

TOWN OF SAN ANSELMO
TOWN COUNCIL AGENDA
Tuesday, February 5th, 1991

Town Hall - Council Chambers
525 San Anselmo Avenue, San Anselmo

6:00 p.m.

Closed session regarding pending litigation, pursuant to Government Code Section 54956.9(a), (Helfrich V. Town of San Anselmo).

7:00 p.m.

AGENDA

1. Call to order.
2. 1990/91 Zoning Ordinance Revision (see other side for details).
3. 1990/91 General Plan Amendments.
4. Environmental Review Document.
5. Adjournment.

If any of the matters described above are challenged in court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting.

I certify that this agenda was posted on the Public Notice Bulletin Board Outside the Council on February 1st, 1991.

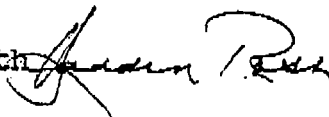
Rw
Rose Wager
Administrative Services Assistant

1. 1990/91 Zoning Ordinance Revision
 - Article 1: Adoption of Zoning Ordinance
 - Article 2: Designation and Establishment of Districts
 - Article 3: Land Use Regulations
 - Remaining Planning Commission Concerns:
 - a) Large Family Day Care in Residential Districts (page 8)
 - b) C-L: Uses Permitted (beginning on page 7)
 - Article 4: Development Standards
 - Remaining Planning Commission Concerns:
 - a) R-1 C and R-1 above 150 Mean Sea Level Elevation: Consideration of Design Review Requirement (page 18)
 - b) Exceptions to Development Standards (beginning on page 21)
 - c) R-1 H, R-1 C, R-1 above 150 Mean Sea Level Elevation: Consideration of Floor Area Ratio Requirement (page 28)
 - Article 5: Parking and Loading Requirements
 - Remaining Planning Commission Concerns:
 - a) R-1 H, R-1 C, R-1 above 150 Mean Sea Level Elevation: Consideration of Minimum On-Site Parking Requirement (beginning on page 32)
 - Article 6: General Provisions
 - Article 7: Procedures
 - Remaining Planning Commission Concerns:
 - a) R-1 H: Consideration of Preliminary Development Plan (page 42)
 - b) Design Review: Consideration of Administrative and Planning Commission Review (beginning on page 51)
 - Article 8: Definitions
2. 1990/91 General Plan Amendments
 - Remaining Planning Commission Concerns:
 - a) Large Family Day Care in Residential Districts
 - b) C-L: Uses Permitted
3. Environmental Review Document

Memorandum

TO: Lisa Wight

FROM: Town Attorney Hadden Roth



RE: Family Day Care Homes

DATE: January 24, 1991; Revised February 1, 1991

You have posed the following questions:

1. Do we have any control over small family day care homes?

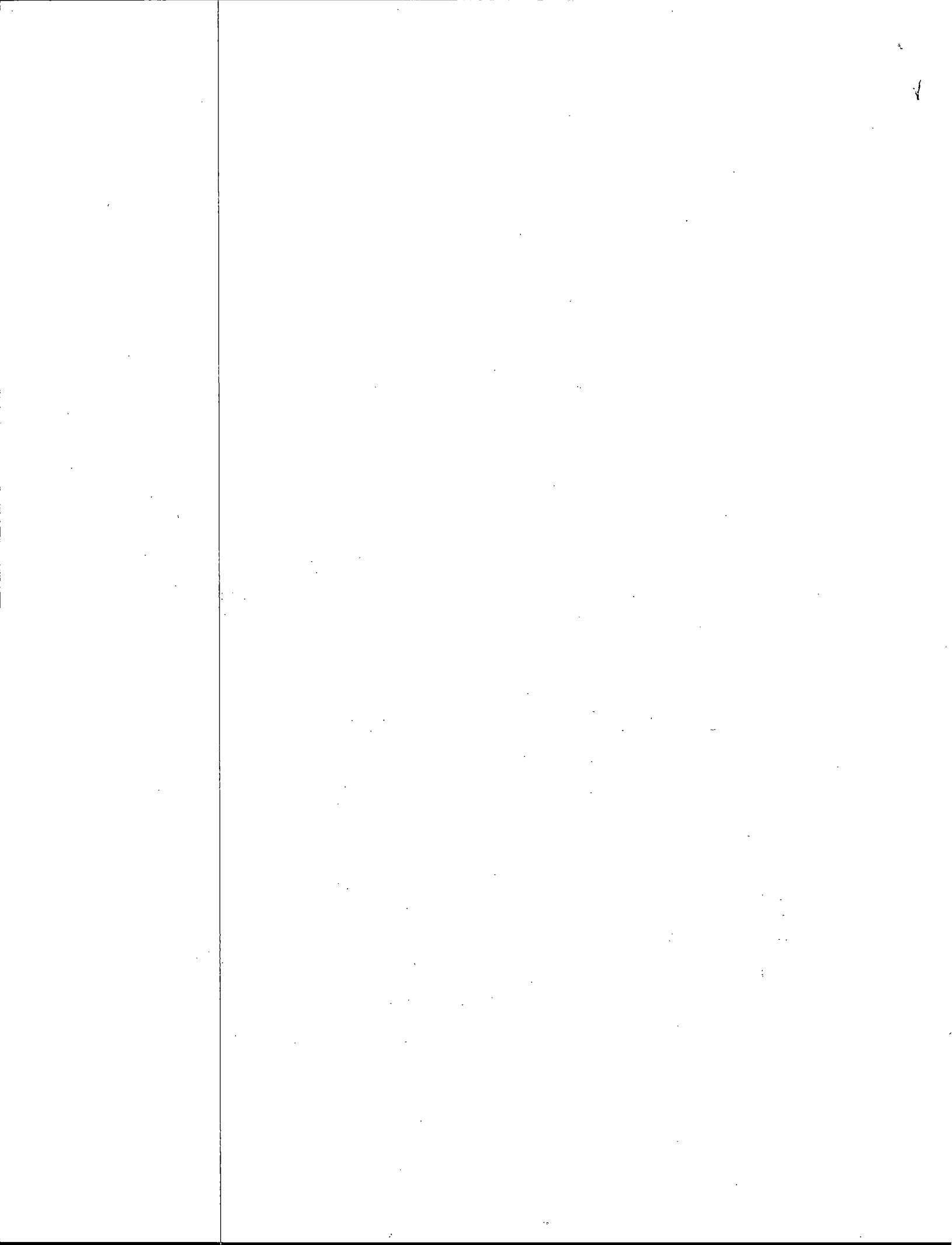
The Town has no more control over small family day care homes (up to 6 children or 8 children if 2 of the children are 6 years of age or older) than the Town has over traditional single family residences except as provided in Health and Safety Code section 1597.45(d) requiring small family day care homes to contain fire extinguishers and smoke detector devices meeting the proper standards.

2. Can the Town restrict large family day care homes altogether from R1H and R1C and just allow the homes in other residential districts with a use permit?

No. Health and Safety Code section 1597.46(a) states a city shall not prohibit large family day care homes in lots owned for single-family dwellings.

3. Does a use permit requirement mean anything? Is the Town forced to grant a use permit? The conditions the Town attaches - do they have any weight if the Town must allow the use anyway?

Section 1597.46(a)(3) states a use permit shall be granted if a large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements containing spacing and concentration, traffic control, parking, and noise control relating to such homes, and if the home complies with the State Uniform Building Standards



Code and local building and fire codes including all additional standards specifically designed to promote the fire and life safety of children residing in the home (section 1597.46(d)). See section 1597.46(a)(3) and (d) for further details.

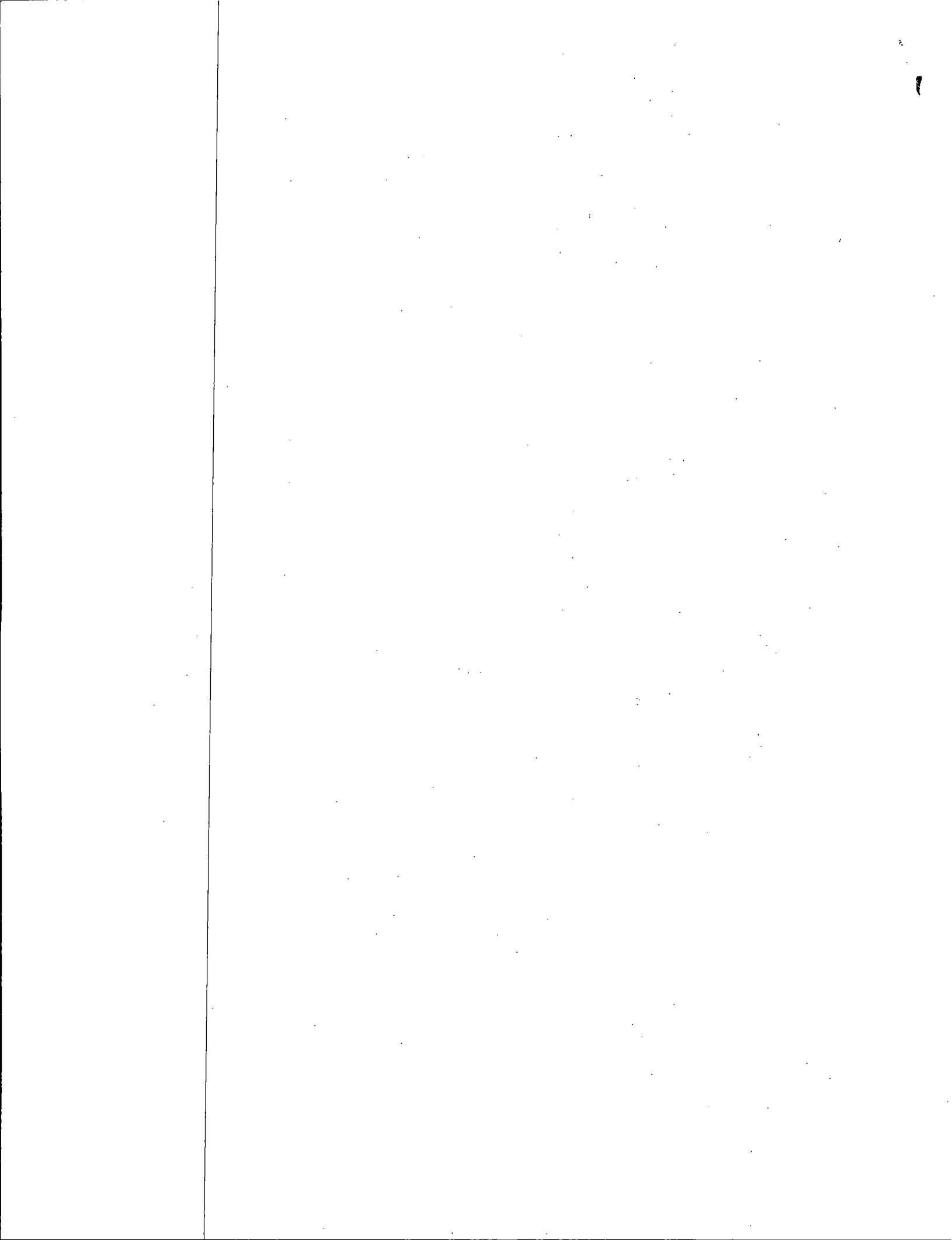
In short, if a use permit is to be required, a local ordinance should be adopted setting forth standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking and noise control relating to such homes and providing the use permit is subject to revocation on failure to implement or maintain those requirements.

4. What does the State require the Town to follow: What does the federal government require the Town to follow?

The State requirements are discussed above.

Under the federal Fair Housing Act, a provision added to SAMC that licensed homes serving 6 or fewer people are permitted without a use permit but those serving 7 or more (up to 14) require a use permit, may be invalid since no similar prohibition is made for families. In El Cerrito a group home for 6 mentally ill persons operated in a single-family district for over 20 years. The operator applied to increase the number of occupants to 8 persons. The city required a use permit since there would be more than 6 persons in the residence. The city's permit requirement was based upon State law which preempts local regulation of residential care facilities occupied by 6 or fewer persons in a residential home. (Health and Safety Code section 1566.3) The operator of the facility filed a complaint with HUD on the grounds that the conditional use permit requirement violated the Fair Housing Act. HUD, in turn, conducted a lengthy administrative investigation (approximately 6-8 months) and referred the matter for litigation to the Department of Justice. The matter was settled only after El Cerrito paid a cash settlement with the operator which included the cost of the application for the use permit and the loss of revenue due to the 6-person limitation on the use of the home after the use permit application had been denied.

The Fair Housing Amendments Act of 1988 added familial status to the classes which are protected from housing discrimination. This classification is meant to protect from housing discrimination those households in which a minor is domiciled with either a parent, person having legal custody, or a designee of either the parent or person having legal custody. Although the Fair Housing Act does not expressly provide local zoning actions are subject to the Act, the courts have found public entities in violation of the Act due to their zoning actions. A plaintiff, suing under the Act, need only show that a defendant's action has a discriminatory or a disparate impact on the classes of persons protected, even where discriminatory intent is absent.



Thus, even though State law permits local agencies to require use permits for large family day care centers, caution is warranted because of the Fair Housing amendments protecting covered classes from discrimination in housing. You have indicated that the operation of a large family day center (serving 7 or more, up to 14) will undoubtedly generate traffic and noise and perhaps other problems necessitating tailored regulation. This provides a legal basis for a use permit requirement and therefore, I recommend that this use be made subject to a use permit and that the sections of the General Plan amendments covering residential use and the Land Use Regulations Table of the zoning amendments be further amended accordingly.

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