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JACK CRIST
DEPUTY CITY MANAGER

NEIGHBORHOODS, PLANNING AND
DEVELOPMENT SERVICES DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 302
SACRAMENTO, CA
95814-2978

ADMINISTRATION
PH 916-264-7598
FAX 916-264-8329

June 15, 1998

City Council
Sacramento, California

APPROVED
BY THE CITY COUNCIL

JUN 30 1998

OFFICE OF THE
CITY CLERK

Honorable Members in Session:

SUBJECT: Social Services Siting Policies

LOCATION: Citywide, All Districts

RECOMMENDATION:

It is recommended that the City Council, by resolution, adopt the social services siting policies. These policies, prepared by the Social Services Siting Focus Group, along with the values and principles from the Homeless Forum, serves as guides for addressing issues related to human services.

CONTACT PERSONS: Gary Stonehouse, Planning Director, 264-5567
Art Gee, Principal Planner, 264-5945
Doug Holmen, 264-8267

FOR THE COUNCIL MEETING OF: June 30, 1998

SUMMARY:

The Social Services Siting Focus Group, comprised of stakeholders, completed an extensive effort to prepare recommendations for the siting of facilities in the City. Their report was transmitted to the City Council and City Planning Commission. The policy recommendations were presented to the City Council concurrently with the Homeless Forum Report on December 2, 1997. A Council motion of intent to approve for both reports was adopted. Staff was directed to bring the matter back for final action after the Board of Supervisor's review of the Homeless Forum recommendations. The Board has taken their action in support of the recommendations.

BACKGROUND:

Considerable community input has been spent in developing the social services siting recommendations. The siting policies will serve to guide subsequent discussions of specific implementation actions as well as discussion over the location of new services. Staff has amended the policies (attachment 1) with the addition (Policy O) made by the City Council on December 2, 1997 and recommends their adoption.

Planning Staff and the City Attorney's Office are progressing with work on Zoning Ordinance amendments to implement the Siting Focus Group recommendations. The drafting work is on target for completion in July. The City Attorney's Office has provided advance cautions to Planning Staff that portions of the Siting Focus Group recommendations may face legal restrictions for implementation. Recently their office has summarized the primary areas of concern in a memo which is attached to this report (attachment 2) for the Council's information.

FINANCIAL CONSIDERATIONS:

None at this time.

POLICY CONSIDERATIONS:

The City Council would be adopting new policies to be used in guiding discussions related to siting of social services in the City.

MBE/WBE EFFORTS:

Not applicable

Respectfully submitted,

Jack Crist
Deputy City Manager

RECOMMENDATION APPROVED:

William H. Edgar
City Manager

APPROVED
BY THE CITY COUNCIL

JUN 30 1998

OFFICE OF THE
CITY CLERK

RESOLUTION NO. 98-348

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION ADOPTING POLICIES TO GUIDE THE SITING OF SOCIAL SERVICES IN THE CITY OF SACRAMENTO

WHEREAS, the City of Sacramento believes that providing adequate access to human services/social services is important to the health of the City and its people, and

WHEREAS, there is a need to provide policy guidance for the location of human service/social service facilities in a manor that accomplishes the goal of convenient access and the goal of neighborhood preservation and revitalization,

THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO, THAT:

The City Council hereby adopts the Siting Policies for Social Services prepared by the Social Services Siting Focus Group and as amended by the City Council.

_____
MAYOR

ATTEST:

_____
CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

SOCIAL SERVICES SITING POLICIES

Policy A **The City's goal for revitalizing and strenghthening neighborhoods is affected by the availability of social services and how these services are delivered. The City therefore, needs to be more actively involved with how these services are provided.**

Policy B **Promote decentralization of social services as a means to improve accessibility and to reduce impacts.**

Policy C **Pursue equitable distribution for services that do not need to be close to where clients reside.**

Policy D **Promote collocation of services as a way to enhance efficiency and reduce costs in the delivery of services.**

Policy E **Promote the use of the "Good Neighbor Guidelines and Process" early in the planning process for new facilities and also consideration by existing facilities.**

Policy F **Treat social services more consistent with businesses of similar operation in the zoning process.**

Policy G **Provide definitive land use policies for the locations of social services facilities.**

Policy H **Provide a streamlined zoning process for facilities that are consistent with the City's goals, policies and standards for social services.**

Policy I **Pursue better enforcement of operating standards and more accountability by service providers.**

Policy J **Protect clients and neighborhoods by not placing "at risk" clients in areas with concentrations of problems such as crime or substandard housing conditions.**

Policy K **Identify and provide information on the need for services by City residents and work with the County and other social service providers to provide convenient access to services.**

Policy L **Address a major cause for concentration of services through the**

City's housing and economic development policies.

Policy M — **Promote exploration of innovative ways to increase accessibilty to services that could also reduce impacts on neighborhoods.**

Policy N — **Establish a cooperative partnership with Sacramento County for planning and siting County facilities in the City. The process should include both County owned and leased facilities.**

Policy O — **No one neighborhood or business district should bear a disproportionate amount of social services.**

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OFFICE OF THE
CITY ATTORNEY

SAMUEL L. JACKSON
CITY ATTORNEY

WILLIAM P. CARNAZZO
ASSISTANT CITY ATTORNEY

CITY OF SACRAMENTO
CALIFORNIA

980 NINTH STREET
TENTH FLOOR
SACRAMENTO, CA
95814-2736

PH 916-264-5346
FAX 916-264-7455

DEPUTY CITY ATTORNEYS
RICHARD E. ARCHIBALD
DIANE B. BALTER
DENNIS M. BEATY
BRUCE C. CLINE
SHANA S. FABER
H. MICHON JOHNSON
GUSTAVO L. MARTINEZ
JOHN A. NAGEL
JOHN C. PADRICK
JOE ROBINSON
ARNOLD D. SAMUEL
ROBERT K. SANDMAN
SANDRA G. TALBOTT
ROBERT D. TOKUNAGA

June 17, 1998

MEMORANDUM

TO: Gary Stonehouse, Planning Director
Art Gee, Principal Planner

FROM: Samuel L. Jackson, City Attorney
William P. Carnazzo, Assistant City Attorney
RGA **Richard E. Archibald, Senior Deputy City Attorney**

RE: **Social Service Siting Policy and Implementing Ordinance Amendments**

BACKGROUND

This office has been working with you on legislation to implement, to the extent practicable and legally feasible, the recommendations of the Social Service Siting Policy Task Force. While cities and counties generally enjoy a broad range of authority and discretion when dealing with local land use issues, case law and federal and state statutes have restricted to a substantial degree the ability of local governments to regulate certain types of social service facilities, particular those which are residential facilities. The purpose of this memorandum is to provide a brief overview and update of these restrictions, which have been discussed on several occasions previously.

DISCUSSION

The restrictions on the City's ability to regulate social service facilities, and the siting of such facilities, falls into five basic categories: (1) judicial restrictions in California on defining and regulating "family"; (2) the California statutory provisions governing community care facilities and similar "group homes"; (3) the 1988 Federal Fair Housing Amendments Act (FHAA); (4) the 1994 amendments to the California Fair Employment and Housing Act, designed to implement the 1988 FEHA; and (5) the Americans with Disabilities Act (ADA). Following is a brief discussion

of each of these areas of restriction, and the manner in which they restrict the land use authority of local governments. The statutory provisions cited above have been the subject of a number of recent court decisions, many of which postdate the recommendations of the Task Force. There also have been a number of changes in the statutory provisions governing community care provisions and "group homes" since the release of the Task Force recommendations.

"Family" Definition

In 1980, the California Supreme Court, in a decision entitled City of Santa Barbara v. Adamson,[1] restricted local zoning authority by ruling that it is a violation of the California constitutional right of privacy to treat blood-related individuals different from non-blood-related individuals in defining and regulating "family" for residential zoning purposes. The Court specifically held that non-related groups of persons living together as a single housekeeping unit could not be restricted to a maximum number of persons which is different from that applicable to blood -elated families. The current definition of "family" found in the City's Zoning Ordinance is consistent with Adamson. The Adamson decision has played a critical role in limiting zoning authority with regard to non-traditional residential uses, including some of the social service facilities addressed in the Task Force recommendation.

California Statutory Provisions Governing Day Care Homes, Community Care Facilities and Residential Drug and Alcohol Treatment Facilities

In California, local zoning control over "small" day care homes, "small" community care facilities (both residential and non-residential) and "small" residential drug and alcohol treatment facilities is substantially limited by various statutes. Under these statutes, such "small" facilities must generally be allowed in the same manner, and in the same zones, as single-family residences, and they are to be treated as residential rather than commercial uses. As a general rule, "small" means six or fewer residents, occupants, patients or guests; however, for certain types of facilities, the number allowed has been increased recently to eight, or in the case of day care homes, to twelve. For purposes of these statutes, attendants, caretakers and others necessary for the daily needs of the residents of such facilities are not considered "residents" of the facilities.

1988 FHAA

The Fair Housing Act was enacted as Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 through 3631), and, as originally enacted, prohibited discrimination in housing on the basis of race, color, religion, national origin and gender. In 1988, Congress enacted the Fair

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[1] City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123.

Housing Amendments Act (FHAA) (effective 1989), which added two factors to the list of those upon which discrimination is illegal; namely, handicap and family status. According to the legislative history, the FHAA was designed to erase stereotypes that had served to exclude handicapped individuals from mainstream American life. Congress found that these individuals had been denied housing because of misperceptions about their abilities and needs, and the FHAA was designed to end the exclusion of handicapped persons from society by integrating them into all residential communities.

Under the FHAA, the term "handicap" includes: (a) a physical or mental impairment which substantially limits one or more of a person's major life activities (including a person caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working); (b) a record of having such an impairment; (c) being regarded as having such an impairment. Perhaps most significantly, in interpreting the FHAA, the courts have uniformly held that individuals in alcohol and drug rehabilitation programs are handicapped for purposes of the FHAA definition, and therefore entitled to its protections.

The basic purpose of the FHAA is to eliminate discrimination against the handicapped in terms of housing. A person makes a prima facie case under the FHAA by showing either intentional disparate treatment of the handicapped with regard to housing; or disparate impact alone. A case of disparate treatment may be established against a public entity by demonstrating that a given legislative provision discriminates against the handicapped on its face (i.e., applies different rules to the disabled than to others). Under the FHAA, discrimination includes refusing to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling. In response to the FHAA and/or court decisions, a number of jurisdictions have enacted "reasonable accommodations" provisions which allow a member of the protected class to seek modification or elimination of requirements, including standards as well as procedures, otherwise applicable to residential facilities.

The FHAA has been used to challenge a broad range of local land use restrictions, including some similar to those contained in the Task Force recommendation. Legal challenges under the FHAA to local government regulations to fall into three general categories: (i) the action is discriminatory on its face because it treats persons protected by the FHAA (and/or the residential dwellings or facilities they occupy) differently than it treats other persons (and/or the dwellings or facilities they occupy); (ii) the action, although not discriminatory on its face, has a discriminatory impact because it imposes greater burdens upon persons protected by the FHAA than it does upon other persons; and (iii) the local agency has failed to make a reasonable accommodation for the handicapped persons affected by its action.

Examples of local legislation struck down under the FHAA include the following: the establishment of special use permit requirements for dwellings occupied by handicapped

persons, since a similar requirement was not imposed on similar dwellings occupied by non-handicapped persons in the same zone, including residential treatment facilities for those suffering from, and seeking treatment for, alcohol and/or drug addiction; dispersal/over-concentration requirements (e.g., not more than one facility every 1500 feet), unless the agency has a legitimate, non-discriminatory reason for imposing such a requirement, such as promoting the integration of handicapped persons throughout the community; "fair share" requirements, which limit the number of handicapped persons living in residential facilities in a community to a specified number or percentage of the local population; a requirement that advance notice or special community meetings be held in conjunction with, or as a condition of approval of, a dwelling or residential facility for the handicapped; a requirement for periodic renewal of a permit for a dwelling or residential facility for the handicapped. In several instances, the courts have found violations of the FHAA "reasonable accommodations" clause when a jurisdiction has failed to allow a dwelling to have several "extra" residents above and beyond the number authorized by local zoning regulation (and in at least one instance, state law) or when it failed to allow a dwelling in a location that did not satisfy local and/or state dispersal/overconcentration standards.

The FHAA applies only to "dwellings." However, the term "dwelling" has been interpreted quite broadly, and in appropriate situations includes single family residences, multi-family structures, group homes for physically and/or mentally handicapped individuals, group homes for recovering alcoholics and/or recovering drug addicts, group homes for abused/neglected children; homeless shelters; hospice facilities.

Local legislation designed to promote the goals of the FHAA (e.g., limited dispersal requirements designed to integrate the handicapped throughout the community) or enacted for valid, non-discriminatory purposes have been upheld.[2] However, legislation based upon "stereotypical", unfounded views and opinions concerning the handicapped and the risks and dangers they present to the community is generally held invalid under the FHAA. In appropriate cases, the courts have looked to the testimony and opinions expressed by members of the community as well as by members of the legislative body in determining the intent and purpose of legislation.

Sanctions for violation of FHAA include civil penalties (up to $50,000 for a first violation and $100,000 for subsequent violations), as well as damages, both compensatory and punitive.

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[2] Examples of non-discriminatory legislation include the following: (i) requiring a discretionary entitlement for all dwellings over a specified size (e.g., number of bedrooms or square feet, number of units, or other similar objective standard) to ensure that the construction is compatible with a given neighborhood, or (ii) establishing particular development standards or other requirements truly necessary to protect the health and safety of the residents.

and attorneys fees. Enforcement may be sought by private parties as well as by the U.S. Department of Justice. Actions may be brought against public entities as well as against individual officers and employees.

1994 Amendments to the California Fair Employment and Housing Act

In 1993, effective 1994, the Legislature amended the Fair Employment and Housing Act to implement the 1988 FHAA. Prior to these amendments, FEHA did not apply to local land use regulations and decisions. With these amendments, FEHA imposes even stricter requirements than the federal law with respect to actions by local zoning authorities that impacted "protected" classes, including the handicapped. These requirements apply to the enactment of legislation as well as adjudicatory decisions under such legislation. Essentially, the FEHA amendments impose a strict scrutiny test in cases challenging local land use legislation and regulations, and decisions thereunder, on grounds that they discriminate against the handicapped or other protected class. To satisfy the strict scrutiny test, the local agency whose regulation or decision is being challenged has the burden of establishing a compelling interest for, and no less restrictive alternative to, such legislation or decision. Needless to say, this is a difficult test to meet. To date, there have been no reported cases under the 1994 amendments to the FEHA which involve land use legislation or decisions.

Under the FEHA, both compensatory as well as punitive damages, along with fines and attorneys fees, are available. Such damages and sanctions are available against the local government as well as against individual officials and employees.

The Americans with Disabilities Act (ADA)

The ADA (codified at 42 U.S.C. Sections 12101 through 12213), is designed primarily to provide disabled individuals with equal access to public facilities and accommodations. The definition of "disabled" under the ADA is similar to the FHAA definition, and includes those suffering from (and being treated for) drug addiction and/or alcoholism.

The basic prohibition of the ADA is that "no qualified individual with a disability shall, by reason of the disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The ADA imposes an obligation upon public entities to make "reasonable modifications" to existing rules, policies or practices to accommodate a qualified individual with a disability unless the entity demonstrates that the modifications would fundamentally alter the nature of the service, program or activity.

A key issue under the ADA, which has been the subject of a number of very recent decisions, is whether the ADA applies to zoning matters at all, or only to the actual provision of

municipal services and access to municipal buildings. The federal Ninth Circuit has not yet addressed the issue, although one California district court did address the issue and concluded that the ADA did not apply to zoning and land use matters; however, the federal Third Circuit reached a contrary conclusion (namely, that the ADA does apply to zoning matters), and a California appellate court recently agreed with the Third Circuit. Pending a different decision by a higher court or another appellate court, this conclusion should be considered binding upon local state courts.

The potential implications of the ADA on land use matters is not clear, given the relatively few cases under the ADA involving land use matters. Unlike the FHAA, the ADA is not limited to concerns about discrimination against the handicapped in the area of housing only; theoretically it applies to non-residential facilities and operations providing services to the disabled. The sanctions under the ADA are similar to those under the FHAA.

The foregoing provides a summary and overview of the primary areas of concern. It should be noted that there is pending at both the federal and state level legislation designed to give states and local jurisdictions greater authority over certain types of residential facilities, including residential drug and alcohol treatment facilities. This legislation is in a state of flux, but our office will provide you with an update before the June 30 Council meeting. Amendments to the FHAA to confer greater authority upon local jurisdictions will likely need to be accompanied by amendments to the FEHA, which stands separate and apart from the FHAA and imposes more stringent standards and requirements than the federal statute.

REA/jmv

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