

DATE ISSUED: August 30, 2007

REPORT NO. PC - 07-150

ATTENTION: **Planning Commission, Agenda of September 6, 2007**

SUBJECT: Rooming House Ordinance [0-2007-158], Project No. 137077

SUMMARY

Issue: Should the Planning Commission vote to recommend, for adoption by City Council, the proposed Rooming House Ordinance [0-2007-158]?

Staff Recommendation:

1. **Certify** that the proposed Rooming House Ordinance [0-2007-158] is exempt from CEQA pursuant to State CEQA Guidelines Sections 15061(b)(3) and 15378 (a)(1).
2. **Recommend** to City Council adoption of the proposed Rooming House Ordinance [0-2007-158].

Community Planning Group Recommendation: There are no formal community planning group recommendations; however, the City Attorney's office has presented the proposed Rooming House Ordinance [O-2007-158] to the Community Planners Committee, and to the following recognized community planning groups: City Heights Area Planning Committee, College Area Community Council, Ocean Beach Planning Board, Pacific Beach Community Planning Committee, Peninsula Community Planning Board, Uptown Planners, Tierrasanta Community Council.

In addition, the Eastern Area Planning Committee, the Navajo Community Planners, Inc., and the Mission Beach Precise Planning Board have scheduled, respectively, the City Attorney on upcoming agendas to review the Rooming House Ordinance [O-2007-158] before the matter is moved for consideration by City Council.

Environmental Review: The Rooming House Ordinance [0-2007-158] is exempt from CEQA pursuant to State CEQA Guidelines § 15061(b)(3) and State CEQA Guidelines § 15378(a)(1).

Fiscal Impact Statement: None.

Code Enforcement Impact: In the short-term, adoption of the proposed Rooming House Ordinance [0-2007-158] can be reasonably expected to produce no change in the number or type

of requests for code enforcement because the ordinance includes an amortization period [O-2007-158, § 131.0424] that will not phase out pre existing, non conforming rooming houses until seven years after the ordinance is adopted. In the long run, as rooming houses are no longer established or developed in residential-single (RS) unit zones, and as pre existing, non conforming rooming houses are phased out, the ordinance can be reasonably expected to reduce the number and type of requests for code enforcement typically generated presently by rooming houses, especially in residential-single (RS) unit zone neighborhoods currently supporting numerous rooming houses.

Housing Impact Statement: The Rooming House Ordinance [O-2007-158] is consistent with the housing elements and housing density limits contained in City of San Diego General Plan, the General Plan Strategic Framework Element, and the City's community plans because the ordinance regulates neither housing density nor occupancy limits, and neither increases or decreases the housing inventory of the City of San Diego. Further, because the Rooming House Ordinance [O-2007-158] does not propose to develop new housing or regulate the physical development of housing, the Inclusionary Housing Ordinance does not apply.

The Rooming House Ordinance [O-2007-158] will not cause the loss of rental units in the City of San Diego. The number of rental units and the number of bedrooms will not change. The rooming house market caters to individuals and small groups renting individual bedrooms. The multiple-dwelling unit market caters to individuals and small groups, who rent studios and smaller apartments, but it also includes larger groups who rent larger apartments. The rooming house market will shift from single residential zones to multiple residential zones. This will cause increased competition for studios and smaller apartments. However, this competition will be offset to some degree as former rooming houses become whole house rentals and larger apartments become rooming houses. Moreover, the Rooming House Ordinance [O-2007-158] includes a seven-year phase out period during which it is anticipated that additional rental units will be built that cater to critical segments of the rooming house market.

BACKGROUND: On September 19, 2006, Councilman Jim Madaffer hosted a public workshop on the commercial overuse of single dwelling units leased as rooming houses in residential-single (RS) unit zones. It was attended by over 300 residents and community leaders, and resulted in the councilman requesting in an October 11, 2006 memorandum to the Mayor and City Attorney, an analysis of possible changes City Council could make to the San Diego Municipal Code to remedy the problem.

In response, on November 20, 2006, the City Attorney issued a report (RC 2006-30) to the Land Use and Housing Committee analyzing numerous aspects and potential approaches to this issue. Importantly, the memo reported a California Attorney General opinion (86 Op. Cal. Att'y. Gen. 30 (2003)) regarding a proposed rooming house ordinance, similar to the one being proposed here, that restricted the operation of rooming houses in a city's residential-single (RS) unit zone. The opinion concluded the ordinance would be a permissible use of the city's police powers, where the stated rationale of the ordinance was to preserve the residential character of the neighborhood, and where the ordinance focused on the commercial use of the property as being inconsistent with the residential character of the neighborhood.

Thereafter public interest in this matter grew. On November 29, 2006 and March 7, 2007, the Land Use and Housing Committee conducted hearings on the issue, and between these two hearings, on December 11, 2006, Councilman Scott Peters wrote a memorandum to the Mayor, requesting that whatever action the City ultimately decides to take to solve the problem be applied citywide. On May 10, 2007, the City Attorney, and Councilmen Jim Madaffer and Kevin Faulconer hosted a public forum on this issue, led by a panel of numerous City officials, and leaders from the three largest local universities, and attended by over 200 residents and community leaders. Public testimony was almost uniformly in support of an approach that would include a rooming house ordinance as a means to protect the quality of life in residential-single (RS) unit zones.

Then, on July 9, 2007, the City Attorney introduced a draft rooming house ordinance, as an informational item to the City Council [Council Meeting Docket, July 9, 2007, Item-201] whereupon City Council unanimously approved a motion to have the City Attorney finalize a rooming house ordinance for its formal consideration in early fall 2007. Since July 9, 2007, the City Attorney's office has presented the proposed Rooming House Ordinance [O-2007-158] to the Community Planners Committee, and to the following recognized community planning groups: City Heights Area Planning Committee, College Area Community Council, Ocean Beach Planning Board, Pacific Beach Community Planning Committee, Peninsula Community Planning Board, Uptown Planners, Tierrasanta Community Council.

The Rooming House Ordinance [O-2007-158] is docketed to be formally heard and considered by City Council on October 8, 2007.

DISCUSSION

Project Description:

The proposed Rooming House Ordinance [O-2007-158] includes amendments to the Land Development Code (Chapter 11, Article 3; Chapter 12, Articles 6 and 7; Chapter 13, Article 1; and Chapter 14, Article 2) and the Local Coastal Program. Amendments would be applicable to zones citywide.

The objective is to halt the commercial overuse of single dwelling units leased as rooming houses in residential-single (RS) unit zones. This will preserve neighborhood quality, character, and livability, will improve the land use compatibility of impacted parcels with the purpose of residential-single (RS) unit zones, and will more appropriately locate rooming houses in neighborhoods with similar densities and characteristics, compatible with residential-multiple (RM) unit zones and in appropriate commercial zones.

In summary, the RHO does the following:

- 1) Defines for the first time the term “rooming house” as a specific residential dwelling type [O-2007-158, § 113.0103].
- 2) Creates a new land use residential subcategory for rooming houses [O-2007-158, § 131.0112(a)(3)(A)].
- 3) Regulates rooming houses separately from other land uses. Specifically, it establishes a phase out period and a review process for non conforming uses, and assigns use specific parking ratios.
 - a. The amortization or phase out period is seven-years for pre existing, non conforming rooming houses [O-2007-158, § 131.0424].
 - b. The review process for non conforming uses establishes an abandonment period of 12 months requiring a Neighborhood Use Permit/Process 2 [O-2007-158, § 127.0108].
 - c. The residential-multiple dwelling unit parking ratios for rooming houses apply at one space per two roomers, except in parking impact overlay zones where the ratio doubles to one per roomer, and where a lower ratio applies for very low income and transit areas [O-2007-158; § 142.0525].
- 4) Prohibits the location of rooming houses in residential-single (RS) unit zones [O-2007-158, § 131.0422] but allows them in residential-multiple (RM) unit zones, and also allows them in the commercial zones that are currently designated as compatible with residential uses. [O-2007-158, § 131.0522].
- 5) Supersedes the residential land use category for Group Living Accommodations [O-2007-158, § 131.0112(a)(3)(A)].

It should be noted that the base zoning and parking requirements for Rooming Houses closely mirrors these requirements as applied to the residential land use subcategory for Boarder and Lodger Accommodations, except that the Rooming House is designated as a permitted use.

Community Plan Analysis: The Rooming House Ordinance [O-2007-158] will not result in any amendment, modification, or change to the City of San Diego General Plan, the General Plan Strategic Framework Element, or to any of the City’s community plans. The Rooming House Ordinance [O-2007-158] merely translocates rooming houses from residential-single unit zones to residential-multiple unit zones and where appropriate, select commercial zones. The Rooming House Ordinance [O-2007-158] does not change land use densities, does not regulate physical development, does not change occupancy limits on dwelling units, which are governed by California Uniform Housing Code § 503.2, and does not propose to zone or rezone any property within the City. For the foregoing reasons the Rooming House Ordinance [O-2007-158] is consistent with the City of San Diego General Plan, General Plan Strategic Framework Element, and the City’s community plans.

Environmental Analysis: The Rooming House Ordinance [0-2007-158] is exempt from CEQA pursuant to State CEQA Guidelines § 15061(b)(3), because the ordinance will have no significant affect on the environment; and pursuant to State CEQA Guidelines § 15378(a)(1), because the ordinance upon adoption will not result in any change to the physical environmental.

Project-Related Issues:

Issue 1: Will Residential Care Facilities or Transitional Housing be regulated by the ordinance?

Issue 2: Why is the proposed amortization or phase out period seven years for pre existing, non conforming rooming houses?

Conclusion:

Issue 1: The Rooming House Ordinance [O-2007-158] does not supercede existing municipal regulations that apply to Residential Care Facilities (San Diego Municipal Code § 141.0312) and Transitional Housing Facilities (San Diego Municipal Code § 141.0313). Rooming Houses will constitute a new residential land use subcategory whereas Residential Care Facilities and Transitional Housing Facilities are both already regulated under the subcategory for Separately Regulated Residential Use. Regulations for a particular separately regulated use control where the use regulations for another use subcategory may match that particular use. San Diego Municipal Code § 131.0112(b).

Issue 2: The City Attorney, based on review of the case law, is recommending a conservative approach to the amortization or phase out period. However, the Planning Commission may balance the public interest against the private harm and recommend to City Council that different length of time should apply. If the Planning Commission applies a balancing test in determining the appropriate phase out period, among the factors that it should consider are the following:

- 1) the fact that ordinance will not impose relocation costs as rooming houses are not storefront businesses that require physical relocation;
- 2) the impact of rooming houses on the neighborhood quality, character, and livability, and the use compatibility of rooming houses with the purpose of residential-single unit zones;
- 3) the impact of rooming houses on property values;
- 4) the typical length of leases executed for bedrooms and guestrooms in rooming houses;
- 5) the loss of rental income, but also the offsetting of that loss by either the whole unit rental of the same dwelling unit, or the continued rental of one or two bedrooms or guestrooms, or by increased tax benefits due to depreciation;
- 6) the loss of investment in the physical expansion of single dwelling units developed as rooming houses;
- 7) the fact that the ordinance does not require any physical alteration of dwelling

units to reverse physical expansion developed as rooming houses;

Respectfully submitted,

Marianne Greene
Deputy City Attorney
City Attorney of the City of San Diego

Attachments:

1. Rooming House Ordinance [O-2007-158] Clean
2. Rooming House Ordinance [O-2007-158] Strike Out
3. Determination of Environmental Exemption, August 15, 2007.