

## RESIDENTIAL CARE HOMES

### STATE LAW:

State law preempts local zoning controls over licensed residential care facilities. If a licensed facility serves six or fewer persons (this does not count the caregivers), the law states this is a residential use and therefore, cannot be treated any differently than a typical family living situation. This means that the city cannot require any special permits, business license, home occupation permit, fire code restrictions, building codes, etc. unless such is required of any other family dwelling. Occupancy (number of people) is limited by the Uniform Housing Code, which applies to all residences, and is based on the size of each bedroom.

The areas under state law cover a number of different types of residential care homes. These preemptions are found as follows:

- Health facilities (care for developmentally disabled and skilled nursing care)  
*California Health and Safety Code Sections 1267.8, 1267.9*
- Community care facilities (covers all other types of care not already noted for adults and children)  
*California Health and Safety Code Sections 1566.3, 1567.1*
- Residential care facilities for the elderly  
*California Health and Safety Code Sections 1568.083, 1568.0831, 1569.85*
- Alcoholism recovery and drug abuse facilities  
*California Health and Safety Code Sections 11834.02 - 11834.30*
- Family day care homes (day care for children)  
*California Health and Safety Code Sections 1596.70 - 1596.795, 1597.40 - 1597.47, 1597.65*
- Homes or facilities for mentally disordered, handicapped, or dependent and neglected children  
*California Welfare and Institutions Code Sections 5115 - 5120*

State law requires that a residential facility have a valid license to operate (Section 1568.5 of the Health and Safety Code). Therefore, if a facility is licensed by the state, the city must recognize the zoning preemption. Without a state license, the zoning preemption is not effective. Two agencies license these facilities. The State Department of Social Services licenses all day care, mental care, group, and elderly care homes. The State Department of Alcohol and Drugs licenses only alcohol and drug rehabilitation homes. Both agencies conduct annual inspections of these homes and will respond to complaints regarding their operation. There is no distinction made for secular versus non-secular providers.

Over concentration of certain care homes in a neighborhood is also regulated by the state for licensed facilities. Licenses issued by the Department of Social Services (except for foster homes and elderly care) must be a minimum of 300 feet away from any other licensed home (as measured from the outside walls of the house - Section 1520.5 of the CA Health and Safety Code). If a home is less than the 300 feet, an exemption must be granted by the city, otherwise the license is denied. (To date, the City of Bakersfield has not granted any exemptions, nor would they be supported). This 300-foot separation restriction does not apply to licenses issued by the State Department of Alcohol and Drugs for rehabilitation homes.

Listings of licensed facilities may be obtained from both agencies either through the internet at [www.calcarenet.ca.gov](http://www.calcarenet.ca.gov) or by phone.

- State Department of Social Services: Monterey Park - (323) 981-3300  
*(group homes only; operational complaints)*
- State Department of Social Services: Fresno - (559) 243-8080  
*(elderly, disabled and day care homes; operational complaints)*
- State Department of Alcohol and Drugs: Sacramento - (916) 445-0834  
*(alcohol and drug rehabilitation only; operational complaints)*

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### CITY OF BAKERSFIELD REGULATIONS:

Residential care facilities must be licensed through the state to receive the zoning preemption for six or fewer persons. If a facility serves more than six people, city regulations require a conditional use permit in a residential zone (except in the R-4 zone for people with disabilities). Residential facilities are permitted by right in most commercial and some industrial zones subject to the city's site plan review process. A business license is required for homes for over six clients.

Those homes that are not licensed and have more than two persons are considered a roominghouse (BMC 17.04.510). The zoning ordinance permits anyone to rent no more than two rooms (one to a person) by right in any residential district. Once that number is exceeded, the use of the home is considered a roominghouse that requires a conditional use permit.

The conditional use process for the larger residential facilities (over 6) and a roominghouse is discretionary and conditions can be imposed to regulate the home. These conditions can include occupancy limits, fire sprinklers, alarm systems, and vehicular prohibitions. Because the permit is discretionary, it can also be found incompatible in a neighborhood and denied. Since the neighborhood is notified of this permit (300' surrounding the site), the public may comment on the proposal. In many instances, establishment of these types of homes under the conditional use permit process are unpopular and controversial so it is advised to seek neighborhood support before submitting an application to the city.

There are homes that become established with six clients without any state license. These include group homes operated by religious institutions, sober living homes, drug/alcohol free environments, etc.). Many are discovered soon after opening through complaints from the neighborhood. However, in these instances, regardless if the home's occupants are referred by a court, other state or local agencies, are non-secular in nature, or are private programs, they do not receive the zoning preemption for six or fewer persons unless they hold a valid license to operate from the State. Otherwise, city ordinance defines them as a roominghouse and they would be subject to the roominghouse limitations. Questions regarding zoning, the use definition, zoning preemption, and conditional use permits, should be directed to the Planning Department before opening any residential care to determine what regulations will apply.

Other than licensed facilities that are preempted from zoning, all other similar homes may also be subject to additional requirements from the City's Building and Fire Departments concerning fire safety, sprinkler and alarm systems, occupancy limitations, handicapped access, etc. It is strongly advised that these two departments be contacted as early in the process as possible since some of these requirements could affect the feasibility and economics of the project.

- Planning Department: (661) 326-3733  
*(zoning, definition of use, general use questions, conditional use permits,)*
- Building Department: (661) 326-3720  
*(building permits, building code and occupancy requirements, handicapped accessibility, complaints - Code Enforcement)*
- Fire Department (Prevention Services): (661) 326-3979  
*(fire safety requirements, fire alarm and sprinkler systems)*
- Business Licenses: (661) 326-3733

## RESIDENTIAL CARE HOMES - SUMMARY

### RESIDENTIAL FACILITY:

"Residential facility" means any group care or similar facility, licensed by the State of California, for 24 hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual as provided in Section 1502 of the California Health and Safety Code. (*Zoning Ordinance definition*)

- **Residential Facility serves 6 or fewer people** (count does not include live-in owners or help):
  - is permitted by right in all residential zones (considered by state law a residential use)
  - no city business license or home occupation permit is required
  - the operator must have a valid license to operate from the State of California
  - is not subject to standards or regulations differently from any other typical home
- **Residential Facility serves 7 or more people** (count does not include live-in owners or help):
  - a conditional use permit is required in all residential zones (except R-4 for people with disabilities)
  - a city business license is required (however, no home occupation is needed)
  - the operator must have a license from the State of California
  - additional building and fire safety items may be required (ie. handicapped access, alarm/fire sprinklers, etc.)

### ROOMINGHOUSE:

"Roominghouse" means a building containing 3 or more guestrooms, used, designed, or intended to be used, let or hired, to be occupied or which are occupied by 3 or more individuals with or without meals, for compensation, as permanent guests pursuant to a previous arrangement for compensation for definite periods, by the month or greater term, and in which rooms are not occupied by, nor meals served, to transients. (*Zoning Ordinance definition*)

- is any building containing 3 or more guestrooms rented for compensation
- may provide some personal oversight (ie. curfew, limited restrictions), but does not qualify for State licensing
- requires a conditional use permit in any residential zone (except R-4)
- requires a city business license
- may require additional building and fire safety items

*In any residential zone, a person can legally rent up to 2 rooms (1 person in each room) as a permitted use. Once they rent 3 or more rooms and/or have 3 or more renters, a conditional use permit is required. If the homeowner states that they are running a group care home for 6 or fewer persons believing this to be a permitted use but they have no state license for such a facility, then they are not a residential facility but a roominghouse. They must either obtain approval of a conditional use permit or reduce the number of people and rooms being rented to 2 so as to remain a legal use without a conditional use permit.*

### FAMILY:

"A family is defined as an individual or group of individuals, related, or unrelated, living together as a single housekeeping unit, including necessary servants. A family does not include a residential facility, group care, rest home, dormitory, roominghouse, motel, or similar uses." (*Zoning Ordinance definition*)

*There is no maximum number of people that can live in a home by definition since the city cannot discriminate between related and unrelated persons as ruled by the Supreme Court. Occupancy limits are a health and safety issue enforced by the Uniform Housing Code as it is based on a person per room or minimum square footage requirement that can be applied equally to all persons regardless of relationship.*

*A single housekeeping unit means that the occupants have common use and access to all living and eating areas, bathrooms, and food preparation and service areas. In addition, court cases have recognized that a family represents an intentionally structured relationship between the occupants implying a permanent, long-term relationship as opposed to one that is short-term or transient. The latter includes roominghouse, halfway and sober/drug-free living homes where the person is at the home for a defined period and then is required to move to more permanent living arrangements once they have satisfied their prescribed recovery period.*