

**AGENDA MEMO****PLANNING COMMISSION MEETING DATE: APRIL 22, 2010****DEPARTMENT: PLANNING AND DEVELOPMENT****ITEM DESCRIPTION: APPLICANT/OWNER: CITY OF LAS VEGAS**

**** STAFF RECOMMENDATION(S) ****

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
TXT-37635	Staff recommends APPROVAL.	N/A



AGENDA MEMO

PLANNING COMMISSION MEETING DATE: APRIL 22, 2010

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: APPLICANT/OWNER: CITY OF LAS VEGAS

** PROPOSED AMENDMENT(S) **

1. Table 2 of Title 19.04.010 is hereby amended by deleting from the “Residential and Lodging” element thereof the entries for the uses “Group Residential Care Facility,” “Halfway House for Recovering Alcohol and Drug Abusers” and “Individual Residential Care Facility” as follows:

USE	RESIDENTIAL												COMMERCIAL					INDUSTRIAL			
Group-Residential-Care Facility	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
	C	C	C	C	C	C	C	C	C	C											
Description: A dwelling of a residential character which is used or intended to be used to provide housing and care for up to ten elderly persons or persons with a handicap. This use does not include an individual residential care facility; convalescent care facility; nursing home; hospital; facility to provide testing, treatment, or counseling for drug or alcohol abuse; or any facility which: - Provides surgical, medical, psychiatric or other specialized treatment on a regular basis; - Provides housing and care to persons who have a chronic illness, disease, injury or other medical condition; or - Provides housing, care or treatment to persons whose occupancy would constitute a direct threat to the health or safety of other individuals or their property.																					
Conditional Use Regulations: - The facility must comply on an ongoing basis with all governmental licensing requirements. - The facility must be located on a parcel with minimum size of 6500 square feet. - Off-street parking shall be provided on the basis of at least one space per 5 residents, plus an additional space for the administrator. - Indoor common area shall be provided on the basis of a minimum of 15 square feet per resident. - The facility shall not be established or modified in a manner that would make it inconsistent with the scale and architectural character of the neighborhood. - No signage, graphics, display, or other visual representation that is visible from a public street shall be used to identify the facility as a Group Residential Care Facility. - A facility may not be located closer than one thousand five hundred feet (measured by means of the shortest distance from property line to property line) from another Group Residential Care Facility, a Facility for Transitional Living for Released Offenders, or a Halfway House for Recovering Alcohol and Drug Abusers, except where there is an intervening street, freeway, or drainage channel wider than one hundred feet. The provisions of 19.04.040(B) do not apply to this Condition. However, a waiver of the distance limitation may be obtained from the City Council, after a recommendation from the Planning Commission as follows: - A public hearing must be conducted by both the Planning Commission and City Council, after notice of hearing has been provided as in the case of a Special Use Permit. - The applicant must demonstrate to the satisfaction of the City Council that: - Approval of a waiver will not adversely affect the health and safety of the general public or the residents of any existing or proposed facility whose location is being considered in connection with the waiver; - The location of the proposed facility in proximity to the facilities whose location is being considered will not inhibit the integration of disabled persons into the community or neighborhood in question; - The proposed facility will be operated in compliance with Condition 1; - The proposed facility will comply with Conditions 2 through 6 and Condition 8, unless any such condition has been waived in connection with the approval of a Special Use Permit. - Approval of a waiver may be conditioned upon measures designed to ensure compatibility of the use. - The number of occupants within a Group Residential Care Facility shall not exceed the following occupancy standards: - For the first bedroom (deemed to be the largest bedroom), a maximum of two adults (eighteen years of age or older). - For each bedroom thereafter: - A maximum of one adult, for bedrooms less than one hundred square feet in area; and - A maximum of two adults, for bedrooms one hundred square feet in area or greater.																					

Proposed Amendment Page Two
April 22, 2010 - Planning Commission Meeting

9. In connection with approval of a Special Use Permit, the City Council may waive any of the occupancy standards in Condition 8 for disabled adults if the applicant demonstrates that:
- a. There will be adequate parking based on the number of occupants;
 - b. The number of occupants will not exceed the number permitted in the zoning district in which the proposed facility is to be located; and
 - c. The facility is adequate to accommodate the number of residents requested, including but not limited to adequate bathroom and kitchen facilities and eating and sleeping areas.
10. Conditions 2-9 shall not apply to a Group Residential Care Facility whose proposed location is not closer than one thousand five hundred feet to any of the following uses:
- a. Another Group Residential Care Facility;
 - b. A Facility for Transitional Living for Released Offenders;
 - c. A Halfway House for Recovering Alcohol and Drug Abusers.

On-site Parking Requirement: Off-street parking shall be provided on the basis of at least one space per five residents, plus an additional space for the administrator.

USE	RESIDENTIAL												COMMERCIAL					INDUSTRIAL			
Halfway House for Recovering Alcohol and Drug Abusers	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
	C	C	C	C	C	C	C	C	C	C											
	Description:																				
	A dwelling unit of a residential character that provides housing and a living environment for up to six recovering alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide any treatment for alcohol or drug abuse. The term does not include a facility for transitional living for released offenders.																				
	Conditional Use Regulations:																				
	1. The facility must comply on an ongoing basis with all governmental licensing requirements.																				
	2. Clients of the facility must be actively and continuously enrolled in an outpatient rehabilitation or substance abuse program that is supervised by a licensed medical professional, or a recognized substance abuse treatment program, or both. The facility must adopt and enforce a policy prohibiting the use of drugs or alcohol by clients while they reside in the facility. Upon request, the facility operator shall produce evidence satisfactory to the Director that the facility is in compliance with this condition.																				
	3. The facility must be located on a parcel with a minimum size of six thousand five hundred square feet.																				
	4. The facility must be located on a parcel that is within one thousand five hundred feet of an existing bus stop served by a regional bus system.																				
	5. Off-street parking shall be provided on the basis of at least one space per five residents, plus an additional space for the administrator.																				
6. Indoor common area shall be provided on the basis of a minimum of fifteen square feet per resident.																					
7. The facility shall not be established or modified in a manner that would make it inconsistent with the scale and architectural character of the neighborhood.																					
8. No signage, graphics, display or other visual representation that is visible from a public street shall be used to identify the facility as a Halfway House for Recovering Alcohol and Drug Abusers.																					
9. A facility may not be located closer than one thousand five hundred feet (measured by means of the shortest distance from property line to property line) from another Halfway House for Recovering Alcohol and Drug Abusers, a Facility for Transitional Living for Released Offenders, or a Group Residential Care Facility, except where there is an intervening street, freeway, or drainage channel wider than one hundred feet. The provisions of Section 19.04.040(B) do not apply to this Condition. However, a waiver of the distance limitation may be obtained from the City Council, after a recommendation from the Planning Commission, as follows:																					
a. A public hearing must be conducted by both the Planning Commission and City Council, after notice of hearing has been provided as in the case of a Special Use Permit.																					
b. The applicant must demonstrate to the satisfaction of the City Council that:																					
i. Approval of the waiver will not adversely affect the health and safety of the general public or the residents of any existing or proposed facility whose location is being considered in connection with the waiver;																					
ii. The location of the proposed facility in proximity to other facilities whose location is being considered will not inhibit the integration of disabled persons into the community or neighborhood in question;																					
iii. The proposed facility will be operated in compliance with Conditions 1 and 2;																					
iv. The proposed facility will comply with Conditions 3 through 8 and condition 10, unless any such condition has been waived in connection with the approval of a Special Use Permit; and																					
c. Approval of a waiver may be conditioned upon measures designed to ensure compatibility of the use.																					
10. The number of occupants within a Halfway House for Recovering Alcohol and Drug Abusers shall not exceed the following occupancy standards;																					
a. For the first bedroom (deemed to be the largest bedroom), a maximum of two adults (eighteen years of age or older).																					
b. For each bedroom thereafter:																					
i. A maximum of one adult, for bedrooms less than one hundred square feet in area; and																					
ii. A maximum of two adults, for bedrooms one hundred square feet in area or greater.																					
11. Conditions 2-10 shall not apply to a Halfway House for Recovering Alcohol and Drug Abusers whose proposed location is not closer than one thousand five hundred feet to any of the following uses:																					
a. Another Halfway House for Recovering Alcohol and Drug Abusers;																					
b. A Facility for Transitional Living for Released Offenders; or																					
c. A Group Residential Care Facility.																					
On-site Parking Requirement: Off-street parking shall be provided on the basis of at least one space per 5 residents, plus an additional space for the administrator.																					

Proposed Amendment Page Three
April 22, 2010 - Planning Commission Meeting

USE	RESIDENTIAL												COMMERCIAL						INDUSTRIAL		
Individual Residential Care Facility	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
	P	P	P	P	P	P	P	P	P	P											
	Description: A home in which a natural person furnishes food, shelter, assistance and limited supervision, for compensation, to not more than 2 persons who are aged, infirm, mentally retarded or handicapped, unless the persons receiving those services are related within the third degree of consanguinity or affinity to the person providing those services.																				
	On-site Parking Requirement: No additional parking required beyond that which is required for the principal use on the site.																				

2. Table 2 of Title 19.04.010 is hereby amended by amending the uses “Convalescent Care Facility/Nursing Home” and “Facility for Transitional Living for Released Offenders,” as found in the “Institutional and Community Service” element thereof, as follows:

USE	RESIDENTIAL												COMMERCIAL						INDUSTRIAL		
Convalescent Care Facility/Nursing Home	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
	S	S	S	S	S	S	S	S	S	S							S	S	P		
	Description: A building or structure designed, used, or intended to be used to house and provide care for persons who have a chronic physical or mental illness or infirmity, but who do not need medical, surgical or other specialized treatment normally provided by a hospital. This use includes a “rest home” and “nursing home,” as well as a use that would qualify as a <u>Community Residence</u> except for the limitation on the number of residents, but does not include an “assisted living apartment,” “hospital” or other medical facility that is specifically defined in Chapter 19.20.																				
	Minimum Special Use Permit Requirements: U through R-2 Districts 1. The minimum parcel size shall be 20,000 square feet. 2. The maximum number of beds per acre shall be 25. 3. Setbacks for buildings shall be the same as required for a single family dwelling in the zoning district where located. 4. The maximum building height shall be 2 stories. 5. The facility must be located on a collector street or larger. R-3, R-4, R-5 Districts 1. The minimum parcel size shall be 10,000 square feet. 2. The maximum number of beds per acre of land shall be 50. 3. Minimum building setbacks and building height are as follows: a. A one-story structure shall be set back a minimum of 25 feet from all property lines. b. A two-story structure shall be set back a minimum of 35 feet from all property lines. 4. The facility must be located on a collector street or larger. On-site Parking Requirement: One space for each 6 beds, plus one space for each employee on the largest shift, plus 3 spaces for use by medical professionals.																				

USE	RESIDENTIAL												COMMERCIAL						INDUSTRIAL		
Facility for Transitional Living for Released Offenders	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
								S	S	S											
	Description: A dwelling unit of a residential character that provides housing and a living environment for up to six persons who have been released from prison and who require assistance with reintegration into the community, other than such a residence that is operated or maintained by a state or local government or an agency thereof. This use does not include a <u>halfway house for recovering alcohol and drug abusers or a facility for the treatment of abuse of alcohol or drugs</u> . <u>Transitional Community Residence or a Facility for the Treatment of Abuse of Alcohol or Drugs</u> . As used in this description, “person who has been released from prison” means: 1. A parolee; 2. A person who is participating in: a. A judicial program pursuant to NRS 209.4886 or 213.625; or b. A correctional program pursuant to NRS 209.488 or 213.632; 3. A person who is supervised by the Division of Parole and Probation of the Department of Public Safety through residential confinement pursuant to NRS 213.371 to 213.410, inclusive; or 4. A person who, within the past 20 years, has been released from prison by expiration of his term of sentence.																				

Proposed Amendment Page Four
April 22, 2010 - Planning Commission Meeting

Minimum Special Use Permit Requirements: *1. The facility must comply on an ongoing basis with all governmental licensing requirements. 2. The facility must be located on a parcel with a minimum size of six thousand five hundred square feet. 3. The facility must be located on a parcel that is within one thousand five hundred feet of an existing bus stop served by a regional bus system. 4. Off-street parking shall be provided on the basis of at least one space per five residents, plus an additional space for the administrator. 5. Indoor common area shall be provided on the basis of a minimum of fifteen square feet per resident. 6. The facility shall not be established or modified in a manner that would make it inconsistent with the scale and architectural character of the neighborhood. 7. No signage, graphics, display, or other visual representation that is visible from a public street shall be used to identify to facility as a Facility for Transitional Living for Released Offenders. 8. A facility may not be located closer than one thousand five hundred feet (measured by means of the shortest distance from property line to property line) from another Facility for Transitional Living for Released Offenders, a Halfway House for Recovering Alcohol and Drug Abusers, a Group Residential Care Facility, Community Residence , church, synagogue, school, child care facility licensed for more than twelve children, or City park. 9. The number of occupants within a Facility for Transitional Living for Released Offenders shall not exceed the following occupancy standards a. For the first bedroom (deemed to be the largest bedroom), a maximum of two adults (eighteen years of age or older). b. For each bedroom thereafter: i. A maximum of one adult, for bedrooms less than one hundred square feet in area; and ii. A maximum of two adults, for bedrooms one hundred square feet in area or greater.	
On-site Parking Requirement: Off-street parking shall be provided on the basis of at least one space per five residents, plus an additional space for the administrator.	

3. Table 2 of Title 19.04.010 is hereby amended by adding to the “Residential and Lodging” element thereof an entry for the use “Community Residence (including Family Community Residence and Transitional Community Residence),” as follows:

USE	RESIDENTIAL												COMMERCIAL					INDUSTRIAL			
<u>Community Residence (including Family Community Residence and Transitional Community Residence)</u>	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
	C	C	C	C	C	C	C	C	C	C	C	C			C		C	C			
	Description: A residential family-like living arrangement for five to ten unrelated individuals with disabilities who are in need of the mutual support furnished by other residents, as well as the support services, if any, provided by the operator of the Community Residence. Residents may be self-governing or supervised by a sponsoring entity or its staff which furnishes habitative or rehabilitative services related to the needs of the residents. Interrelationships among residents are an essential component of a Community Residence. A Community Residence shall be considered a residential use of property for purposes of all zoning and building codes. However, the Fire Marshal, pursuant to and consistent with the City's Fire Code, may require enhanced fire protection, including the installation of fire sprinklers and other mitigating measures, where one or more residents has a lessened ability to ambulate adequately. The use includes a Family Community Residence and a Transitional Community Residence, but does not include any of the following: 1. Senior Citizen Apartment; 2. Adult Day Care Center; 3. Convalescent Care Facility/Nursing Home; 4. Facility for Transitional Living for Released Offenders; 5. Facility to Provide Testing, Treatment, or Counseling for Drug and Alcohol Abuse; 6. Hospice; 7. Sex Offender Counseling Facility; 8. Boarding House or Rooming House; 9. Any other group living arrangement for unrelated individuals who are not disabled; or 10. Any of the following, as defined by NRS Chapter 449: a. Facilities for the Treatment of Drug and Alcohol Abuse; b. Modified Medical Detoxification Facilities; c. Transitional Living Facilities for Released Offenders; d. Facility for the Treatment of Narcotics; or e. Community Triage Center. Conditional Use Regulations: 1. Except as otherwise provided in Regulations 2 and 3, a Community Residence may not be located closer than 660 feet to any other Community Residence (measured door-to-door along the nearest pedestrian or vehicular route, whichever is shorter).																				

Proposed Amendment Page Five
April 22, 2010 - Planning Commission Meeting

2.	Where there is a street, freeway or drainage channel at least 100 feet wide between the proposed Community Residence and an existing Community Residence, the minimum separation requirement is reduced to 100 feet from property line to property line.
3.	When the population of a proposed Community Residence is of such a nature that its location must be kept confidential for it to function successfully, such as a Community Residence for victims of domestic abuse, the minimum separation requirements set forth in Regulations 1 and 2 above shall not apply.
4.	A maximum of 2 persons who function as facility operator or support staff may reside in a Community Residence without being counted toward the 10-resident limit established for that use. Resident operator/support staff in excess of 2 shall be counted toward the 10-person limit.
5.	A Community Residence shall comply with all public health and safety requirements including all Building and Fire Code requirements for the dwelling type in question.
6.	If Federal or State law or regulations require the proposed Community Residence to be licensed or certified, then the applicant must obtain that required license or certification before commencing operation of the Community Residence.
7.	When located in an O, C-1 or C-2 Zoning District, a Community Residence may not be established unless it is part of a mixed-use development.
8.	The operator of a Transitional Community Residence: a. Must require residents to be actively and continuously enrolled in an offsite support program, including without limitation Alcoholics Anonymous or an equivalent program, or a rehabilitation program such as one supervised by a medical professional or recognized treatment; b. Must prohibit the use of alcohol and illegal drugs by residents; and c. Upon request and with reasonable notice, must produce evidence satisfactory to the Director or the Code Enforcement Manager residents are in compliance with this Regulation.
9.	Occupancy within a Community Residence shall not be made available to any individual whose tenancy would constitute a direct threat to the health and safety of individuals or would result in substantial physical damage to the property of others. The fact that a person is sentenced or referred to a Transitional Community Residence by a judge does not, without other evidence of a person's actual danger to other persons or property, establish that the person is a direct threat to the health and safety of others.
10.	The Community Residence must be consistent with the scale and architectural character of the neighborhood.
11.	The Special Use Permit provisions of LVMC 19.04.040(B) shall not apply to Regulations 5 through 10 above.
12.	In the case of a Special Use Permit application that is filed as a consequence of not qualifying for conditional use treatment under Regulations 1 and 2 above, the application must be approved unless the Planning Commission or City Council determines that one or more of the following conditions would occur: a. The building to be occupied as a Community Residence would be established or modified in a manner that would make it inconsistent with the scale and architectural character of the neighborhood; b. The proposed Community Residence, together with existing Community Residences, would alter the residential character of the neighborhood by creating an institutional atmosphere due to the concentration of Community Residences on a block or adjoining blocks; or c. The application or Community Residence does not or would not comply with Regulations 5 through 10 above.
On-site Parking Requirement: Two spaces per dwelling unit.	

4. Title 19.04.020 "Accessory Uses and Structures" is hereby amended to read as follows:

19.04.020 Accessory Uses and Structures.

- (A) General. An accessory use or structure which is customarily incidental to the principal use or structure, and is located on the same lot or tract of land shall be permitted as an accessory use without being separately listed as a permitted use.
- (B) Particular Accessory Uses. In any residential zoning district, each of the following uses shall be considered an accessory use to the extent described, without being separately listed in the Land Use Tables, provided in each case that the use is incidental to the property's use as a dwelling and does not alter the character of its use as a dwelling of the character permitted in the respective district:
 - (1) ~~The renting of rooms, providing of board, or both, for not more than three unrelated persons, where no care is provided;~~

Proposed Amendment Page Six
April 22, 2010 - Planning Commission Meeting

- (2) Garage or yard sales, provided that:
 - (a) No property may be offered for sale which has not been owned and used by the occupant of the premises;
 - (b) No more than two garage or yard sales shall be conducted on the premises in any calendar year;
 - (c) No garage or yard sale shall be conducted for longer than three days duration;
 - (d) Garage or yard sales may be conducted during the daylight hours only; and
 - (e) All signage shall conform to the provisions of LVMC 19.14.040(E).
- (3) (2) On a single-family residential lot, the parking of a motor vehicle that bears a sign advertising the vehicle for sale, provided that:
 - (a) The vehicle is:
 - (i) Owned by or registered to an owner or occupant of the property;
 - (ii) Parked on an improved parking surface; and
 - (iii) Not being sold in connection with an automobile sales business;
 - (b) The vehicle identification number is clearly visible from outside the vehicle, if the vehicle was manufactured to include a visible vehicle identification number;
 - (c) No more than one vehicle is parked on the lot for purposes of display and sale at any one time; and
 - (d) No more than two vehicles are parked on the lot for purposes of display and sale within a twelve month period.
- (C) Unless otherwise permitted by this Title, any type of use listed in Subsection (B) that exceeds the limitations set forth for that use in Subsection (B) does not qualify as an accessory use and shall be deemed to be in violation of this Title.

5. Title 19.04.040 "Conditional Uses" is hereby amended by adding thereto two new subsections, designated as Subsections (C) and (D), reading as follows:

- (C) Conditional Use Verification. Uses that are permitted conditionally pursuant to this Section are made subject to conditional use regulations, some of which are conditions that must be met before a use may commence and others that represent ongoing requirements or limitations. In order for the Department to verify compliance with applicable conditional use regulations, the Director may require the submission of documentation regarding such compliance. For uses concerning which the Director requires such documentation, the submission shall be in the form of a Conditional Use Verification provided by the Department.

April 22, 2010 - Planning Commission Meeting

Within the time period for submission established by the Department, the form must be signed, notarized and acknowledged, and filed with the Department. The form must be signed by the owner of record of the property for which the verification is sought; provided however, that such submission is also sufficient if it is signed and acknowledged by a lessee, a contract purchaser or an optionee of the property upon which such conditional use is maintained. However, interest in such property must exist in a written agreement with the owner of record attached to which is a copy of the submission and in which the owner of record has authorized the lessee, contract purchaser or optionee to sign the submission.

(D) Noncompliance. Whether or not the Director requires the submittal of a Conditional Use Verification under Subsection (C) of this Section, each person or entity maintaining, operating or permitting a conditional use must comply with all provisions of this Title. Failure to comply with this Section or with any other requirement of this Title pertaining to conditional uses shall be grounds for enforcement action pursuant to LVMC 19.00.070 against the person or entity that owns the property or the person or entity that operates the conditional use.

6. Title 19.20.020, is hereby amended by deleting therefrom the following terms, "Group Residential Care Facility," "Halfway House for Recovering Alcohol and Drug Abusers," "Handicap" and "Individual Residential Care Facility," together with their corresponding definitions, as follows:

~~"Group Residential Care Facility" means a dwelling unit of a residential character which is used or intended to be used to provide long-term housing and care for up to ten persons who are aged, infirm, physically or mentally handicapped, or physically dependent, and are living together for the purpose of training, observation, common support, or a combination thereof. The term does not include an individual residential care facility, a facility for transitional living for released offenders, a halfway house for recovering alcohol and drug abusers, a convalescent care facility/nursing home, or any facility which:~~

- ~~(1) — Provides surgical, medical, psychiatric or other specialized treatment a regular basis; or~~
- ~~(2) — Provides housing, care or treatment to persons whose occupancy would constitute a direct threat to the health or safety of other individuals or their property.~~

~~"Halfway House for Recovering Alcohol and Drug Abusers" means a dwelling unit of a residential character that provides housing and a living environment for up to six recovering alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide any treatment for alcohol or drug abuse. The term does not include a facility for transitional living for released offenders.~~

Proposed Amendment Page Eight
April 22, 2010 - Planning Commission Meeting

~~"Handicap" means, with respect to a person:-~~

- ~~(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 impairment; or~~
- ~~(3) — Being regarded as having such an impairment.~~

~~The term does not include current illegal use of or addiction to a controlled substance.~~

~~"Individual Residential Care Facility" means a home in which a natural person furnishes food, shelter, assistance and limited supervision, for compensation, to not more than two persons who are aged, infirm, mentally retarded or handicapped, unless the persons receiving those services are related within the third degree of consanguinity or affinity to the person providing those services.~~

7. Title 19.20.020 is hereby amended by amending the definitions of the terms "Convalescent Care Facility/Nursing Home," "Facility for Transitional Living for Released Offenders" and "Family" as follows:

"Convalescent Care Facility/Nursing Home" means a building or structure designed, used, or intended to be used to house and provide care for persons who have a chronic physical or mental illness or infirmity, but who do not need medical, surgical or other specialized treatment normally provided by a hospital. The term includes a "rest home" and "nursing home," as well as a use that would qualify as a Community Residence except for the limitation on the number of residents, but does not include an "assisted living apartment," "hospital" or other medical facility that is specifically defined in this Chapter.

"Facility for Transitional Living for Released Offenders" means a dwelling unit of a residential character that provides housing and a living environment for up to six persons who have been released from prison and who require assistance with reintegration into the community, other than such a residence that is operated or maintained by a state or local government or an agency thereof. The term does not include a ~~halfway house for recovering alcohol and drug abusers or a facility for the treatment of abuse of alcohol or drugs.~~ Transitional Community Residence or a Facility for the Treatment of Abuse of Alcohol or Drugs. As used in this definition, "person who has been released from prison" means:

- (1) A parolee;
- (2) A person who is participating in:
 - (a) A judicial program pursuant to NRS 209.4886 or 213.625; or
 - (b) A correctional program pursuant to NRS 209.488 or 213.632;
- (3) A person who is supervised by the Division of Parole and Probation of the Department of Public Safety through residential confinement pursuant to

Proposed Amendment Page Nine
April 22, 2010 - Planning Commission Meeting

NRS 213.371 to 213.410, inclusive; or

- (4) A person who, within the past twenty years, has been released from prison by expiration of his term of sentence.

“Family” means, ~~two or more persons customarily living together and occupying a dwelling unit.~~ with respect to the occupancy of a dwelling unit:

- (1) One or more individuals related by blood, marriage, adoption or guardianship; or
 (2) No more than four unrelated individuals living together as a single housekeeping unit.

8. Title 19.20.020 is hereby amended by adding thereto the following terms, together with their corresponding definitions:

“Community Residence” means a residential family-like living arrangement for five to ten unrelated individuals with disabilities who are in need of the mutual support furnished by other residents, as well as the support services, if any, provided by the operator of the Community Residence. Residents may be self-governing or supervised by a sponsoring entity or its staff which furnishes habilitative or rehabilitative services related to the needs of the residents. Interrelationships among residents are an essential component of a Community Residence. A Community Residence shall be considered a residential use of property for purposes of all zoning and building codes. However, the Fire Marshal, pursuant to and consistent with the City’s Fire Code, may require enhanced fire protection, including the installation of fire sprinklers and other mitigating measures, where one or more residents have a lessened ability to ambulate adequately. The term includes a Family Community Residence and a Transitional Community Residence, but does not include any of the following:

- (1) Senior Citizen Apartment;
 (2) Adult Day Care Center;
 (3) Convalescent Care Facility/Nursing Home;
 (4) Facility for Transitional Living for Released Offenders;
 (5) Facility to Provide Testing, Treatment, or Counseling for Drug and Alcohol Abuse;
 (6) Hospice;
 (7) Sex Offender Counseling Facility;
 (8) Boarding or Rooming House;
 (9) Any other group living arrangement for unrelated individuals who are not disabled;
 (10) Any of the following, as defined by NRS Chapter 449:
 (a) Facilities for the Treatment of Drug and Alcohol Abuse;
 (b) Modified Medical Detoxification Facilities;
 (c) Transitional Living Facilities for Released Offenders;

Proposed Amendment Page Ten
April 22, 2010 - Planning Commission Meeting

- (d) Facility for the Treatment of Narcotics; or
- (e) Community Triage Center.

“Disability” or “disabilities” refers to:

- (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 impairment; or
- (3) Being regarded as having such an impairment.

The terms are intended to be coextensive with the terms “handicap” and “disability” as set forth in Federal fair housing legislation and other Federal legislation protecting individuals with a handicap or disability. The terms include the impairment associated with recovery from alcohol and drug abuse, but do not include impairment caused by current, illegal use of, or addiction to a controlled substance.

“Family Community Residence” means a Community Residence other than a Transitional Community Residence.

“Transitional Community Residence” means a Community Residence that provides housing and a living environment for recovering alcohol and drug abusers and is operated to facilitate their reintegration into the community, but does not provide any treatment for alcohol or drug abuse.

9. The provisions of this amendment setting forth the circumstances under which Community Residences are allowed shall be deemed to apply:

- (A) Within each of the following special purpose districts not listed in the Land Use Tables to the same extent that they apply to the most-similar zoning district listed in the Land Use Tables:
 - (1) Planned Community District;
 - (2) Residential Planned Development District; and
 - (3) Planned Development District.
- (B) Within any special area plan adopted by the City, whether or not such a plan specifically allows Community Residences otherwise.

Staff Report Page One
April 22, 2010 - Planning Commission Meeting

**** STAFF REPORT ****

APPLICATION REQUEST

This is a request to amend Table 2 of Title 19.04 and Title 19.20 to modify the descriptions, minimum use standards and definitions for Community Residences (commonly referred to as Group Homes) and similar uses.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
10/15/1986	The City Council adopted Ordinance #3251, which amended Title 19 to provide for the “Residential Facility for Adult Care” use in certain residential districts by Special Use Permit, among other items.
11/18/1992	The City Council adopted Ordinance #3689, which amended Title 19 to allow residential care facilities for up to six elderly persons or persons with handicap as a permitted use in residential districts.
07/19/00	The City Council adopted Ordinance #5239, which amended Title 19 to establish the uses “Individual Residential Care Facility,” “Group Residential Care Facility” and “Transitional Living Group Home” and the circumstances under which these facilities are permitted.
08/02/06	The City Council adopted Ordinance #5840, which amended Title 19 to establish the uses “Halfway House for Recovering Alcohol and Drug Abusers” and “Facility for Transitional Living for Released Offenders,” and to update the standards applicable to group residential care facilities.

ANALYSIS

This proposed ordinance amendment is the culmination many hours of staff time, and numerous one-on-one and community meetings with concerned neighborhood residents, as well as owners and operators of various types of congregate care facilities proposed for operation and those currently operating in the City of Las Vegas.

Community Meetings

City staff held four community meetings for members of the public to gather information and express issues or concerns. The Neighborhood Services Department (NSD) specifically notified by letter and/or e-mail any person that had called expressing concern about group homes or the City’s group home regulatory process, whether the person was a neighborhood resident, or an owner or operator of a congregate care facility. The NSD also sent a letter notifying each

registered Neighborhood Association of each community meeting. It is staff's understanding that one or more Councilmembers also included information (date, time and location) for each community meeting in that Councilperson's ward newsletter at the relevant time.

The first community meeting was held at the Downtown Senior Services Center on June 25, 2009. Approximately 34 people attended. The second community meeting was held at City Council Chambers on July 22, 2009. Approximately 24 people attended. These first two meetings were held to discuss the reasons for proposing a change to the City's regulatory process for congregate care facilities and to answer any questions from the public. The third community meeting was held at City Council Chambers on February 4, 2010 at 2:00 p.m. Approximately 56 people attended, including three Councilmembers and Council staffers. The last community meeting was held at the Las Vegas Valley Water District on February 4, 2010 at 6:00 p.m. Approximately four people attended, including a Councilmember and a Council staffer. The last two meetings were convened to introduce the actual language for the ordinance amendment to the public, and to address and additional questions or concerns.

City staff invited comments, oral and written, from those in attendance at all meetings, and City staff evaluated all comments when considering amendments. Comments received from the public are attached to the staff report as Exhibit 1.

Background

The process for amending this ordinance began in December of 2008 when three independent issues were presented almost contemporaneously to members of an internal City working group informally known as the Group Home Task Force ("Task Force") which was made up of representatives from the following City departments and divisions: the Neighborhood Services Department, the Code Enforcement Division, the Business Licensing Division, the Planning and Development Department, the Building and Safety Department and the City Attorney's Office.

The first issue was the receipt of several complaints from members of the community regarding the existence of "group homes" in residential neighborhoods, and whether or not these "group homes" were legally entitled to exist in certain neighborhoods. The second issue was a request for a "reasonable accommodation" for two Oxford Houses (sober living homes) pursuant to Federal law, by a national sober house recovery organization asserting that the City's regulatory structure was violative of Federal anti-discrimination laws. The third issue was information received by the Task Force that on July 9, 2008, Nevada Federal District Court Judge Larry R. Hicks declared Nevada Revised Statutes (NRS) 278.0238-278.02388 pre-empted by the Federal Fair Housing Amendments Act of 1988 (FHAA) as facially discriminatory, and invalid.

As for the first issue, the Task Force found that, for the most part, the residential facilities in question were in compliance with the current City regulatory structure. Those which were not were directed to comply with the law, but enforcement was tolled during a period of review and reasonable consideration of the City's regulatory structure, which ends with the consideration of these proposed amendments.

As for the second issue, the City also tolled the enforcement of the City's regulatory structure against the two Oxford Houses in question until such time as the City could review its rules and consider whether the City should provide a "reasonable accommodation" to this particular party or whether the City should propose amendments to the City's regulatory process for congregate care facilities to more clearly follow the Nevada Federal District Court holding and federal anti-

discrimination laws.

Last, as the City is required to enact rules that the State mandates for local governments, and because the City's regulatory process for congregate care facilities was based upon NRS 278.0238 -278.02388 ("State Land Use Regulatory Process"), and that State Land Use Regulatory Process was invalidated as violative of the FHAA, a decision was made to review and revise the City's land use regulatory structure to make sure that the City of Las Vegas would be in compliance with the findings of the Nevada Federal District Court and all relevant federal anti-discrimination laws regarding the housing of the disabled. As the State Land Use Regulatory Process mandate was invalidated, the City was free to adopt a regulatory process that would be in compliance with the findings of the Nevada Federal District Court and federal law.

In 2007, Clark County was sued in Federal Court by the Nevada Fair Housing Center, Inc. based upon Clark County's application of its regulatory scheme, a scheme that was also based upon the State Land Use Regulatory Process. It was during this lawsuit that the Nevada Federal District Court made its decision to invalidate the State Land Use Regulatory Process, and so Clark County was able to amend its zoning code to better comply with the FHAA and the Nevada Federal District Court's opinion.

The County's zoning code was revised in December 2008, and since then, the County's congregate care regulatory process has not been challenged. The County hired an expert in congregate care regulation to help revise its code, and that expert provided information for the County Commission in support of the Clark County code amendments. That information is attached hereto as Exhibit 2, and because the substantive structure of the amendments proposed herein follow Clark County's code, the City hereby adopts and incorporates the relevant findings therein to support the amendment proposed by the Task Force.

Lastly, the State Legislature is currently considering alternatives to the State Land Use Regulatory Process in an interim study mandated by AB 294. The City of Las Vegas is actively participating in the State's amendment process and the City will be assisting the committee convened to address the land use regulatory process from the State level.

Recommendation

Based upon the actions taken by the Nevada Federal District Court invalidating the language upon which the City's congregate care regulatory structure is based, as well as the status of the Federal anti-discrimination laws (the FHAA, the Americans with Disabilities Act and the Federal Rehabilitation Act), the Task Force recommends adoption of the amendments as proposed herein.

In a nutshell, the relevant federal anti-discrimination laws require that a municipality's land use regulatory process must not discriminate against the disabled on the face of the law, in the practice of regulation, and that municipalities must "reasonably accommodate" the disabled in its regulatory process, and mandate that the disabled are treated no differently than the non-disabled.

The important thing to remember is that the federal anti-discrimination laws only protect the disabled—not non-disabled ex-felons, not non-disabled sexual predators, and not non-disabled foster children, to name a few not protected by these federal laws. One type of person that is "disabled" for purposes of these federal laws, by statute and by court rulings are those persons recovering from alcohol and drug abuse, that are not currently using drugs or alcohol. These people are disabled as a matter of law, and must be treated as such.

The proposed amendments act to treat all non-disabled persons and disabled persons the same in the land use context. In a nutshell, the proposed ordinance permits that a single family dwelling may be inhabited by a family, which includes either: 1) related persons up to the occupancy limits provided by the City’s housing code or 2) no more than four unrelated persons.

The proposed ordinance “builds in,” for lack of a better term, a “reasonable accommodation” to those persons that are disabled as a matter of law, that need or desire to live in a congregate care facility to further the treatment of their disability. The “built-in reasonable accommodation” is the ability for those persons that own a single-family dwelling that propose to have five to ten (5-10) **disabled** persons in residence to be considered a conditional use, permitted by law as long as the use conditions are met, some of which are: a 660 foot distance separation between community residences (not as the crow flies, but travel distance by foot or vehicle), compliance with all State regulations and licensing requirements by the State, and that the operator of a community residence shall not permit occupancy by a person whose “tenancy would constitute a direct threat to the health and safety of individuals or would result on substantial physical damage to the property of others.” The case law regarding a population on greater than 11 persons permits the City to continue requiring a case-by-case review of these uses by special use permit, and the proposed ordinance does not change that requirement.

Based upon the above, the Task Force recommends adoption of these amendments.

FINDINGS

The following table summarizes all proposed changes to Title 19:

Code Requirements	Existing Regulations	Proposed Regulations
Title 19.04.010 Land Use Tables	• Group Residential Care Facility, Individual Residential Care Facility and Halfway House for Recovering Alcohol and Drug Abusers uses • Convalescent Care Facility/Nursing Home use description does not make provision for Community Residences • Facility for Transitional Living for Released Offenders use description and Special Use Permit requirements are not inclusive of Halfway House for Recovering Alcohol and Drug Abusers use	• Deletes from the tables these uses and requirements and establishes the Community Residence use as a conditional use with minimum use requirements • Amends description so that the use includes uses qualifying as Community Residences • Amends description and Special Use Permit requirements so that they are not inclusive of a Transitional Community Residence instead of a Halfway House for Recovering Alcohol and Drug Abusers use
Title 19.04.020 (B) – Accessory Uses and Structures: Particular Accessory Uses	• Renting of rooms and provision of board are considered uses accessory to the primary residential use on the same lot	• Deletes renting of rooms and provision of board as accessory uses

Title 19.04.040 (C) – Conditional Uses: Conditional Use Verification	• No standards	• Adds new Section establishing procedure to verify conditional use requirements
Title 19.04.040 (D) – Conditional Uses: Noncompliance	• No standards	• Adds new Section establishing consequences for noncompliance of Title 19.04.040 or requirements pertaining to conditional uses
Title 19.020.020 Definitions – Words and Terms Defined	• Defines terms Group Residential Care Facility, Halfway House for Recovering Alcohol and Drug Abusers and Individual Residential Care Facility • No definition exists for Community Residence, Family Community Residence or Transitional Community Residence • Defines term Handicap • Definition for Convalescent Care Facility/Nursing Home does not include uses qualifying as Community Residences • Definition for Facility for Transitional Living for Released Offenders includes the term Halfway House for Recovering Alcohol and Drug Abusers	• Deletes definitions for these terms • Adds definitions for Community Residence, Family Community Residence and Transitional Community Residence uses • Deletes definition of Handicap and adds definition for Disability • Amends the definition for “Convalescent Care Facility/ Nursing Home” to include uses that qualify as Community Residences • Amends the definition for Facility for Transitional Living for Released Offenders to delete the term Halfway House for Recovering Alcohol and Drug Abusers and adds Transitional Community Residence as an included term
	• Definition for Family means two or more persons customarily living together and occupying a dwelling unit	• Amends the definition of Family as either one or more related individuals or no more than four unrelated individuals living together in a dwelling unit

NOTICES MAILED

NEWSPAPER ONLY

APPROVALS

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PROTESTS

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