

Exhibit 2

Clark County, Nevada

**Guidelines for
Amending Title 30 of
the Unified Development Code
of Clark County, Nevada
to Provide for Community Residences**

Prepared for the Board of County Commissioners
Clark County, Nevada

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Introduction

This report explains the rationale for the proposed text amendments to Title 30 of the *Unified Development Code* of Clark County, Nevada, to make further reasonable accommodations for community residences for people with disabilities. The recommended zoning approach is based upon a careful review of:

1. The goals, objectives, and policies of the *Clark County Comprehensive Plan*;
2. The Fair Housing Amendments Act of 1988 (FHAA) which became effective March 12, 1989 and amended Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-3619 (1982);
3. Report No. 100-711 of the House Judiciary Committee interpreting the Fair Housing Amendments Act of 1988;
4. The HUD regulations implementing the amendments, 24 C.F.R. Sections 100-121 (January 23, 1989);
5. Sound city planning and zoning principles and policies;
6. The functions and needs of community residences and the people who live in them;
7. The existing provisions of Title 30 of Clark County's *Unified Development Code*;
8. Existing Nevada state law regarding community residences, particularly NRS 278.021, NRS 449.008, NRS 449.009, NRS 449.0108, NRS 449.0115, NRS 449.017; and
9. Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities.

Community Residences

People with substantial disabilities often need a living arrangement where they receive staff support to engage in the everyday life activities most of us take for granted. These sorts of living arrangements fall under the broad rubric "community residence" — which reflects that these are residences in the community rather than institutional uses. Community residences seek to achieve "normalization" of their residents and incorporate them into the social fabric of the surrounding community. Community residences are operated under the auspices of a legal entity such as a non-profit association, for-profit private care provider, or a government entity. A community residence does *not* include groups of unrelated individuals, with or without disabilities, who establish a single housekeeping unit on their own or with the assistance of their parents or legal guardians, even if support staff is present. Such residences, if they fit within the definition of "family" will be permitted uses without the requirements imposed by these proposed changes to the county's *Unified Development Code*. Within the broad category of community residences are two types of living arrangements that warrant slightly different zoning treatments tailored to their specific characteristics:

1. "Family community residences," which include such uses commonly known as group homes and recovery communities, and
2. "Transitional community residences," which include such uses commonly known as halfway houses.

The 1988 amendments to the nation's Fair Housing Act prohibit discrimination in housing against people with disabilities and require all jurisdictions to make a "reasonable accommodation" in their laws, rules, and regulations to enable people with disabilities to live in the community. The act recognizes that many people with disabilities require a "supported living arrangement" with staff support in order to live in the community rather than an inappropriate and excessively restrictive institutional setting. Consequently, the act requires all cities, counties, and states to allow for community residences (group homes, recovery homes, and halfway houses) for people with disabilities by making some exceptions in their zoning ordinance provisions that, for example, may limit how many unrelated people can live together in a dwelling unit or even prohibit unrelated individuals from living together. People *without* disabilities and people with disabilities who pose "a direct threat to the health or safety of others" are not covered by the 1988 amendments to the Fair Housing Act. Therefore, cities do not have to make the same zoning allowances for them as they do for people with disabilities who do not pose "a direct threat to the health or safety of others."

Family Community Residences

A family community residence offers a relatively permanent living arrangement for people with disabilities that emulates a family, and is operated under the auspices of an association, corporation, or other legal entity other than the residents themselves or their parents or individual legal guardians. Residence, *not* treatment is the home's primary function. There is no limit to how long a resident can live in a family community residence. Tenancy is measured in years, not months. Family community residences are most often used to house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities including the frail elderly, and individuals in recovery from addiction to alcohol or drugs (legal or illegal) who are not currently "using."

Family community residences are often called "group homes" and, in the case of people with alcohol or drug addictions, "recovery communities." Their key distinction from "transitional community residences," is that people with disabilities can live in a family community residence for years, not months or weeks. In a nation where the typical household lives in its home for five to seven years, these are long-term, relatively permanent residences. There is no limit on how long someone can dwell in a family community residence as long as they obey the rules and do not constitute a direct threat to others or themselves.

To be successful, a community residence must be located in a conventional residential neighborhood so that "normalization" can take place. The underlying rationale for a community residence is that by placing people with disabilities in as "normal" a living environment as possible, they will be able to develop to their full capacities as individuals and

citizens. The atmosphere and aim of a community residence is very much the opposite of an institution.

The family community residence emulates a family in most every way. **The activities in a family community residence are essentially the same as those in a dwelling occupied by a biologically-related family.** Essential life skills are taught, just like we teach our children. Most family community residences provide "habilitative"

services for their residents to enable them to develop their life skills to their full capacity. Habilitation involves *learning* life skills for the first time as opposed to rehabilitation which involves *relearning* life skills.

While recovery communities are like group homes in most respects, they tend to engage more in rehabilitation where residents relearn the essential life skills we tend to take for granted, although for some very long-term alcoholics or drug addicts, they may be learning some of these life skills for the very first time. Recovery communities are often referred to as "three-quarter houses" because they are more family-like and permanent than the better known "halfway houses" which fall under the rubric "transitional community residence." The residents periodically elect officers who act in the parental role while the other residents are in the role of siblings. In a group home, staff functions in the parental role.

Interaction between the people who live in a family community residence is essential to achieving normalization. The relationship of a community residence's inhabitants is much closer than the sort of casual acquaintances that occur between the residents of a boarding or lodging house where interaction between residents is merely incidental. In a community residence, family and transitional, the residents share household chores and duties, learn from each other, and provide one another with emotional support — family-like relationships not essential for nor present in lodging houses, boarding houses, fraternities and sororities, and institutions.

Family community residences comply with the purpose statements for each of Clark County's residential districts as stated in Chapter 30.40. Even before passage of the 1988 amendments to the Fair Housing Act, most courts concluded that family community residences for people with disabilities should *not be excluded* from any residential zoning districts.

Direct threat exclusion

Individuals with disabilities who "constitute a direct threat to the health or safety of others" are not covered by the Fair Housing Amendments Act of 1988. 42 U.S.C. § 3602(f)(9) (1988). Consequently, the licensing rules that prohibit such individuals from living in community residences are legal.

Transitional Community Residences

In contrast to the group homes and recovery communities that fall under the rubric "family community residence," transitional community residences such as halfway houses are a comparatively temporary living arrangement that is not quite as family-like as a group home or recovery community. Residency is measured in weeks or months, not years. Nearly all halfway houses impose a limit on how long someone can live there.

A halfway house offers a temporary living opportunity in the community for individuals who need supportive living while they prepare to reenter society and live on their own or with their family. The residents need to *relearn* life skills they may have lost — halfway houses offer rehabilitative services rather than habilitation. Like all community residences, a halfway house is operated by some legal entity such as a non-profit association, a for-profit company, or a government agency. Typical of the people with disabilities who need a halfway house are people with mental illness who leave an institution and need only a short stay in a community residence before moving to an even less restrictive living environment. Similarly, people recovering from addictions to alcohol or drugs follow detoxification in an institution with residency in a halfway house until they are capable of living in a recovery community or other less restrictive environment.

Halfway houses are also used for prison pre-parolees. However, such individuals are *not*, as a class, people with disabilities. Zoning can be more restrictive of halfway houses for them since they are not covered by the Fair Housing Act. Clark County's current zoning provides for such halfway houses as "custodial institutions." Because prison pre-parolees are not, as a class, "handicapped," the proposed ordinance amendments do not suggest any changes in the current zoning treatment for them which requires a special use permit in residential districts.

Halfway houses are residential uses that must locate in residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a group home or recovery community does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a special use permit for halfway houses in single-family districts while allowing them as a conditional use in multiple family districts. (The two requisite conditions are explained later in this document.) However, it is important to remember that a special use permit cannot be denied on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents of a proposed halfway house.

Rational Foundations for Regulating Community Residences

No small land use has been studied as much as community residences. To understand the rationale for the guidelines for regulating community residences that are suggested in this report, it is vital to review what is known about community residences related to their appropriate location, number of residents needed to succeed both therapeutically and financially, means of protecting their vulnerable populations from mistreatment or neglect as well as excluding dangerous individuals from living in them, and their impacts, if any, on the surrounding community.

Relative location of community residences

Researchers have found that some community residence operators will locate their community residences close to other community residences, especially when zoning does not allow community residences for people with disabilities in all residential districts. They tend to be clustered in

nonwhite, lower income, or older neighborhoods and in areas around colleges. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) which found that 36.2 percent of the group homes for people with developmental disabilities surveyed were located within two blocks of another community residence or an institutional use. At 19. Also see D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* at 14; and *Family Style of St. Paul, Inc., v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991) where 21 group homes that housed 130 people with mental illness were established on just two blocks.

Limitations Due to Nevada State Law

While the most proper approach is to distinguish between family and transitional community residences, Nevada state law requires that "halfway houses for recovering alcohol and drug abusers" be included in the definition of "single-family residence." NRS 278.021

Due solely to this state law, the recommendations contained in this report will not distinguish between family and transitional community residences. Instead the report proposes a single zoning category of community residences.

NOT APPLICABLE DUE TO
HOLDING IN:

NEVADA FMR HOUSING CENTER V.

CLARK COUNTY 565 F. SUPP. 2d 1178

(2008) INVALIDATING NRS 278.0238-

NRS 278.02388

Why clustering is detrimental

Placing community residences too close to each other can easily hinder their ability to achieve normalization for their residents and create a *de facto* social service district. In today's society, people tend to get to know nearby neighbors on their block face within a few doors of their home (unless they have children together in school or engage in jogging). Neighbors that close to a community residence serve as role models to the community residence dwellers.

For normalization to occur, it is essential that people who live in community residences have such so-called "able-bodied" neighbors as role models. But if another community residence is opened very close to an existing group home — such as next door or even on the same block — it will replace the "able-bodied" role models with other people with disabilities and quite possibly hamper the normalization efforts of the existing community residence. Clustering a number of community residences on the same block not only undermines normalization but could inadvertently create a *de facto* social service district and alter the purely residential character of the neighborhood. All the evidence recorded to date shows that **one or two community residences for people with disabilities on a block do not alter the purely residential character of a neighborhood.** See General Accounting Office, *Analysis of Zoning and*

Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled 27 (August 17, 1983).

As long as community residences are not clustered on the same block (the idea is to assure there are at least several lots between community residences on a linear block) they will not generate these adverse impacts. Consequently, it is reasonable to require a spacing distance between community residences that keeps them about a block apart in terms of actual walking distance along public rights of ways.

If the operator of a proposed community residence wishes to locate it within the spacing distance, then the heightened scrutiny of a special use permit is warranted so the county can evaluate the cumulative effect of locating so close to an existing community residence.

Measuring the spacing distance

To avoid any ambiguity, when a community residence is proposed, this spacing distance is measured from the front door of the closest community residence along the public right of way. The idea is to measure the actual distance people would have to walk to go from one community residence to another, as opposed to measuring as the crow flies. Therefore, it is necessary for the operator of every proposed community residence to complete the *Zoning Compliance Application* form that is recommended for Clark County's use so the county can measure spacing distances from existing community residences. The county should also establish a database and map of the locations of all existing community residences so it can apply the spacing distance to any new proposed community residence.

The technical explanation

Normalization and community integration require that persons with disabilities severe enough to require a supportive living arrangement like a community residence be absorbed into the neighborhood's social structure. Generally speaking, the existing social structure of a neighborhood can accommodate no more than one or two community residences on a single block. Neighborhoods seem to have a limited absorption capacity for service-dependent people that should not be exceeded. Kurt Wehring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

Social scientists note that this capacity level exists, but an absolute, precise level cannot be identified. Writing about service-dependent populations in general, Jennifer Wolch notes, "At some level of concentration, a community may become saturated by services and populations and evolve into a service-dependent ghetto." Jennifer Wolch, "Residential Location of the Service-Dependent Poor," *70 Annals of the Association of American Geographers*, at 330, 332 (Sept. 1982).

According to one leading planning study, "While it is difficult to precisely identify or explain, "saturation" is the point at which a community's existing social structure is unable to properly support additional residential care facilities [community residence]. Overconcentration is not a constant but varies according to a community's population density, socio-economic level, quantity and quality of municipal services and other characteristics." There are no universally accepted criteria for

determining how many community residences are appropriate for a given area. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* at 25.

This research suggests that there is a legitimate government interest in assuring that group homes do not cluster on a block or in a neighborhood. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is very credible concern that group homes located more closely together on the same block can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which, after all, is their *raison d'être*.

Maximum number of residents

The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is that community residences constitute a functional family and that zoning should treat the occupants of a community residence as a "family," albeit with appropriate regulations. Still, the U.S. Supreme Court has ruled that a jurisdiction can establish a cap on the number of unrelated persons who can occupy a dwelling unit. *Belle Terre v. Borass*, 416 U.S. 1 (1974). The Fair Housing Act requires jurisdictions to make a reasonable accommodation for community residences for people with disabilities by making exceptions to these caps.

In *Belle Terre*, the Court upheld this Long Island resort community's zoning definition of "family" that permitted no more than two unrelated persons to live together. It's hard to quarrel with the Court's concern that the specter of "boarding housing, fraternity houses, and the like" would pose a threat to establishing a "quiet place where yards are wide, people few, and motor vehicles restricted.... These are legitimate guidelines in a land-use project addressed to family needs...." *Id.* at 7-9.

Clark County would be within its legal rights to establish a cap on the number of unrelated persons allowed to live together in a dwelling unit like the vast majority of U.S. cities and counties already do. A cap of four or five unrelated individuals should allow for a reasonable number of roommates. Language implementing this approach appears in the proposed set of zoning amendments.

Unlike the six sociology students who rented a house during summer vacation in Belle Terre, Long Island, a community residence is not a home for transients, and is very much the antithesis of an institution. Consequently, the majority of state and federal courts have treated community residences as "functional families" that should be allowed in single-family zoning districts despite zoning ordinance definitions of "family" that place a cap on the number of unrelated residents in a dwelling unit. In a very real sense, the FHAA essentially codifies the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

It is important to remember, however, that no matter what the cap is, the housing or building code that applies to all residential uses ultimately limits the number of residents in any type of residence as discussed below.

The U.S. Supreme Court brought this point home in its 1995 decision in *Edmonds v. Washington State Building Code Council*, 115 S.Ct. 1776 (1995). There the Court ruled that housing codes that "ordinarily apply *uniformly* to all residents of all dwelling units ... to protect health and safety by preventing dwelling overcrowding" are legal, *Id.* at 1781 [emphasis added]. Zoning ordinance restrictions that focus on the "composition of households rather than on the total number of occupants living quarters can contain" are subject to the Fair Housing Act. *Id.* at 1782.

Protecting the residents and neighbors

People with disabilities who live in community residences constitute a vulnerable population that needs protection from possible abuse and exploitation. Community residences for these folk need to be regulated to assure that their residents receive adequate care and supervision. Licensing and certification are the regulatory vehicles used to assure adequate care and supervision. Sometimes a state hasn't established licensing or certification for a particular population served by group homes. In these situations, certification by an appropriate national certifying organization or agency that is more than simply a trade group should be used in lieu of formal licensing. Licensing or certification also tends to prohibit from community residences people who pose a "direct threat" to others or themselves, or to property. As explained earlier, such people are not covered by the Fair Housing Act.

Therefore, it is reasonable to require that a community residence or its operator be licensed by the State of Nevada. If state licensing does not exist for a particular type of community residence, the residence can meet the certification of an appropriate national certifying agency, if one exists, or is otherwise sanctioned by the federal or state government. If there is no governmental or quasi-governmental body that requires licensing or certification for a particular type of community residence, then the heightened scrutiny of a special use permit is warranted so the county can make sure that the residents of a proposed home are protected.

Credible concerns exist that some supposed recovery communities and halfway houses are not the sober living environments they purport to be. Because people recovering from drug and/or alcohol addiction who live in recovery homes and halfway houses are a vulnerable population, the proposed amendments include a provision to assure that such individuals living in recovery communities and halfway houses actually receive appropriate treatment and remain clean and sober while living in their recovery home or halfway house.

Impacts of community residences

The impacts of most types of community residences have been studied more than those of any other small land use. More than 50 statistically-valid studies have found that community residences that meet the health and safety standards imposed by licensing and that are not clustered on a block produce no adverse impacts on the surrounding neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to them. They do not affect

neighborhood safety nor neighborhood character — as long as they are licensed and not clustered on a block. They do not create excessive demand on public utilities, sewer systems, water supply, street capacity, or parking. They do not produce any more noise than a conventional family of the same size. All told, licensed, unclustered group homes and half-way houses have consistently been found to be good neighbors.

Clustering community residences only undermines their ability to achieve their essential goals of normalization and community integration. A community residence needs to be surrounded by so-called "normal" or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one another or on the same block increases the chances that their residents will interact with other service-dependent people living in a nearby community residence rather than conventional households with non-service dependent people.

Appendix 2 proffers an annotated bibliography of representative studies. The evidence is so overwhelming that few studies have been conducted in recent years since the issue is pretty much settled: community residences that comply with the health and safety standards imposed by licensing and that are not clustered on a block simply do not generate any adverse impacts on the surrounding community.

Recommended regulatory approach

The 1988 amendments to the federal Fair Housing Act require all government jurisdictions to make a "reasonable accommodation" in their zoning codes and other rules and regulations to enable group homes and other community residences for people with disabilities to locate in the residential districts where they belong.

Currently, Clark County's *Unified Development Code* (§30.56.130) allows up to six unrelated adults to occupy a dwelling unit — a larger number than most jurisdictions allow. The amendments proposed here establish a reasonable cap of four unrelated individuals as the maximum number of unrelated individuals who can live together in a dwelling unit. The proposed amendments also allow for the reasonable accommodation that the Fair Housing Amendments Act of 1988 (FHAA) requires when more than four unrelated individuals with disabilities wish to live in a community residence. The FHAA does not require jurisdiction to allow community residences for persons who do not have disabilities.

As discussed earlier, the U.S. Supreme Court has determined that a jurisdiction is certainly within its legal rights to place a cap on the number of unrelated people allowed to occupy a dwelling unit.

Like any other dwelling, when a community residence — whether it be "family" or "transitional" — complies with the cap on the number of unrelated persons that constitutes a "family" under the zoning code definition of "family," it is allowed as of right in all residential districts. No additional zoning restrictions can be imposed on them. Licensing cannot be required; a spacing distance cannot be imposed.

But when a community residence houses more unrelated individuals than the zoning code definition of "family" allows, a jurisdiction must make a "reasonable accommodation" to enable these homes to locate in

the residential districts in which they belong. A thorough review of case law suggests that any reasonable accommodation must meet three tests:

- ☐ The proposed zoning restriction must be intended to achieve a legitimate government purpose.
- ☐ The proposed zoning restriction must actually achieve that legitimate government purpose.
- ☐ The proposed zoning restriction must be the least drastic means necessary to achieve that legitimate government purpose.

In *Bangerter v. Orem City Corporation*, the federal Court of Appeals said the same thing a bit differently, "Restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefits to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them." 46 F.3d 1491 (10th Cir. 1995) at 1504.

The proposed zoning amendments seek to enable community residences to locate in all residential zoning districts through the least drastic regulation necessary to prevent clustering (which undermines the ability of community residences to achieve their purposes and function properly and to maintain the residential character of a neighborhood) and to protect the residents of the community residences from improper or incompetent care and from abuse. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon them.

As discussed earlier, due to existing Nevada state law, zoning codes for residential districts cannot distinguish between family community residences and transient residences as the most proper approach would. They must be treated the same under current state law.

Proposed zoning treatment, Part 1: Community residences as a conditional use

To make this reasonable accommodation when more than four unrelated people with disabilities wish to live in a community residence, these proposed zoning ordinance amendments make community residences for people with disabilities, a conditional use in all Clark County zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

1. The operator of the community residence itself must receive any license or certification required by the State of Nevada or Clark County, or certification or recognition from an appropriate national or state accrediting agency, to operate the proposed family community residence; and
2. The proposed community residence is not located within a rationally-based spacing distance of one typical block, 660 feet, of an existing community residence as measured from front door to front door along the public right of way.

The proposed amendments include language that allows for a shorter spacing distance when barriers exist between the homes that have the same effect as the 660 foot spacing distance.

The term "recognition from an appropriate national or state accrediting agency" is suggested due to the unique situation of Oxford House, a self-governing recovery community recognized and funded through the states by the federal government. Oxford Houses do not require a state license.

Special use permit backup

There will be times when an operator seeks to establish a new community residence for five or more people within the spacing distance of an existing community residence or the state, county, or federal government do not run a license, certification, accreditation, or recognition program for this type of residence. In these situations, the heightened scrutiny provided by special use permit review is warranted. There are two circumstances under which a special use permit could be sought:

(1) Locating Within the Spacing Distance. To determine whether a community residence should be allowed within the spacing distance from an existing community residence, the county needs to consider whether allowing the proposed community residence will hinder the normalization for residents in the existing community residence and whether the proposed community residence would actually alter the character of the neighborhood, in addition to the county's standard criteria for issuing a special use permit.

(2) When the State of Nevada, Clark County, or the Federal Government Does Not Operate a Licensing, Certification, Accreditation, or Recognition Program. If a community residence operator seeks to establish a community residence in Clark County for which there is no state or federal licensing or certification requirement, the proposed zoning amendments allow the proposed community residence only if the operator demonstrates that the proposed community residence largely complies with state, county, or federal licensing certification, or accreditation standards for a comparable type of community residence for which licensing, certification, or accreditation is required.

If a required state, county, or federal license, certification, accreditation, or recognition has been denied to a proposed community residence or its operator, it would be ineligible for a special use permit and could not be located in Clark County.

It is vital to stress that the decision on a special use permit must be based on a record of factual evidence and not on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities.

Maximum number of occupants in a community residence

Nevada state statute sets the maximum number of individuals who can live in a community residence at ten. NRS 278.021. Even with that state-imposed cap, it is well-established that the number of residents cannot exceed the number permissible under the applicable building or housing code. For example, if the applicable housing or building code limits the number of residents in a dwelling unit to six, then even if used as a community residence, no more than six people could live there.

Under fair housing case law, it is quite clear that *for determining the maximum number of occupants*, community residences are to be treated the same as single-family residences (or multiple-family when the *structure* is a multiple-family building). Please note that many building codes improperly impose additional requirements on community residences such as sprinkler systems, a fire alarm hard-wired to the local fire department, or "exit" signs. To be legal, these additional requirements must be based on demonstrable facts, not on myths or misconceptions about people with disabilities.

In Nevada, the state has established minimum room sizes and occupancy standards for many types of community residences. These state-imposed standards supersede local housing codes. Clark County is obligated to comply with the state standards.

Other zoning regulations for community residences

All other regulations of the zoning district apply to a community residence including height, lot size, yards, building coverage, habitable floor area, off-street parking, and signage. Residents of most community residences do not drive cars. Consequently, there is no reason to require more off-street parking for a community residence than for a single-family house, assuming the community residence is located in a single-family house. No amendments for off-street parking are necessary. Like all zoning restrictions on community residences, parking requirements must be factually-based.

Summary

The proposed regulatory approach offers the least restrictive means needed to achieve the legitimate government interests of protecting people with disabilities from unscrupulous operators and assuring their health and safety needs are met, and enabling normalization to occur by preventing clustering on a block. These provisions help assure that no adverse impacts will be generated. Compliance with these conditions will be achieved by requiring a zoning certificate before a community residence can be occupied.

The proposed amendments treat community residences that comply with the definition of "family" the same as any other family. It imposes no additional zoning requirements upon them.

However, when the number of unrelated occupants in a proposed community residence exceeds four, the maximum number of unrelated

dwellers allowed under the proposed definition of "family," the proposed ordinance makes community residences for people with disabilities a conditional use subject to rationally-based licensing and spacing criteria in all residential districts. In Clark County, conditional uses are administratively determined.

But when a proposed community residence does not satisfy the criteria for awarding a conditional use permit, the greater scrutiny achieved by requiring a special use permit is warranted. Consequently, the operator would have to obtain a special use permit if her proposed community residence would be located within the spacing distance or if the State of Nevada, Clark County, or the federal government do not operate a program licensing, certifying, accrediting, or recognizing the particular type of community residence or its operator.

The burden rests on the operator to show that the proposed home would meet the standards Clark County requires for issuing a special use permit. Note, however, that if a required license, certification, accreditation, or recognition has been denied to a proposed community residence, the residence is not even eligible to apply for a special use permit. But if there is no certification, licensing, accreditation, or recognition required or available, then the community residence operator can seek a special use permit under the special use permit backup provision.

To implement these amendments, the county will need to maintain a map and database of all community residences within its jurisdiction and within adjacent communities. The spacing distances would be measured from existing community residences whether or not they are within Clark County's jurisdiction.

Appendix 1:

Sample Form for Zoning Compliance Application

The next two pages offer a sample form which the county can adapt to use in addition to its current zoning compliance application forms. The information requested by the form makes it easy for zoning officials to objectively determine if the proposed community residence complies with the development code and should receive an administratively-determined conditional use permit. This form also enables the zoning official to determine if a special use permit is required. It is crucial that the operators of all community residences be required to complete this form so the county can determine spacing distances between community residences. This requirement places no burden on people with disabilities while offering them great benefit by helping to prevent overconcentrations, enabling normalization to occur, and protecting the vulnerable residents from unscrupulous operators.

Zoning Compliance Application — Clark County, Nevada

Applicants — Who must file:

To establish a community residence for people with disabilities as a conditional use, the operator must file this application for a Certificate of Zoning Compliance. If the application meets the criteria for a Certificate of Zoning Compliance as spelled out in the applicable sections of the Clark County Unified Development Code, the Zoning Officer will issue a Certificate of Zoning Compliance within 15 days. No public hearing is required and no discretion is allowed: if the criteria specified in the zoning ordinance are met, the Certificate of Zoning Compliance is issued administratively. Be sure to keep a copy of this completed application for your records.

The applicant must provide all information requested. Please type or print clearly.

*With this application, you must supply one plat map of the site
(prepared by a licensed surveyor) that shows all lot lines.*

Date application submitted to Clark County's Zoning Officer: _____

Address of proposed community residence: _____

Zoning district in which the proposed community residence would be located: _____

Applicant Information:

Name of group or individual that will operate the proposed community residence: _____

Address: _____

City-State-Zip Code: _____

Telephone: _____

Contact person and title: _____

Evidence of licensing or certification for proposed community residence or its operator:

State or local licensing program under which the proposed community residence will be operated: _____

☐ Check here if neither the State of Nevada nor Clark County requires a license or certification to operate the proposed community residence

☐ Check here if there is no applicable national accreditation agency or body for the proposed use.

Identify the licensing or certification agency (include address, telephone phone number, and, if possible, the contact person) which licenses or certifies the proposed use. If the applicant has not received a required license or certification, please explain why not.

Please provide the information requested in the following table:

Dimensions of each bedroom (excluding closets)			Square Feet	Number of residents to sleep in bedroom
1	ft x	ft		
2	ft x	ft		
3	ft x	ft		
4	ft x	ft		
5	ft x	ft		
6	ft x	ft		
7	ft x	ft		
Total number of people with disabilities to live in this residence:				

Describe general nature of the residents' disabilities:

Maximum number of support staff present at the site on a single shift: _____

The findings below indicate whether the applicant can establish the proposed community residence as a conditional use or whether a special use permit is required. The proposed home must also comply with all other applicable municipal codes.

FOR STAFF USE ONLY:

Findings: [Planning Department staff person shall initial appropriate boxes.]

- ☐ Proposed use is a community residence for people with disabilities
- ☐ Proposed use is a community residence for people without disabilities
- ☐ Proposed use is a halfway house for people without disabilities
- ☐ Proposed use is not a community residence of any type.

Number of residents with disabilities: _____

- ☐ Proposed use or operator is properly licensed, certified, accredited, or recognized by the State of Nevada, Clark County, or other body.
- ☐ Neither State of Nevada nor Clark County requires a license, certification, accreditation, or recognition for this type of community residence.
- ☐ Zoning district in which proposed use would be located: _____
- ☐ Closest existing community residence is located _____ linear feet from the proposed community residence, as measured from front door to front door walking along the public right of way. List any existing community residences within 660 feet:

Determination:

- ☐ Grant conditional use permit
- ☐ Applicant must seek a special use permit
- ☐ Proposed community residence is not eligible for either a conditional use permit nor a special use permit. Application denied.

Staff review conducted by:

_____ Signed: _____ Date: _____

Print or type

Sign in ink

Appendix 2: Representative Studies of the Impact of Community Residences

Over 50 scientific studies have been conducted to identify whether the presence of a group home or halfway house has any effect on property values, neighborhood turnover, or neighborhood safety. No matter which scientifically-sound methodology has been used, every study has concluded that community residences that meet the health and safety standards imposed by licensing and that are not clustered on the same block have no effect on property values, even for the houses next door, nor on the marketability of nearby homes, neighborhood safety, neighborhood character, parking, traffic, public utilities, nor municipal services. The following studies constitute a representative sample. Few studies have been conducted recently simply because this issue has been studied so exhaustively and the findings have been so consistent that they generate no negative impacts.

Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, (Governor's Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986) (found no effect on property values or turnover due to any of 14 group homes for up to eight residents; also found crime rate among group home residents to be, at most, 16 percent of that for the general population).

Christopher Wagner and Christine Mitchell, *Non-Effect of Group Homes on Neighboring Residential Property Values in Franklin County* (Metropolitan Human Services Commission, Columbus, Ohio, Aug. 1979) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12-18 years old).

Eric Knowles and Ronald Baba, *The Social Impact of Group Homes: a study of small residential service programs in first residential areas* (Green Bay, Wisconsin Plan Commission June 1973) (disadvantaged children from urban areas, teenage boys and girls under court commitment, infants and children with severe medical problems requiring nursing care, convicts in work release or study release programs).

Minnesota Developmental Disabilities Program, *Analysis of Minnesota Property Values of Community Intermediate Care Facilities for Mentally Retarded (ICF-MRs)* (Dept. of Energy, Planning and Development 1982) (no difference in property values and turnover rates in 14 neighborhoods with group homes during the two years before and after homes opened, as compared to 14 comparable control neighborhoods without group homes).

Dirk Wiener, Ronald Anderson, and John Nietupski, *Impact of Community-Based Residential Facilities for Mentally Retarded Adults on Surrounding*

Property Values Using Realtor Analysis Methods, 17 Education and Training of the Mentally Retarded 278 (Dec. 1982) (used realtors' "comparable market analysis" method to examine neighborhoods surrounding eight group homes in two medium-sized Iowa communities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).

Montgomery County Board of Mental Retardation and Developmental Disabilities, *Property Sales Study of the Impact of Group Homes in Montgomery County* (1981) (property appraiser from Magin Realty Company examined neighborhoods surrounding seven group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, *Effect of Community Residences for the Mentally Retarded on Real-Estate Values in the Neighborhoods in Which They are Located* (State University College at Brockport, N.Y. 1980) (examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

L. Dolan and J. Wolpert, *Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People*, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982) (examined long-term effects on neighborhoods surrounding 32 group homes for five years after the

homes were opened and found same results as in Wolpert, *infra*).

Julian Wolpert, *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts* (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978) (most thorough study of all; covered 1870 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, *The Neighbors and the Small Group Homes for the Handicapped: A Survey* (Illinois Association for Retarded Citizens Sept. 1979) (real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, *Impact of Residential Care Facilities in Decatur* (Macon County Community Mental Health Board Dec. 9, 1976) (examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

Suffolk Community Council, Inc., *Impact of Community Residences Upon Neighborhood Property Values* (July 1984) (compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, *Group Homes and Property Values: A Second Look* (Aug. 1980) (Columbus, Ohio) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12-18 years old).

Tom Goodale and Sherry Wickware, *Group Homes and Property Values in Residential Areas*, 19 Plan Canada 154-163 (June 1979) (group homes for children, prison pre-parolees).

City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (Lansing, Mich. Oct. 1976) (No adverse impacts on property values due to halfway houses and group homes for adult ex-offenders, youth offenders, alcoholics).

Michael Dear and S. Martin Taylor, *Not on Our Street*, 133-144 (1982) (group homes for persons with mental illness have no effect on property values or turnover).

John Boeckh, Michael Dear, and S. Martin Taylor, *Property Values and Mental Health Facilities in Metropolitan Toronto*, 24 The Canadian Geographer 270 (Fall 1980) (residential mental health facilities have no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).

Michael Dear, *Impact of Mental Health Facilities on Property Values*, 13 Community Mental Health Journal 150 (1977) (persons with mental illness; found indeterminate impact on property values).

Stuart Breslow, *The Effect of Siting Group Homes on the Surrounding Environs* (1976) (unpublished) (although data limitations render his results inconclusive, the author suggests that communities can absorb a "limited" number of group homes without measurable effects on property values).

P. Magin, *Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio* (May 1975) (available from County Prosecutors Office, Dayton, Ohio). (found no adverse effects on property values.) ■

Memorandum

City of Las Vegas Office of the City Attorney

To: Betsy Fretwell, City Manager
Orlando Sanchez, Deputy City Manager
James Nichols, Deputy City Manager
Scott Adams, Chief Urban Redevelopment Officer
Margo Wheeler, Director of Planning and Zoning
Doug Rankin, Planning Manager
Stephen Harsin, Director of Neighborhood Services
Lisa Morris-Hibbler, Deputy Director of Neighborhood Services
Devin Smith, Code Enforcement Manager
Jim DiFiore, Business Licensing Manager
Greg Gammon, Fire Chief
Robert Bell, Deputy Chief
Chris Knight, Building Official
James Carmany, Court Administrator
Beverly Golston, Municipal Court

From: James B. Lewis, Deputy City Attorney

CC: Brad Jerbic, City Attorney
Bryan Scott, Assistant City Attorney
Val Steed, Chief Deputy City Attorney

Date: December 17, 2009

Re: Las Vegas Municipal Code Title 19 and Title 6 amendments regarding the regulation of "Community Residences," otherwise known "Group Homes."

Attached hereto is a draft ordinance proposing changes to Title 19 and Title 6 of the Las Vegas Municipal Code. This draft is the product of many hours of work by the City's Group Home Task Force, including numerous private and public meetings with stakeholders, including concerned neighborhood constituents and the owners and operators of alzheimer's care homes and sober living homes. Those persons underlined above are members of the City's Group Home Task Force, and either appeared in person or sent delegates to internal and external meetings. Following a brief introduction, please find an executive summary of the changes proposed to the City's code.

Based upon concerns raised by owners and operators of certain group homes, as well as threats of unidentified actions to be levied against the City of Las Vegas by a national sober house constituency group (the Oxford House people out of Chicago), the Group Home Task Force requested assistance from the City Attorney's Office to help sort out the state of the City's current regulation of group homes, as well as help in understanding the interplay between the City's current regulation, state regulation and federal law as it relates to the City's ability to regulate group homes.

Simply stated, the relevant federal law requires a municipality to treat a single family detached dwelling housing disabled persons (which includes those recovering from alcohol or drug addiction) in a similar manner to the single family detached dwelling housing a non-disabled family.

The City's current group home regulatory process is based primarily upon the NRS 278 group home regulatory scheme that was declared invalid by a Nevada Federal District Court in 2008, and is similar to the County's prior regulatory process that was also deemed invalid by a Nevada Federal District Court in 2007. In December 2008, Clark County adopted a new group home regulatory scheme that omitted the offending provisions. It is important to note that the Nevada Attorney General's office has indicated in writing to certain state legislators that the AG would not be enforcing those provisions of NRS 278 that were found to be invalid by the Nevada Supreme Court.

To ensure that the City's regulatory process is not in conflict with relevant federal laws, the Group Home Task Force utilized the County's new code as a starting point for ongoing discussions with the City's concerned constituents and the owners and operators of group homes. After many meetings, two of which were publicly noticed and well attended, the Group Home Task Force organized the comments from the constituents and the industry groups, and drafted the attached ordinance for your consideration.

Provided that there are no final comments from staff, or any comments provided by the City Council after briefings, the Group Home Task Force intends to distribute this draft ordinance to the people who appeared at the public meetings and to all neighborhood associations. Thereafter, the Group Home Task Force will schedule, advertise and hold a final community meeting in the City Council chambers for both the citizen constituency and industry folks on or about the third week of January, 2010 to collect final comments from both the concerned citizenry and the owners and operators of group homes. The Group Home Task Force is hopeful to forward the proposed ordinance to the Planning Commission in February and present the final ordinance to the City Council for consideration in March 2010.

The Executive Summary follows.

EXECUTIVE SUMMARY

The following changes to the Las Vegas Municipal Code are proposed:

1. Striking the following definition and use categories from Title 19:
 - a. Group Residential Care Facility
 - b. Individual Residential Care Facility
 - c. Halfway House for Recovering Alcohol and Drug Abusers
2. Adding the "Community Residence" definition and use category as a conditional use in U, R-A, R-E, R-D, R-CL, R-2, R-3, R-4, R-5 R-MH, R-MHP, O, C-1 and C-2. Community Residences may only be a part of O, C-1 and C-2 as part of a mixed use development.

3. “Community Residence” takes the place of Group Residential Care Facility, Individual Care Facility and Halfway House for Recovering Alcohol and Drug Abusers. In a nutshell, any use of a single family dwelling for the disabled between 5-10 persons is a conditional use, and such residences must be treated as residential structures for the purposes of fire and building codes, unless residents of such CR are unable to ambulate adequately, and then measures to address the safety of such non-ambulatory individuals consistent with the Fire Code and Building Code may be required.
4. Community Residences are specifically not:
 - a. Senior Citizen Apartment;
 - b. Adult Day Care Center;
 - c. Nursing Home;
 - d. Facility for Transitional Living for Released Offenders;
 - e. Facility to Provide Testing, Treatment or Counseling for Drug and Alcohol Abuse;
 - f. Hospice;
 - g. Sex Offender Counseling Facility;
 - h. Boarding or Rooming House;
 - i. Any other group living arrangement for unrelated individuals who are not disabled;
 - j. Any of the following as defined by NRS 449: Facilities for the Treatment of Drug and Alcohol Abuse; Modified Medical Detoxification Facilities; Transitional Living Facilities for Released Offenders; Facility for the Treatment of Narcotics; and Community Triage Center.
5. The 1500 foot separation requirement will be reduced to 660 feet.
6. The operator of a Transitional Community Residence must: require residents to be actively and continuously enrolled in an offsite support program; prohibit alcohol or drug abuse by residents; and provide evidence to the Code Enforcement Manager that residents are in compliance with this regulation, if requested.
7. 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.”
8. The fact that a person is sentenced or referred to a Transitional Community Residence by a judge, does not in itself establish that the person is a danger to other persons or property.
9. If a potential owner/operator of a Community Residence files for an SUP because the CR is within the established distance proximity to another, the City Council must approve the SUP unless: 1) the building to be used will be modified to make it inconsistent with the neighborhood scale and architectural character; 2) the number of CR on a street would create an institutional atmosphere; or 3) the CR would

not or does not comply with the certain conditional use conditions regarding life safety, licensure by the state, or the tenants would be a direct threat to others.

10. Conditional Use Verification forms to be required by the Director of Planning and Zoning for certain conditional uses, such as Community Residences.

11. Definition of “family” is changed to read:

“Family” means 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.

12. Striking “Group Residential Care Facility” from the Title 6 Business License fee requirement.

PRACTICAL EFFECT

1. Who will be the residents of a Community Residence? The disabled.

Family Community Residences will have as residents, for example, persons diagnosed with alzheimers, the blind, and persons diagnosed with terminal cancer, etc. where such uses do not otherwise fall into another specific land use category, such as nursing home or hospice. Transitional Community Residences will have as residents, for example, recovering alcoholics and recovering drug addicts. As a matter of law, the term “disabled” in the Community Residence context includes recovering alcoholics and recovering drug addicts, who are not using alcohol or illegal drugs.

2. What’s the practical effect of these amendments regarding occupancy by the disabled?

- a. Four or fewer unrelated individuals may live in a single-family residence as a matter of right, whether four or fewer college students, four or fewer friends or roommates, four or fewer alzheimer’s patients, or four or fewer recovering alcoholics.
- b. Five to ten unrelated individuals may live in a single-family residence as a conditional use, provided that the owner, operator or tenants comply with all conditional use regulations for Community Residences.
- c. This provision is unchanged by the amendments. Eleven or more unrelated individuals may only live in a Convalescent Care Facility, if a Special Use Permit is approved by the PC and CC. Convalescent Care Facilities are allowed by SUP in all residential zoning districts.

3. Is there a still a distance separation requirement between Community Residences?

Yes. Community Residences must be separated by 660 feet, measured door to door, along the nearest pedestrian or vehicular route, whichever is shorter, to qualify as a conditional use.

Practically, this means that the first Community Residence in a 660 foot circle is permitted as a matter of law as long as all other conditional use regulations are satisfied. If there is another community residence proposed within that 660 foot circle, then such proposed community residence must apply for a Special Use Permit and be approved to operate.

4. Why is the business license fee for Group Residential Care Facilities proposed for removal?

Similar to child care facilities, the State has “occupied the field” regarding the licensure for operation of certain types of congregate care homes, including, but not limited to “Group Residential Care Facilities” pursuant to NRS 449. Since the State licenses the operation of what the City will define as “Community Residences” for five persons and above, the State procedures for state licensure pre-empt the City’s ability to also license the operation of such homes.

In addition, for the purpose of federal anti-discrimination laws, the Community Residence use is not a business, but a single-family residence. The City may not charge a business license fee to the owner of a single-family dwelling rental who rents to the disabled, when in the same neighborhood an owner of single-family dwelling rental who rents to the non-disabled is not charged a business license fee.

There may be a business license fee that the City can consider that can be charged to any landlord of a single-family dwelling rental, which, if applied to each and every owner of single-family dwelling rental, regardless of the type of tenant, would not be a violation of federal anti-discrimination laws. The CAO will continue discussions with the Business License manager regarding such a non-discriminatory business license fee for owners of single-family dwelling rentals.

5. Why does this amendment allow large group home corporations to operate a business within residential neighborhoods?

Federal law, and the case law that has been reported over the last twenty years does not adequately differentiate between a single-family dwelling owned and rented/operated by a single person and a single-family dwelling owned and rented/operated by a corporation. Regarding the federal anti-discrimination laws, the only matter of importance is whether or not a municipality’s actions discriminate against the disabled.

If a large real estate company with 600 single-family dwelling units in its inventory is permitted as a matter of right to rent to the non-disabled in the City’s residential neighborhoods, this office would face an enormous challenge to reasonably defend an ordinance that would act to create additional hardships for

December 17, 2009

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a large group home company with 600 single family dwelling units in its inventory from renting such homes to the disabled.

The real question to be answered is this--why is the rental of an entire house by a real estate company legally similar to the operation of a house by a group home corporation such that the City cannot regulate the latter as a commercial use? The simplest answer is this--there is no relevant precedent that permits the CAO to reasonably defend such action, and based upon the current state of the law and the serious consequences that may accrue to the City for violating the federal anti-discrimination laws, it is not reasonable to, and the CAO cannot advise that the City of Las Vegas be a test case for the rest of the country as to whether a municipality can legally regulate a Community Residence as something other than a residential use.

Attachment

Memorandum

City of Las Vegas Office of the City Attorney

To: City of Las Vegas Group Home Task Force
Dr. Lisa Morris Hibbler, Deputy Director, Neighborhood Services Department
Stephen Harsin, Director, Neighborhood Services Department
Margo Wheeler, Director, Planning and Development Department
Chris Knight, Building Official
Greg Gammon, Fire Chief
James Carmany, Municipal Court Administrator

From: James B. Lewis, Deputy City Attorney

CC: Brad Jerbic, City Attorney
Bryan Scott, Assistant City Attorney
Betsy Fretwell, City Manager
Orlando Sanchez, Deputy City Manager
Scott Adams, Chief Urban Redevelopment Officer
Mark Vincent, Chief Financial Officer
Chief Municipal Court Judge Bert Brown

Date: June 12, 2009

Re: Federal laws relating to municipal regulation of group homes

INTRODUCTION

This memorandum is a general examination at the City's ability to regulate group homes pursuant to relevant state and federal law.

The impetus behind this examination of group home regulation comes from multiple sources. First, in December of 2008, the City Attorney's Office was asked to attend meetings of an established City Group Home Task Force, populated by City staffers from across many City departments--the Neighborhood Services Department, Code Enforcement, Planning and Development, Building and Safety and the Fire Department. This office was asked to provide advice to the Group Home Task Force on state and federal law regarding group homes. This memorandum acts to provide that advice.

Second, around December 2008, the Nevada Coalition of Recovery Homes, an industry group made up of owners and operators of a specific type of recovery home approached the Neighborhood Services Department to discuss its belief that the City was not properly regulating the industry it represents in accordance with federal law. This industry group has been invited to participate with City staff and interested neighborhood constituents when the City staff considers possible amendments to the City's group home regulatory scheme.

Third, in early 2009, at least one neighborhood constituent began to question why the City was not excluding group homes from residential neighborhoods. A neighborhood constituent complained that group homes were inappropriate commercial uses in residential neighborhoods, that the presence of these group homes lowered property values or surrounding homes and caused an inappropriate increase in vehicular traffic in and around residential neighborhoods. This office was asked by one Councilman to address the complaints of an unhappy neighborhood constituent, and this constituent has been invited to

participate with City staff and the group home industry members when the City staff considers possible amendments to the City's group home regulatory scheme.

Fourth, around that same time, the City was asked to provide a "reasonable accommodation" in accordance with the Fair Housing Amendments acts of 1988 (FHAA) to permit two particular recovery homes providing care for recovering alcoholics to continue to operate in the City of Las Vegas. The City is currently tolling its enforcement of current code as to these recovery homes until the City decides upon its direction for the appropriate regulation of group homes.

Next, in connection with certain recovery homes that accepted referrals from the City's Municipal Court system, the Chief Judge and Municipal Court administrator asked the City for guidance as to how certain recovery homes could obtain properly licensure by the City of Las Vegas so as to allow the courts to refer defendants to these recovery homes.

Last, while researching the law to address the growing number of questions, this office found that in 2007 a Nevada Federal District Court declared Clark County's group home regulatory process to be violative of federal law, and in 2008, that same Nevada Federal District Court declared the state law regulating group homes in violation of federal law and pre-empted by federal statute (void). Further, it has come to this office's attention that the Nevada Attorney General is no longer enforcing the state laws found to be pre-empted by federal law. At that point, this office suggested to City Management that the City toll its enforcement efforts against group homes alleged to be violating City code until such time as the City Group Home Task Force could properly review relevant state and federal laws and come up with recommendations for the City Manager's Office and the City Council regarding the City's compliance with federal law as it relates to the regulation of group homes, and possible amendments to City code to better comply with federal law.

This memorandum will examine the following specific topics:

- 1) the federal laws that act to limit the City's local regulation of group homes;
- 2) an examination of a 2007 Nevada Federal District Court case that found that Clark County's group home regulatory process violated federal law;
- 3) an examination of a 2008 Nevada Federal District Court case that found that state laws regulating group homes violated federal law;
- 4) an examination of federal case law as it relates to specific issues, such as the City's ability to utilize a special use permit process to regulate the existence of group homes; and
- 5) this memorandum will examine the City's current regulatory structure in light of the recent Nevada District Court rulings, and provide for consideration Clark County's recent amendment to its own code. This amendment is suggested as a starting point for a City discussion as to how the City should amend its code to better comply with federal law now that a Nevada Federal District Court has declared void the state law upon which City's group home regulation is substantially based.

FEDERAL LAWS AFFECTING THE CITY'S REGULATION OF GROUP HOMES

There are three federal statutes that directly affect the City's ability to regulate group homes. These three statutes are the Americans with Disabilities Act (ADA), the Federal Rehabilitation Act (FRA) and the Fair Housing Amendments Act of 1988, which amended the Fair Housing Act of 1968. (FHAA). Each of these statutes act to prohibit discrimination against disabled persons, and each of these statutes can be used as a separate cause of action against municipality when one is

alleging discriminatory treatment of the disabled.

For purposes of this memo, while each statute carries separate and distinct consequences if a finding of discrimination against disabled persons is made by a court of law, this memorandum will focus on the FHAA, as it is explicit in its prohibition in the discrimination of disabled persons in the housing context.

This section of the memorandum will explore the history and intent of the FHAA, as well as an overview of the law as it relates to municipalities and then an examination of specific issues relevant to municipal regulation of group homes as limited by the FHAA and the cases defining the scope of the FHAA.

History and Intent of the FHAA

CITY OF LAS VEGAS REGULATORY STRUCTURE

For purposes of this memo, the regulatory structure of each affected department will be addressed separately herein. The affected departments are Planning and Development, Building Safety, the Fire Department and Business Licensing.

The term “group home” is used generically by people when referring to a number of different types of “congregate living arrangements” and facilities for the care of individuals. One of the reasons for confusion among City staff, industry groups and neighborhood constituents as to how the City regulates this “group homes” is that there are so many different definitions. Throughout this memorandum, if the term group home is used, assume that it is used generically to refer to all types of group living and care arrangements. If it is necessary to delineate further, the specific type of congregate living arrangement or care arrangement will be noted.

Planning and Development

The land use regulatory scheme for group homes in the City of Las Vegas appears to be based primarily upon the statutory provisions of NRS 278.0238-278.02388. There are five major categories of group homes: 1) Group Residential Care Facilities; 2) Individual Residential Care Facilities; 3) Facilities for transitional living for released offenders; 4) Halfway houses for recovering alcohol and drug abusers; and 5) convalescent care facilities/nursing homes. Provided below are the definitions as delineated by the City Code, as well as a summary of the zoning classification.

Group Residential Care Facility

“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. CLVMC 19.20.020

Group Residential Care Facilities are conditional uses in the U, R-A, R-E, R-D, R-1, R-CL, R-2, R-3, R-4, and R-5 zoning districts, which means that as long as the following conditions are complied with by the owner/operator of the Group Residential Care Facility, no discretionary approval (Special Use Permit) is required. The conditions are as follows: