

TO: James L. App, City Manager  
FROM: Ronald Whisenand, Community Development Director  
SUBJECT: Code Amendment 09-001: Reasonable Accommodation  
DATE: July 7, 2009

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Needs: Consider supplemental information and either amend or adopt ordinance relating to housing policies (“reasonable accommodation”)

Facts:

1. The Council held a public hearing on June 16, 2009 to consider a draft ordinance relating to reasonable accommodations. The draft changes were required in order to comply with adopted City Housing Element policies (2004), changes in state and federal housing laws, and a California Supreme Court case involving the definition of a “family.”
2. The Council introduced the Ordinance, but requested the City Attorney offer up supplemental information on the City’s ability to regulate family size as well as provide alternative definition language for Council consideration.
3. According to the City Attorney (see attached memo), the City has limited flexibility in how we define a “family.” Three alternative definitions have been provided.

Analysis &  
Conclusion: Section 2 of the draft Ordinance, as introduced by the Council on June 16<sup>th</sup> contains the proposed definition of a “Family.” While the City may be precluded from limiting the size of a “family,” there are three alternative definitions that have been provided by the City Attorney. Those definitions are:

- “Family” means an individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.
- "Family" means one or more persons occupying a premises and living as a single housekeeping unit. "Single housekeeping unit" is in turn defined as: the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling

unit, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores, and expenses.

- “Family” means any group of individuals living together based on personal relationships. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, nunneries, residential care facilities or military barracks, nor does it include such commercial group living arrangements as boardinghouses, lodginghouses and the like.

The Council should feel free to either adopt the ordinance as introduced, or substitute one of the above definitions.

Policy

Reference: See staff report for June 16<sup>th</sup> public hearing

Options:

- a. Adopt Ordinance No. XXX N.S. amending the Zoning Code to establish a Reasonable Accommodation Ordinance, along with updating the City’s land use definitions to be in compliance with the Housing Element of the General Plan, Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.
- b. Reintroduce Ordinance No. XXX N.S, as modified, amending the Zoning Code to establish a Reasonable Accommodation Ordinance, along with updating the City’s land use definitions to be in compliance with the Housing Element of the General Plan, Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.
- c. Amend, modify or reject the foregoing options.

# Attachment 1 June 16th Report with Attachments

TO: JAMES L. APP, CITY MANAGER  
FROM: RON WHISENAND, COMMUNITY DEVELOPMENT DIRECTOR  
SUBJECT: CODE AMENDMENT 09-001: REASONABLE ACCOMMODATION  
DATE: JUNE 16, 2009

Needs: For the City Council to consider a City-initiated amendment to the Zoning Code to revise the regulations to allow for reasonable accommodation.

- Facts:
1. The Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities and equal opportunity to housing.
  2. To implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, the Housing Element of the General Plan includes Policy H-1B and Action Item 8, which state:

**POLICY H-1B:** Range of Housing Opportunities. Cooperate with private housing developers, nonprofit housing sponsors, and public agencies to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.

**Action Item 8.** Amend the Zoning Code to provide a means by which development standards such as setbacks, projections into yards, and heights of graded slopes and/or retaining walls might be modified either by staff (Plot Plan Review) or by the Development Review Committee (Site Plan Review) where no other means exist to make a dwelling accessible to a disabled person.

3. Additionally, in *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), the California Supreme Court ruled that definitions of “family”, such as those in Section 21.08.170, which made a distinction between related and unrelated persons in setting occupancy limits for single family homes, violated the right to privacy in the State Constitution which encompasses the right to choose with whom one lives.
4. Code Amendment 09-001 would amend the necessary Zoning Code sections to accommodate Policy H-1B and Action Item 8 of the Housing Element of the General Plan and to redefine “family” in order to conform with the Supreme Court’s decision in *City of Santa Barbara v. Adamson*.
5. Public Resources Code Section 21080.17 provides that adoption of an ordinance to implement the provisions of Government Code Sections 65852.1 and/or 65852.2 are not subject to environmental review under the California Environmental Quality Act (CEQA).

6. The Planning Commission on May 12, 2009, reviewed this request for a Code Amendment and unanimously recommended that the City Council adopt the Ordinance approving the Code Amendment 09-001.

Analysis and  
Conclusion:

Code Amendment 09-001 would amend the Zoning Code in the following ways:

- A. Add a new Section 21.20A Reasonable Accommodation;
- B. Update the Land Use Matrix (Table 21.16.200) to add to and revise uses dealing with housing;
- C. Update Section 21.08 Definitions, to add to and revise definitions related to family as follows:

- Replace the current definition of family:

*“Family” means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores.”*

With the following definition which would conform with the Supreme Court’s decision in *City of Santa Barbara v. Adamson* as follows:

*“Family” means an individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, residential care facilities or military barracks, nor does it include such commercial group living arrangements as boardinghouses, lodginghouses, and the like.*

- Add a new definition for “Group Care Home” as follows:

*Group Care Home. A residential care facility for six or fewer residents which is licensed or supervised by any federal, state, or local agency which provides housing and nonmedical care for children, elderly persons, or physically and mentally handicapped persons in a family-like environment.*

*Group care homes includes the following:*

- (a) *An intermediate care facility, developmentally disabled habilitative and intermediate care facility/ developmentally disabled-nursing or congregate living facility as identified in state of California Health and Safety Code sections 1267.8 and 1267.16;*
- (b) *A community care facility as indentified in state of California Health and Safety Code section 1566.3;*

- (c) *An alcoholism or drug abuse recovery or treatment facility as identified in state of California Health and Safety Code section 11834.02;*
- (d) *Use of property for state-authorized, certified, or licensed family care home, foster home, of group home housing for six or fewer persons afflicted with mental disorders or handicaps or dependent and neglected children, and providing care 24 hours per day, pursuant to California (Welfare & Institutions Code Section 5116);*
- (e) *Residential care facilities for the elderly and for persons with chronic life threatening illness pursuant to California Health & Safety Code Sections 1568.0831 and 1569.85;*
- (f) *Pediatric day health and respite care facilities pursuant to California Health & Safety Code Section 1760 et seq.*

*The definition of "group care home" does not include homeless shelters, half-way houses for parolees or convicted persons, or living groups as defined in this chapter.*

- Add a new definition for "Living Groups" as follows:

*"Living Groups". Organized living groups are organizations, clubs or associations (such as fraternities, sororities or co-operatives) that include as a principal purpose the sharing of a residence by members.*

By amending the Zoning Code to include the Reasonable Accommodation Ordinance and redefine and add definitions related to "family" as suggested, Policy HB-1 and Action Item 8 of the Housing Element of the General Plan would be implemented, which would also implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act.

Policy

Reference:

General Plan: Housing Element; Government Code Section 65852.2

Fiscal

Impact:

None

Options:

After consideration of all public testimony, that the City Council consider the following options:

- a. Introduce the attached Ordinance amending the Zoning Code to establish a Reasonable Accommodation Ordinance, along with updating the City's land use definitions to be in compliance with the Housing Element of the General Plan, Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, and set July 7, 2009 for adoption.
- b. Amend, modify or reject the foregoing options.

Prepared by Darren Nash and Ed Gallagher

Attachments:

1. Ordinance Amending the Zoning Code to Establish Regulations for Reasonable Housing
2. Newspaper Notice

DARREN\CODE AMEND\REASONABLE ACCOMMODATION\CCR 061209

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
AMENDING SECTION 21.08, DEFINITIONS AND TABLE 21.16.200,  
PERMITTED LAND USE MATRIX OF THE MUNICIPAL CODE,  
ADDRESSING REASONABLE ACCOMMODATION HOUSING

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WHEREAS, the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing; and

WHEREAS, to implement the Federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act, the Housing Element of the City's General Plan includes Policy H-1B and Action Item 8, which state:

**POLICY H-1B: Range of Housing Opportunities.** Cooperate with private housing developers, nonprofit housing sponsors, and public agencies to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.

**Action Item 8.** Amend the Zoning Code to provide a means by which development standards such as setbacks, projections into yards, and heights of graded slopes and/or retaining walls might be modified either by staff (Plot Plan Review) or by the Development Review Committee (Site Plan Review) where no other means exist to make a dwelling accessible to a disabled person.

WHEREAS, Ordinance 405 N.S., adopted in 1977, included Section 21.08.170, which defined “family” as follows:

“ ‘Family’ means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores.”; and

WHEREAS, in *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), the California Supreme Court ruled that definitions of “family” that distinguish between related and unrelated persons for the purpose of setting occupancy limits for single family homes, violated the constitutional right to privacy, which encompasses the right to choose with whom one lives; and

WHEREAS, Section 21.08.170 of the Municipal Code is not in accord with the holding in *City of Santa Barbara v. Adamson*; and

WHEREAS, the City filed Code Amendment 09-001 both to amend the necessary Zoning Code sections to accommodate Policy H-1B and Action Item 8 of the Housing Element of the City's General Plan and to redefine “family” in accordance with the California Supreme Court's decision in *City of Santa Barbara v. Adamson*; and

WHEREAS, this Zoning Ordinance Amendment would add to, and revise, existing definitions pertaining to housing; and

WHEREAS, this Zoning Ordinance Amendment would update the Land Use Matrix (Table 21.16.200) to accommodate the additions to, and revisions of, existing definitions pertaining to housing; and

WHEREAS, this Zoning Ordinance Amendment would add Section 21.20A, on Reasonable Accommodation, to the City's Municipal Code; and

WHEREAS, at a meeting held on May 12, 2009, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Recommended that the City Council approve the proposed ordinance; and

WHEREAS, based on information received at its meeting on June 16, 2009 the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Considered the Planning Commission's recommendation from its May 12, 2009 public meeting;
- d. Introduced said ordinance for the first reading; and

WHEREAS, on July 7, 2009 the City Council held a second reading of said ordinance.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

SECTION 1. City Council Findings.

The City Council finds that:

- a. It is necessary to amend the Zoning Ordinance in order to comply with Policy H-1B and Action Item 8 of the Housing Element, which requires the City to promote and expand housing opportunities for all segments of the community;
- b. It is necessary to amend the Zoning Ordinance's definition of "family" in accordance with the California Supreme Court's decision in *City of Santa Barbara v. Adamson*; and
- c. The proposed amendment would further an important policy of the City's General Plan, which is to promote and expand housing opportunities for all segments of the community, recognizing such factors as income, age, family size, and mobility.



SECTION 2: Section 21.08.170 of the Zoning Ordinance is hereby amended to read as follows:

**21.08.170 Family.**

~~“Family” means parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals and chores. (Ord. 405 N.S. § 2 (part), 1977)~~

“Family” means an individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food and/or rent. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, residential care facilities or military barracks, nor does it include such commercial group living arrangements such as boardinghouses, lodginghouses, and the like.

SECTION 3: Section 21.08.217 is added to the Zoning Ordinance to read as follows:

**21.08.217 Group Care Homes.**

“Group Care Home”. A residential care facility for six or fewer residents which is licensed or supervised by any federal, state, or local agency which provides housing and nonmedical care for children, elderly persons, or physically and mentally handicapped persons in a family-like environment.

Group care homes include the following:

- (a) An intermediate care facility, developmentally disabled habilitative and intermediate care facility/developmentally disabled-nursing or congregate living facility pursuant to California Health and Safety Code sections 1267.8 and 1267.16;
- (b) A community care facility as identified in California Health and Safety Code section 1566.3;
- (c) An alcoholism or drug abuse recovery or treatment facility as identified in California Health and Safety Code section 11834.02;
- (d) Use of property for state-authorized, certified, or licensed family care home, foster home, or group home housing six or fewer persons afflicted with mental disorders or handicaps or dependent and neglected children, and providing care 24 hours per day, pursuant to California Welfare and Institutions Code section 5116;
- (e) Residential care facilities for the elderly and for persons with chronic life threatening illness pursuant to California Health & Safety Code sections 1568.0831 and 1569.85;
- (f) Pediatric day health and respite care facilities pursuant to California Health & Safety Code section 1760 et seq.

The definition of "group care home" does not include homeless shelters, half-way houses for parolees or convicted persons, or living groups as defined in this chapter.

SECTION 4: Section 21.08.265 is added to the Zoning Ordinance to read as follows:

**21.08.265 Living Groups.**

“Living Groups”. Organized living groups are organizations, clubs or associations (such as fraternities, sororities or co-operatives) that include as a principal purpose the sharing of a residence by members.

SECTION 5: Table 21.16.200 of the Zoning Ordinance is hereby amended by the changes set forth in Exhibit A.

SECTION 6: Chapter 21.20A, on Reasonable Accommodation, set forth in Exhibit B, is added to the Zoning Code.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 8. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 9. Inconsistency. To the extent that the terms or provisions of this ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof, such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

Introduced at a regular meeting of the City Council held on June 16, 2009, and passed and adopted by the City Council of the City of El Paso de Robles on the 7<sup>th</sup> day of July, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Duane Picanco, Mayor

ATTEST:

\_\_\_\_\_  
Cathy David, Deputy City Clerk

**Exhibit A**

TABLE 21.16.200  
(As amended through Ordinance 934 N.S.)  
PERMITTED LAND USES FOR ALL ZONING DISTRICTS

EXPLANATION OF CODES USED IN THIS CHART

- P (permitted use) denotes a land use which is permitted.
- C (conditional use) denotes a land use which requires approval of a conditional use permit (CUP).
- N (non-permitted use) denotes a land use which is not permitted.
- T (temporary use permit) denotes a land use which requires approval of a temporary use permit per Chapter 21.23C.

NOTES:

1. All uses are subject to compliance with the general regulations and performance standards contained within Chapters 21.20 and 21.21, and specific limits and/or restrictions contained in chapters for specific zoning districts. Additionally, there may be limits and restrictions within overlay zoning districts and specific plan areas.
2. Any use not specifically listed below is not permitted unless the Planning Commission determines a particular land use to be similar to another permitted, conditional or temporary use within a particular zoning district.

LAND USE	ZONING DISTRICT																		
	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS	
<b>A. Agriculture &amp; Animal Keeping...</b>																			
<b>B. Residential</b>																			
1. Boardinghouse, roominghouse	N	N	N	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N
...																			
5. <del>Group homes (convents, fraternities, sororities)</del>	N	N	N	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N
5. Living Groups (as defined by Section 21.08.265)	N	C	C	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N
6. Group care homes (as defined by Section 21.08.217)	N	P	P	P	P	P	P	P	N	N	N	N	N	N	N	N	N	N	N
7. Home occupation business per Section 21.23.070	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
...																			

**Exhibit B**

**Chapter 21.20A**

**REASONABLE ACCOMMODATION**

**Sections:**

<b>21.20A.010</b>	<b>Purpose</b>
<b>21.20A.020</b>	<b>Applicability</b>
<b>21.20A.030</b>	<b>Information Required</b>
<b>21.20A.040</b>	<b>Process</b>
<b>21.20A.050</b>	<b>Action on Application, Criteria, Findings, Appeal</b>
<b>21.20A.060</b>	<b>Rescission of Grants of Reasonable Accommodation</b>
<b>21.20A.070</b>	<b>Fees</b>

**21.20A.010 Purpose.**

It is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation in rules, policies, practices, and procedures for persons with disabilities seeking fair access to housing. The City also recognizes the importance of sustaining and enhancing neighborhoods. In determining whether a requested modification in rules, policies, practices, and procedures is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purpose of its existing zoning or subdivision regulations. The purpose of this chapter is to provide a process for individuals to request reasonable accommodation in regard to relief from the City's various land use, zoning, or building rules, policies, practices, and procedures, and for the City to evaluate such requests.

**21.20A.020 Applicability**

- A. Any person lacking fair housing opportunities due to the disability of existing or proposed residents, may request a reasonable accommodation in the City's rules, policies, practices, and procedures. This request for reasonable accommodation shall be made on a form prescribed by the City for that purpose.
- B. If, pursuant to this title, the project for which the request is being made requires an application for an additional approval, permit or entitlement, the applicant shall file the request for reasonable accommodation along with such additional application for approval, permit or entitlement.
- C. An applicant seeking reasonable accommodation pursuant to this chapter may seek an accommodation that is also available under other provisions allowing for modifications of otherwise applicable standards under this title. In such case, an accommodation under this chapter shall be in lieu of any approval, permit or entitlement that would otherwise be required.
- D. An applicant submitting a request for reasonable accommodation pursuant to this chapter may request an accommodation not otherwise available under this title.

**21.20A.030 Information Required.**

In addition to any other information that is required under this title, an applicant submitting a request for reasonable accommodation shall provide the following information:

- A. Applicant's name, address and telephone number;
- B. Address of the property for which the request is being made;

- C. The current actual use of the property;
- D. The code provision, regulation(s), policy, or procedure for which accommodation is requested;
- E. A statement describing why the requested accommodation is reasonably necessary to make the specific housing available to the applicant, including information establishing that the applicant is disabled under applicable laws. Any information related to a disability status and identified by the applicant as confidential shall be retained in a manner so as to respect the applicant's privacy rights and shall not be made available for public inspection;
- F. Such other relevant and permissible information as may be requested by the Community Development Director or his or her designee.

**21.20A.040 Process.**

- A. If an application filed pursuant to this chapter is filed along with an application for an additional approval, permit or entitlement pursuant to this title, it shall be heard and acted upon at the same time, in the same manner, and in accordance with the same procedures, as such additional application. If an application filed pursuant to this chapter is filed along with more than one additional application pursuant to this title, the Zoning Administrator shall determine the appropriate procedure to evaluate the applications.
- B. If an application filed pursuant to this chapter is the only application filed by the applicant, it shall be heard and acted upon at the same time, in the same manner, and in accordance with the same procedures, as the application that would normally be required to modify the code provision that the application seeks to modify, as determined by the Zoning Administrator.

**21.20A.050 Actions on Application, Criteria, Findings, Appeal**

- A. The Zoning Administrator shall have the authority to consider and act on requests for reasonable accommodation.
- B. An application filed pursuant to this chapter may be approved, approved subject to conditions, or denied.
- C. The following factors shall be considered in making a determination regarding an application filed pursuant to this chapter:
  1. Need for the requested modification, including alternatives that may provide an equivalent level of benefit;
  2. Physical attributes of, and any proposed changes to, the subject property and structures;
  3. Whether the requested modification would impose an undue financial or administrative burden on the City;
  4. Whether the requested modification would constitute a fundamental alteration of the City's zoning or building laws, policies, procedures, or subdivision program;

5. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood;
  6. Any other factor that may bear on the request.
- D. Any decision on an application filed pursuant to this chapter shall be supported by written findings and conclusions addressing the criteria set forth in this section, and shall be subject to appeal pursuant to Chapter 21.23A. The Zoning Administrator shall issue a written determination to the applicant, which shall include notice of the right to appeal the determination.

**21.20A.060 Rescission of Grants of Reasonable Accommodation**

Any approval or conditional approval of an application filed pursuant to this chapter may provide for its rescission or automatic expiration under appropriate circumstances.

**21.20.A.070 Fees.**

There shall be no fee in connection with the filing of a request for reasonable accommodation. If the request for reasonable accommodation is filed concurrently with an application for an additional approval, permit or entitlement, the applicant shall pay only the fee for the additional approval, permit or entitlement.

# Attachment 2 City Attorney Memo

## Memorandum

Iris P. Yang  
Attorney at Law

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**DATE** June 23, 2009

**TO** Mayor Duane Picanco, Councilmembers Nick Gilman, John Hamon, Ed Steinbeck and Fred Strong

**FROM** Iris Yang, City Attorney

**RE** City Council Questions Concerning the Definition of "Family" and the Scope of "Employee Housing"

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When proposed Ordinances 958 and 959 were discussed at the last City Council meeting, the Council expressed concern regarding two issues:

- A. The proposed new definition of "family," which removes the limitation the old definition placed on the number of unrelated persons that could reside in one household.
- B. With respect to employee housing, the City Council would like to clarify whether a dwelling limited in occupancy to 6 "employees" must allow the family members of those 6 employees to reside in the same dwelling.

### DISCUSSION

#### A. Definition of "family"

The reasons for the proposed change in the definition of "family" is based on a decision from the California Supreme Court (and related cases) that held that an ordinance's definition of "family" cannot make a distinction between related and unrelated persons that choose to live together. The pertinent case concerned a city ordinance that defined "family" as either "[a]n individual, or two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit..." **or** "[a] group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit." *Santa Barbara v. Adamson*, 27 Cal.3d 123, 127 (1980). In that case, a group of 12 adults, who were not related by blood, marriage, or adoption, were prohibited from residing in a very large home located in a single-family zone because they did not fit within

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the ordinance's definition of "family." *Id.* The court noted that their household illustrates the type of living arrangement that the ordinance's rule-of-five prohibits.

The court highlighted the close relationships that the individuals within the group have developed with one another. The individuals living together "have become a close group with social, economic, and psychological commitments to each other." *Id.* at 127. Furthermore, "[t]hey share expenses, rotate chores, and eat evening meals together." Some have contributed money towards improving the house. Also, "[e]motional support and stability are provided by the members to each other; they enjoy recreational activities...together; they have chosen to live together mainly because of their compatibility." *Id.* at 127-28.

Because the individuals did not constitute a "family" as defined by the zoning ordinance, they were foreclosed from living together in a one-family, two-family, or multiple-family dwelling. If they wanted to continue to live together, the ordinance provided them with three options: (1) if some were accepted as masters, the others could sign on as servants (since the second definition of "family" excludes servants from the number of unrelated people that may reside together - the court did, however, question the legality of such an arrangement); (2) they might obtain a conditional use permit to maintain a boarding house in another zone; or (3) they might apply for a zoning variance. *Id.* at 129.

Taking into account the constitutional right to privacy, the court first examined whether the city had a compelling public interest to restrict communal living. To that end, the court turned to the intent of the zoning ordinance, to see if the ordinance's rule-of-five truly and substantially helped to fulfill its goals. The court questioned whether "the preservation of a residential environment" was dependent on a blood, marriage, or adoption relationship among the residents of a household, or whether transiency was determined by the lack of such relationships. *Id.* at 132. With respect to pronouncements of "low density," the court noted that the ordinance only limits the number of unrelated residents, not the number of related residents or of servants. Thus, the definition of "family" did "not appear to have been designed to prevent overcrowding, which may be a legitimate zoning goal." *Id.*

The court decided that the city's zoning goals could be furthered by means that are less restrictive than the rule-of-five, noting that "zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users." *Id.* at 133. For example:

- Residential character → can be preserved by restrictions on transient and institutional uses such as hotels, motels, boardinghouses, etc.
- Population density → can be regulated by reference to floor space and facilities.



- Noise and morality → can be dealt with by enforcement of police power ordinances and criminal statutes.
- Traffic and parking → can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements.

It is important to note that the court did not address the question of how many people should be allowed to live in one house. It "merely h[e]ld invalid the distinction effected by the ordinance between (1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons." *Id.* at 134.

In a similar case, the City of Chula Vista sought to abate as a nuisance religious family households that consisted of up to 24 unrelated individuals living in single-family dwellings, in violation of the city's zoning ordinance. *City of Chula Vista v. Pagard*, 115 Cal.App.3d 785, 787 (1981). The groups did not meet the city's definition of "family." The ordinance defined "family" as including two or more related persons, or a group of not more than three unrelated persons. *Id.* at 789.

Unlike the household at issue in *Adamson*, the dwellings in this case were in fact overcrowded. *Id.* at 791. The court noted that *Adamson* does not preclude a zoning ordinance that is designed to prevent overcrowding, nor does it "preclude Chula Vista from redefining 'family' to specify a concept more rationally and substantially related to the legitimate aim of maintaining a family style of living." *Id.* at 792. Since the ordinance did not directly address the problem of overcrowding, it was deemed invalid. *Id.* at 793. The court recognized, however, that the city could "enact a properly drawn ordinance regulating the number of occupants..." to prevent overcrowding, alleviate parking concerns, and the like, as "[a]n ordinance which limits population density directly, tying the maximum permitted occupancy in a dwelling to the habitable floor area is one specifically addressed to the problem of overcrowding." *Id.* (quoting *Moore v. East Cleveland*, 431 U.S. 494 (1977)).<sup>1</sup>

The City's current definition of "family" is problematic because it is similar to the definition held invalid in *Adamson*. It is currently defined as "parents and children or not more than five unrelated individuals living together as a family and sharing household expenses, meals, and chores." 21.08.170. Given the ruling in *Adamson*, it is unlikely that the City would be able to limit the number of unrelated individuals living in one house, so long as those individuals "operated" like a traditional family.

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<sup>1</sup> The City may be limited by the Uniform Housing Code in its ability to increase the square footage requirements for dwelling units. See *Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378 (1992), holding that the Uniform Housing Code preempts local occupancy ordinances generally. While a city may enact occupancy standards that differ from those set forth in the Uniform Housing Code, specific procedures must be followed, and certain findings must be made, to accomplish such local regulation.

Definitions of "family" adopted by other cities are similar including:

- An individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.
- "Family" means one or more persons occupying a premises and living as a single housekeeping unit. "Single housekeeping unit" is in turn defined as: the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores, and expenses. (City of San Jose)
- "Family" means any group of individuals living together based on personal relationships. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, nunneries, residential care facilities or military barracks, nor does it include such commercial group living arrangements as boardinghouses, lodginghouses and the like. (City of Long Beach)

#### **B. Employee housing**

The City Council also inquired as to whether a dwelling limited in occupancy to 6 "employees" must allow the family members of those 6 employees to reside in the same dwelling. This would seem to be contrary to occupancy standards and may lead to overcrowding. We do not believe that an employee's family members are allowed to live in such housing.

Employee housing is regulated under the Employee Housing Act, commencing with Health & Safety Code Section 17000. Employee housing is housing that meets the definitions set forth in Section 17008. Notably, those wishing to operate employee housing must obtain a permit to do so, subject to certain exceptions. § 17030. Local use zone requirements are left to local agencies "[e]xcept as provided in Section 17021.5 and 17021.6...." § 17021(a).

The Council's concern appears to stem from Section 17021.5.<sup>2</sup> That section basically provides that employee housing that serves six or fewer employees must be treated like any other single-family structure. Specifically, "[a]ny employee housing providing accommodations for six or fewer employees shall be deemed a single-family structure with a residential land use designation for the purposes of this

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<sup>2</sup> The section begins by providing that "[a]ny employee housing which has qualified, or is intended to qualify, for a **permit to operate**...may invoke the provisions of this section." (emphasis added).

section." § 17021.5(a). Moreover, local regulations cannot include this housing within the definition of "boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling." Additionally, local government may not require a conditional use permit, zoning variance, or other zoning clearance of employee housing that houses 6 or fewer employees that is not required of a family dwelling of the same type in the same zone. § 17021.5(b).

We believe that this section does not allow family members of those employees must be allowed to reside in the same dwelling. Section 17009.5 specifies that "person" may be used interchangeably with "employee." Furthermore, "[t]hose terms are used interchangeably when the context does not imply an employer or an owner of employee housing." § 17009.5(b), emphasis added. If the Legislature had intended to include an employee's family within the definition of "employee," it would have so stated. Moreover, allowing family members to live in such housing would create a number of other potential public health, safety and privacy issues.

Please let me know if you have any further questions.