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September 28, 2017

Fort Bragg City Council
C/O Marie Jones
Director of Community Development
416 North Franklin St.
Fort Bragg, California 95437

By Email: mjones@fortbragg.com

*Re: Mendocino Coast Hospitality Center's Response to Staff Report for
October 3, 2017 City Council Hearing*

Dear City Council Members:

We are writing on behalf of the Mendocino Coast Hospitality Center (MCHC) in response to the City's staff report regarding Hospitality House's special use permit. This matter is scheduled for hearing before the Fort Bragg City Council meeting on October 3, 2017. We urge the City Council to deny this appeal, affirm the decision of the Planning Commission,¹ and adopt the Proposed Resolution attached to the City's staff report as Exhibit G.²

¹ MCHC's entire submission to the Planning Commission is part of the record of these City Council proceedings because Appellants included it with their appeal. For your convenience, MCHC's letter to the City Council (without the attachments) is also included here as Attachment H-1.

² MCHC joins City Staff in recommending that the City Council adopt the Proposed Resolution attached to the Staff Report as Exhibit G, with the understanding that the clause in which MCHC acknowledges "that the resolution is binding and enforceable" refers to the resolution that was adopted by the Planning Commission. The following clause in the resolution that was attached to the City Council appeal was not, in fact,

The mission of Hospitality House is to “shelter the homeless, feed the hungry, and provide a path to personal self-sufficiency.” Hospitality House Policies and Procedures Manual, Attachment H-2, p.3. Hospitality House is the only year-round emergency shelter on the Mendocino Coast. As discussed below, Fort Bragg relies exclusively on Hospitality House to meet its legal obligation to provide emergency shelter to local individuals and families who lack permanent housing.

MCHC and Hospitality House enjoy strong community support, which was displayed at the Planning Commission hearing. The Mendocino County Continuum of Care for the Homeless “strongly supports the activities” provided by Hospitality House.” Attachment H-3. The Health and Human Services Agency of Mendocino County supports MCHC because it “provides key resources in the continuum of homeless services to decrease homelessness and increase quality of life for those struggling to access or maintain housing.” Attachment H-4. Just this week, the City of Fort Bragg honored Hospitality House with a Certificate of Appreciation for its Adopt-A-Street program. Certificate of Appreciation, Attachment H-5.

The Fort Bragg Community Development Department and Planning Commission have gone to great lengths to work with MCHC to address the concerns of a small but vocal group of individuals who want to see Hospitality House closed down or moved out of the Central Business District. MCHC and City staff discussed these concerns and worked out a detailed and extensive list of changes to Hospitality House’s special use permit to address them. On August 23, 2017, the City and MCHC jointly recommended those changes to the Planning Commission, which adopted them as proposed. Although the use permit conditions that were adopted by the Planning Commission are not in effect because of the pending appeal, MCHC has taken significant steps to comply with them. These steps are summarized in Attachment H-6. See *a/so*, Letter from Lynelle Johnson, Attachment H-7; Letter from Lara Anderson, Attachment H-8;

part of the resolution that was adopted by the Planning Commission: “WHEREAS, During the Public Hearing Counsel for the Hospitality House acknowledged that the resolution is binding and enforceable against the Hospitality House with regard to the use permit modification and all conditions, and that the Hospitality House waived any pupated legal insufficiency of the resolution with regard to findings or otherwise.”

Hospitality House Policies and Procedures Manual, Attachment H-2; Administrator Position Description, Attachment H-9; House Manager Position Description, Attachment H-10.

Appellants are now asking the City Council to ignore the hard work and careful consideration of the Planning Commission, City staff and MCHC, simply because they do not want a homeless shelter in their backyard. Following their lead would be an inappropriate and potentially illegal exercise of the City Council's role in land use planning.

Legal Framework

As the staff report indicates, the Fort Bragg Municipal Code allows the City Council to take a variety of actions in response to this appeal. However, state and federal law impose significant constraints. The City Council's decision must comply with land use and planning laws, provide MCHC with due process of law, and protect Hospitality House clients against discrimination on the basis of disability or other protected class.

A. Land Use and Planning Laws

Fort Bragg's Housing Element, and the Consolidated Plan under which the City receives Community Development Block Grant and other federal funds, acknowledge the City's reliance on Hospitality House to address the City's need for emergency shelter. These planning documents also articulate the City's commitment to working with MCHC to meet that need. The City Council must support MCHC's efforts to operate Hospitality House so that the City can meet its obligations to identify and address its needs for emergency housing as required by law.³ See *Hoffmaster v. City of San Diego*, 55 Cal.App.4th 1098, 1114 (4th Dist. 1997) (cautioning against "restrictive zoning burdens which combined with the NIMBY (Not In My Back Yard) factor...become insurmountable or produce protracted delays and deterrent cost increases.")

³ The Housing Accountability Act also requires that the City Council make adequate written findings to support its land use decisions. Government Code Section 65589.5.

1. Housing Element

California law recognizes that the “availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian... is a priority of the highest order.” Government Code Section 65580(a). The law further recognizes that the “early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.” Section 65580(b). The provision of housing to low-income individuals “requires the cooperation of all levels of government.” Section 65580(c). “Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development” of all types of housing, including emergency shelter. Section 65580(d). Accordingly, as part of its General Plan, each local planning jurisdiction must submit to the state and periodically update a Housing Element that makes “adequate provision for the housing needs of all economic segments of the community.” Section 65580(d).

Fort Bragg’s current Housing Element (Attachment H-11) identifies a significant need for emergency shelter in the City. According to the Housing Element, “slightly more than half of Fort Bragg’s households live under the poverty line.” Attachment H-11, p.10-25. The Housing Element estimates that there are 1,441 homeless individuals in Fort Bragg, 267 of whom are chronically homeless, and 1,379 homeless households. Attachment H-11, pp.10-42, 10-43. “Most of the homeless are unsheltered; a very small proportion (7.6%) are sheltered...” Attachment H-11, p.10-43.

Fort Bragg’s Housing Element relies exclusively on Hospitality House to meet the City’s need for emergency shelter. Attachment H-11, p.10-43. The Housing Element acknowledges that the need to provide housing and services to people who are homeless “exceeds the resources of the City of Fort Bragg,” and repeatedly confirms the City’s commitment to working with service providers to meet that need. Attachment H-11, pp.10-14, 10-19, 10-43, 10-67. The Housing Element specifically singles out MCHC as a partner in this effort: “The City works with the Mendocino Coast Hospitality Center to identify, acquire, and expand facilities to serve the homeless in Fort Bragg.” Attachment H-11, p.10-43. The attached letters from the

Mendocino County Continuum of Care and Health and Human Services Agency also emphasize the role of MCHC and Hospitality House in providing services to people who are homeless. Attachments H-3, H-4.

The Housing Element acknowledges that Hospitality House is addressing a local need for emergency shelter, rather than attracting homeless individuals from other communities. "In most cases, homelessness has occurred because local people are unable to afford housing, rather than as the result of an influx of homeless persons from other areas." Attachment H-11, p.10-43. The attached letters from the Mendocino County Continuum of Care and Health and Human Services Agency also indicate that Hospitality House is not contributing to the number of homeless individuals in the Fort Bragg area. Attachments H-3, H-4. In addition, the Housing Element acknowledges that Hospitality House and other supportive services for people who are homeless are "appropriately located in areas with access to supportive health, welfare, social, employment, and public transportation services." Attachment H-11, p. 10-50.

The City runs a significant risk of noncompliance with its Housing Element if it revokes or unreasonably conditions Hospitality House's use permit, or otherwise acts in a way that interferes with its ability to meet the City's need for emergency shelter. This includes forcing Hospitality House to move from the Central Business District to the General Commercial District, where barriers would make its facilities less accessible to the people who need them. This result would be inconsistent with the Housing Element, which acknowledges that Hospitality House is appropriately situated in the Central Business District. Attachment H-11, p. 10-50. It would also prohibit the City from enforcing many of the use permit conditions that were adopted by the Planning Commission, because state law limits the restrictions that a City can place on shelters operating in the district that is zoned for the operation of shelters "by right." Government Code 65583(4)(A).

2. Consolidated Plan

Federal law also requires local governments that receive certain federal housing funds to submit periodic Consolidated Plans to the federal government to plan for affordable housing, including emergency shelter.

The Consolidated Plan must identify and prioritize affordable housing needs, identify barriers to the development of affordable housing, and establish a strategic plan that addresses those needs and barriers. 24 C.F.R. Section 91.1. Any housing activities that are supported by federal funds must be consistent with the jurisdiction's consolidated plan. 24 C.F.R. Section 91.2.

Like Fort Bragg's Housing Element, Mendocino County's Consolidated Plan identifies Hospitality House as one of the County's primary providers of emergency shelter. Attachment H-12, p.28. One of the other providers, the Ford Street Project, closed its emergency shelter in 2014. The other provider, Project Sanctuary, serves only victims of domestic violence. As with its Housing Element, the City may be found to be out of compliance with its Consolidated Plan obligations if it fails to support MCHC's efforts to provide emergency shelter at Hospitality House.

Due Process

The City Council is also at risk of violating MCHC's right to due process of law if it revokes or unreasonably conditions the Hospitality House use permit. MCHC has a vested property interest in its special use permit for Hospitality House. In order to modify or revoke that permit over MCHC's objection, the City must establish either that MCHC violated the permit's reasonable terms and conditions, or that there is a compelling public necessity to make changes that are reasonably necessary to achieve that purpose and not unduly burdensome. *Bauer v. San Diego*, 75 Cal.App.4th 1281, 1294 (1999).

The City Council cannot rely on a use permit violation to justify a change in Hospitality House's use permit over MCHC's objection. As discussed at length before the Planning Commission, the permit's limitation of 24 "beds" has always been understood to refer to the number of overnight guests, and the Planning Commission agreed to amend the use permit language accordingly.⁴ As the City acknowledged at the Planning Commission

⁴ As discussed in MCHC's letter to the Planning Commission (Attachment H-1), MCHC has always considered the limitation of 24 "beds" in Hospitality House's use permit to refer to the number of overnight guests or "bed nights," not the number of pieces of furniture in the house. Hospitality House must keep extra beds in each room in order to

hearing, Hospitality House has exceeded that limit only a few times, in emergency situations. Contrary to the Appellants' assertion, there are no conditions in the original use permit limiting the number of meals that Hospitality House can serve.

Alleged incidents of nuisance behavior near Hospitality House also do not constitute use permit violations, because there is no evidence that Hospitality House is responsible for that behavior.⁵ An entity is legally responsible for a nuisance only if it "created or assisted in the creation of the nuisance." *Melton v. Boustred*, 183 Cal. App. 4th 521, 542 (2010). Neighbors who claim that Hospitality is a "nuisance" have referred to behavior occurring outside of Hospitality House property, and offer no indication that Hospitality House or MCHC created or assisted in the creation of that behavior. As counsel for the Planning Commission and the City Council explained at the Planning Commission hearing, MCHC cannot legally or practically be held responsible for that behavior. Nuisance behavior for which MCHC is not responsible cannot be held against MCHC as reason for amending or revoking the Hospitality House use permit.

Similarly, the City Council cannot rely on compelling public necessity as a reason to amend or revoke the Hospitality House use permit over MCHC's objection. There is no evidence that nuisance behavior in Fort Bragg has risen to the level of a compelling public necessity, or that MCHC is responsible for any nuisance behavior at all. Even if Hospitality House or MCHC were responsible for nuisance behavior, the use permit conditions negotiated by the City and MCHC and adopted by the Planning Commission would adequately address those concerns. There is no necessity – compelling or otherwise – to impose additional changes beyond those that City staff and the Planning Commission have already determined

allow men, women and families to sleep separately. There were more than 24 actual beds at Hospitality House when its use permit was issued in 2003, and the number of beds has not changed since that time.

⁵ MCHC agrees with the staff report's analysis that the petition to revoke Hospitality Houses use permit, which was submitted anonymously, "likely has no evidentiary value and cannot be used to support or revocation. Moreover, substantively, the comments in the petition are insufficient to support revocation in that they do not call out specific violations of the use permit or nuisance conditions." Staff Report, p.9.

are appropriate. Doing so would be unnecessary and unduly burdensome, and would violate MCHC's right to due process of law. *Bauer v. San Diego*, 75 Cal.App.4th 1281, 1294 (1999).

Fair Housing and Anti-Discrimination Laws

The vast majority of Hospitality House clients have mental and/or physical disabilities. Letter from Lynelle Johnson, Attachment H-7. The City Council cannot allow its decision to be motivated by community animus toward people who have or appear to have disabilities, or belong to other legally protected groups. It also cannot take any action that would deny members of those groups equal access to emergency housing and supportive services. Such an action would expose the City to legal challenge under state and federal anti-discrimination laws, including: The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; The Fair Housing Act (42 U.S.C. §§ 3601-3631); Title II of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C § 12132); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C § 794); The California Fair Employment and Housing Act (Gov't Code §§ 12955-12956.2); The California Disabled Persons Act (Civil Code §§ 54.1 and 54.2); and California Government Code §11135. See also, e.g., *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999) (ADA Title II and Section 504 apply to discriminatory zoning practices because zoning is a normal function of a government entity); *Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-440 (1985) (14th Amendment prohibits discrimination on the basis of protected class including race, national origin and disability).

Use Permit Special Conditions

Although MCHC objects to the staff report's repeated references to MCHC having violated the Hospitality House use permit, MCHC agrees with the City's recommendation that the City Council should retain each of the permit conditions as adopted by the Planning Commission. MCHC's additional comments regarding Special Conditions 1, 5, 6, 7, 8, 9, 10, 13

and 14, and new proposed Special Conditions 19-23, are below.⁶ Appellants have not requested any changes to Special Conditions 3, 4, 9, 11, 12 or 15-18, so they are not addressed here.

Special Condition 1

As the staff report indicates, Appellants' proposed language with regard to fire safety is not necessary. Hospitality House is already under a legal obligation to comply with all fire inspections and safety requirements. The Fire Inspection report that MCHC submitted to the Planning Commission confirms that Hospitality House is in full compliance with these requirements. August 23, 2017 Fire Inspection Report, Attachment H-13; Staff Report, p.10. There is no legal requirement or practical necessity for MCHC to post the maximum occupancy of each guest room.

State and local law determine the frequency with which the Fire Marshall inspects Hospitality House, and the Fire Marshall is responsible for ensuring that those inspections are conducted in a timely and effective manner. It would not be appropriate to include these responsibilities in a use permit.

Special Condition 5

MCHC agrees with the staff report that Appellants have not produced evidence that demonstrates that the current hours of restroom operation at Hospitality House contribute to nuisance conditions.

Special Condition 6

MCHC agrees with the staff report that the expansion of the operation of Hospitality House as a day shelter is not appealable.

⁶ The staff report does not address Appellants' New Proposed Special Conditions 19 or 20. Therefore, the numbering of the New Proposed Special Conditions below is not consistent with the numbering in the staff report.

As discussed in the attached letter from Lynelle Johnson (Attachment H-7), MCHC has never operated a day shelter. Hospitality House and MCHC's Hospitality Center offer a variety of housing navigation, case management, classes, vocational programs and other supportive services for people who are homeless. MCHC agrees with the staff report that the City cannot compel MCHC to operate a day shelter.

Special Condition 7

MCHC agrees with the staff report that Appellants have not identified evidence that police calls to Hospitality House disrupt the ability of the Police Department to respond other calls, or that the addition of a private security contractor would significantly improve security or reduce calls for service. As the staff report indicates, the use permit conditions that were approved by the Planning Commission may result in fewer calls for service, making police available for other law enforcement activities. Staff Report, p.10.

Special Condition 8

The newly-updated Hospitality House Policies and Procedures manual includes prohibitions on intoxication and possession of alcohol, non-prescribed drugs and drug paraphernalia. Attachment H-2. MCHC agrees with the staff report that the use permit conditions that were adopted by the Planning Commission are sufficient to ensure that these rules are followed.

Special Condition 10

Please see comments on Special Conditions 5 and 8, above. In addition, Appellants mischaracterize Hospitality House's operating hours and the working hours of its Administrator. Hospitality House's current operating hours, which may change over time, are listed on page 11 of Appendix H-2. The Hospitality House Administrator currently works from 7:00 a.m. to 3:30 p.m. on Mondays and Wednesdays, and 8:30 a.m. to 5:00 p.m. on Tuesdays, Thursdays and Fridays. This is also subject to change.

Special Condition 13

MCHC agrees with the staff report that there is no evidence in the record indicating that the qualifications in terms of employment requested by Appellants are necessary or appropriate additions to the use permit.

Special Condition 14

MCHC agrees with the staff report that the use permit conditions that were adopted by the Planning Commission are sufficient to ensure that these individuals are appropriately trained.

Hospitality House operates with a paid House Manager on some evenings, and with a trained intern on others. See House Manager Position Description, Attachment H-10, and Policies and Procedures Manual, Attachment H-2.

New Proposed Special Conditions

MCHC agrees with the staff report that the City Council should not adopt any of the additional use permit conditions that Appellants have proposed.

New Proposed Special Condition 19

Proposed Special Condition 19 is not an appropriate condition for a special use permit.⁷ MCHC has agreed to open its meetings to the public, with the exception of confidential matters. However, MCHC must have the flexibility to revise this policy as necessary over time.

⁷ Proposed Special Condition 19, which was not specifically addressed in the staff report, reads: "MCHC Board of Directors meetings shall be open to the public. Meetings that are required to be confidential in regard to clients and personnel shall continue to be closed as required by law."

New Proposed Special Condition 20

Proposed Special Condition 20 is not an appropriate condition for a special use permit.⁸⁸ As is customary at shelters, MCHC contracts with a local laboratory which provides online training for Hospitality House staff to perform simple drug tests. The testing consists solely of collecting urine, inserting and reading a testing strip, taking a photo of the results and signing and dating the test. Hospitality House has never had any problems with drug tests, and there is no evidence to the contrary.

New Proposed Special Condition 21

MCHC agrees with the staff report that the City does not have the authority to require Hospitality House to hire a licensed medical professional to store client medications. In fact, this is unnecessary. In accordance with best practices, Hospitality House staff do not dispense medications. Medications are locked in a cabinet in a locked office. Staff only unlock the cabinet to allow the clients access to their medications as requested. Hospitality House has never had any problems with this procedure, and there is no evidence to the contrary.

New Proposed Special Condition 22

MCHC agrees with the staff report that the City does not have authority to dictate the membership of the MCHC Board of Directors.

New Proposed Special Condition 23

MCHC agrees with the staff report that there is no evidence in the record requiring that Hospitality House have a written manual that is available to the public. MCHC does, in fact, have a written manual for Hospitality

⁸⁸ Proposed Special Condition 20, which was not specifically addressed in the staff report, reads "MCHC shall have all employees, including administrators, managers, and security personnel drug tested prior to employment and intermittently while employed at a licensed outside medical facility. Employees will not be responsible for drug testing each other or the clients. Clients who require drug testing will also be required to be tested at a licensed outside medical facility."

Marie Jones
September 28, 2017
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House. The current version is included here as Attachment H-2. However, this is a matter of MCHC's discretion, and is not an appropriate subject for use permit.

Thank you for your consideration.

Sincerely,



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Attachments:

- H-1: MCHC Letter to Planning Commission (without attachments)
- H-2: Hospitality House Policies and Procedures Manual
- H-3: Letter from Mendocino County Homeless Services Continuum of Care
- H-4: Letter from Mendocino County Health & Human Services Agency
- H-5: Certificate of Appreciation from City of Fort Bragg
- H-6: Use Permit Spreadsheet
- H-7: Letter from Lynelle Johnson, MCHC Board President
- H-8: Letter from Lara Anderson, Hospitality House Administrator
- H-9: Administrator Position Description
- H-10: House Manager Position Description
- H-11: 2014 Fort Bragg Housing Element Excerpts
- H-12: County of Mendocino Abbreviated Consolidated Plan
- H-13: Hospitality House Fire Inspection Report