income households than the percentage of affordable units in the housing development.

B. The County may deny the request for a density bonus or incentive for a child care facility if the county finds, based upon substantial evidence, that the community has adequate child care facilities without the facilities being considered as part of the subject housing development.

17.106.130 - Density Bonus--Donation of land.

A. When an applicant for a tentative subdivision map, parcel map or other residential development donates land to the County, the applicant shall be entitled to a density bonus above the maximum allowable residential density, up to a maximum of thirty five (35) percent depending on the amount of land donated. The amount of density bonus shall be based upon the number of permittable units consistent with Section 17.106.050(H). This increase shall be in addition to any increase in density permitted by this chapter up to a maximum combined density increase of 35 percent. A density bonus for donation of land shall only be considered if all of the following conditions are met:

1. The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
2. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in the amount not less than ten percent (10%) of the residential units in the proposed development.
3. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 (forty) units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is, or will be, served by adequate public facilities and infrastructure (such as waste water treatment facilities and public transit). The transferred land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income units on the transferred land, except that the County may subject the proposed development to subsequent design review if the design is not reviewed by the County prior to the time of transfer.
4. The transferred land and the units constructed on said land shall be subject to a deed restriction ensuring continued affordability of the units for a period of at least thirty (30) years and subject to restrictions consistent with California Government Code Section 65915 (c)(1)

and (2), as may be periodically amended.

5. The land is transferred to the County or to a housing developer approved by the County.

6. The transferred land shall be within the boundary of the proposed development or, if the County determines appropriate, be located within the same General Plan area as the proposed development.

17. 106.140 - Administration and fees.

A. At the discretion of the planning director, the county may contract with another entity to administer the rental and sales provisions of this chapter.

B. The planning director shall establish the amount of fees to be charged to applicants for administration of this chapter at the cost of staff time attributable to such administration. These fees may be waived or reduced as specified in Section 17.106.030 (Definitions) under subsection (4)(a) of the definition of "incentive" .

C. The planning director shall be responsible for monitoring the resale of restricted units.

D. The planning director shall adopt regulations and forms necessary to implement and interpret the provisions of this chapter.

SECTION XXV

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, _____, 2012 by the following called vote:

AYES:
NOES:
EXCUSED:

_____
NATE MILEY
President of the Board of Supervisors
County of Alameda, State of California

ATTEST: CRYSTAL K. HISHIDA GRAFF,
Clerk of the Board of Supervisors, County of Alameda

By_____

Approved as to Form:
DONNA ZIEGLER, County Counsel

By_____
BRIAN WASHINGTON
Chief Assistant County Counsel

Select California Laws Relating to Residential Recovery Facilities and Group Homes

American Planning Association, California
Annual Conference
September 22, 2008

Presented by:

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9/18/2008

I. Introduction

This paper summarizes two sources of protection for group homes and supportive housing under California law. First, it reviews state statutes that protect certain licensed group homes. Second, it explains California case law relating to the right of privacy, which prevents local governments from discriminating between families and unrelated individuals. It concludes by describing areas of uncertainty and suggesting strategies for local governments and for providers related to those issues.

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 very complex area of law.

1. Community Care Facilities

Community care facilities must be licensed by the California Department of Social Services (CDSS).[1] A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.[2] 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.[3]

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-medical care and supervision for persons 60 years of age or older.[4] Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.[5]

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[1] Cal. Health & Safety Code 1500 *et seq.*
[2] Cal. Health & Safety Code 1502(a).
[3] 22 Cal. Code of Regulations 80001(c)(2).
[4] Cal. Health & Safety Code 1569.2(k).
[5] 22 Cal. Code of Regulations 87801(a)(5).

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.[6] Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.[7] This category of disability includes both individuals 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.[8] 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[9] and intermediate care facilities for persons who need intermittent nursing care.[10] Pediatric day health and respite care facilities with six or fewer beds are separately licensed.[11]

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 for zoning purposes.[12] 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

[6] Cal. Health & Safety Code 11834.02.
[7] 24 C.F.R. 100.201.
[8] Cal. Health & Safety Code 1265 – 1271.1.
[9] Cal. Health & Safety Code 1250(i).
[10] Cal. Health & Safety Code 1250(e) and 1250(h).
[11] Cal. Health & Safety Code 1760 – 1761.8.
[12] 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).

be boarding houses or rest homes or regulated as such.[13] 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.[14]

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.[15]

2. Facilities Serving More Than Six Residents

Because California law only protects 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, and analyses of recent State legislation appear to assume that localities can restrict facilities with seven or more clients. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.[16] 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.[17]

One specific statutory provision states that a congregate living *health* facility serving more than six persons is "subject to the conditional use permit requirements of the city or county in which it is located."[18] It is not clear whether this section means that these facilities must be permitted in any zone with a use permit; or, that the facilities must obtain a use permit if the zoning district otherwise allows the facility with a use permit.

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 of a special use permit was not consistent with the Fair Housing Act.[19]

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

[13] For example, *see* Health & Safety Code 1566.3 & 11834.23.
[14] Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4th 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4th 1 (1994).
[15] Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.
[16] 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).
[17] Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997).
[18] Cal. Health & Safety Code 1267.16(c).
[19] Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

cities. The bill would also have severely limited communities' ability to deny these facilities by including them within the protections of the so-called "Anti-NIMBY Law"[20] (now renamed the Housing Accountability Act). It was vetoed by the Governor.

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.[21] "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.[22]

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,[23] intermediate care facilities, and pediatric day health and respite care facilities,[24] "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.[25]

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.[26]

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[20] Cal. Government Code 65589.5.
[21] Cal. Wel. & Inst. Code 5120.
[22] City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).
[23] Cal. Health & Safety Code 1520.5.
[24] Cal. Health & Safety Code 1267.9.
[25] Cal. Health & Safety Code 1267.9(b)(2).
[26] Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld.

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.[27]

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.[28] "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.[29] 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.[30]

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.[31] Although there is no case on point in California or the Ninth Circuit, there may be both a fair housing and equal protection argument against requiring a use permit for an unlicensed group home with six or fewer residents when a licensed group home does not require a permit. This is discussed in more detail below.

Assemblymember Bogh introduced legislation in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. The legislation was ultimately amended to remove this provision 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.

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[27] *See, e.g.,* Cal. Health & Safety Code 1520.5(d).
[28] Cal. Health & Safety Code 1505(p).
[29] Cal. Health & Safety Code 1504.5.
[30] Cal. Health & Safety Code 1505(i).
[31] North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

D. 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) familial status, disability, or occupancy by low to middle income persons.[32] 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.[33]

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.[34] However, federal fair housing law does not specifically limit discrimination based on *income*,[35] and the State statute provides another potential claim that may be relevant when a group home is denied.

III. 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."[36] 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.

Communities opposed to certain unlicensed facilities, such as halfway houses, clean and sober houses, and supportive housing, have attempted to define them as commercial *uses* 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.[37] 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.

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[32] Cal. Gov't Code 65008(a) and (b).
[33] Cal. Gov't Code 65008(d)(2).
[34] Keith v. Volpe, 858 F.2d 467, 485 (9th Cir. 1987).
[35] Affordable Housing Development Corp. v. City of Fresno, 433 F.3d 1182 (2006).
[36] Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4th 451, 459-60 (2001).
[37] City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 134 (1980).

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—should 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*."[38]

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.[39] 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.[40]

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.[41]

- Allowed owner-occupied properties to have more residents than renter-occupied properties.[42]

- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.[43]

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[38] Adamson, 27 Cal. 3d at 133.
[39] Housing Rights, Inc., *California Land Use and Zoning Campaign Report* 27-28 (2002).
[40] Kim Savage, *Fair Housing Impediments Study* 37 (prepared for Los Angeles Housing Department) (2002).
[41] Coalition Advocating Legal Housing Options v. City of Santa Monica, 88 Cal. App. 4th 451 (2001).
[42] College Area Renters and Landlords Assn. v. City of San Diego, 43 Cal. App. 4th 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.
[43] Tom v. City & County of San Francisco, 120 Cal. App. 4th 674 (2004).

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.[44]

- Prohibited short-term transient rentals of properties for less than thirty days.[45]

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 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.[46] 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.[47]

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.[48]

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.

C. Defining Unlicensed Facilities as Lodging Houses

Communities often attempt to define certain group residences, such as sober living homes, as "lodging houses," "boarding houses" or "rooming homes" so that they can be regulated more strictly. Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Potential locations for sober living houses would be severely limited if they could not be located in single-family areas.

A recent 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.[49] Here the City of Lompoc defined a lodging house as "a

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[44] City of Los Altos v. Barnes, 3 Cal. App. 4th 1193 (1992).
[45] Ewing v. City of Carmel, 234 Cal. App. 3d 1579 (1991).
[46] 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).
[47] Briseno, 6 Cal. App. 4th at 1383.
[48] Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).
[49] 86 Op. Att'y Gen'l Cal. 30 (2003).

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 that a lodging house could be considered a *commercial* use and so could be prohibited in residential areas.

To avoid being subject to such a provision, all residents of the dwelling would need to sign the lease or rental agreement, so that it could not be argued that the rooms were rented under separate agreements.

Cities have also sought to distinguish lodging houses from residences by requiring that all occupants in a residence have common use of and access to all living and eating areas and food preparation and service areas. Some also seek to distinguish transient use from permanent residence. For instance, one city states in a publication on residential care homes that:

> "Court cases have recognized that a family represents an intentionally structured relationship between the occupants implying a permanent, long-term relationship as opposed to one that is short-term or transient. The latter includes roominghouse, halfway, and sober/drug-free living homes where the person is at the home for a defined period and then is required to move to more permanent living arrangements…"

The *Adamson* court did not specifically address the issue of transiency (although some of the cases on which it relied considered this to be a factor). The above definition would appear to require a fairly intrusive investigation into the precise relationship between residents living in a clean and sober house.

Ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services may well raise equal protection and fair housing issues. For example, a Connecticut court found evidence of discriminatory decision-making where a city classified a clean and sober house as a boarding house and enforced a zoning restriction against the house in response to neighborhood opposition. The court listed among factors it considered in finding evidence of discriminatory intent "the decision's historical background," "the specific sequence of events leading up to the challenged decision," and "departures from the normal procedural sequences."[50]

If a group is challenged as not constituting a single housekeeping unit, it 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., an ad saying, "Rooms for Rent"), 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

[50] Tsombanidis v. City of West Haven, 180 F. Supp. 2d 262, 286-88 (D. Conn. 2001).

in part by the neighbors' fears about the residents' mental illness.[51] In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

In general, the courts look with particular disfavor on local decisions that appear to have been influenced by neighborhood opposition to the types of people who will live there.

IV. Best Practices

A. Local Agencies

In advising our public agency clients, we recommend that they treat unlicensed facilities identically to licensed facilities, allowing facilities with six or fewer persons to be treated like single-family homes. This avoids what may be a losing battle to force supportive housing into the "lodging house" definition.

For facilities with seven or more residents, the challenge for a local agency is to define an unlicensed facility as a *use* that is different from a residence. The Attorney General's opinion provides guidance to those wishing to define these facilities as lodging houses. Others have defined "residential service facilities" as a separate use. One such definition reads as follows:

> Residential Service Facility. 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.

Because this definition is more related to care than is the definition of a lodging house, it may be perceived as being directed at disabled persons and hence more subject to challenge as intentionally discriminatory. It can also force supportive housing and foster care homes (which are not usually the target of community wrath) into lengthy and complicated processes.

Other defensible ordinances would attempt to control the behavior or actions that the community finds offensive: too many cars, groups smoking outdoors, too much noise. In trying to control these problems, local agencies have been constrained since *Adamson* by being required to apply ordinances uniformly to traditional families and to households made up of unrelated people. For instance, communities could deal with complaints about too many cars by limiting the number of vehicles that could be parked at a home—but the ordinance would also need to apply to families with two teenagers and four cars. Controls on outdoor cigarette smoking would similarly need to be applied uniformly. Consequently, developing controls on offensive behavior is a challenge.

B. Service Providers

We advise our nonprofit sponsors that if a facility with more than six persons 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:

[51] Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

- 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.

- 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.

V. 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 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. Without required licensing, 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, along with minimal separation requirements to maintain the "community integration" purpose of the statutes. 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

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 (eg, 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. 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:

Can it be considered a single housekeeping unit? Or can it be defined as a boarding house or another use? (City of Santa Barbara v. Adamson) Only the *use* can be regulated, not the *user.* Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

- Physical design: all have access to common areas, kitchens; laundry is free; one mailbox; looks like a home.
- No limits on term of occupancy ["must move after 3 months"]
- All residents on lease or rental agreement [AG's opinion]

There are different *local* definitions of various uses relating to the qualification of unlicensed homes as 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.)

6 or fewer clients: equal protection or fair housing argument if treated more strictly than licensed facilities.

DEFINITIONS OF EMERGENCY SHELTERS, TRANSITIONAL, AND SUPPORTIVE HOUSING

Emergency Shelter

(e) "Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Cal Health & Saf Code § 50801

Transitional Housing

(h) "Transitional housing" and "transitional housing development" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months.

Cal Health & Saf Code § 50675.2

Supportive Housing

(b) "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

Cal Health & Saf Code § 50675.14

"Target Population"

(d) "Target population" means adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.

Cal Health & Saf Code § 53260

"Eligible for Services Under the Lanterman Act"

Persons with a "developmental disability" are eligible for services under the Lanterman Act.

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

Cal Wel & Inst Code § 4512

Summary from Draft Mental Health Services Act Guide

The definition of "supportive housing" contained in Health & Safety Code Section 50675.14 requires that the supportive housing:

- Have no limit on the length of stay.

- Be linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and living and working in the community.

- Be occupied by the "target population." The "target population" includes adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health problems. The target population also includes persons eligible for services under the Lanterman Development Disabilities Act (the "Lanterman Act"). The Lanterman Act provides services to persons, including children, with developmental disabilities that originated before the person turned 18; it does not provide services to persons with solely physical disabilities. The target population may include, among other populations, families with children, elderly persons, young adults aging our of the foster care system, individual exiting from institutional settings, veterans, and homeless people.

Public Law 104–76
104th Congress

An Act

To amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons.

Dec. 28, 1995
[H.R. 660]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Housing for Older Persons Act of 1995.
46 USC 3601 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Housing for Older Persons Act of 1995".

SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C. 3607(b)(2)(C)) is amended to read as follows:

"(C) intended and operated for occupancy by persons 55 years of age or older, and—

"(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

"(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

"(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

"(I) provide for verification by reliable surveys and affidavits; and

"(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.".

SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE; DEFENSE AGAINST CIVIL MONEY DAMAGES.

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b)) is amended by adding at the end the following new paragraph:

"(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

"(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

"(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

"(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.".

Approved December 28, 1995.

LEGISLATIVE HISTORY—H.R. 660:

HOUSE REPORTS: No. 104–91 (Comm. on the Judiciary).
SENATE REPORTS: No. 104–172 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 141 (1995):
Apr. 6, considered and passed House.
Dec. 6, considered and passed Senate, amended.
Dec. 18, House concurred in Senate amendment.

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Questions and Answers
Concerning the Final Rule Implementing
the Housing for Older Persons Act of 1995 (HOPA)

Title VIII of the Civil Rights Act of 1968 (the Federal Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act), prohibits discrimination in housing and real estate-related transactions based on race, color, religion, sex, national origin, handicap and familial status (in general, the presence of children under the age of 18 in the household). The prohibition against discrimination based on familial status became effective March 12, 1989. The Act contained a provision exempting "senior" housing from the prohibition against familial status discrimination.

The Housing for Older Persons Act (HOPA), signed into law by President Clinton on December 28, 1995, amended the housing for older persons exemption against familial status discrimination. The HOPA modified the statutory definition of housing for older persons as housing intended and operated for occupancy by at least one person 55 years of age or older per unit. It eliminated the requirement that housing for older persons have significant services and facilities specifically designed for its elderly residents. It required that facilities or communities claiming the exemption establish age verification procedures. It established a good faith reliance defense or exemption against monetary damages for persons who illegally act in good faith to exclude children based on a legitimate belief that the housing facility or community was entitled to the exemption.

Question 1
For the purpose of HOPA, what is a housing community or facility? What are some typical examples of a housing, community or facility?

Answer
A housing community or facility is any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion of a single building may not be considered a housing facility or community. Typical examples include: a condominium association; a cooperative; a property governed by homeowners or resident association; a municipally zoned area; a leased property under common private ownership; a manufactured housing community, a mobile home park.

Question 2

May an owner of single family houses that are dispersed throughout a geographical area, and who is not otherwise exempt under the Fair Housing Act, qualify as a "housing community or facility" and claim the exemption?

Answer

No. The common use of the terms "housing community" and "facility" applies to dwelling units which are in the same location and have some relationship to each other. The dwelling units in a housing community or facility must share a common set of rules, policies, and procedures, that is applied to all of the dwellings in the community or facility. Further, although there is no required stated minimum number of dwelling units that must be present for the exemption to apply, there must be a sufficient number of dwelling units to constitute a "community" or "facility" in the common meaning of those terms. One single family dwelling or a duplex would not qualify as a "housing community or facility."

Question 3

What must a housing community or facility do to qualify for the 55 or older housing for older persons exemption?

Answer

In order to qualify for the exemption, the housing community/facility must satisfy each of the following requirements:

a) at least 80 percent of the occupied units must be occupied by at least one person 55 years of age or older per unit;

b) the owner or management of the housing facility/community must publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons 55 years or older; and

c) the facility/community must comply with rules issued by the Secretary for verification of occupancy through reliable surveys and affidavits.

Question 4

What are some examples of the types of policies and procedures that would demonstrate an intent to provide housing for persons 55 years of age or older?

Answer
Examples include:

a) the written rules, regulations, lease provisions, deed or other restrictions,

b) the actual practices of the owner/management of the housing facility/community used in the enforcement of the rules;

c) the kind of advertising used to attract prospective residents to the housing facility/community as well as the manner in which the facility/community is described to prospective residents;

d) the housing community's/facility's age verification procedures, and its ability to produce, in response to a familial status complaint, verification of required occupancy.

Question 5
May a housing facility or community advertise as "adult" housing and still demonstrate the intent to be housing for older persons?

Answer
Use of the word "adult" or "adult community" in an advertisement, sign or other informational material, or when describing the facility or community to prospective renters or purchasers or members of the public, does not demonstrate an intent to be housing for older persons as defined by the final rule. The use of these terms, on the other hand, does not destroy the intent requirement of HOPA. If a facility or community has clearly shown in other ways that it intends to operate as housing for older persons, and meets the 80% requirement, and has in place age verification procedures, the intent requirement can be met even if the term "adult" is occasionally used to describe it. The Department will look at the totality of the circumstances in the investigation of a complaint alleging that the facility or community does not qualify as housing for older persons.

Question 6

How many days after the effective date of the final rule implementing HOPA does a facility/community have to develop routine procedures for determining the occupancy of each unit, including age verification?

Answer

The housing community/facility has 180 days after the effective date of the rule, May 3, 1999, to develop the appropriate procedures that should constitute a part of its normal leasing and purchasing procedures. However, if a housing facility or community is not now but intends to become eligible for the exemption, it should not delay development of appropriate procedures.

Question 7

What information should a housing provider include in its survey of residents in order to calculate whether the community or facility meets the 80% requirement of HOPA?

Answer

The owner or manager should obtain the total number of units in the housing community or facility. From that number, the following units should be excluded from the calculation of the 80% requirement:

a) the number of units that have been continuously occupied by the same household since September 13, 1988, and the household did not contain and does not currently contain at least one person over the age of 55;

b) the number of unoccupied units (see question 22);

c) the number of units occupied by employees of the housing facility or community who are under 55 years of age, and who provide substantial management and maintenance services to the housing facility or community

d) the number of units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents.

The owner or management then should calculate the percentage of the remaining number of units that are occupied by at least one person age 55 or over as of the date of the survey or the alleged date of violation of the Act.

Question 8
What is considered reliable age verification documentation?

Answer
The following documents are considered to be reliable for age verification: birth certificate, drivers license, passport, immigration card, military identification, or any other state, local, national or international documentation, provided it contains current information about the age or birth of the possessor.

Question 9
Is there any other documentation that would be considered reliable for age verification?

Answer
Yes. A self certification in a lease, application affidavit, or other document signed by an adult member of the household asserting that at least one occupant in the unit is 55 years of age or older will satisfy this requirement.

Question 10
What recourse is there for the owner or management of the housing community or facility if the occupants in the household refuse to cooperate in providing documentation regarding their age?

Answer
The housing/community facility may, if it has sufficient evidence, consider the household to be occupied by at least one person who is 55 years or older. Statements made under penalty of perjury from third party individuals who have knowledge of the age of the occupants of a household may be used when the household itself refuses to cooperate by providing age verification. Other information, such as statements indicating age in prior applications may be acceptable. In addition, the facility/community may base its decision on government documents such as census data. The census data referred to is household censuses that are conducted by many cities and towns.

Question 11

How frequently should a housing/community provider update its lists of occupants to be in compliance with the age verification requirements of HOPA? Are there any consequences if a housing provider fails to update its list of residents?

Answer

HOPA requires that a housing facility/community re-survey its lists of residents every two years to ensure that the 80% requirement is met. A housing community's or facility's failure to survey or re-survey its list of occupants in accordance with its age verification procedures does not demonstrate intent to housing for older persons, and could jeopardize the housing community's status as 55 or older housing.

Question 12

How long should a housing community/facility retain its records of survey information that show it meets the 80 percent requirement?

Answer

The records referred to in Answer 9 above need to be kept as long as the housing community/facility intends to proffer its exempt status.

Question 13

Are the surveys and affidavits used to gather information about the facility's/community's residents admissible in an administrative or judicial proceeding under the Fair Housing Act?

Answer

Yes.

Question 14

What does the ratio or percentage of 80/20 portion of housing mean?

Answer

HOPA requires that at least 80 percent of the occupied units must be occupied by at least one person 55 or older. The remaining 20 percent of the units may be occupied by persons under 55, and the community/facility may still qualify for the exemption.

Question 15

Is it lawful to advertise or market the 20 percent portion of the units not required to be occupied by at least one person 55 years of age or older to prospective tenants/purchasers under age 55 and to families with children?

Answer

Yes. However, the marketing must be done in a way that identifies the facility/community as housing intended for older persons. Advertising and marketing must not be inconsistent with the intent. Further, the facility/community needs to plan with care any attempt to sell or rent the entire 20 percent portion of the remaining units to incoming households under age 55, because it could risk losing the exemption if some occupants over 55 die, with surviving spouses or heirs who are under 55 years of age. Such planning should address notice to incoming households under the age of 55 regarding how the housing provider will proceed in the event that the 80% requirement is endangered.

Question 16

May a housing facility/community impose an age limitation more restrictive than that required by HOPA and qualify for the 55 or older exemption?

Answer

Yes. For example, the housing facility/community may require that at least 80 percent of the units be occupied by at least one person 60 years of age or older. The housing facility/community may require that 100% of the units are occupied by at least one person 55 years of age or older, or that 80% of the units be occupied exclusively by persons aged 55 or older. However, the facility/community should review other state and local laws, including fair housing laws that may prohibit discrimination based on age, before establishing policies and procedures restricting occupancy based on age, or affecting survivors' rights to property, that are not covered under HOPA.

Question 17

If a housing facility or community meets the requirements of HOPA but permits up to 20 percent of the units to be occupied by families with children, may the facility/community impose different terms and conditions of residency on those families with children who reside there?

Answer

Yes. If a housing community/facility qualifies under HOPA as housing for older persons, the community/facility is exempt from the Act's prohibition against discrimination on the basis of familial status. The housing community/facility may restrict families with children from benefits of the community, or otherwise treat family households differently than senior households, as long as those actions do not violate any other state or local law. However, the community/facility is not exempt from the provisions of the Act that prohibit discrimination against any resident or potential resident on the basis of race, color, religion, national origin, sex, or disability.

Question 18

If a 55 or older occupant dies and leaves his/her property to a surviving spouse or heir(s) under the age of 55, what rights, if any, do the survivors have to possession?

Answer

The right to possession by a surviving spouse or heir is not governed by the HOPA or the Fair Housing Act. Whether an underage heir or surviving spouse can occupy the unit upon the death of the 55 or older occupant is a matter of state/local law or custom, and generally is governed by private contractual agreements between senior housing developers and the individuals who purchased or rented the dwelling. The provision in the Act permitting 20 percent of the units to be occupied by persons under 55 is intended, in part, to prevent a housing facility/community from losing the exemption due to situations where there are surviving spouses and underage heirs when the 55 or older occupant dies.

Question 19

In the event that the sole 55 or older occupant dies, and a surviving spouse or heir remains in the unit, is the surviving occupant counted in the 80 percent or the 20 percent portion of the units needed to meet the criteria for housing for older persons?

Answer
The surviving occupant must be counted in the 20 percent portion.

Question 20
How should a housing provider count, for the purpose of meeting the 80/20 occupancy requirement, attendants or health care providers needed for the reasonable accommodation of the disability of an occupant (including family members under the age of 18)?

Answer
The attendant or health care provider or family care provider is excluded from the calculation in its entirety. This is true whether the live-in person resides in the same unit with the disabled occupant or in a separate unit. Neither circumstance adversely affects the exemption of the housing facility/community.

Question 21
How is the calculation for the 80/20 percent requirement affected if a 55 or older individual purchases a dwelling in a senior housing facility/community, vacates the unit, and allows an underage adult relative to move in for an indefinite length of time?

Answer
In calculating whether a community/facility meets the 80 percent requirement, it is the occupants of the dwelling units who are counted, not the owners. In this example, the current resident, the underage adult relative, would be counted in the 20 percent portion. Similarly, if a 55 or older owner/occupant decided to vacate a unit for an indefinite period of time and rent to an underage individual, the current occupant would be counted in the 20 percent portion.

Question 22

Are there circumstances under which a 55 or older owner/tenant might be temporarily absent from a dwelling without affecting the exemption status of the community/dwelling?

Answer

Yes. For example, the 55 or older occupant may be on vacation, hospitalized, or absent for a season without affecting the exempt status of the community. The resident may, if he/she wishes, allow a younger relative or a house sitter under 55 years if age to live in the unit during this absence. In either event, the unit would be included in the calculation of the 80 percent occupancy requirement as long as the dwelling is not rented out, the owner/tenant returns on a periodic basis, and maintains legal and financial responsibility for the upkeep of the dwelling.

Question 23

Can a housing community/facility that does not now meet the 80 percent occupancy requirement take any action to become eligible?

Answer

Yes. For a period of one year after the rule became effective (May 3, 1999), a housing provider may reserve all new, vacant and/or unoccupied units/dwellings for occupancy until 80 percent of the units/dwellings are occupied by at least one person 55 years of age or older. This does not mean that the dwellings/units must be held off the market; indeed, marketing the units as 55 and over units during the transition period may be done as those units become vacant.

Question 24

During this transition period, may a facility/community refuse to rent or sell to families with children in its effort to qualify as housing for older persons?

Answer

Yes. If, during the one year period the facility/community demonstrates its intent to be housing for older persons through advertising and revisions to or development of rules and procedures, and adopts age verification procedures, it may refuse to rent or sell to applicants based on their familial status. Of course, the facility/community may have to meet the requirements of state and local laws with respect to making the changes required for the transition in its covenants or other instruments binding on the property.

Question 25

Can the facility/community evict families with children during the transition period for the purpose of becoming housing for older persons?

Answer

No. However, the housing facility/community can renew or not renew leases for families with children if doing so does not represent a change in its practices or does not violate state or local landlord tenant law. Additionally, while the facility/community may not take any measures deliberately designed to discourage families with children from continuing to reside in the community, nothing prevents the offering of positive incentives that might lead some families to seek housing elsewhere.

Question 26

What if a 55 or older housing provider, at the end of the transition period, does not succeed in meeting the 80 percent occupancy requirement?

Answer

At the expiration of the one year period, all units/dwellings must be marketed and made available to the public in general, including families with children. Additionally, all restrictive operations policies which may impact negatively on families with children must be rescinded.

Question 27

When does HUD become involved in determining whether a 55 or older housing community or facility is in compliance with HOPA requirements?

Answer

HUD's involvement begins in one of two ways: 1) when a person allegedly injured on the basis of familial status files a complaint against a housing facility/community and the respondent claims the exemption as a defense; or 2) when HUD commences a Secretary-initiated investigation or files a complaint based on information it has that indicates the need for an investigation.

Question 28

When must a person claiming to be injured by a housing community/facility because of familial status file a complaint with the Department in order for the complaint to be timely?

Answer

The complaint must be filed no later than one year after the alleged discriminatory act occurred or was terminated.

Question 29

Can a household which does not fall within the Fair Housing Act's definition of familial status file a complaint challenging a housing provider's attempt to provide housing for older persons?

Answer

No. The family cannot file a familial status complaint because it does not meet the definition of familial status.

Question 30

Can an owner of a dwelling file a complaint based on familial status if the owner is being impeded in the ability to sell or rent the dwelling because the housing facility/community is claiming to be 55 and over housing but does not meet the requirements for the exemption?

Answer

Yes, if the owner has affirmatively undertaken to rent or sell his property and can establish that the housing community/facility illegally (is not qualified housing for older persons) interfered with the owner's ability to do so, be/she can file a familial status complaint. Other complainant parties could include the family with children seeking to rent or buy but was denied the opportunity, as well as any real estate agent involved in the transaction.

Question 31

If an individual files a complaint based on familial status and the housing community/facility claims the exemption as a defense, who has the burden of proving, that the community/facility is in compliance with HOPA requirements?

Answer

The community/facility housing provider has the burden of proving that it was in compliance with HOPA requirements on the date of occurrence of the alleged act or incident of discrimination.

Question 32

Can a corporate entity avail itself of the good faith reliance against monetary damages if the housing community/facility is found not to be in compliance with the HOPA requirements?

Answer

No. The governing board, management company, or corporate entity of the housing facility/community is liable if the facility/community fails to meet the requirements, and cannot claim a good faith reliance defense against monetary damages. The legislative history of HOPA shows that in creating the good faith reliance defense, Congress intended to protect **individual persons,** such as individual members of boards of governing homeowners associations and real estate agents relying on information provided by the housing providers of senior housing.

Question 33

Since individuals, including individual members of a homeowners association or a board of directors, can use the good faith reliance against monetary damages, under what conditions might that occur?

Answer

An individual is not liable for monetary damages if the person acted with a good faith belief that the housing facility/community qualified for a housing for older persons exemption. Such a person must have knowledge, from an authorized representative, that the facility/community asserted in writing that it qualified for the older persons exemption before the date on which the alleged discrimination occurred. An authorized representative may be an

individual, committee, management company, listing agent, owner or other entity.

Question 34
Under what circumstances may an individual not use the good faith reliance defense?

Answer
An individual is not entitled to the good faith defense if he or she has actual knowledge that the facility/community does not or will not qualify as housing for older persons, despite the fact that he/she received written assurances to the contrary from an authorized representative of the housing provider.

Question 35
Is an individual insulated from a liability claim for disseminating information to others regarding the facility's/community's exemption claim?

Answer
An individual who claims the good faith reliance defense based on his/her actual knowledge and a written assertion from an authorized representative of the facility/community may disseminate such information to others. Those others may include real estate agents, multiple listing services, advertisers and other print media who may, in turn, rely on the assertions of the individual from whom they received the information, unless they have actual knowledge that information is not accurate.

Question 36
Is a publisher (newspaper or other print media) liable for damages under the Fair Housing Act for accepting for publication an advertisement for 55 and older housing if the community/facility is found not to be in compliance with HOPA?

Answer
No. Newspaper publishers and other print media that rely on the assertions of the housing provider are not liable unless they have actual knowledge that the housing does not qualify for the exemption.

Question 37

Does HUD certify that a housing, facility/community is housing for older persons?

Answer

No. Neither the Fair Housing Act nor HOPA authorizes the Department to certify whether a particular housing facility or community meets the qualifications for housing for older persons.

Question 38

If a developer is building new housing that is intended to be for persons 55 and over, how should the new units be marketed and occupied as the facility/community is being developed?

Answer

Newly constructed housing for first occupancy after March 12, 1989 (including a facility or community that has not been occupied in its entirety for at least 90 days prior to re-occupancy due to renovation or rehabilitation), must be marketed as housing intended for older persons. It does not have to have at least one occupant in each occupied unit who is age 55 and over until at least 25 percent of the units are occupied.

Question 39

How are state and federal fair housing laws that prohibit age discrimination affected by HOPA?

Answer

Neither the Fair Housing Act nor HOPA covers age discrimination. Neither of these federal laws supersede or otherwise affect state or local laws that prohibit age discrimination. Housing community/facilities always should check all relevant state, local and federal laws, and any requirements imposed as a term of governmental financial assistance before implementing policies and procedures that limit the eligibility of its residents.

Question 40

Must state or local governments that have been determined to have substantially equivalent laws to the Fair Housing Act change the laws under which they operate in order to be identical to HOPA?

Answer

No. States and local governments with fair housing laws that have been determined to be substantially equivalent to the federal law may have no exemption from familial status discrimination for housing for older persons, or may have more stringent requirements to meet an exemption than does HOPA.

Question 41

Must a housing community/facility file or register a declaration of intent with the state or local unit of government in order to claim its exemption as housing for older persons?

Answer

HOPA does not require this. However, the state or local government might require the housing community/facility to register its intent to be housing for older persons. The facility/community should consult the appropriate governmental body for requirements in this regard.

Question 42

Must a resident of a 55 or older housing community/facility join the homeowner's association?

Answer

The Fair Housing Act does not require this. HOPA does not require this. This is an example of an issue or aspect of senior housing communities that is generally governed by independent law, deed restriction, or other legally enforceable documents.

Question 43

Would HUD apply HOPA retroactively to a familial status claim of discrimination that occurred prior to December 28, 1995, when HOPA was signed into law?

Answer

No. If the alleged violation occurred prior to December 28, 1995, the Department's investigation of a pending complaint will determine whether the community/facility met the requirements for the housing for older persons exemption, based on the regulations that were in effect at the time of the alleged violation.

Question 44

How does the Fair Housing Amendments Act senior housing, exemption, and HOPA, affect eligibility requirements for federally funded housing programs.

Answer

The Act and HOPA do not affect statutory or regulatory provisions of federally assisted housing programs. For example, neither HOPA nor the Act change the definition of "elderly family"' in federally assisted housing programs. HOPA does not permit a HUD funded public housing provider to designate a project as an "elderly project" without HUD review and approval as mandated by existing regulations. HUD funded housing that is designated as elderly housing may not, because of HOPA, admit households that are not statutorily eligible for the housing. No public housing development that is not designated as an elderly development by statute or program regulation may exclude families with children even if at least 80% of the units are occupied by at least one person age 55 or older. Federally assisted housing providers should continue look to existing program statutory and regulatory requirements to determine tenancy of those developments.