

# **ZONING AMENDMENT, ZA-16-03: RESIDENTIAL CARE FACILITIES AND OTHER VARIOUS AMENDMENTS**

**Planning Commission April 12, 2016**

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## **BACKGROUND:**

Three state agencies are responsible for licensing and overseeing a range of community-based residential facilities including:

1. The California Department of Social Services;
2. California Department of Public Health; and
3. The Department of Health Care Services.

Community and Residential care facilities must have a valid license to operate. The licensing process consists of a background check on the applicant and an on-site facility inspection to ensure that the facility meets health and safety standards. When all health and safety requirements are met, the licensing agency issues a license valid for two years. It conducts a comprehensive facility evaluation on an annual or bi-annual basis. Deficiencies are cited and monetary penalties can be assessed if the facility does not come into compliance with licensing laws and regulations. In addition, the State licensing agency investigates complaints and addresses the concerns of neighbors and other community members.

State law requires that residential care facilities serving six or fewer residents (small facilities) be considered a residential property and be treated the same as a single-family home. This means that local government can impose on these facilities only those local use restrictions or fees that apply to other single-family residences.

Unlike small facilities, large residential care facilities (those with seven or more residents) are subject to local land use regulations and other restrictions such as conditional or special permit requirements.

State laws also address overconcentration of facilities. Except for residential facilities for the elderly and alcohol and drug facilities, new residential care facilities must be located at least 300 feet from another facility. Local governments can object to requests for placement closer than these limits.

## **ANALYSIS:**

City staff has noticed an increase interest in the establishment of new and the expansion of existing residential care facilities within the City. Because of this interest, staff has reviewed the Municipal Code definitions and state definitions as they relate to residential care facilities for inconsistencies and is recommending amendment of the Municipal Code based on this review to better align with State regulations. This report summarizes State agency licensing requirements, and proposes amendments to the City's Municipal Code, to be consistent with definitions and licensing requirements of the State.

State licensing of residential care facilities is administered by three different Departments, each providing oversight to a different general category of facility.

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## 1. California Department of Social Services, Community Care Licensing Division (CCLD)

The CCLD licenses care facilities for persons who cannot live alone but do not need extensive medical services. Services provided typically include help with medication, assistance with hygiene, dressing and grooming. There are three facility categories:

- a. **Community Care Facilities:** Any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including but not limited to the physically handicapped, developmentally or mentally disabled. Community Care Facilities must be 300 feet apart; with the exception of foster family homes and transitional shelter care facilities which are not subject to the State's overconcentration standard. Regulations and definitions are provided in Sections 1500-1567.5 of the Health & Safety Code.
- b. **Residential Care Facilities for the Elderly:** Facilities that provide housing arrangements for persons 60 years old or over. Residents may receive assistance with housework, meals, taking medication, managing money, or personal care. The facility must provide care and supervision, as well as assistance with daily needs of the resident. Although the residents may travel independently in the community, the facility must be aware of the resident's general whereabouts. The facility must also monitor activities within the facility to ensure the general health, safety, and well-being of the residents. There are three levels of care. There are no separation requirements. Regulations and definitions are provided in Sections 1569-1569.889 of the Health and Safety Code.
- c. **Residential Care Facilities for the Chronically Ill:** Facilities that serve persons with chronic, life threatening illnesses. No facility may house more than 25 residents, except that the director of the CCLD may authorize a facility to house up to 50 residents. Residential Care Facilities for the Chronically Ill must meet the State's overconcentration standard and be located 300 feet apart. Regulations and definitions are provided in Sections 1568.01-1568.17 of the Health & Safety Code.

These facilities cannot operate without a license. In order to obtain a license, the applicant must demonstrate that they have a reputable and responsible character which is determined by evaluating employment history and character references, and obtaining a criminal record clearance based on fingerprints. Prior approval or denial of applications for other facilities and the financial ability of the applicant to maintain the facility according to acceptable standards are also considered.

## 2. California Department of Public Health, Licensing and Certification Program (L&C)

The L&C Program is responsible for ensuring health care facilities comply with state laws and regulations in cooperation with the Department of Health and Human Services. L&C licenses or certifies health care facilities which include, nursing facilities, hospices, facilities that serve persons with developmental disabilities, pediatric day and respite health facilities, congregate care health facilities and psychiatric health facilities. Of these, the congregate living health

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facility is of relevance to the City's Zoning Code:

- a. Congregate living health facility: A residential home with a capacity, generally of no more than 12 beds, that provides inpatient care, including medical supervision, 24-hours skilled nursing and supportive care, pharmacy, dietary, social and recreation. A state license is a requirement. In addition, to reduce the concentration of these facilities, congregate living health facilities must have 1,000 feet of separation. Regulations and definitions are provided in Sections 1250 -1339.59 of the Health & Safety Code.

A state license is required to operate a Congregate living health facility in California.

### 3. Department of Health Care Services (DHCS)

DHCS has sole authority to license facilities providing 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug (AOD) misuse or abuse. Licensure is required when at least one of the following services is provided: detoxification, group sessions, individual sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning. Residential facilities licensed by other State Departments such as the Department of Social Services (DSS) or the Department of Public Health (DPH) do not require a residential AOD license by DHCS.

In order to accommodate adolescents, the staff at the facility must obtain a criminal record clearance. No facility that provides recovery, treatment or detoxification services may operate without a license. Facilities providing these types of services without a license can be fined, and if necessary can be required to discontinue the services by court order. A license is valid for two years and there is at least one inspection during that time to ensure compliance. The license must be displayed in a conspicuous place visible when entering the facility. Regulations and definitions are provided in Sections 11833.01-11834.50 of the Health & Safety Code.

### **Proposed Amendments**

The goal of the proposed amendments is to align the City's definitions with the State and to require licensing where applicable. The City's Zoning Code generally considers residential care facilities to be a non-residential use and therefore not subject to the Residential Development Control System (RDCS). The proposed Zoning Code changes are intended to strengthen the implementation of the RDCS by clarifying when a use is residential rather than commercial (non-residential) in nature. With the proposed amendment to the Zoning Code, supportive or transitional housing that provides medical care or services patients whose need for care or supervision exceeds a certain threshold (Section 1505 of the Health and Safety Code) will need to have a license or they will be considered an apartment requiring participation in the City's Residential Development Control System (RDCS).

The City has four distinct definitions within the Municipal Code dealing with this topic which include, "*Congregate Care for the elderly/assisted living facility*", "*Residential Care Facility, Large*", "*Residential Care Facility, Small*" and "*Senior citizen housing, independent/active*". The proposed changes are indicated on the attached document (Attachment 2) with new text indicated by underline and text to be deleted indicated by ~~strike-through~~.

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## General Plan

The proposed changes to Title 18 of the Morgan Hill Municipal Code have been analyzed for consistency with General Plan Policies as follows:

**Policy 1a. Ensure that City decisions regarding planning are reached in a comprehensive, coordinated manner.**

The amendments are comprehensive in nature and would be consistent with State licensing requirements.

**Policy 2d. Plan for the needs of all socioeconomic segments of the community, encouraging self-sufficiency in jobs and housing within the city.**

The amendments provide clarity where residential care facilities may be located within the City and what permitting requirements would be necessary. Residential care facilities would be available for all socioeconomic segments of the community.

**Policy 7m. Allow residential uses in commercial zones and residential and commercial uses within a structure in a commercial zone (e.g., downstairs commercial and upstairs residential), subject to meeting performance standards.**

The amendments provide for Residential care facilities in commercial zones, with a Conditional Use Permit, provided state licensing is obtained. The State requires certain standards be met to obtain licensing.

## Community Engagement

A 10 day public hearing notice was published in the Friday, April 1, 2016 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096.

## Conclusion

As discussed above, the proposed amendments to Title 18 would be consistent with the City's General Plan and would provide clarity regarding application processes, consistency with State definitions and licensing requirements.

Staff recommends the Planning Commission recommend City Council approval of the Ordinance by adoption of the attached resolution.

## CEQA (California Environmental Quality Act):

This Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b) (3) of the State CEQA Guidelines. Text amendments to the Morgan Hill Municipal Code are covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on

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the environment, the activity is not subject to CEQA. Adoption of these amendments will not create changes in the physical environment and are therefore exempt.

**LINKS/ATTACHMENTS:**

1. Resolution
2. Exhibit A- Proposed Ordinance Amendments