

SUBJECT: GROUP HOMES

REQUESTED: Council Member Lowe

PREPARED BY: Thomas Klinkner

DATE: May 8, 2001

FOR AGENDA OF: May 14, 2001

SUMMARY: In an opinion dated January 19, 2001, I provided a detailed explanation of the issues under the federal Fair Housing Act that are raised by the City's current approach to zoning for group homes. Ordinance Serial No. 01-31 would enact the revisions to the City's zoning ordinance that I recommended in that opinion. As stated in the opinion, these revisions have the following purposes:

- Reasonably accommodate living arrangements in the RR, R1 and R2 zoning districts for handicapped persons.
- Exclude from the RR, R1 and R2 zoning districts institutional living arrangements for persons other than the handicapped.
- Separately define and regulate group living arrangements for persons who are likely to pose a risk to public safety.
- Make the regulation of group living arrangements in the various zoning districts internally consistent.

The following are matters for the Council to consider in connection with this ordinance:

Maximum Dwelling Unit Occupancy. As my opinion explained, the Fair Housing Act prohibits discrimination in housing in general terms. It does not establish specific numerical standards concerning the number of residents in a facility that must be permitted by right to "reasonably accommodate" the handicapped. Writers and judicial decisions on this issue appear to indicate that the number of residents required for this accommodation ranges from 8 to 12. In addition, the number of unrelated handicapped persons permitted by right to occupy a dwelling may not be less than the number of related persons similarly permitted to occupy a dwelling. Because the Council has expressed a desire to minimize the intrusion of institutional uses into single family residential areas, the definition of "family" in the ordinance makes 8 the maximum number of persons (related or unrelated) who may occupy a single dwelling unit. If the Council finds that a maximum of 8 is unduly restrictive when applied to related persons, it may increase that maximum, provided that the increased number applies also to unrelated handicapped persons.

Facilities for Children. I understand that the original controversy over zoning for group homes arose in connection with a home for children. This ordinance does not specifically address homes for children as such. Under the ordinance as submitted, a

home for up to 8 handicapped children would be treated as a by right use, just as any other residence for up to 8 handicapped persons. A residence for children who have been referred from the criminal justice system would be treated as a correctional facility, and not permitted in residential zoning districts. A residence that houses up to 8 children who are neither handicapped nor delinquent still would be regulated as a group home. A separate provision of the Fair Housing Act prohibits discrimination in housing based on "familial status." Some courts have held that this provision protects residences for non-delinquent children who are wards of the state in the same manner that residences for the handicapped are protected. However, the case law on this question is not as well developed as that concerning residences for the handicapped.

FISCAL IMPACT: No Yes, amount requested: _____ Fund: _____

RECOMMENDED ACTION: Introduction and set for public hearing.

Administration Initial: SP

Attachments: None

Presented with: Ord 01-31 Sub
Date: 6/11/01 Verified by: yhv.