



California Renters Legal Advocacy and Education Fund

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Oakland, CA 94612
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March 9, 2021

City of Los Altos
City Council

Re: Ordinance to Regulate or Ban Boarding Houses in Los Altos

Dear City Council, and City Attorney,

The California Renters Legal Advocacy and Education Fund (CaRLA) submits this letter to the City Council to express our concern regarding the proposed ordinance to regulate or ban boarding houses within the city of Los Altos. This ordinance raises important legal concerns related to fair housing, equal protection, and the rights of intimate association. From the materials provided, it appears that the Council has not adequately addressed these concerns, or even articulated a clear public interest in enacting this ordinance at all.

The ordinance as proposed would seek to regulate a certain class of living situation, involving separate co-tenants sharing a single living space. Defined as “boarding houses,” these homes and tenants would be prohibited unless required “to make housing available to persons with disabilities” and would not impose a “burden on the city.” Without presenting any evidence, the staff report states that boarding houses “ha[ve] the potential to result in overcrowding, excessive noise, traffic congestion, illegal parking, and other potential impacts to residential neighborhoods.” As proposed this ordinance raises several legal concerns that it appears have not been addressed.

1. The Proposed Ordinance Could Have a Disparate Impact on a Protected Class

There is no question that the proposed ordinance would limit the availability of rental housing in Los Altos. Because the city is predominantly made up of detached, single family homes, boarding houses are one of the few sources of rental housing available. A ban on boarding houses would exclude potential tenants from residing in Los Altos. By excluding these potential Los Altos residents, the city may be excluding members of a class protected by the state or federal fair housing acts. The ordinance does seem to acknowledge this concern by carving out an exception where housing is needed for persons with disabilities, but it fails to acknowledge or discuss whether the ordinance may also exclude on the basis of race, color, religion, national origin, sex, familial status, and disability. The staff report includes no analysis of this question.

The Council should carefully examine whether this regulation could have a disparate impact on any of these classes by collecting data on current and potential boarding house residents.

2. The Ordinance May Violate the California Constitution's right to Equal Protection Under the Law

For reasons similar to those outlined above, this ordinance may also violate the right to equal protection. Any ordinance that seeks to limit the types of occupants that are allowed to reside in certain areas is inherently suspect. While the staff report acknowledges this concern and covers the main case on the issue in *City of Santa Barbara v. Adamson*, it incorrectly states that a subsequent case "clarifies" the *Adamson* decision in a way that would allow for the proposed ordinance. The case cited, *Barrett v. Lipscomb*, allowed for the enforcement of a private limitation on commercial use (residential care facility) within a subdivision. This ordinance does not limit the use of a home as a "commercial venture," but instead attempts to limit certain types of occupants based on their living arrangements. This is very much the type of regulation that is suspect under the *Adamson* decision.

3. The City has Failed to Establish a Public Interest in Regulating Boarding Houses

Given the potential this ordinance has for infringing on the rights of Los Altos residents, the city should clearly demonstrate the public interest being served by the restriction. The staff report raises some concerns about the use of single-family properties as boarding houses, but fails to examine the prevalence of these issues, provide any link between them and the prevalence of boarding houses, or explain why existing rules on parking, noise, or traffic cannot address these concerns. Without further explanation, it appears that the city's main goal is to establish limits of the types of people who are allowed to live in Los Altos, rather than actually address any of the issues identified in the staff report.

Given the potential impacts and lack of justification for this ordinance, it potentially violates the equal protection clause of the California constitution and the federal and state fair housing laws. I urge the Council to reconsider this proposal. If the problems outlined in the staff report are becoming an issue for residents, Los Altos should look to enforce its existing regulations on these issues rather than attempt to bar certain groups of people from living in the city. CaRLA is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CaRLA at www.carlaef.org.

Sincerely,

California Renters Legal Advocacy and Education Fund - hi@carlaef.org
2044 Franklin St, Oakland, CA 94612

A handwritten signature in black ink, appearing to read 'Dylan Casey', with a long horizontal line extending to the right.

Dylan Casey
Executive Director
California Renters Legal Advocacy and Education Fund