



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

August 30, 2006

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Hillsboro Plan Amendment  
DLCD File Number 001-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

### DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 14, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Meg Fernekees, DLCD Regional Representative  
Debbie Raber, City Of Hillsboro

<paa> ya



# FORM 2

## DLCD NOTICE OF ADOPTION DEPT OF

This form must be mailed to DLCD within 5 working days after the final decision  
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

AUG 25 2006

LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: City of Hillsboro Local File No.: 20A 1-06  
(If no number, use none)  
Date of Adoption: 15 August 2006 Date Mailed: 25 August 2006  
(Must be filled in) (Date mailed or sent to DLCD)  
Date the Notice of Proposed Amendment was mailed to DLCD: 10 April 2006

☐ Comprehensive Plan Text Amendment ☐ Comprehensive Plan Map Amendment  
☒ Land Use Regulation Amendment ☐ Zoning Map Amendment  
☐ New Land Use Regulation ☐ Other: \_\_\_\_\_  
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Amendments revise definition of "family," create new use type "group living structure;" allow residential homes and facilities as permitted uses in single family and multi-family zones; and establish a maximum occupancy for accessory dwelling units.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Revisions made in definitions of group living structure and dwelling unit (to reference 4 persons in a group structure as a dwelling unit); and to revise parking ratios for group living structures.

Plan Map Changed from: NA to NA  
Zone Map Changed from: NA to NA  
Location: NA Acres Involved: NA  
Specify Density: Previous: NA New: NA  
Applicable Statewide Planning Goals: Housing NA  
Was an Exception Adopted? Yes: ☐ No: ☒

DLCD File No.: 001-06 (15139)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: ☒ No: ☐

If no, do the Statewide Planning Goals apply. Yes: ☐ No: ☐

If no, did The Emergency Circumstances Require immediate adoption. Yes: ☐ No: ☐

Affected State or Federal Agencies, Local Governments or Special Districts: None

Local Contact: Debbie Raber Area Code + Phone Number: 503/681-6155

Address: Hillsboro Planning Dept. 150 E. Main St. 4th Floor

City: Hillsboro Zip Code+4: 97123

### **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO (2) Copies of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Larry.French@state.or.us](mailto:Larry.French@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 5667

**ZOA 1-06: RESIDENTIAL FACILITIES AND GROUP LIVING STRUCTURES**

AN ORDINANCE AMENDING SEVERAL SECTIONS OF ZONING ORDINANCE NO. 1945, AS AMENDED, REGARDING RESIDENTIAL HOMES AND FACILITIES, GROUP LIVING STRUCTURES AND ACCESSORY DWELLINGS.

WHEREAS, the Zoning Ordinance does not include provisions to allow residential homes and residential facilities as permitted uses in residential zones, as required by ORS 197.660 and 197.670, and

WHEREAS, the Zoning Ordinance contains outdated references such as "boarding house," "common dwelling," and "home for the aged," which do not reflect the nature of the current land uses, and lacks more modern terms which better describe present and foreseeable future uses, and

WHEREAS, the Zoning Ordinance does not distinguish between the number of persons who can occupy a single family dwelling, which has no maximum square footage, and the number which can occupy an accessory or ancillary dwelling, which have maximum areas of 750 and 1000 square feet respectively, and

WHEREAS, the City Council discussed these shortcomings in a work session on March 7, 2006, and deemed it appropriate to initiate amendments to the Zoning Ordinance to correct these issues, as authorized under Section 112, through adoption of Resolution No. 2159 on April 4, 2006, and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on May 24 and June 23, 2006, hearing testimony in support and no testimony in opposition, and

WHEREAS, the Planning Commission subsequently adopted Resolution No. 1568-P, recommending to the City Council approval of the proposed amendments, with the May 17, June 9, and June 23, 2006 staff reports and attachments as findings in support of their recommendation, which staff reports are attached hereto, and

WHEREAS, the City Council considered the Planning Commission's recommendation on August 15, 2006, and voted to adopt the findings of the Planning Commission as their own in regard to the Zoning Ordinance amendments.

NOW, THEREFORE, THE CITY OF HILLSBORO DOES ORDAIN AS FOLLOWS:

Section 1. Zoning Ordinance No. 1945, as amended, Section 3 Definitions is hereby further amended with the deletion of the subsections in overstrike typeface, with the addition of the subsections in bold italic typeface, and with the renumbering of existing subsections to maintain the existing alphabetic and numeric sequences:

~~Boarding, lodging or rooming house. A building where lodging with or without meals is provided for compensation for not less than three nor more than 15 guests.~~

***Disability. (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; (3) being regarded as having such an impairment. "Disability" does not include current, illegal use of or addiction to a controlled substance as defined by 21 U.S.C. § 802, or pedophilia, exhibitionism, voyeurism or other sexual behavior disorders. "Disability" shall be interpreted consistent with the meaning of "handicap" under 42 U.S.C. § 3602(h)."***

~~Dwelling, common. A building with separate bedroom-bathroom-living area for two or more individuals or couples and common or shared kitchen facilities, and which may have other common shared facilities.~~

~~Dwelling, Elderly and Disabled. A dwelling unit in a building of two or more dwelling units which is, in its entirety, specifically limited to occupancy by citizens of age 58 or above or by a person whose disability requires special housing provisions to accommodate the impairment.~~

~~Dwelling, Elderly Disabled Congregate Care. A common dwelling unit in a building of two or more common dwelling units which is, in its entirety, specifically limited to occupancy by citizens described under definition (17) above, but requiring limited special care with common cooking and eating facilities.~~

***Group living structure. A structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence by six to fifteen unrelated persons, where the tenancy is arranged on a month-to-month basis or longer, and the home is occupied by the owner or the owner's agent and that person supervises the use of the home. "Group living structure" does not include a residential home, residential facility, senior or convalescent care facility, or specialty housing facility. "Group living structure" also does not include residential uses accessory to a college, medical center or religious institution (such as dormitories, fraternities, or monasteries), which are included as part of an approved concept development, planned unit development or conditional use plan. The number of residents in a group living structure is limited to the density of the underlying zone, at an equivalency ratio of four persons equaling one dwelling unit.***

***Residential facility. "Residential facility" as defined by state law (currently ORS 197.660), including a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, licensed or registered under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be***

*related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.*

*Residential home. "Residential home" as defined by state law (currently ORS 197.660), including a residential treatment or training or an adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.*

*Senior or Convalescent Care Facility. A living facility for six or more non-related persons, which provides specialized care, supervision, treatment, training, or a combination of these services, for residents. This definition includes, but is not limited to, Assisted Living or Residential Care Facilities, Congregate Care Facilities, Nursing Homes, Sanatoriums, and Geriatric Care Facilities.*

*Specialty Housing. An independent living facility for six or more non-related persons, in which specialized care or other services for residents is not provided, but which has structural accommodations or amenities for senior or disabled residents.*

Section 2. The subsections of Zoning Ordinance No. 1945, as amended, Section 3 Definitions shown below are hereby amended with the addition of the language in bold italic typeface, and the deletion of the language in overstrike typeface:

Dwelling, accessory. A second, ***restricted occupancy*** dwelling unit created on a lot with a detached house. The second unit is created auxiliary to, and is always smaller by at least 25% in total floor area than the primary detached house; however, an accessory dwelling unit may never exceed 750 square feet in total floor area.

Dwelling unit. One or more rooms designed for occupancy by one family and not having more than one cooking facility. In the case of a ~~boarding or rooming house, however, or a common dwelling~~ ***group living structure***, each two bedrooms ***four residents*** shall constitute a dwelling unit.

Family. An individual, or two or more persons ***related to one or more persons in the household*** by blood, marriage, ***domestic partnership***, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. ***"Family" also includes persons who live together in a residential home or***

***residential facility and not more than eight persons with disabilities who live together in a dwelling unit.***

Section 3. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 7 Uses Permitted Outright in the R-10 Single Family Residential zone to include a new subsection (9) to read as follows:

**(9) Residential Homes and Facilities**

Section 4. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 28 Uses Permitted Outright in the A-2 Multi-Family Residential zone to include a new subsection (5) to read as follows:

**(5) Residential Facilities**

Section 5. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 41 Uses Permitted Outright in the C-4 Neighborhood Commercial zone to include a new subsection (22) to read as follows:

**(22) Residential Homes and Facilities**

Section 6. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 48A.II. Permitted and Conditional Uses in the MU-C Commercial and MU-N Neighborhood Districts, Table 48-A1, to include an additional entry line in the Residential Uses category, to read as follows (bracketed entries for reference only): :

	(MU-N)	(MU-C)
<b>Residential Facilities</b>	<b>P</b>	<b>P</b>

Section 7. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 136 IV. Permitted Land Uses in Station Community Planning Areas, Table 1 to include an additional entry line to read as follows (bracketed entries for reference only):

	(SCC-CBD)	(SCC-HOD)	(SCC-SC)	(SCC-MM)
<b>Residential Facilities</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>

Section 8. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 136 IV. Permitted Land Uses in Station Community Planning Areas, Table 2 to include three additional entry lines to read as follows (bracketed entries for reference only):

	(SCR-HD)	(SCR-MD)	(SCR-LD)	(SCR-V)	(SCR-DNC)	(SCR-OTC)
<b>Residential Homes</b>			<b>P</b>			<b>P</b>
<b>Residential Facilities</b>	<b>P</b>					
<b>Residential Homes and Facilities</b>		<b>P</b>		<b>P</b>	<b>P</b>	

Section 9. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 117 Enforcement, with the addition of the language in bold italic typeface, to read as follows:

Section 117 Enforcement. The Planning Director shall have the power and duty to enforce the provisions of this Ordinance. ***Notwithstanding any other provision of this ordinance, the Planning Director has the authority to make reasonable accommodations in the application of this ordinance when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling to the extent required by federal or state law. In considering whether an accommodation is reasonable, the Planning Director may consider whether the request puts an undue burden or expense on the city and whether the proposed use creates a fundamental alteration in the zoning ordinance. The accommodation may result in a permitted or conditional waiver of any limitation of this ordinance.*** An appeal from the ruling of the Planning Director shall be made to the Hearings Board.

Section 10. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 8 Conditional Uses (in the R-10 zone); subsection 7 with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

- (7) ~~Common-dwelling~~ ***Group living structure***, limited to the number of dwelling units allowable.

Section 11. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 21 Permitted Uses (in the A-1 zone) subsection 4, with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

- (4) ~~Common-dwelling~~ ***Group living structure***, limited to the density allowable.

Section 12. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 28 Permitted Uses (in the A-2 zone) subsection 3 with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

- (3) ~~Boardinghouse, lodging, or rooming house~~ ***Group living structure.***

Section 13. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 28 Permitted Uses (in the A-2 zone), subsection 3 with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

- (4) ~~Boardinghouse, lodging, or rooming house~~ ***Group living structure.***



Section 14. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 34A Permitted Uses (in the A-4 zone), subsections 3 and 4 with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

(3) Boardinghouse, lodging, or roominghouse ***Group living structure***

(4) ~~Common dwelling.~~

Section 15. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 55 Conditional Uses (in the C-1 zone), subsection 4 with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

(4) Boardinghouse ***Group living structure.***

Section 16. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 84A Off- Street Parking and Loading Table A, in the "Residential" subsection only, with the addition of the language in bold italic typeface and the deletion of the language in overstrike typeface, to read as follows:

	Minimum Parking Required	Maximum Parking Zone A	Maximum Parking Zone B	Minimum Bicycle Parking
<b>RESIDENTIAL</b>				
Single Family Detached	1 per unit	N/A	N/A	N/A
Accessory dwelling unit	1 per unit	N/A	N/A	N/A
Multi-Family, townhouse (1 bedroom)	1.25 per unit	N/A	N/A	1 per unit
Multi-Family, townhouse (2 bedroom)	1.50 per unit	N/A	N/A	1 per unit
Multi-Family, townhouse (3+ bedroom)	1.75 per unit	N/A	N/A	1 per unit
Rooming or boarding house <b><i>Group Living Structure</i></b>	1 per guest room <b><i>bedroom</i></b> plus 1 space for the owner <b><i>or agent</i></b>	N/A	N/A	1 per 10 guest rooms <b><i>1 per 4 bedrooms</i></b>
<b><i>Residential Home or Facility</i></b>	<b><i>0.25 per resident plus 1 per care giver</i></b>	N/A	N/A	<b><i>1 per 20 parking spaces</i></b>
Elderly disabled dwelling <b><i>Specialty Housing</i></b>	0.75 per dwelling unit	N/A	N/A	N/A
Congregate care facility <b><i>Senior or Convalescent Care Facility</i></b>	0.50 per dwelling unit <b><i>0.25 per resident plus 1 per care giver</i></b>	N/A	N/A	1 per 20 parking spaces

Section 17. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 84A Off- Street Parking and Loading Table A, in the "Institutional" subsection only, with the deletion of the line item "Convalescence, nursing and other health homes, sanitarium, rest home for the aged."

Section 18. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 137 XI Minimum and Maximum Off-Street Parking Requirements, Section B Table 3, with the addition of the line items in bold italic typeface, to read as follows:

Table 3: Residential Parking Standards in Station Community Districts

Housing Type	Min. Required Parking (Per DU)	Max. Allowed Parking (Per Bedroom)	Min. Required Bicycle Parking
Single Family Detached	1.0	0.90	None
Single Family Attached	1.0	0.90	None
Rowhouse	1.0	0.90	None
Townhouse	1.0	0.90	1.0
Duplex	1.0	0.90	1.0
Attached Duplex	1.0	0.90	1.0
Multi-Family Dwelling	1.5	0.90	1.0
Garden Apartment	1.25	0.90	1.0
Mid-rise Multi-family	1.5	0.90	1.0
Flats and Apartments over Commercial space, and for Live/Work units	1.0	0.90	1.0
Senior Housing	0.25	0.75	None
<b><i>Residential Homes and Facilities</i></b>	<b><i>0.25 per resident plus 1 per caregiver</i></b>	<b><i>0.75 per resident</i></b>	<b><i>None</i></b>
<b><i>Group Living Structures (as defined in Volume 1, Section 3)</i></b>	<b><i>2.0</i></b>	<b><i>1.0</i></b>	<b><i>1.0</i></b>
Student Housing (Per dormitory type room)	0.25	0.75	1 per room

Section 19. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 137 XI Minimum and Maximum Off-Street Parking Requirements, Section B Table 2 “Maximum Non-Residential Parking Standards in Station Community Districts” in the line item “Hospital and Geriatric Care Facility” with the deletion of the term “Geriatric Care Facility.”

with the addition of the subsections in bold italic typeface, and with the renumbering of existing subsections to maintain the existing alphabetic and numeric sequences:

Section 20. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 88A Accessory Dwellings with the addition of a new subsection (2) to read as follows, and with the renumbering of existing subsections to maintain the existing numeric sequence:

***(2) Occupancy restriction. An accessory dwelling unit shall not be occupied by more than three (3) related or unrelated persons.***

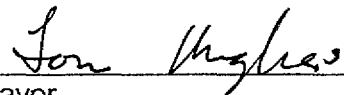
Section 21. Zoning Ordinance No. 1945, as amended, is hereby further amended in Section 137 (V) Minimum and Maximum Residential Densities and Ancillary Dwelling Units, subsection (13) with the addition of a new subsection (f) to read as follows, and with the renumbering of existing subsections to maintain the existing alphabetic sequence:

- (f) ***An ancillary dwelling unit shall not be occupied by more than three (3) related or unrelated persons.***

Section 22. Except as therein amended, Zoning Ordinance No. 1945, as amended, shall remain in full force and effect.

Passed by the Council this 15<sup>th</sup> day of August, 2006.

Approved by the Mayor this 15<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Mayor

ATTEST:   
\_\_\_\_\_  
City Recorder

# CITY OF HILLSBORO

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May 17, 2006

## STAFF REPORT

TO: Planning Commission  
FROM: Planning Department

RE: Proposed Zoning Ordinance Amendments regarding Residential Homes and Facilities, Group Living Structures, and Accessory Dwellings – File No. ZOA 1-06

## REQUEST

The City of Hillsboro, acting as applicant, requests that the Planning Commission recommend approval of amendments to several sections of the Zoning Ordinance regarding residential homes and facilities, group living structures, and accessory dwellings.

The proposed amendments are specifically listed in the attached City Council Resolution No. 2159, approved on April 4, 2006.

## BACKGROUND

On January 17, 2006, residents of the SE 50<sup>th</sup> Court neighborhood appeared before the Hillsboro City council to voice their concerns regarding a particular property rented to a number of parolees and probationers. Neighbors expressed strong concerns regarding numerous police calls and behaviors exhibited by residents of the house. Planning Department staff indicated that could be Zoning Ordinance violations on the subject property based on the number of occupants exceeding the maximum number specified in the Zoning Ordinance (five) for a single family dwelling. Additional comments were received from the Police Department and the City Attorney. The City Council instructed the Planning and Police Departments to return with additional information at the February 21<sup>st</sup> meeting.

On February 21<sup>st</sup>, the Council continued to receive comments from the 50<sup>th</sup> Court neighbors regarding the undesirable behavior of the residents of the subject property. However, other parties also testified to the Council that this property and other properties owned by the same landlord and rented to parolees and probationers provided necessary transitional housing for a population at risk for homelessness and return to custody. For the February 21<sup>st</sup> meeting, the Police Department and the City Attorney's office, in conjunction with the Planning Department, submitted memoranda outlining the enforcement and legal issues related to the situation. The City Attorney's memorandum included the possibility of regulating "post-incarceration group homes" as a separate land use category.

At a subsequent work session on March 7<sup>th</sup>, the Council received additional information from the Police Department concerning changes to the Nuisance Ordinance in the Municipal Code, and from the Planning Department and City Attorney concerning possible changes to the Zoning Ordinance. The Zoning Ordinance amendments suggested fell into four categories:

- Allow licensed residential homes and residential facilities in the low-density and higher-density residential zoning districts as required by state law. Such amendment should also allow homes for persons with disabilities as required by the Fair Housing Act.
- Define “boardinghouse” as a dwelling with more than five, but less than ten, unrelated persons, that has some combination of shared cooking and/or sanitary facilities, and that is not licensed as a residential facility under state law. Tenancies in a boardinghouse would be for a period of one month or more. A boardinghouse would be allowed as a conditional use in the residential zones and would require a resident landlord or caretaker. The number of residents could be further limited by the density of the underlying zone, with an equivalency ratio of 2 persons = 1 dwelling unit.
- Consider a maximum occupancy for lots in the single-family zones that includes the primary dwelling and any accessory dwelling.
- Define a “post-incarceration group home” with a maximum occupancy and resident supervisor requirements, and allow only in particular zoning districts.

Also during the March 7<sup>th</sup> work session, staff from the County Corrections Department provided additional comments regarding the possible impact of the amendments on housing providers with whom County Corrections works closely.

Following discussion, the Councilors expressed satisfaction that the changes to the Nuisance Ordinance were a sufficient first step toward resolving the issues on the 50<sup>th</sup> Court property, and declined to pursue the option of defining a “post-incarceration group home” in the Zoning Ordinance. However, the Councilors did direct the Planning staff to prepare language initiating the first three categories of Zoning Ordinance amendments for review on March 21<sup>st</sup>.

Following preparation of the proposed amendment language for the March 21<sup>st</sup> Council meeting, Mr. John Hartner, County Corrections Director, met with City Administration and Planning Department staff to request additional opportunity to review the language prior to the initiation of the amendments by Council on March 21<sup>st</sup>. The Council subsequently postponed initiation of the Zoning Ordinance amendments pending further discussion between County Corrections and City staff.

Planning staff met with Mr. Hartner, Mr. Reed Ritchey, and Mr. Dan Olson of the Washington County Counsel’s Office on March 28<sup>th</sup> to discuss possible changes to the draft language, and agreed on changes which would alleviate Corrections’ primary concerns. Planning staff and the City Attorney’s office proposed additional minor changes, which were approved by City Council in Resolution No. 2159 on April 4<sup>th</sup>. Copies of the February 16<sup>th</sup> memoranda from the Police

Department and the City Attorney, and the March 7<sup>th</sup>, March 16<sup>th</sup>, and March 30<sup>th</sup> City Council staff reports, are attached for the Planning Commissioners' review.

#### **CRITERIA FOR INITIATING A ZONING ORDINANCE AMENDMENT**

Section 112 of the Zoning Ordinance authorizes the Planning Commission or the City Council to initiate amendments to the text of the Zoning Ordinance. Pursuant to this authorization, the City Council initiated the proposed amendments on April 4<sup>th</sup>, through adoption of Resolution No. 2159-P, which is attached for the Commissioners' review.

Pursuant to State and City requirements, notice of this amendment has been sent to the Department of Land Conservation and Development, and has also been published in the Hillsboro Argus.

#### **LANGUAGE OF PROPOSED ZONING ORDINANCE AMENDMENT**

The proposed amendments would revise several sections of the Zoning Ordinance, as listed below. Proposed additional language is shown in ***bold italic*** typeface, and language proposed for deletion shown in ~~everstruck~~ typeface:

##### Additions and deletions to Section 3 Definitions (includes renumbering):

~~Boarding, lodging or rooming house. A building where lodging with or without meals is provided for compensation for not less than three nor more than 15 guests.~~

***Disability. (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; (3) being regarded as having such an impairment. "Disability" does not include current, illegal use of or addiction to a controlled substance as defined by 21 U.S.C. § 802, or pedophilia, exhibitionism, voyeurism or other sexual behavior disorders. "Disability" shall be interpreted consistent with the meaning of "handicap" under 42 U.S.C. § 3602(h)."***

~~Dwelling, common. A building with separate bedroom bathroom living area for two or more individuals or couples and common or shared kitchen facilities, and which may have other common shared facilities.~~

~~Dwelling, Elderly and Disabled. A dwelling unit in a building of two or more dwelling units which is, in its entirety, specifically limited to occupancy by citizens of age 58 or above or by a person whose disability requires special housing provisions to accommodate the impairment.~~

~~Dwelling, Elderly Disabled Congregate Care. A common dwelling unit in a building of two or more common dwelling units which is, in its entirety, specifically limited to occupancy by citizens described under definition (17) above, but requiring limited special care with common cooking and eating facilities.~~

**Group living structure.** A structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence by six to fifteen unrelated persons, where the tenancy is arranged on a month-to-month basis or longer, and the home is occupied by the owner or the owner's agent and that person supervises the use of the home. "Group living structure" does not include a residential home, residential facility, senior or convalescent care facility, or specialty housing facility. "Group living structure" also does not include residential uses accessory to a college, medical center or religious institution (such as dormitories, fraternities, or monasteries), which are included as part of an approved concept development, planned unit development or conditional use plan. The number of residents in a group living structure is limited to the density of the underlying zone, at an equivalency ratio of four persons equaling one dwelling unit.

**Residential facility.** "Residential facility" as defined by state law (currently ORS 197.660), including a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, licensed or registered under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

**Residential home.** "Residential home" as defined by state law (currently ORS 197.660), including a residential treatment or training or an adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

**Senior or Convalescent Care Facility.** A living facility for six or more non-related persons, which provides specialized care, supervision, treatment, training, or a combination of these services, for residents. This definition includes, but is not limited to, Assisted Living or Residential Care Facilities, Congregate Care Facilities, Nursing Homes, Sanatoriums, and Geriatric Care Facilities.

**Specialty Housing.** An independent living facility for six or more non-related persons, in which specialized care or other services for residents is not provided, but which has structural accommodations or amenities for senior or disabled residents. The number of residents in a specialty housing structure is limited to the density of the underlying zone, at an equivalency ratio of four persons equaling one dwelling unit.

Changes to existing definitions in Section 3 Definitions (includes renumbering):

Dwelling, accessory. A second, **restricted occupancy** dwelling unit created on a lot with a detached house. The second unit is created auxiliary to, and is always smaller by at least 25% in total floor area than the primary detached house; however, an accessory dwelling unit may never exceed 750 square feet in total floor area.

Dwelling unit. One or more rooms designed for occupancy by one family and not having more than one cooking facility. In the case of a ~~boarding or rooming house, however, or a common dwelling~~ **group living structure**, each two bedrooms shall constitute a dwelling unit.

Family. An individual, or two or more persons **related to one or more persons in the household** by blood, marriage, **domestic partnership**, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. **"Family" also includes persons who live together in a residential home or residential facility and not more than eight persons with disabilities who live together in a dwelling unit.**

Addition of "Residential Homes" and "Residential Facilities" in zones permitting single family and multi-family residential uses:

Zoning Ordinance Section and subsection	Pertinent Zoning District
Sect. 7 Uses Permitted Outright in R-10 (Residential Homes and Facilities)	R-10 Single Family Residential (also carries forward by reference into: R-8.5 Single Family Residential; R-7 Single Family Residential; R-6 Single Family Residential; and A-1 Duplex Residential)
Section 21 Uses Permitted Outright in A-2 (Residential Facilities only)	A-2 Multi-Family Residential (also carries forward by reference into: A-3 Multi-Family Residential; and A-4 Multi-Family Residential)
Section 41 (20) Uses Permitted Outright in C-4 (Residential Homes and Facilities)	C-4 Neighborhood Commercial
Section 48.II. Table 48 Land Uses/Residential (Residential Homes and Facilities)	MU-N Mixed Use Neighborhood
Section 48.II. Table 48 Land Uses/Residential (Residential Facilities only)	MU-C Mixed Use Commercial



Addition of "Residential Homes" and "Residential Facilities" in zones permitting single family and multi-family residential uses (continued):

<u>Zoning Ordinance Section and subsection</u>	<u>Pertinent Zoning District</u>
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCC-CBD Central Business District SCC-HOD Highway-Oriented District SCC-SC Station Commercial SCC-MM Multi-Modal
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCC-CBD Central Business District SCC-HOD Highway-Oriented District SCC-SC Station Commercial SCC-MM Multi-Modal
Section 136.II. Table 1 Permitted Land Uses (Residential Homes and Facilities)	SCR-MD Medium Density SCR-V Village SCR-DNC Downtown Neighborhood Conservation
Section 136.II. Table 1 Permitted Land Uses (Residential Homes only)	SCR-LD Low Density SCR-OTC Orenco Townsite Conservation
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCR-HD High Density Residential

Changes in Provisions allowing "reasonable accommodation" in Section 117:

Section 117. Enforcement. The Planning Director shall have the power and duty to enforce the provisions of this Ordinance. ***Notwithstanding any other provision of this ordinance, the Planning Director has the authority to make reasonable accommodations in the application of this ordinance when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling to the extent required by federal or state law. In considering whether an accommodation is reasonable, the Planning Director may consider whether the request puts an undue burden or expense on the city and whether the proposed use creates a fundamental alteration in the zoning ordinance. The accommodation may result in a permitted or conditional waiver of any limitation of this ordinance.*** An appeal from the ruling of the Planning Director shall be made to the Hearings Board.

Additions and deletions replacing the terms "boarding house," "common dwelling," "home for the aged etc.," with "group living structure" "senior or convalescent care facility" and "specialty housing":

Section 8 Conditional Uses (in the R-10 zone); subsection 7:

- (7) ~~Common dwelling~~ **Group living structure or specialty housing**, limited to the number of dwelling units allowable.

Section 21 Permitted Uses (in the A-1 zone), subsection 4:

- (4) ~~Common dwelling~~ **Group living structure or specialty housing**, limited to the density allowable.

Section 22 Conditional Uses Permitted (in the A-1 zone), subsection (2):

- (2) ~~Hospital, sanitarium, home for the aged, rest home, nursing or convalescent home.~~ **senior or convalescent care facility.**

Section 28 Permitted Uses (in the A-2 zone), subsection 3:

- (3) ~~Boardinghouse, lodging, or rooming house~~ **Group living structure or specialty housing.**

~~Section 8.~~ Section 28 Permitted Uses (in the A-2 zone), subsection 3:

- (4) ~~Boardinghouse, lodging, or rooming house~~ **Group living structure or specialty housing..**

Section 34A Permitted Uses (in the A-4 zone), subsections 3 and 4:

- (3) ~~Boardinghouse, lodging, or roominghouse~~ **Group living structure or specialty housing..**
- (4) ~~Common dwelling.~~

Section 55 Conditional Uses (in the C-1 zone), subsections 2 and 4:

- (2) ~~Hospital, sanitarium, home for the aged, rest home, nursing or convalescent home.~~ **senior or convalescent care facility.**
- (4) ~~Boardinghouse~~ **Group living structure or specialty housing...**

Changes restricting the occupancy of accessory and ancillary dwellings:

Section 88A Accessory Dwellings (addition of a new subsection (2) and renumbering of subsequent subsections):

- (2) **Occupancy restriction. An accessory dwelling unit shall not be occupied by more than three (3) related or unrelated persons.**

Section 137 (V) Minimum and Maximum Residential Densities and Ancillary Dwelling Units, subsection (13) (addition of a new subsection (f) and renumbering of subsequent subsections):

- (f) *An ancillary dwelling unit shall not be occupied by more than three (3) related or unrelated persons.*

#### **ADDITIONAL PROPOSED REVISIONS REGARDING PARKING**

During City Council's initiation of the proposed amendments the issue of parking for group living structures was raised. This term, and the other proposed definitions are not currently listed in Section 84A Off-Street Parking and Loading and Section 137 XI Minimum and Maximum Off-Street Parking Requirements. To reflect the proposed additions and deletions in the text amendments, the Residential portion of Table 84A should be revised to read as shown below:

Section 84A Off-Street Parking and Loading Table 84A

	Minimum Parking Required	Maximum Parking Zone A	Maximum Parking Zone B	Minimum Bicycle Parking
<b>RESIDENTIAL</b>				
Single Family Detached	1 per unit	N/A	N/A	N/A
Accessory dwelling unit	1 per unit	N/A	N/A	N/A
Multi-Family, townhouse (1 bedroom)	1.25 per unit	N/A	N/A	1 per unit
Multi-Family, townhouse (2 bedroom)	1.50 per unit	N/A	N/A	1 per unit
Multi-Family, townhouse (3+ bedroom)	1.75 per unit	N/A	N/A	1 per unit
Rooming or boarding house <i>Group Living Structure</i>	1 per guest room <i>bedroom</i> plus 1 space for the owner <i>or agent</i>	N/A	N/A	1 per 10 guest rooms 1 per 4 bedrooms
<i>Residential Home or Facility</i>	0.25 per resident plus 1 per care giver	N/A	N/A	1 per 20 parking spaces
Elderly disabled dwelling <i>Specialty Housing</i>	0.75 per dwelling unit	N/A	N/A	N/A
Congregate care facility <i>Senior or Convalescent Care Facility</i>	0.50 per dwelling unit 0.25 per resident plus 1 per care giver	N/A	N/A	1 per 20 parking spaces

In addition to these changes, the line item in Table 84A under "Institutional" uses, "Convalescence, nursing and other health homes, rest home for the aged" would be deleted in its entirety.

Also to reflect the proposed additions and deletions in the text amendments, the Residential portion of 137.XI.B.3 should be revised to read as shown below:

Section 137 XI Minimum and Maximum Off-Street Parking Requirements, Table 137.XI.B.3

Table 3: Residential Parking Standards in Station Community Districts

Housing Type	Min. Required Parking (Per DU)	Max. Allowed Parking (Per Bedroom)	Min. Required Bicycle Parking
Single Family Detached	1.0	0.90	None
Single Family Attached	1.0	0.90	None
Rowhouse	1.0	0.90	None
Townhouse	1.0	0.90	1.0
Duplex	1.0	0.90	1.0
Attached Duplex	1.0	0.90	1.0
Multi-Family Dwelling	1.5	0.90	1.0
Garden Apartment	1.25	0.90	1.0
Mid-rise Multi-family	1.5	0.90	1.0
Flats and Apartments over Commercial space, and for Live/Work units	1.0	0.90	1.0
Senior Housing	0.25	0.75	None
<i>Residential Homes and Facilities</i>	<i>.25 per resident plus 1 per caregiver</i>	<i>.75 per resident</i>	<i>None</i>
Student Housing (Per dormitory type room)	0.25	0.75	1 per room

In addition to these changes, the line item in Table 137.XI.B.2 Parking for Commercial Uses under "Hospital and Geriatric Care Facility" would be amended to delete the reference to Geriatric Care Facility."

**RECOMMENDATION**

Planning staff recommends that the Planning Commission open the public hearing on the proposed Zoning Ordinance text amendments on May 24<sup>th</sup>, and receive any testimony from interested parties. Following receipt of testimony, if the Commission chooses to recommend City Council approval of the proposed amendments, Planning staff will return a resolution for the Commission's consideration to the June 14<sup>th</sup> meeting. If the Commission directs that additional changes be made in the draft, such revisions could be made prior to the next meeting.

PC staff report – ZOA 1-06: residential homes and facilities

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Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT

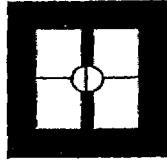
A handwritten signature in black ink, appearing to read "Deborah A. Raber". The signature is fluid and cursive, with the first name "Deborah" being more prominent.

Deborah A. Raber AICP  
Project Manager

Attachment: February 16<sup>th</sup> memoranda  
March 7<sup>th</sup>, March 16<sup>th</sup>, and March 30<sup>th</sup> City Council staff reports

CITY OF HILLSBORO

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**MEMORANDUM**

**DATE:** February 16, 2006  
**TO:** Mayor and City Council  
**FROM:** Lt. Michael Rouches, Police Dept.,  
Deborah Raber, Planning Dept.  
**SUBJECT:** 50<sup>th</sup> Court Issues and Coordination with Planning Department

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**REQUESTED CITY COUNCIL ACTION:**

No specific action requested. Please review the following information in your deliberations and consider the options provided in the below staff report outlining potential changes and additions to city nuisance code and the partnership with the planning department to resolve issues at 195 SE 50<sup>th</sup> Ct. This report is provided specifically to assist the City Manager, Council, and ancillary staff in direction, decisions and policy.

**BACKGROUND:**

This report addresses the issues surrounding the property located at 195 SE 50<sup>th</sup> Court in Hillsboro. In an effort to provide a complete historical reference, the issues and solutions the Council and the Police department have affected are explained below.

**Different Address Similar Issue.**

In January 2005, the city of Hillsboro received an e-mail from a concerned citizen regarding the home and property located at 5025 NE Belmont Ct. in Hillsboro, Oregon. The concern voiced in this complaint related to the use of this home as a half-way house that currently housed ex-offenders on supervision for sex offenses; located in a cul-de-sac filled with children. The city officials forwarded this concern to the police department to evaluate how we could best address this livability issue and calm the neighborhood.

The major concerns that arose in regard to this home focused on the tenants, zoning and the perceived utilization of the home as a half-way house. While researching this issue, we found that most of the tenants at this property were on supervision for sex offenses. The property was zoned for R7 dwellings which half-way houses do not qualify. Further research into this matter revealed that the property owner, Jay Swenson, was well within zoning regulations; and the tenants, at this

Hillsboro Police Department  
250 SE 10<sup>th</sup> Ave Hillsboro, OR 97123

in this primary situation was to find a plausible solution to calm a neighborhood where they significantly felt that their safety was in a continued state of vulnerability.

In working with this situation, we recognized that a significant lack of information and education existed regarding the notification process of the Washington County Parole and Probation Department concerning sex offenders supervision, as well as the zoning ordinances that govern the Belmont Court area. To address this lack of information, it was decided that the police department would convene a town hall meeting for all concerned residents to allow the opportunity to learn more information and to ask questions regarding their concerns. The town hall meeting was held on January 31, 2005, at the Golden Road Baptist Church. This was a collaborative effort that consisted of Parole and Probation, the Planning Department, Prison Fellowship, and the Police Department. The Police Department moderated the meeting. At the meeting, citizens were given information regarding the sex offender notification process, supervision requirements, and accountability expectations and standards. The Prison Fellowship provided information regarding the faith based aftercare program that was operating within the home for the tenants and the Planning Department spoke regarding the zoning ordinances that applied to the Belmont Court area. This town hall was highly emotionally charged, and at times, became quite heated. The Police Department kept close watch over the home based upon issues of perceived vigilantism that began to erupt over the tenants remaining in this home.

In this case Mr. Sercombe provided options to Council related to changes in the nuisance ordinance to solve the problem. Subsequently the State legislature passed a sex offender law prohibiting sex offenders on probation to residing in the same dwelling. These actions led to the abatement of issues at that location.

#### **195 SE 50<sup>th</sup> Court**

In September, 2005, HPD's Crime Prevention Specialist, Janae Saunders was contacted via e-mail by a concerned citizen who resides on SE 50th Ave, Hillsboro, Oregon. The issue was concerning a home owned and operated by Jay Swenson. The citizen's concerns focused on the tenants in the home; who seemed to be on drugs, or possibly mentally challenged. She was continually fearful as these tenants were 'wandering' the neighborhood, having arguments with themselves, urinating outside in plain view, and creating overall neighborhood disturbances.

Based upon the previous issues with Belmont Ct., CPS Saunders referred this woman to the Parole and Probation Department for further information regarding the tenants of this particular home. This referral was given due to the understanding that Parole and Probation consistently worked with Jay Swenson in placing individuals who had difficulty renting into homes.

After the Hillsboro Police Department was contacted by the residents of the neighborhood, we became aware that the neighborhood issues were not remedied by contact with Parole and

Probation and residents felt the Swenson property (with its variety of renters) didn't fit in a residential neighborhood.

In reviewing calls for service, the Police Department serviced 41 calls for service at the 50<sup>th</sup> Court location in 2005. Of these calls for service, three involved disturbance/fight calls among residents; and four calls for service were agency assists where the Police Department was called to assist the Washington County Parole and Probation Department in taking residents into custody for violation of parole or probation. The department also responded to calls for service at this location for garbage piled up, noise complaints, and calls generated by the neighborhood for suspicious or "mental" persons wandering the neighborhood.

The residents in the neighborhood came to City Council on January 17, 2006 and February 7, 2006 in a search for long range solutions to this problem. Since those meetings, the police department and the planning department have worked jointly to address the two issues of nuisances and zoning. As indicated in the February 15<sup>th</sup> memorandum from the City Attorney, possible zoning ordinance amendments include changes to the definition of "boardinghouse" and addition of a new definition of "post-incarceration group home." These suggestions have been sent to Mr. Sercombe for review.

It should be noted since the police met with Mr. Swenson on January 20<sup>th</sup> we have had only one call for service. The removal of problematic tenants by Mr. Swenson, increased police concentration, and the better management and communication by Mr. Swenson and Parole and Probation is responsible for this drop in calls for service.

**Actions taken to increase livability in the neighborhood:**

The Hillsboro Police Department has been successful in abating the issues raised by the neighborhood by:

- Deployment of our mobile command center in the area for police presence and neighborhood calming.
- Assignment of a district officer daily to check the area and liaison with neighbors.
- Responsiveness to calls for service and proper response of police action.
- Coordination with Washington County Parole and Probation and Swenson to increase their communication and problem solving measures.
- Offered on-going landlord training for Mr. Swenson.
- Provision on-going communication with Mr. Swenson and P&P.

It should be noted that the actions taken by the police department have been satisfactory for the neighbors. We have responded to and utilized the tools available to appropriately act. The issue



remains that the citizens would like to see a stronger tool for us to utilize when or if livability issues in the neighborhood become out of hand. These tools or options are presented below.

The issue not addressed by the police department is zoning, and the neighbors' assertion that a residence of this type simply does not belong in their neighborhood. The planning department and the City Attorney have discussed possible changes to the zoning ordinance to address this issue, as explained in the memorandum from the City Attorney dated February 15, 2006.

#### **Better living through laws**

Police department staff (Cynthia Bolek, Janae Saunders, Kristi Gobel, and I) met and devised draft options and modifications to our current nuisance ordinance. The rough draft of the options were sent to City Attorney Tim Sercombe and will be available for City Manager Tim Erwert, Council and Mayor for consideration upon legal review.

The draft changes, had they been in place in 2005, would have given the police department tools for citation and abatement of some of the livability issues presented by the neighbors. Our current code did not fit this situation due to the fact that it defined and addressed a scope of crimes and outside calls for service that did not fit the violations that were occurring.

Below is a brief synopsis of options for consideration with respect to potential amendment to the current Nuisance Ordinance.

#### **OPTION 1:**

To not adjust or change our current nuisance ordinance, but to redefine and adjust the Municipal Code definition of Boarding House, and/or Group Home to better control the management of the locations.

#### **OPTION 2:**

To consider approving proposed modifications (upon legal review) to our current Chronic Nuisance Property Ordinance completed by Ms. Bolek and our support staff. In brief, this group looked at the nuisance ordinances in other Oregon cities (Portland, Salem, Newberg, Ashland, Corvallis, McMinnville, Stayton) and broadened the crimes and violations considered necessary to meet the elements of a nuisance location. This would give the police and Code Enforcement Officers greater latitude to address the quality of life issues that are present in these situations and have a viable tool to manage future situations.

Most interesting about this option is its two-prong approach. A part of the proposed changes to be reviewed by Attorney Tim Sercombe, we have included utilizing the property owner or manager

as a true partner. The proposed draft language in the ordinance would allow for the owner to actively work with the police to abate the problems after the location after identification of nuisance ordinance violations. So long as the police and owner were actively working together to solve the problems documented, the potential fines or closure of property associated with the nuisance property would be held in abeyance.

#### **RECOMMENDATION:**

To consider changes and/or recommendations by the Planning Department and Attorney Tim Sercombe with respect to zoning for properties meeting boarding house criteria.

To provide direction and potentially consider adoption of proposed language to be implemented into the City's Chronic Nuisance Property Ordinance to provide tools for the police department and City to cooperatively attempt to abate issues defined prior to enforcement action should additional issues in this neighborhood or other neighborhoods arise

#### **CONCLUSION:**

Two tools are proposed to better address these issues in the future. One involves the expansion of the current nuisance ordinance to include lesser offenses and the second to address zoning issues and definitions for this type of property.

The issues and experiences presented by this neighborhood relate directly to the livability and comfort felt in one's neighborhood. The ideas presented here for Council's consideration drive into the issues raised by the neighbors which are the appropriateness of a residence like this in their neighborhood, and what response the police can have when laws are broken.

Our focus has been and will continue to be as stewards of the safety and quality of life of our citizens. We will utilize all tools, mediation, communication, and partnerships necessary to abate issues of this kind. We do not see this as a one location problem, but as a long term issue that could befall any neighborhood in our city.

MEMORANDUM

TO: Mayor and City Councilors

FROM: Timothy J. Sercombe  
Deborah Raber

DATE: February 16, 2006

SUBJECT: Regulation of Post-Incarceration Group Homes

**Introduction.**

Last year, the City Council was contacted by residents of the Belmont Court neighborhood regarding parolees housed in a residence owned by Jay Swensen. The Council has recently been contacted again by residents of the 50<sup>th</sup> Court neighborhood regarding repeated police calls to another house owned by Mr. Swensen, also a residence for parolees.

In February 2005 we reported to the Council on the legal setting for regulating collective housing. A copy of that memorandum is attached. The key points are:

- The City allows “single family dwellings” in its residential zones, as well as “duplex dwellings” and “accessory dwellings” in some circumstances. A “dwelling” allows occupancy by a family or a group of not more than five unrelated persons.
- In the multifamily residential districts, a “boardinghouse, lodging or rooming house” is allowed. These uses allow not less than three or more than 15 guests.
- State law requires licensed residential homes and facilities be allowed in single-family and multi-family zoning districts.
- The federal Fair Housing Act preempts zoning controls that discriminate textually or in application against handicapped persons or as a result of familial status, race, religion or national origin.
- It is legitimate to limit unrelated occupants in a dwelling to five or fewer persons, so long as this limit does not work out in practice to limit housing choices for persons with disabilities. Sex offenders or parolees are not persons with disabilities.

A LAW FIRM

A LIMITED LIABILITY PARTNERSHIP INCLUDING OTHER LIMITED LIABILITY ENTITIES

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- The City could amend its zoning code to help defend against a FHA claim of disparate impact on a protected class by setting out a process for accommodation through a waiver or exception procedure.

The February, 2005 memorandum set out some ideas on additional controls on occupancies in the residential zoning districts. Each of the ideas requires further research and analysis. The memorandum noted that following options:

- “1. *Distinguishing residential care facilities or residential homes from collective rentals.* The definition of “boardinghouse” could be clarified, and perhaps other prohibitions made more explicit in the low density residential zones, to exclude certain types of uses from low density residential zones. For example, the ordinance could limit the number of persons to whom a residence, or portion of a residence, could be leased without a resident caretaker or supervisor. It could define “boardinghouse” to require an owner occupant or agent to live fulltime on the premises.
- “2. *Limiting occupancies by disfavored groups.* It might be possible to limit more than one occupant of a single-family residence who is a sexual offender, probationer, or parolee, unless part of a licensed care facility or living together with other family members. Care must be taken in this legislative change to be consistent with state and federal law.
- “3. *Limiting types of tenancies.* It is not unusual in vacation communities to limit transient occupancies (less than a particular number of days) in single family zones. The Council may want to consider limiting tenancies to longer periods than month-to-month tenancies in low density residential zones. This would be opposed by rental management firms.
- “4. *Limiting commercial rentals in single family zones.* There may be ways to require registration or licensing for rental agencies in single family residential districts or limit the number of rentals of a portion of single family dwellings by any person.”

There were three relevant legal changes subsequent to the February 15, 2005 memorandum. First, the State Legislature passed new laws relating to limiting occupancies by disfavored groups. HB 3419 requires as a condition of probation, parole or post-prison supervision that a sex offender not reside with another sex offender without permission of his or her supervisor. SB 243 requires as a condition of parole or post-prison supervision that a sex offender not be present at or on property adjacent to a school, child care center, playground or places used by minors without permission of his or her supervisor. SB 106 requires notification of sex offender status if a parolee or probationer seeks admission to a long-term or residential

care facility. The person can be discharged from the facility if his or her status as a sex offender was not known when admitted.

Second, the City amended its nuisance ordinance, codified at HMC Chapter 8.05. The amendments changed the abatement process and consolidated the nuisance sections of the code. The revision did not change the "chronic nuisance" section of the code. Under the chronic nuisance ordinance, if property has three or more occurrences of certain offenses in a 30-day period, the City can prosecute the nuisance in Washington County Circuit Court and seek to shut down the property and assess penalties. The proscribed offenses are harassment, intimidation, discharge of a weapon, those involving controlled substance or liquor, gambling and prostitution.

#### **Additional Thoughts.**

The Police Department studied the nuisance ordinance and has suggestions on expanding the types of behavior that can trigger a chronic nuisance determination. This expanded tool may provide additional leverage to remedy external problems caused by group living arrangements.

The Planning Department suggests consideration of limited changes to the zoning ordinance. A more thorough treatment of the uses in the residential zoning districts probably should await the upcoming code revision process. As an interim measure, however, the zoning ordinance could be amended as follows:

1. Allow licensed residential homes and residential facilities in the low-density and higher-density residential zoning districts as required by state law. The amendment should also allow homes for persons with disabilities as required by the Fair Housing Act.
2. Define "boardinghouse" as a dwelling with more than five, but less than ten, unrelated persons, that has some combination of shared cooking and/or sanitary facilities, and that is not licensed as a residential facility under state law. Tenancies in a boardinghouse would be for a period of one month or more. A boardinghouse would be allowed as a conditional use in the residential zones and would require a resident landlord or caretaker. The number of residents could be further limited by a density standard of a resident number/square feet of the structure.
3. Define a "post-incarceration group home" with a maximum occupancy and resident supervisor requirements, and allow only in particular zoning districts.
4. Consider a maximum occupancy for lots in the single-family zones that includes the primary dwelling and any accessory dwelling. That limit could be the number of persons that is allowed for a single dwelling unit.

Should the Council wish to pursue this or any other zoning ordinance amendment, we can draft an ordinance and seek a recommendation from the Planning Commission before presenting it to the Council for consideration. Please let us know if you have questions or concerns.

MEMORANDUM  
February 16, 2006  
Page 4

cc: Tim Erwert

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MEMORANDUM

TO: Mayor and City Councilors

FROM: Timothy J. Sercombe

DATE: February 15, 2005

SUBJECT: Group Homes, Local Land Use and the Fair Housing Act

Introduction

During the public communications portion of the February 1, 2005 council meeting, the council heard testimony about rental of a residence to a number of recent sex offender parolees. The discussion provoked questions concerning the application of federal law to the enforcement of the City's zoning law, as well as the meaning of the zoning limitations.

The residence is located on property zoned R-7. It is not licensed by the state as a residential home or facility. Although occupants receive assistance from a religious group, the ownership and operation of the facility is not a religious use.

At the council meeting, I advised as follows:

1. The R-7 zoning district allows a "single family dwelling" use. Under the applicable definitions, occupancy of the residence is confined to five or fewer unrelated persons or any number of related persons.

HZO §3(24) defines "single-family dwelling" as "a detached building, other than a mobile or manufactured home, containing one dwelling unit." "Dwelling unit" is "one or more rooms designed for occupancy by one family and not having more than one cooking facility. In the case of a boarding or rooming house, however, or a common dwelling, each two bedrooms shall constitute a dwelling unit." HZO §3(26). The key definition is "family" which is defined by HZO §3(28) to be,

An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or

a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit.

2. Other group living arrangements are permitted in the higher density residential districts. A "boardinghouse, lodging or rooming house" is allowed in the A-2 district. A "common dwelling" is an outright use in the A-1 district. It is reasonable to read the zoning ordinance as precluding uses in a district that are expressly allowed elsewhere. Thus, a "boardinghouse" is not a "single family dwelling" use.

"Boardinghouse" is defined to be "a building where lodging with or without meals is provided for compensation for not less than three nor more than 15 guests." The meaning of "boardinghouse" is not clear. It might possibly depend upon whether the tenancy is for the entire residence or just one exclusive part, whether there is a resident owner or owner's representative, or the length of the tenancy. A "common dwelling" is allowed in the A-1 district. The arrangement here does not fit that bill (separate bedroom, bathroom, living room suites).

3. State law requires licensed residential homes and facilities to be accommodated in single family and multi-family zones respectively. These laws do not affect the residence here because it is unlicensed.

4. The Fair Housing Act (FHA) does preempt zoning controls that discriminate textually or in application against handicapped persons or as a result of familial status, race, color, religion or national origin of the affected persons. It would violate the FHA if the City's zoning code allowed family residences in the low density residential zones but not group homes for persons with disabilities.

This advice spurred a number of related questions, some of which may be moot now that the rentals to parolees are being discontinued. But if similar issues arise in the future, there is benefit in preserving and communicating the answers to your questions.

#### **Fair Housing Act Issues**

The Fair Housing Act was passed in 1968 and prohibits discrimination in housing transactions based on race, color, religion and national origin. Discrimination based on gender was outlawed in 1974. The Act was extensively revised in 1988, and changed to proscribe discrimination against persons because of handicaps or familial status.

The Act is administered by the Department of Housing and Urban Development. Administrative claims can be filed with HUD. The Act authorizes prosecution of violations by the Department of Justice and private enforcement in state or federal courts. Remedies can include compensatory damages, punitive damages and civil penalties.

Local government policies that limit or exclude facilities for persons with disabilities or families with children may violate portions of the FHA. The Act prohibits cities from making



zoning or land use decisions or implementing land use policies that exclude or discriminate against the protected classes.

Liability can arise in three different ways: 1) from making a law that treats a protected group differently from similarly situated persons; 2) from enforcing a law that is neutral on its face but has a disproportionate impact on protected persons; or, 3) failing to make reasonable accommodations in the enforcement of laws that might be necessary to allow a person with a disability to have equal housing opportunities.

The attached guidance from the Department of Justice and HUD on "Group Homes, Local Land Use and the Fair Housing Act" contains an excellent summary of the relevant legal principles and limitations. In addition, we have a legal research memoranda for review if you wish.

Our review of the law suggests the following:

1. *Can the City enforce the occupancy limit of five or fewer unrelated persons for residences in the low density residential zones?* Yes, so long as it does not work in practice to limit housing choices for persons with disabilities. The City might have to reasonably accommodate slightly larger homes for persons with disabilities if that can be done. But generally speaking, a local government may restrict the ability of groups of unrelated persons to cohabitate, so long as the restrictions are imposed on all groups.
2. *Are sexual offenders protected under the FHA as persons with handicaps?* No. The Fair Housing Act defines "handicapped" as "a physical or mental impairment which substantially limits one or more of [a] . . . person's major life activities." A "major life activity" is "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." This includes physically disabled persons, recovering alcoholics, elderly persons, abused youths, and HIV positive persons under the decisions.

According to the HUD and Department of Justice guidance, "current users of illegal controlled substances, persons convicted for the illegal manufacture or distribution of a controlled substance, sex offenders and juvenile offenders are not considered disabled under the Fair Housing Act."

3. *Are changes to the Hillsboro Zoning Ordinance necessary in order to comply with the Fair Housing Act?* There are no facially discriminatory provisions in the code that classify on the basis of protected classes under the Act. There is no need for an ordinance amendment to ensure that the code is lawful.

The Council could amend the ordinance in ways that would better situate the City to defend against a disparate impact FHA claim. As noted above, that type of claim is based on neutral policies that have a discriminatory impact. The FHA requires the provision of reasonable accommodation to avoid this impact.

Although not necessary for facial compliance with the Act, the City could amend its zoning policies to expressly preclude their application in ways that result in violations of the FHA (and other federal laws) and set out a process for providing any accommodation required by the FHA. That process could be part of a variance or exception procedure. As it stands now, if the City were requested to make a change in the application of its zoning law to accommodate housing to a person with disabilities, we would have to make up a process. On the other hand, there is no history of reasonable accommodation requests.

If the City wished to reduce the number of unrelated persons allowed to live together in the low density residential zones, it would surely need to except persons with disabilities from this lower occupancy limit (as well as those residential homes licensed under state law). In *Oxford House-C v. City of St. Louis*, 77 F3d 249 (8<sup>th</sup> Cir. 1996), a city's zoning ordinance provided three classes of numerical limitations on residential occupancies: related persons (with no limitations); unrelated persons (with a three person limitation) and unrelated persons with disabilities (with an eight person limitation). These distinctions were upheld.

#### **Classification of Persons as "Predatory Sex Offenders"**

Under ORS 181.585 to 181.590, community notification is required with a person is released into the community who has been designated as a "predatory sex offender." For purposes of the statute, a "predatory sex offender" is a person who has been convicted of a sex crime who "exhibits characteristics showing a tendency to victimize or injure others." In a 1998 case, the Oregon Supreme Court held that the Board of Parole's procedures for designating persons as predatory sex offenders violated due process. *Noble v. Board of Parole*, 327 Or 485 (1998).

After that case, the Board adopted a designation procedure that used a scale of objective factors. Some of the factors on the scale automatically required designation as a predatory sex offender and did not allow a hearing on the designation. This automatic designation was overturned by the Oregon Supreme Court in *Y.L.Y. v. Board of Parole and Post-Prison Supervision*, SC S51000, decided February 10, 2005. The Court determined that the statute defines "predatory sex offender" in terms of present characteristics and that determinative factors based on past events were inconsistent with the statute. These past events (e.g., past convictions for particular sex crimes) were relevant but not determinative.

When a person is designated as a "predatory sex offender" and is under parole or probation supervision, the Parole Board or Department of Corrections "shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender." ORS 181.586. The agency must consider notifying, among others, "residential neighbors and churches, community parks, schools, convenience stores, businesses and other places that children or other potential victims may frequent." When a predatory sex offender is no longer under supervision, there are additional requirements for public notification. ORS 181.588.

You may wish to obtain further information from Chief Louie on the participation of the City in this program of notification. If there are concerns about the administration and adequacy of the program, the City and supervising agencies may enter into agreements regarding community notification. ORS 181.590.

#### **Hillsboro Zoning Ordinance Issues**

To reiterate, the current zoning ordinance is sufficient to limit occupancies of unrelated persons in the low density residential zoning districts to five or fewer persons (absent any issue of protection of the occupants by the FHA). This limitation would allow a congregation of parolees or sex offenders and would likely be insufficient in the view of affected neighbors.

In addition to the amendments to better comply with the FHA (reasonable accommodation process), there are other ordinance changes that could be considered to inhibit similar situations in the future. The following is a list of potential changes, and not a recommendation for Council action. Should the Council wish to pursue any of these alternatives, further research and analysis would be needed:

1. *Distinguishing residential care facilities or residential homes from collective rentals.* The definition of "boardinghouse" could be clarified, and perhaps other prohibitions made more explicit in the low density residential zones, to exclude certain types of uses from low density residential zones. For example, the ordinance could limit the number of persons to whom a residence, or portion of a residence, could be leased without a resident caretaker or supervisor. It could define "boardinghouse" to require an owner occupant or agent to live fulltime on the premises.
2. *Limiting occupancies by disfavored groups.* It might be possible to limit more than one occupant of a single-family residence who is a sexual offender, probationer, or parolee, unless part of a licensed care facility or living together with other family members. Care must be taken in this legislative change to be consistent with state and federal law.
3. *Limiting types of tenancies.* It is not unusual in vacation communities to limit transient occupancies (less than a particular number of days) in single family zones. The Council may want to consider limiting tenancies to longer periods than month-to-month tenancies in low density residential zones. This would be opposed by rental management firms.
4. *Limiting commercial rentals in single family zones.* There may be ways to require registration or licensing for rental agencies in single family residential districts or limit the number of rentals of a portion of single family dwellings by any person.

Should the Council wish to pursue any of these alternatives, staff would be available to research and develop appropriate options. You may also want to delegate this issue to the Planning Commission or reserve it as worthy of change in any future code revision.

MEMORANDUM  
February 15, 2005  
Page 6

If you have further questions, or if I can be of any other assistance, please do not hesitate to ask.

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JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

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Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>(1)</sup> The Act does not preempt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999.

**Questions and Answers**  
**on the Fair Housing Act and Zoning**

**Q. Does the Fair Housing Act pre-empt local zoning laws?**

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

**Q. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.<sup>(2)</sup> Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

**Q. Who are persons with disabilities within the meaning of the Fair Housing Act?**

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct

threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

**Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?**

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

**Q. What is a reasonable accommodation under the Fair Housing Act?**

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-

family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

**Q. What is the procedure for requesting a reasonable accommodation?**

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

**Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?**

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of



Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

**Q. What kinds of health and safety regulations can be imposed upon group homes?**

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns...

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?**

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home

for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

**Q. What is the status of group living arrangements for children under the Fair Housing Act?**

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

**Q. How are zoning and land use matters handled by HUD and the Department of Justice?**

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or

Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

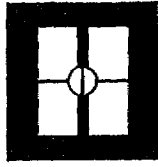
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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.

2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes;" and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

## CITY OF HILLSBORO

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March 7, 2006

### MEMORANDUM

TO: Hillsboro City Council  
FROM: Planning Department

RE: Possible Zoning Ordinance Amendments regarding "Post-incarceration Group Homes"

### BACKGROUND

At their regular meeting of February 21, 2006, the City Council continued to receive comments from residents of the 50<sup>th</sup> Court neighborhood regarding a particular property rented to a number of parolees and probationers. Neighbors expressed strong concerns regarding numerous police calls and behaviors exhibited by residents of the house. Other parties also testified to the Council that this property and other properties owned by the same landlord and rented to parolees and probationers provided necessary transitional housing for a population at risk for homelessness and return to custody.

In an earlier memorandum, dated February 16<sup>th</sup>, the City Attorney and Planning Department staff outlined some limited possible amendments to the Zoning Ordinance to address the current situation. The four categories of amendments are summarized below:

- Allow licensed residential homes and residential facilities in the low-density and higher-density residential zoning districts as required by state law. The amendment should also allow homes for persons with disabilities as required by the Fair Housing Act.
- Define "boardinghouse" as a dwelling with more than five, but less than ten, unrelated persons, that has some combination of shared cooking and/or sanitary facilities, and that is not licensed as a residential facility under state law. Tenancies in a boardinghouse

would be for a period of one month or more. A boardinghouse would be allowed as a conditional use in the residential zones and would require a resident landlord or caretaker. The number of residents could be further limited by the density of the underlying zone, with an equivalency ratio of 2 persons = 1 dwelling unit.

- Consider a maximum occupancy for lots in the single-family zones that includes the primary dwelling and any accessory dwelling.
- Define a "post-incarceration group home" with a maximum occupancy and resident supervisor requirements, and allow only in particular zoning districts.

#### **NATURE OF POSSIBLE ZONING ORDINANCE AMENDMENTS**

The nature of the amendments, by category as listed in the previous section, are summarized below:

##### **Residential Homes and Facilities:**

Add the following new definitions in Section 3:

"Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, licensed or registered under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

"Residential home" means a residential treatment or training or an adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

"Disability" is (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; (3) being regarded as having such an impairment; but such term does not include current, illegal use of or addiction to a controlled substance as defined by 21 U.S.C. § 802, or pedophilia, exhibitionism, voyeurism or other sexual behavior disorders. "Disability"

shall be interpreted consistent with the meaning of "handicap" under 42 U.S.C. § 3602(h)."

Amend the existing definition of Family as follows: Family. An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. ***"Family" also includes persons who live together in a residential home or residential facility and not more than six persons with disabilities who live together in a dwelling unit.***

Note: The effect of this amendment would be to allow one more disabled person in a group living facility than the five or fewer otherwise allowed. The additional "density" represents a positive accommodation to persons with disabilities, and creates a more defensible ordinance.

In addition, the Attorney General has issued an opinion that both homes (up to 5 residents) and facilities (6 to 15 residents) should be allowed in single family zones, since any number of related persons are considered a "family" and to prohibit larger facilities for the disabled could be considered discriminatory.

Delete existing definitions of Dwelling, Elderly and Disabled and Dwelling, Elderly Disabled Congregate Care and replace with newer definition citing current terminology such as "assisted living facility", "geriatric care facility" or similar language. [The Zoning Ordinance also uses the term "home for the aged, rest home, nursing or convalescent home" which should also be replaced with the newly defined term.]

Amend the permitted uses sections of the Zoning Ordinance regarding the new definitions and uses:

Adding Residential Homes and Residential Facilities as Permitted Uses in all single family residential and multi-family residential zones (both standard and light rail); in the MU-N and MU-C mixed use zones; and in the C-4 zone and the light rail commercial zones which allow either free-standing residential uses or residential uses on the upper floors of mixed use buildings.

Providing for a reasonable accommodation under the FHAA:

Amend Section 117 as follows: Enforcement. The Planning Director shall have the power and duty to enforce the provisions of this Ordinance. ***Notwithstanding any other provision of this ordinance, the Planning Director has the authority to make reasonable accommodations in the application of this ordinance when such***

*accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling to the extent required by federal or state law. In considering whether an accommodation is reasonable, the Planning Director may consider whether the request puts an undue burden or expense on the city and whether the proposed use creates a fundamental alteration in the zoning ordinance. The accommodation may result in a permitted or conditional waiver of any limitation of this ordinance.* An appeal from the ruling of the Planning Director shall be made to the Hearings Board.

**Redefining Group Living Facilities:**

Delete the existing definitions of Boarding, lodging or rooming house and Common dwelling, and replace with a more comprehensive, modern term: “Group living structure” means a structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence by six to ten unrelated persons, where the tenancy is arranged on a month-to-month basis or longer, and the home is occupied by the owner or the owner’s agent and that person supervises the use of the home. “Group living structure” does not include a residential home, residential facility, elderly and disabled dwelling, elderly disabled congregate care dwelling [or their redefined equivalent] or structures that are accessory to a college, medical center or religious institution (such as dormitories, fraternities, or monasteries) and that are a part of an approved detailed development plan, planned unit development or conditional use plan. The number of residents in a group living structure is limited to the density of the underlying zone, at an equivalency ratio of two persons equaling one dwelling unit.

Amend the permitted uses sections of the Zoning Ordinance regarding the new definitions and uses:

Replacing boarding houses and common dwellings with Group Living structures as Permitted Uses in the duplex and multi-family residential zones, and as Conditional Uses in applicable commercial zones.

**Establishing maximum occupancy for accessory dwellings:**

Zoning Ordinance Volume 1 defines an “accessory dwelling” as a second dwelling unit created on a lot with a detached house, which is auxiliary to and always smaller by at least 25% in total floor area than the primary detached house. Zoning Ordinance Volume II has a similar definition. In Volume I the maximum square footage for an accessory dwelling is 750 square feet; in Volume II the maximum area is 1000 square feet.

Based on the smaller size of these dwellings, Planning staff would recommend amending Section 88A Accessory Dwellings in Volume I, and Section 137V Minimum

and Maximum Residential Densities and Ancillary Dwellings in Volume II, to establish a maximum occupancy of three related or unrelated persons in an accessory / ancillary dwelling unit.

**Defining “post-incarceration group home” and establishing with a maximum occupancy and resident supervisor requirements, and allow only in particular zoning districts.**

The Zoning Ordinance currently allows “Corrections Facilities including, but not limited to, jails, half-way houses, probation centers, and restitution centers” as conditional uses in the C-1 General Commercial zone, but does not define any of these terms.

However, ORS 169.005 includes the following related definitions:

(4) “Local correctional facility” means a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(7) “Prisoner” means a person held with criminal charges or sentenced to the facility.

By the State definition “halfway houses, probation centers, and restitution centers”, as well as the subject property on 50<sup>th</sup> Court, may not be classifiable as correctional facilities. However, since Hillsboro has both a county jail and a restitution center, any new definition of correctional facility should include both of these facilities.

In the February 16<sup>th</sup> memorandum to the City Council, Planning staff had suggested the concept of a “post-incarceration group home” as a possible means to address this issue through zoning. The City of Portland identifies an “Alternative or Post Incarceration Facility” as a Group Living use where the residents are on probation or parole” Washington County identifies a “Detention Facility” as an establishment licensed or certified by the State and operated with 24 hour supervision, for the purpose of providing planned treatment and/or care to individuals who are criminal offenders, alcoholics, drug abusers, mentally ill or who require planned care while living together as a single housekeeping unit.” In both jurisdictions, such uses are allowed as conditional uses in multi-family residential zones and as either permitted or conditional uses in some commercial, industrial, and institutional zones.

However, further research with planning staff from both jurisdictions indicates that these types of uses are owned and/or operated by a corrections agency or other agency (usually non-profit), rather than by an individual, and that these types of uses are occupied by more than five unrelated individuals. Both Portland and Washington County planning staff indicated that a single family dwelling, occupied by five or fewer persons still under corrections supervision but not under full or partial confinement,



would not meet their respective definitions of “alternative or post incarceration facility” or “detention facility”.

To address the differences in scale and ownership of the Belmont Court and 50<sup>th</sup> Court residences, versus the larger institutional facilities identified by Portland and Washington County, Planning staff now recommends two new definitions: “Correctional Group Home” and “Correctional Group Facility”.

***A “Correctional Group Home” could be defined as a single dwelling unit or portion thereof, in which reside more than two, but fewer than six, unrelated persons convicted of criminal activity and currently on parole or probation under the supervision of authorized correction department personnel.”***

***A “Correctional Group Facility” could be defined as a group living structure or portion thereof, in which reside more than six, but fewer than ten, unrelated persons convicted of criminal activity and currently on parole or probation under the supervision of authorized correction department personnel.”***

“Correctional Group Facilities” could be allowed as conditional uses in the duplex, multi-family and commercial zones, where group living structures are permitted outright. “Correctional Group Homes” could be allowed as conditional uses in single family zones, and permitted outright in the more intensive zones, at the Council’s discretion, but more restrictive limitations could be imposed at the Council’s direction.

Planning staff would note that some legal theories support the idea that a “conditional use” cannot be denied outright, but only conditioned to comply with certain standards or criteria. The Council may wish to consider whether allowing the correctional home or facilities as conditional uses is appropriate if they are considered a permitted use which has been conditioned, rather than a use which could be denied if it does not meet the standards.

Zoning Ordinance Section 78 through 83 listed the procedures, general standards, and use-specific standards for conditional uses. Planning staff suggests that an additional subsection be added to this section to include specific standards for correctional group homes and facilities, with the following requirements:

- The home or facility is occupied by the owner or a resident supervisor;
- Tenancy is a minimum of 30 days;
- The home or facility is registered with the Hillsboro Police Department;
- The site area and structural setbacks meet or exceed the minimum requirements of the underlying zone;
- A minimum of one off-street parking space per two residents is provided on site.

- The home or facility meets all of the City's requirements for residential occupancy, including fire and life safety, plumbing, mechanic, and electrical codes.

#### **INITIATION AND REVIEW PROCESS FOR ZONING ORDINANCE AMENDMENTS**

The process for initiation and review of Zoning Ordinance amendments is described in Sections 112 and 116 of the Zoning Ordinance. These sections are paraphrased below, with references to zoning map changes deleted:

**Section 112. Authorization to Initiate Amendments.** Amendment to the text of this Ordinance may be initiated by the City Council or Planning Commission. Consideration of amendments to the text of this Ordinance shall be by the Planning Commission.

**Section 116. Public Hearing on an Amendment.** Before taking action on a proposed amendment to this Ordinance, the Planning Commission shall hold a public hearing thereon within 40 calendar days after receiving the application.

- (1) Notice of hearing. Notice of time, place, and purpose of the public hearing before the Planning Commission on a proposed amendment shall be given in the following manner:

If an amendment to the text of this Ordinance is proposed, notice shall be by three publications in a newspaper of general circulation in the City, the first to be not more than 30 calendar days and the last not more than 10 calendar days prior to the date of hearing.

- (2) Recess of hearing. The Planning Commission or City Council may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposed amendment. Upon recessing for this purpose, the Planning Commission or City Council shall announce the time and date when the hearing will be resumed or other manner, such as written evidence, in which additional information will be considered.
- (3) Action of the Planning Commission. A decision by the Planning Commission to deny an amendment shall be final unless appealed to the City Council according to the provisions of this ordinance. An action favoring an amendment shall be in the form of a recommendation to the City Council. The City Council may, on its own initiative or upon appeal, hold such hearing as it deems appropriate upon other proposed amendments. The City Council may pass an ordinance amending the Zoning Ordinance text based upon the recommendation of the Planning Commission, or based on findings of the City Council.

Also, Section 83 (11) and (12) also allow for the Hearings Board to require an annual report for any conditional use; and for the Planning Commission to hold a public hearing upon determining that there are sufficient grounds to warrant a review of whether the conditional use complies with applicable conditions and standards.

In addition to the published notice required by Section 116, State law requires that notice be sent to the Department of Land Conservation and Development a minimum of 45 days prior to the first evidentiary hearing on a proposed Zoning Ordinance amendment. This notice period can be shortened to 20 days, but Planning staff believes that acceleration of the process may increase scrutiny of the amendment and increase the possibility that any decision would be subject to appeal.

Following discussion with the City Attorney, the most expedited possible process for initiation and review of any proposed amendments would appear to be as follows:

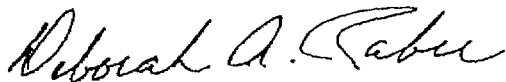
- March 7<sup>th</sup> City Council directs Planning staff and City Attorney to draft language of proposed Zoning Ordinance amendments
- March 10<sup>th</sup> proposed amendments are sent to DLCD, with notice that the first evidentiary hearing will be held before the Planning Commission on April 26<sup>th</sup>
- April 26<sup>th</sup> Planning Commission hearing. Hearing closes and Planning Commission makes a recommendation to City Council.
- May 2<sup>nd</sup> City Council adopts Planning Commission's recommended language and findings regarding the proposed amendments.

#### RECOMMENDATION

Planning staff will review the proposed amendments with the Council members at tonight's work session. At Council's direction and with the oversight of the City Attorney, a draft resolution initiating the amendments will be returned for initiation at the March 21<sup>st</sup> Council meeting.

Respectfully submitted,

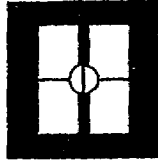
CITY OF HILLSBORO PLANNING DEPARTMENT



Deborah A. Raber AICP  
Project Manager

# CITY OF HILLSBORO

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March 16, 2006

## STAFF REPORT

TO: Hillsboro City Council  
FROM: Planning Department

RE: Initiation of Zoning Ordinance Amendments regarding Residential Homes and Facilities, Group Living Structures, and Accessory Dwellings

## BACKGROUND

At their regular meeting of February 21, 2006, the City Council continued to receive comments from residents of the 50<sup>th</sup> Court neighborhood regarding a particular property rented to a number of parolees and probationers. Neighbors expressed strong concerns regarding numerous police calls and behaviors exhibited by residents of the house. Other parties also testified to the Council that this property and other properties owned by the same landlord and rented to parolees and probationers provided necessary transitional housing for a population at risk for homelessness and return to custody.

At a work session on March 7<sup>th</sup>, the Council received additional information from the Police Department concerning changes to the Nuisance Ordinance in the Municipal Code, and from the Planning Department and City Attorney concerning possible changes to the Zoning Ordinance. The possible changes fell into four categories, as summarized below:

- Allow licensed residential homes and residential facilities in the low-density and higher-density residential zoning districts as required by state law. The amendment should also allow homes for persons with disabilities as required by the Fair Housing Act.
- Define "boardinghouse" as a dwelling with more than five, but less than ten, unrelated persons, that has some combination of shared cooking and/or sanitary facilities, and that is not licensed as a residential facility under state law. Tenancies in a boardinghouse would be for a period of one month or more. A boardinghouse would be allowed as a conditional use in the residential zones and would require a resident landlord or caretaker. The number of residents could be further limited by the density of the underlying zone, with an equivalency ratio of 2 persons = 1 dwelling unit.

- Consider a maximum occupancy for lots in the single-family zones that includes the primary dwelling and any accessory dwelling.
- Define a "post-incarceration group home" with a maximum occupancy and resident supervisor requirements, and allow only in particular zoning districts.

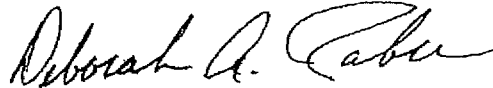
Following discussion, the Councilors expressed satisfaction that the changes to the Nuisance Ordinance were a sufficient first step toward resolving the issues on the 50<sup>th</sup> Court property, and declined to pursue the option of defining a "post-incarceration group home" in the Zoning Ordinance. However, the Councilors did direct the Planning staff to prepare language initiating the first three categories of Zoning Ordinance amendments.

#### **PROCESS FOR INITIATING ZONING ORDINANCE AMENDMENTS**

Section 112 of the Zoning Ordinance authorizes the Planning Commission or the City Council to initiate amendments to the text of the Zoning Ordinance. Pursuant to this authorization, a draft resolution is attached for the City Council members' review.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT



Deborah A. Raber AICP  
Project Manager

Attachment: draft resolution

RESOLUTION NO. \_\_\_\_\_

ZOA 1-06: RESIDENTIAL FACILITIES AND GROUP LIVING STRUCTURES

A RESOLUTION INITIATING AMENDMENTS TO SEVERAL SECTIONS OF THE ZONING ORDINANCE, REGARDING RESIDENTIAL HOMES AND FACILITIES, GROUP LIVING STRUCTURES AND ACCESSORY DWELLINGS.

WHEREAS, the Zoning Ordinance does not include provisions to allow residential homes and residential facilities as permitted uses in residential zones, as required by ORS 197.660 and 197.670, and

WHEREAS, the Zoning Ordinance contains outdated references such as "boarding house," "common dwelling," and "home for the aged," which do not reflect the nature of the current land uses, and lacks more modern terms which better describe present and foreseeable future uses, and

WHEREAS, the Zoning Ordinance does not distinguish between the number of persons who can occupy a single family dwelling, which has no maximum square footage, and the number which can occupy an accessory or ancillary dwelling, which have maximum areas of 750 and 1000 square feet respectively, and

WHEREAS, the City Council discussed these shortcomings in a work session on March 7, 2006, and deemed it appropriate to initiate amendments to the Zoning Ordinance to correct these issues, as authorized under Section 112.

NOW THEREFORE BE IT RESOLVED by the Hillsboro City Council, that the Council by and through this resolution does hereby initiate the following amendments to the text of Hillsboro Zoning Ordinance No. 1945:

Section 1. Section 3 Definitions is proposed to be amended with the addition of the following subsections shown in ***bold italic*** typeface; with the deletion of the following subsections shown in ~~overstrike~~ typeface; and with the renumbering of existing subsections to maintain an alphabetical sequence:

~~Boarding, lodging or rooming house. A building where lodging with or without meals is provided for compensation for not less than three nor more than 15 guests.~~

***Disability. (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such an impairment; (3) being regarded as having such an impairment. "Disability" does not include current, illegal use of or addiction to a controlled substance as defined by 21 U.S.C. § 802, or pedophilia, exhibitionism, voyeurism or other sexual behavior disorders. "Disability"***

*shall be interpreted consistent with the meaning of "handicap" under 42 U.S.C. § 3602(h)."*

~~Dwelling, common. A building with separate bedroom-bathroom-living area for two or more individuals or couples and common or shared kitchen facilities, and which may have other common-shared facilities.~~

~~Dwelling, Elderly and Disabled. A dwelling unit in a building of two or more dwelling units which is, in its entirety, specifically limited to occupancy by citizens of age 58 or above or by a person whose disability requires special housing provisions to accommodate the impairment.~~

~~Dwelling, Elderly Disabled Congregate Care. A common dwelling unit in a building of two or more common dwelling units which is, in its entirety, specifically limited to occupancy by citizens described under definition (17) above, but requiring limited special care with common cooking and eating facilities.~~

*Group living structure. A structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence by six to fifteen unrelated persons, where the tenancy is arranged on a month-to-month basis or longer, and the home is occupied by the owner or the owner's agent and that person supervises the use of the home. "Group living structure" does not include a residential home, residential facility, senior or convalescent care facility, or specialty housing facility. "Group living structure" also does not include residential uses accessory to a college, medical center or religious institution (such as dormitories, fraternities, or monasteries), which are included as part of an approved concept development, planned unit development or conditional use plan. The number of residents in a group living structure is limited to the density of the underlying zone, at an equivalency ratio of two persons equaling one dwelling unit.*

*Residential facility. "Residential facility" as defined by state law (currently ORS 197.660), including a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, licensed or registered under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.*

*Residential home. "Residential home" as defined by state law (currently ORS 197.660), including a residential treatment or training or an adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or*

*fewer individuals who need not be related. Staff persons required to meet licensing requirements are not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.*

***Senior or Convalescent Care Facility.*** A living facility for six or more non-related persons, which provides specialized care, supervision, treatment, training, or a combination of these services, for residents. This definition includes, but is not limited to, Assisted Living or Residential Care Facilities, Congregate Care Facilities, Nursing Homes, Sanatoriums, and Geriatric Care Facilities.

***Specialty Housing.*** An independent living facility for six or more non-related persons, in which specialized care or other services for residents is not provided, but which has structural accommodations or amenities for senior or disabled residents.

Section 2. The following subsections in Section 3 Definitions are proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface:

Dwelling, accessory. A second, ***restricted occupancy*** dwelling unit created on a lot with a detached house. The second unit is created auxiliary to, and is always smaller by at least 25% in total floor area than the primary detached house; however, an accessory dwelling unit may never exceed 750 square feet in total floor area.

Dwelling unit. One or more rooms designed for occupancy by one family and not having more than one cooking facility. In the case of a boarding or rooming house, however, or a common dwelling ***group living structure***, each two bedrooms shall constitute a dwelling unit.

Family. An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. ***“Family” also includes persons who live together in a residential home or residential facility and not more than six persons with disabilities who live together in a dwelling unit.***

Section 3. The sections and subsections of the Zoning Ordinance listed on the following page are hereby amended to include Residential Homes and/or Residential Facilities as Permitted Uses in the pertinent zoning districts:

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Initiating Resolution – Residential Facilities and Group Living Structures

Zoning Ordinance Section and Subsection	Pertinent Zoning District
Sect. 7 Uses Permitted Outright in R-10 (Residential Homes and Facilities)	R-10 Single Family Residential (also carries forward by reference into: R-8.5 Single Family Residential; R-7 Single Family Residential; R-6 Single Family Residential; and A-1 Duplex Residential)
Section 21 Uses Permitted Outright in A-2 (Residential Facilities only)	A-2 Multi-Family Residential (also carries forward by reference into: A-3 Multi-Family Residential; and A-4 Multi-Family Residential)
Section 41 (20) Uses Permitted Outright in C-4 (Residential Homes and Facilities)	C-4 Neighborhood Commercial
Section 48.II. Table 48 Land Uses/Residential (Residential Homes and Facilities)	MU-N Mixed Use Neighborhood
Section 48.II. Table 48 Land Uses/Residential (Residential Facilities only)	MU-C Mixed Use Commercial
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCC-CBD Central Business District SCC-HOD Highway-Oriented District SCC-SC Station Commercial SCC-MM Multi-Modal
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCC-CBD Central Business District SCC-HOD Highway-Oriented District SCC-SC Station Commercial SCC-MM Multi-Modal
Section 136.II. Table 1 Permitted Land Uses (Residential Homes and Facilities)	SCR-MD Medium Density SCR-V Village SCR-DNC Downtown Neighborhood Conservation
Section 136.II. Table 1 Permitted Land Uses (Residential Homes only)	SCR-LD Low Density SCR-OTC Orenco Townsite Conservation
Section 136.II. Table 1 Permitted Land Uses (Residential Facilities only)	SCR-HD High Density Residential

Section 4. Section 117 Enforcement is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface:

Enforcement. The Planning Director shall have the power and duty to enforce the provisions of this Ordinance. ***Notwithstanding any other provision of this ordinance, the Planning Director has the authority to make reasonable accommodations in the application of this ordinance when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling to the extent required by federal or state law. In considering whether an accommodation is reasonable, the Planning Director may consider whether the request puts an undue burden or expense on the city and whether the proposed use creates a fundamental alteration in the zoning ordinance. The accommodation may result in a permitted or conditional waiver of any limitation of this ordinance.*** An appeal from the ruling of the Planning Director shall be made to the Hearings Board.

Section 5. Section 8 Conditional Uses (in the R-10 zone); subsection 7 is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

- (7) ~~Common-dwelling~~ ***Group living structure***, limited to the number of dwelling units allowable.

Section 6. Section 21 Permitted Uses (in the A-1 zone), subsection 4 is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

- (4) ~~Common-dwelling~~ ***Group living structure***, limited to the density allowable.

Section 7. Section 28 Permitted Uses (in the A-2 zone), subsection 3 is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

- (3) ~~Boardinghouse, lodging, or rooming-house~~ ***Group living structure***.

Section 8. Section 28 Permitted Uses (in the A-2 zone), subsection 3 is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

- (4) ~~Boardinghouse, lodging, or rooming-house~~ ***Group living structure***.

Section 9. Section 34A Permitted Uses (in the A-4 zone), subsection 4 is proposed to be deleted, and subsection 3 amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

- (3) ~~Boardinghouse, lodging, or roominghouse~~ ***Group living structure***

Initiating Resolution – Residential Facilities and Group Living Structures

~~(4) Common dwelling.~~

Section 10. Section 55 Conditional Uses (in the C-1 zone), subsection 4 is proposed to be amended to read as follows, with the addition of the language shown in ***bold italic*** typeface, and the deletion of the language shown in ~~everstrike~~ typeface:

(4) Boardinghouse ***Group living structure.***

Section 11. Section 88A Accessory Dwellings is proposed to be amended with the addition of a new subsection (2) to read as shown in ***bold italic*** typeface, and the renumbering of subsequent subsections:

(2) ***Occupancy restriction. An accessory dwelling unit shall not be occupied by more than three (3) related or unrelated persons.***

Section 12. Section 137 (V) Minimum and Maximum Residential Densities and Ancillary Dwelling Units, subsection (13) is proposed to be amended with the addition of a new subsection (f) to read as shown in ***bold italic*** typeface, and the renumbering of subsequent subsections:

(f) ***An ancillary dwelling unit shall not be occupied by more than three (3) related or unrelated persons.***

BE IT FURTHER RESOLVED that the City Council hereby directs the Planning Commission to schedule these amendments for public hearing before the Commission on May 10, 2006.

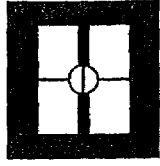
Introduced and passed this 21<sup>st</sup> day of March, 2006.

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Recorder

# CITY OF HILLSBORO

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March 30, 2006

## **SUPPLEMENTAL MEMORANDUM**

**TO:** Hillsboro City Council  
**FROM:** Planning Department

**RE:** Proposed Zoning Ordinance Amendments regarding Residential Homes and Facilities, Group Living Structures, and Accessory Dwellings

### **BACKGROUND**

At their regular meeting of February 21, 2006, the City Council continued to receive comments from residents of the 50<sup>th</sup> Court neighborhood regarding a particular property rented to a number of parolees and probationers. Neighbors expressed strong concerns regarding numerous police calls and behaviors exhibited by residents of the house. Other parties also testified to the Council that this property and other properties owned by the same landlord and rented to parolees and probationers provided necessary transitional housing for a population at risk for homelessness and return to custody.

At a work session on March 7<sup>th</sup>, the Council received additional information from the Police Department concerning changes to the Nuisance Ordinance in the Municipal Code, and from the Planning Department and City Attorney concerning possible changes to the Zoning Ordinance. Following discussion, the Councilors expressed satisfaction that the changes to the Nuisance Ordinance were a sufficient first step toward resolving the issues on the 50<sup>th</sup> Court property, and declined to pursue the option of defining a "post-incarceration group home" in the Zoning Ordinance. However, the Councilors did direct the Planning staff to prepare language initiating the first three categories of Zoning Ordinance amendments for review on March 21<sup>st</sup>.

During the March 7<sup>th</sup> work session, staff from the County Corrections Department provided additional comments regarding the possible impact of the amendments on housing providers with whom County Corrections works closely. Following preparation of the proposed amendment language for the March 21<sup>st</sup> Council meeting, Mr. John Hartner, County Corrections Director, met with City Administration and Planning Department staff to request additional opportunity to review the language prior to the initiation of the amendments by Council. The Council subsequently voted on March 21<sup>st</sup> to postpone initiation of the Zoning Ordinance amendments pending further discussion between County Corrections and City staff.

Planning staff met with Mr. Hartner, Mr. Reed Ritchey, and Mr. Dan Olson of the Washington County Counsel's Office on March 28<sup>th</sup> to discuss possible changes to the draft language, and agreed on changes which would alleviate Corrections' primary concerns. Planning staff and the City Attorney's office propose additional minor changes, as shown below.

### CHANGES FROM PREVIOUSLY PROPOSED LANGUAGE

Two of the proposed changes are in the revisions to the definition of “family”. As proposed in the March 21<sup>st</sup> draft resolution, this definition would be amended to read as follows (proposed added language in ***bold italic*** typeface; language to be deleted in overstrike typeface):

Family. An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. ***“Family” also includes persons who live together in a residential home or residential facility and not more than six persons with disabilities who live together in a dwelling unit.***

The proposed revisions to the definition would include the following (proposed added language in ***bold italic*** and underline typeface; language to be deleted in overstrike typeface):

Family. An individual, or two or more persons related to one or more persons in the household by blood, marriage, domestic partnership, legal adoption, or guardianship living together in a dwelling unit in which board and lodging may also be provided for not more than three additional persons, excluding servants; or a group of not more than five persons who need not be related by blood, marriage, legal adoption, or guardianship living together in a dwelling unit. ***“Family” also includes persons who live together in a residential home or residential facility and not more than eight persons with disabilities who live together in a dwelling unit.***

An additional change is in the new definition of group living structure, as shown below, with the change identified in overstruck and underlined typefaces:

***Group living structure. A structure that contains sleeping areas and at least one set of cooking and sanitary facilities that is used as a residence by six to fifteen unrelated persons, where the tenancy is arranged on a month-to-month basis or longer, and the home is occupied by the owner or the owner's agent and that person supervises the use of the home. “Group living structure” does not include a residential home, residential facility, senior or convalescent care facility, or specialty housing facility. “Group living structure” also does not include residential uses accessory to a college, medical center or religious institution (such as dormitories, fraternities, or monasteries), which are included as part of an approved concept development, planned unit development or conditional use plan. The number of residents in a group living structure is limited to the density of the underlying zone, at an equivalency ratio of ~~two~~ four persons equaling one dwelling unit.***

A draft resolution, initiating the proposed amendments as authorized by Zoning Ordinance Section 112, is attached for the City Council members’ review. The language in this draft is

March 30<sup>th</sup> City Council memorandum – residential notices and fees

identical to that in the earlier March 21<sup>st</sup> draft, with the exception of the changes to the definitions of family and group living structure discussed above.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARMENT

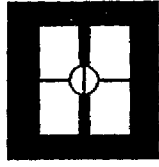
A handwritten signature in black ink, appearing to read "Deborah A. Raber". The signature is fluid and cursive, with the first name being the most prominent.

Deborah A. Raber AICP  
Project Manager

Attachment: draft resolution

# CITY OF HILLSBORO

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June 9, 2006

## **SUPPLEMENTAL STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Planning Department

**RE:** Proposed Zoning Ordinance Amendments regarding Residential Homes and Facilities, Group Living Structures, and Accessory Dwellings – File No. ZOA 1-06

### **REQUEST AND BACKGROUND**

The City of Hillsboro, acting as applicant, requests that the Planning Commission recommend approval of amendments to several sections of the Zoning Ordinance regarding residential homes and facilities, group living structures, and accessory dwellings. The proposed amendments were initiated by the City Council on April 4, 2006.

The Planning Commission opened the public hearing on this matter on May 24, 2006, and received testimony in support of the amendments from Lt. Michael Rouches of the Hillsboro Police Department and Mr. Robert Severe of Washington County Community Corrections Department. The Planning Commission also received a staff report dated May 17, 2006.

Following testimony and discussion among the Commissioners between Planning staff, the Planning Commission voted to continue consideration of this matter to June 14<sup>th</sup>, and directed staff to request additional information from the City Attorney regarding a particular phrase in the proposed amendment language.

### **ADDITIONAL INFORMATION FROM CITY ATTORNEY**

Planning staff requested and received the attached memorandum from City Attorney Tim Sercombe, in response to a question regarding the phrase "undue burden or expense on the city."

### **PLANNING STAFF REQUEST FOR FURTHER CONTINUANCE**

On May 16<sup>th</sup>, the City Council directed Planning staff to begin work immediately on the Comprehensive Plan, Zoning Ordinance, and Subdivision Ordinance amendments regarding Density, Design, and Open Space, as discussed at the Council's joint work sessions with the Planning Commission and the Parks Commission in late March. Planning staff was able to

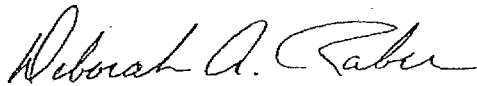
complete the first draft of the amendments, which were provided to the City Council on June 6<sup>th</sup>, and are included in the Planning Commissioners' packets for the June 14<sup>th</sup> meeting.

However, given the amount of staff time necessary to complete those amendments and to prepare the revisions to the Sign Code draft, staff was unable to complete the requested revisions to the Zoning Ordinance amendments regarding the residential facilities.

We therefore respectfully request that the Planning Commission consider a further continuation of this item to the next meeting on June 28<sup>th</sup>. The Hillsboro Police Department and the Washington County Community Corrections Department have both been advised of the staff's request for continuance, and have no objections.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT



Deborah A. Raber AICP  
Project Manager

Attachment: Memorandum from City Attorney



MEMORANDUM

TO: Planning Commission

FROM: Timothy J. Sercombe

DATE: May 31, 2006

SUBJECT: Proposed Zoning Ordinance Amendment for Group Homes

The Commission is considering a proposed ordinance on residential facilities and group living structures. The draft ordinance expands the allowances for residential homes and facilities, making the Zoning Ordinance consistent with state and federal law. In particular, the changes are intended to implement the requirements of the federal Fair Housing Act, as amended in 1988.

The proposed ordinance includes an amendment to HZO § 117, expanding the administrative authority of the Planning Director. The change gives the Director the authority to make “reasonable accommodations in the application” of the zoning ordinance when necessary “to afford a person with a disability equal opportunity to use and enjoy a dwelling to the extent required by federal or state law.” In considering whether an accommodation is reasonable, the Director may consider “whether the request puts an undue burden or expense on the city and whether the proposed use creates a fundamental alteration in the zoning ordinance.” You ask what an “undue burden or expense” is, and what creates a “fundamental alteration” in the zoning ordinance.

These terms are the ones used by the courts in deciding whether a “reasonable accommodation” is required by the Fair Housing Act. The intent in using the words “undue burden” and “fundamental alteration” is to allow the Director to look to case law in deciding whether a variance from the requirements of the zoning ordinance is required to make a “reasonable accommodation” under the law. Because the meaning of these terms is evolving, and because they are terms of art, it may not be wise to attempt to refine their meaning in the zoning ordinance itself.

The Fair Housing Act prohibits housing providers from discriminating against applicants or residents because of their disability or treating persons with disabilities less favorably because of that status. The Act makes it unlawful to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford . . .

person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." Thus, in some situations, a housing provider may need to make structural modifications to a dwelling unit or to common areas in order to allow full enjoyment of the residence by a disabled person. Under the case law, a request for reasonable accommodation may be denied if it would impose an undue financial and administrative burden on the housing provider or if it would fundamentally alter the nature of the provider's operations.

These same legal requirements apply to local governments in the enactment and enforcement of zoning laws that restrict housing for persons with disabilities. Generally speaking, a local government may be liable under the Act if an ordinance explicitly discriminates against persons with disabilities, if the ordinance produces disparate impacts on persons with disabilities, or if the local government fails to make "reasonable accommodations" as required by the Act.

What is a "reasonable accommodation" is a case-by-case determination. Admittedly, the standards for "undue burden" and "fundamental alteration" are easier to understand in the context of alterations of a residential structure. The Department of Justice and the Department of Housing and Urban Development, however, advise that a local government must make modifications of rules and policies if the modifications are reasonable and necessary to accommodate persons with disabilities. In their joint statement on the requirements of the Act, the Departments summarize the case law and advise that,

If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

August 18, 1999 Joint Statement of the Department of Justice and the Department of Housing and Urban Development, "*Group Homes, Local Land Use, and the Fair Housing Act.*"

These requirements of "undue financial or administrative burden" or "fundamental alteration" in the existing regulatory scheme come from an older law, the Rehabilitation Act, 29 USC § 794 *et seq.* The terms have been adopted for use in adjudicating Fair Housing Act claims. *See, Hovsons v Township of Brick*, 89 F3d 1096 (3<sup>rd</sup> Cir. 1996); *Bryant Woods v. Howard County*, 124 F3d 597 (4<sup>th</sup> Cir. 1997).

Thus, a requested modification of a requirement of the zoning ordinance that imposes an ongoing monitoring or oversight responsibility on the City might qualify as one that creates an "undue burden." It might also be relevant if the allowed modification would lead to a great number of similar requests and required processing. Moreover, the degree of deviation from the required land use control and its practical and contextual significance are relevant in determining whether there is a "fundamental alteration" of the zoning ordinance.

MEMORANDUM  
May 31, 2006  
Page 3

If you wish, I can delve into the case law and provide more explicit guidance from judicial decisions. The intent of the draft ordinance, however, is to rely upon whatever judicial teachings exist at the time the Director considers a reasonable accommodation request.

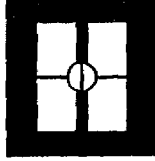
Please let me know if you have further questions or concerns.

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# CITY OF HILLSBORO

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June 23, 2006

## **SUPPLEMENTAL STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Planning Department

**RE:** Proposed Zoning Ordinance Amendments regarding Residential Homes and Facilities, Group Living Structures, and Accessory Dwellings – File No. ZOA 1-06

### **REQUEST AND BACKGROUND**

The City of Hillsboro, acting as applicant, requests that the Planning Commission recommend approval of amendments to several sections of the Zoning Ordinance regarding residential homes and facilities, group living structures, and accessory dwellings. The proposed amendments were initiated by the City Council on April 4, 2006.

The Planning Commission opened the public hearing on this matter on May 24, 2006, and received testimony in support of the amendments from Lt. Michael Rouches of the Hillsboro Police Department and Mr. Robert Severe of Washington County Community Corrections Department. The Planning Commission also received a staff report dated May 17, 2006.

Following testimony and discussion among the Commissioners between Planning staff, the Planning Commission voted to continue consideration of this matter to June 14<sup>th</sup>, and directed staff to request additional information from the City Attorney regarding a particular phrase in the proposed amendment language. The information from the City Attorney was forwarded to the Commissioners on June 9<sup>th</sup>, together with a staff report on that date requesting a further continuance to June 28<sup>th</sup>. On June 14<sup>th</sup>, the Commissioners continued the meeting to June 28<sup>th</sup>.

### **SUMMARY OF MAY 24<sup>TH</sup> HEARING**

Ms. Raber summarized the staff report dated May 17<sup>th</sup>. She explained that the City was the applicant for these amendments, which were initiated by the City Council as a result of neighborhood concerns regarding a particular property occupied by parolees and probationers. She further explained that Planning staff had originally suggested that a new definition of "post-incarceration group homes" be included in the amendments, but that Council had decided the neighborhood's concerns were sufficiently addressed by changes made concurrently in the City's nuisance ordinance. She described the discussion between City staff and County Corrections regarding the impacts of the proposed amendments on the availability of housing for County Corrections' clients, and that several of the amendments were "housekeeping"

measures intended to bring the Zoning Ordinance into compliance with State and Federal statutes regarding definitions of, and housing for, disabled persons. The amendments also replace outdated terminology with updated terms. She described proposed changes to limit occupancy of accessory or ancillary dwellings to a lower maximum of three rather than five persons, and summarized the proposed parking requirements for the new uses defined in the amendments.

Commissioner Eyre asked a question regarding an apparent discrepancy between the definitions of dwelling unit, disabled persons, and family as concerned the number of bedrooms. Ms. Raber responded that the definitions were not related: group living structures were formerly described as "boarding houses" or "quad dwellings," and served fully abled residents. The City now has very few of these, except those properties whose owners are working with Community Corrections. She added that the definition of family needed to be amended to comply with the Federal and State requirements to provide reasonable accommodation to a higher number of disabled persons seeking to live together (outside a licensed facility) due to the higher number of related and abled persons allowed to live together. Ms. Raber also explained that the term "family" is cited elsewhere in the Code as allowed in the various zones.

Commissioner Eyre asked how the proposed amendments addressed the issues raised by the neighborhood. Ms. Raber indicated that questions could be better answered by the Police and Community Corrections representatives.

Commissioner Callaway asked for an example of an "undue burden," as the term is used in Section 117. Ms. Raber responded that this question would be asked of the City Attorney, and the answer returned to the Commissioners at their next meeting. She continued that the City had avoided for many years allowing administrative variances, but that the proposed language did that.

Commissioner Callaway asked another question regarding parking for group living structures, and whether that parking included the garage. Ms. Raber replied that if a garage were converted to a bedroom, even more parking would be required. Commissioner Callaway expressed concern that paving additional parking would make group living structures out of place in single family zones. Ms. Raber responded that group living structures would be conditional uses in the single family zones, and would be permitted uses only in the more intensive duplex and multi-family zones.

Lieutenant Michael Rouches of the Hillsboro Police Department testified that he, Mr. Severe of the Parole and Probation office, and Ms. Raber were the authors of the proposed amendments. He stated that he and Mr. Severe would testify regarding the need for and the impact of the proposed amendments. From a police perspective, he commented that more people in a smaller space created quality of life issues, such as parking, crimes and lesser offenses. He explained that changes in the chronic nuisance property ordinance had addressed some of those issues, and that the Zoning amendments were an outgrowth of that effort. He concluded that some of the changes would help balance the needs of certain groups with the needs of the community.

Commissioner Eyre asked if the Police Department had reviewed the language, and whether it would accommodate the Police Department's needs. Lt. Rouches replied that from a code enforcement perspective, the amendments would do this.

Bob Severe, Senior Parole and Probation Officer with Washington County, testified to provide background information to the Commission. He stated that the County had experienced an unusual phenomenon in the past several years: persons coming from prison or jail without having a family or support network with whom to live, and that the problem was acute with sex offenders, who had few choices for housing. He stated that some private individuals had decided to help by creating housing for these types of offenders, who found these housing providers through referrals rather than through County subsidy of any sort. He added that the County has learned in January that due to high housing costs and limited availability, some of these homes had many more residents than anticipated, and that County Parole and Probation had become involved when neighbors came to the City Council. He added County Parole and Probation and Hillsboro Police Department, through communication and problem-solving, had cleaned up and resolved many issues with neighbors, had supported the changes to the chronic nuisance property ordinance, and felt that the Zoning amendments were a part of that package, and that his department could better supervise and deal with problems with the amendments in place.

There was no further testimony.

Ms. Raber commented that additional changes needed to be made to make consistent the definitions of group living structure and dwelling unit, by revising the definition of dwelling unit to reference four residents in a group living structure as a dwelling unit, and to revise the parking ratios for a group living structure in a light rail zone to be a minimum of 2 spaces per use and a maximum of 1 space per bedroom.

President Coulter directed the staff to ask the City Attorney for an answer to Commissioner Callaway's questions about "undue burden or expense on the City" in Section 117. Ms. Raber replied that staff would also ask what constituted "a fundamental alteration in the Zoning Ordinance" referenced in the same section.

Commissioner Mathews asked if three married couples living in the same house would be considered related to each other, as is the circumstance of co-op housing. Ms. Raber responded that this situation would be considered a group living structure, which would be a conditional use in single family zones and a permitted use in multi-family zones. She added that with six residents staff would round up, and require siting the use on a property large enough for two dwelling units. Commissioner Mathews asked why not a three-bedroom single family house to economize the cost of living? President Coulter expressed concern regarding plumbing capacity. Commissioner Mathews added that this situation was taking place in Multnomah County, providing housing for seniors, and that larger older homes in Hillsboro would be ideal for this use, which he did not want to preclude. Ms. Raber responded that staff would reexamine the language and suggest revisions as necessary to accommodate seniors in that situation.

Commissioner Eyre pointed out two typographic errors in the staff report, and asked how the changes in the language achieved the intended purpose. Ms. Raber responded that the amendments addressed two different issues. The Council chose to address the issue of offender housing through changes in the chronic nuisance property ordinance. During that discussion, Planning staff had worked with Police Department and Community Corrections on the terms boarding house and common dwelling, and had updated those terms such that the facilities and property owners with whom Community Corrections works are more clearly allowable under the new definitions. Commissioner Eyre asked if the amendments were then intended to clarify permissible uses and zoning. Ms. Raber indicated that residential facilities

were staffed and licensed through the state, but that the persons with whom Mr. Severe worked did not need the services in licensed facilities, and received housing services through private landlords. She continued that Mr. Severe's clients could live in a group living structure, or in a single family dwelling so long as there were no more than five.

Commissioner Eyre asked Mr. Severe whether Hillsboro's status as the site of the County jail meant that Community Corrections actively placed more released offenders in Hillsboro, or whether facilities were located in other cities in Washington County. Mr. Severe replied that Community Corrections did not place offenders, but only approved or disapproved housing, and that approval or disapproval was seldom exercised except for sexual offenders, for whom housing resources were closely scrutinized. He added that there were many facilities in Cornelius, Washington County, Beaverton and Tigard.

Commissioner Fleisher thanked the Police Department, Community Corrections, and Planning staff for their work on the amendments, and commented that he respected their knowledge and perspective.

The Commission voted to continue consideration of the amendments to June 14<sup>th</sup>. However, due to time constraints, Planning staff was unable to complete the staff report and requested a further continuance (which was granted by the Commission) to June 28<sup>th</sup>.

#### ADDITIONAL REVISIONS IN PROPOSED LANGUAGE

As mentioned on May 24<sup>th</sup>, additional changes are needed to reconcile the definitions of group living structure and dwelling unit, and to revise the parking ratios for a group living structure in a light rail zone. These changes are shown below:

Dwelling unit. One or more rooms designed for occupancy by one family and not having more than one cooking facility. In the case of a ~~boarding or rooming house, however, or a common dwelling~~ **group living structure**, each ~~two bedrooms~~ **four residents** shall constitute a dwelling unit.

#### Section 137 XI Minimum and Maximum Off-Street Parking Requirements, Table 137.XI.B.3

Table 3: Residential Parking Standards in Station Community Districts

Housing Type	Min. Required Parking (Per DU)	Max. Allowed Parking (Per Bedroom)	Min. Required Bicycle Parking
Single Family Detached	1.0	0.90	None
Single Family Attached	1.0	0.90	None
Rowhouse	1.0	0.90	None
Townhouse	1.0	0.90	1.0
Duplex	1.0	0.90	1.0
Attached Duplex	1.0	0.90	1.0

*[table continued on next page]*

[table continued from previous page]

Housing Type	Min. Required Parking (Per DU)	Max. Allowed Parking (Per Bedroom)	Min. Required Bicycle Parking
Multi-Family Dwelling	1.5	0.90	1.0
Garden Apartment	1.25	0.90	1.0
Mid-rise Multi-family	1.5	0.90	1.0
Flats and Apartments over Commercial space, and for Live/Work units	1.0	0.90	1.0
Senior Housing	0.25	0.75	None
<b>Residential Homes and Facilities</b>	<b>0.25 per resident plus 1 per caregiver</b>	<b>0.75 per resident</b>	<b>None</b>
<b>Group Living Structures (as defined in Vol.1, Section 3)</b>	<b>2.0</b>	<b>1.0</b>	<b>1.0</b>
Student Housing (Per dormitory type room)	0.25	0.75	1 per room

At the May 24<sup>th</sup> meeting, Planning staff also indicated they would research Commissioner Mathews' request to include provisions for "co-op" or shared housing, under which senior couples could occupy single family residences. Planning Staff contacted Grady Turnbutton and Bob Palmer of the Multnomah County Department of Aging and Disability Services. Neither Mr. Turnbutton nor Mr. Palmer was aware of any provisions in the Multnomah County zoning ordinance which allowed this type of housing: the Multnomah County zoning ordinance defines "family" as up to only five unrelated individuals, similar to Hillsboro's. Both Mr. Turnbutton and Mr. Palmer believe such arrangements are made between private individuals, and were unaware of any code enforcement issues arising from complaints about such housing situations.

The current Zoning Ordinance language would not allow six unrelated seniors to live in a single family residence. However, Lt. Michael Rouches of the Police Department has indicated that the City has not received any complaints regarding six or more seniors in one dwelling unit, and added that he believes such complaints are unlikely.

Planning staff is reluctant to further amend the definition of "family" to include six unrelated individuals, on the basis that the wider definition would also apply to non-senior households, and the increase may have unintended consequences.

### **RECOMMENDATION**

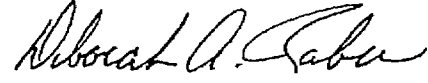
The public hearing on this matter remains open, and the Planning staff recommends that the Commission receive any additional testimony which may be presented. If there is no additional testimony, and if the Commission supports approval of the amendments, staff recommends that the Commission direct us to prepare a draft resolution recommending approval of the amendments, with the May 17<sup>th</sup>, June 9<sup>th</sup>, and June 23<sup>rd</sup> staff reports as findings.



PC staff report – ZOA 1-06: residential homes and facilities

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT

A handwritten signature in cursive script, appearing to read "Deborah A. Raber".

Deborah A. Raber AICP  
Project Manager