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August 23, 2017

Fort Bragg Planning Commission
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 Revised Staff Report for August 23, 2017 Hearing

Dear Planning Commission Members:

We are writing on behalf of the Mendocino Coast Hospitality Center (MCHC) in response to the City's revised staff report regarding Hospitality House's special use permit. This matter is scheduled for hearing at the Fort Bragg Planning Commission meeting on August 23, 2017.

MCHC appreciates the opportunity that the Planning Commission process has provided to review and improve Hospitality House management policies and practices. We also appreciate the City's meeting with MCHC to discuss ways of revising the conditions that were proposed in the original staff report to address neighbor concerns, the needs of MCHC's clients, and the interests of the community as a whole.

As discussed below, MCHC has demonstrated its good faith participation in this process by agreeing to most of the City's proposed conditions, either as originally presented or as revised. The only issues that remain in dispute are whether the use permit should limit the number of overnight guests or

the number of beds (Special Conditions 1 and 2), the specifics of the City's proposals for a ban list and security cameras at Hospitality House (Special Condition 8), and the language of a proposal to ensure that Hospitality House is properly managed (Special Condition 12).

As discussed below, MCHC urges the Planning Commission to:

- a. Adopt the proposed use permit conditions to which the parties have agreed, as summarized below and reflected in the revised staff report;
- b. Amend Special Conditions 1, 2, 8, and 12 as proposed below;
- c. Refrain from adopting the City's proposed Findings because they lack adequate support; and
- d. Adopt MCHC's recommended Proposed Resolution No. PC____-2017, attached hereto as Attachment 1 (with comparisons to the City's Proposed Resolution, Revised Staff Report Attachment 24).

Summary of Undisputed Conditions

As reflected in the revised staff report, the City and MCHC are now in full agreement that Hospitality House will:

- a. Serve all food on premises (Special Condition 3);
- b. Provide and empty at least two 50-gallon trash receptacles (Special Condition 4);
- c. Provide a restroom facility for non-guest clients starting one hour before breakfast (Special Condition 5);
- d. Provide and monitor a waiting area beginning one hour before food service begins (Special Condition 6);
- e. Monitor client behavior on and adjacent to Hospitality House property, report illegal behavior to the Police Department and cooperate with the Police Department to address client behavior that disturbs the peace (Special Condition 7);
- f. Maintain and enforce rules of conduct prohibiting drug use and drinking (Special Condition 9);
- g. Post signs on the front and back property entrances of Hospitality House prohibiting drug use, drinking and loitering on Hospitality House property and providing a phone number to reach a member of

- the Hospitality House staff during operating hours from 4:00pm through 9:00am¹ (Special Condition 10);
- h. Discontinue operation of the Extreme Weather Shelter from Hospitality House (Special Condition 11);
 - i. Ensure that the Hospitality House manager is responsible for oversight of all activities on the premises and works to minimize the negative impacts of the facility and its clients on the surrounding neighborhood (Special Condition 13);
 - j. Maintain a trained person at Hospitality House at all times when clients are present (Special Condition 14);
 - k. Cooperate with the Police Department and Police Officers when they respond to complaints and calls for service or undertake investigations at Hospitality House (Special Condition 15);
 - l. Limit meal service to 20,000 meals per year (Special Condition 16); and
 - m. Refrain from intensifying or expanding services currently offered, or otherwise intensify the utilization of the facility (Special Conditions 17 and 18).
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Remaining Disputed Conditions

The only issues that remain in dispute are:

- a. Whether the Hospitality House use permit should limit the number of overnight guests or the number of beds (Special Conditions 1 and 2);
- b. The specifics of the City's proposals for a ban list and security cameras at Hospitality House (Special Condition 8); and
- c. The language of a proposal to ensure that Hospitality House is properly managed (Special Condition 12).

In order to modify Hospitality House's use permit over MCHC's objection, the City must establish either that MCHC violated the reasonable terms and

¹ This statement on page 20 of the revised staff report is inaccurate: "MCHC noted that management is not available 24 hours a day as the house is generally closed between 9:00am and 4:00pm." MCHC did not make that representation. In fact, Hospitality House is generally open, and staff are available, between 9:00am and 4:00pm.

conditions of the permit, 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 (1999). In addition, the modifications cannot discriminate against people with disabilities or people of color in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution or state or federal non-discrimination laws. These laws include: 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). The City is unable to make this showing for the proposed use permit conditions that remain in dispute.

The City has not established a violation of the reasonable terms and conditions of Hospitality House's use permit, a compelling necessity for its proposed modifications, or non-discriminatory treatment.

Nuisance Allegations

The City maintains that Hospitality House has violated Standard Condition 6c of its use permit by creating nuisance conditions in the neighborhood. However, it has not established any connection between Hospitality House's services and conduct in the vicinity that might be considered a nuisance. To the contrary, Hospitality House provides essential services for vulnerable members of the Fort Bragg community.

Hospitality House meets a documented and continuing need for homeless services in Fort Bragg. The City's Staff Report for Hospitality House's 2003 use permit refers to the need for homeless services as reflected in the Fort Bragg General Plan's Housing Element (Revised Staff Report, Attachment

4 p.4). The most recent 2014 Housing Element continues to reflect that need:

Policy H-3.9 Emergency and Transitional Housing: Continue to support emergency shelters, transitional housing and supportive housing within the City....

Program H-3.9.2 Inter-Agency Cooperation: Continue to work with private, non-profit, County, and State agencies to provide transitional housing, supportive services and emergency housing for the homeless.

(Attachment 2, Excerpt from 2014 Fort Bragg Inland General Plan Housing Element.) As recently as in June of this year, City staff demonstrated a commitment to work with community members to address the needs of homeless individuals in Fort Bragg by forming a Homeless Action Planning Group, in which MCHC will be participating. (Attachment 3, Letter from Lynelle Johnson dated August 21, 2017.)

Despite the City's expressed need for homeless services, Hospitality House is the only year-round overnight shelter in Mendocino County. (Revised Staff Report, Attachment 4, p.2, Staff Report for 2003 Hospitality House Use Permit). While other shelters have come and gone, Hospitality House has been providing food, shelter and work opportunities to men, women and children for 31 years. The vast majority of Hospitality House guests have physical and/or mental health disabilities. Guests must be sober, drug tested, and engaged in day programs, working or caring for children.² As of July, 2017, 16.3% of the outside guests receiving meals at

² Page 8 of the revised staff report mischaracterizes Hospitality House's length of stay requirements: "According to MCHC, in 1987 clients of the shelter were limited to a maximum stay of three days unless they entered a drug/alcohol treatment program, in which case their stay was extended to a maximum of 30 days." In fact, Hospitality House has always been a drug and alcohol free facility. After three days at the shelter, an individual must remain drug and alcohol free and commit to programs to address his or her needs in areas including mental health, addiction, personal finances, job training, etc. If an individual remains on that "path to self-sufficiency", he or she may remain at Hospitality House for up to six months.

In July of 2017, MCHC determined that 16.3% of Hospitality House's outside guests receiving meals were born and raised in Fort Bragg, and over 81% had been in Fort Bragg for 6 months or longer. Many guests find work at local businesses during or after their stay at Hospitality House. (Attachment 4, Letter from Anna Shaw dated August 7, 2017; Attachment 3, Letter from Lynelle Johnson.) In other words, Hospitality House is a stabilizing influence on the lives of the homeless individuals and families who seek services there, and by extension improves the stability and quality of life of the community at large.

In response to the community's concerns, MCHC has taken the following steps to ensure that Hospitality House is managed effectively, safely, and with full accountability:

1. MCHC has recently established and filled a new position, Hospitality House Administrator, whose responsibilities include full management of the house. This includes recruitment, staff training and supervision, control of substance abuse, application of all internal rules and policies and acting as a liaison with neighbors. (Attachment 3, Letter from Lynelle Johnson.)
2. MCHC recently established a Management Action Plan addressing staff training and supervision, implementation of rules and policies, medication audits, house inspections, maintenance of files, control of substance abuse and communication with community members and the Police Department. (Attachment 5, Management Action Plan). Some of the actions that Hospitality House is taking under this plan include:
 - a. Maintaining and enforcing a "ban list" of individuals who will be prohibiting from using Hospitality House services, and sharing that list with the Police Department:
 - b. Educating guests and the public about its use permit limit of 24 overnight guests per night, including by posting a sign to that effect on its front door;

- c. Ensuring that drug testing is conducted promptly and effectively when necessary;
 - d. Installing security cameras and sharing footage as necessary with the Police Department, as described below; and
 - e. Otherwise communicating and cooperating with the Police Department, as described below.
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3. MCHC has stepped up its cooperation with the Fort Bragg Police Department to ensure that Hospitality House takes all necessary steps to be a good neighbor. On August 16, 2017, representatives of MCHC met with Officer Thomas O'Neal of the Fort Bragg Police Department to develop strategies to communicate and work closely together to prevent and resolve any issues that may arise. As a result of this meeting, the Police Department will:

- a. Provide input regarding any concerns, information or suggestion for additions to Hospitality House's ban list;
 - b. Work with Hospitality House staff to ensure that drug testing is conducted promptly and effectively when necessary;
 - c. Work with staff to educate Hospitality House clients about loitering restrictions in and around the property; and
 - d. Work with MCHC in hiring new Hospitality House staff.
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(Attachment 6, Letter from Gary Johnson dated August 20, 2017.)

4. MCHC recently initiated an inspection by the Fire Department, and made some changes to bed configurations, fire alarms and sprinklers. The Fire Department has certified that Hospitality House, with bed configurations as reflected in the attached floor plan, is currently in compliance with all applicable safety requirements. (Attachment 7, Fire Inspection Report; Attachment 8, Hospitality House Floor Plan).³

³ The statement in Footnote 5 of page 10 of the revised staff report that "the Fire Marshall has noted" that there may be fire safety issues at Hospitality House is entirely unsupported.

5. MCHC will no longer make emergency exceptions to its limit of 24 overnight guests each night.⁴ As the revised staff report indicates, MCHC records the number of overnight guests that it serves each night, (Revised Staff Report, Attachment 8.) Tracking of guests through the Homeless Management Information System is a condition of MCHC's federal grants. The guest logs attached to the Revised Staff Report indicate that MCHC accurately records the number of guests each night, even on the rare occasions when it has exceeded its 24-guest limit. MCHC has arranged with the Police Department to review its guest logs on a weekly basis, and to conduct spot checks to count the number of overnight guests. (Attachment 6, Letter from Gary Johnson.)
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Hospitality House has strong support from the Fort Bragg community. The revised staff report contains many emails and letters describing the importance of Hospitality House and its services. (Revised Staff Report, Attachments 15, 20). The majority of the 40 individuals who provided comment during Open Time at the July 26, 2017 Planning Commission meeting were unequivocally supportive of Hospitality House. Going forward, Hospitality House will be taking the following measures to maintain and improve its relationship with its neighbors:

- a. Opening its board meetings to the public (with the exception of confidential matters involving staff or guests);
 - b. Arranging quarterly gatherings so that neighbors can ask questions and share their thoughts and suggestions; and
 - c. Continuing to work with our local business owners through the "Downtown Watch" meetings.
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Neighbor complaints to the City and the Police Department about Hospitality House do not establish that Hospitality House is a nuisance.

⁴ On fewer than 5% of the nights from January 2016 through June 2017, Hospitality House has allowed one, two or three additional overnight guests over its 24-person limit. These were all emergency situations, many of which involved mothers with young children. (Revised Staff Report, Attachment 8.) Hospitality House will discontinue this practice due to community concerns.

Complaints from sources who are anonymous or whose names have been redacted have very little evidentiary value and may well be unfounded. For example, a neighbor recently complained that Hospitality House had left a sofa in the alley behind its facility, attracting nuisance behavior. In fact, Hospitality House had nothing to do with the sofa, or its appearance in the alley. However, in order to be a good neighbor, Hospitality House is paying to have the sofa removed. (Attachment 9, Letter from Lara Anderson dated August 22, 2017.)

Police calls also do not establish that Hospitality House is a nuisance. As discussed in the attached letter from Gary Johnson, when security checks are excluded, the number of police calls for service to Hospitality House from June 1, 2016 through June 30, 2017 is 134 rather than 196 as indicated in the revised staff report. Only approximately one-half of one percent of the total calls for service in 2016 were attributable to Hospitality House. Most of those calls took place in January and February of 2016, when the Emergency Weather Shelter was operating. The fact that more police calls were associated with a homeless shelter compared to restaurants, bars and single room occupancy hotels is a meaningless comparison. (Attachment 6, Letter from Gary Johnson.)

It is human nature to seek a scapegoat for poverty and homelessness, and Hospitality House is an easy local target. Nevertheless, nothing that the City has presented to the Planning Commission establishes that Hospitality House itself is the source of any nuisance behavior in the neighborhood, rather than being an important part of the solution. As discussed above, Hospitality House is primarily serving people who are already in Fort Bragg and have no place else to go. It has taken significant steps to enhance its management practices and community relations, and will continue to do so. Taking government action against Hospitality House based on the neighbors' concerns about its clientele would be an illegal use of the City's land use authority and potentially discriminatory.

Special Condition 1:

The City has not established that Hospitality House violated Special Condition 1 by keeping more than 24 beds at the facility, or that there is a compelling necessity to limit the number of beds at the facility as opposed

to the number of overnight guests. To the contrary, the high rates of homelessness in Fort Bragg and Mendocino County reflect a compelling necessity for Hospitality House to serve the full allotment of 24 guests.

Logic dictates that the use permit's limitation of 24 "beds" refers to the number of overnight guests or "bed nights," not the number of pieces of furniture in the house. 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. The Background section of the City's staff report for Hospitality House's 2003 use permit refers to the number of "bed nights" provided from February 2002 – February 2003. (Revised Staff Report, Attachment 4, p.2.) Consistent with this, MCHC itself has always understood the City to have been regulating the number of overnight guests, and not the number of pieces of furniture. MCHC's reports have always referred to "bed nights" provided at Hospitality House.

It is clear from the original use permit record that the City intended to allow up to 24 guests to stay in Hospitality House each night. In order to accommodate up to 24 guests per night (including women, people with disabilities and families with children, who have unique needs), Hospitality House must keep extra beds in each room. This is because Hospitality House provides overnight shelter to men, women and families in separate rooms. It uses sturdy, heavy bunk beds that are difficult to move. Staff do not know until check-in time at 4:00 p.m. how many men, women and children will be staying that night. Limiting the number of beds to 24 would effectively limit Hospitality House's overnight capacity to fewer than 24 individuals. Restricting Hospitality House's operations on the fiction that Special Condition 1 was meant to limit the number of pieces of furniture rather than the number of overnight guests in the house flies in the face of the original intent of the use permit. (Attachment 9, Letter from Lara Anderson.)

The City has proposed to add a provision imposing a code violation fee for violations of Special Condition 1. As discussed above, this provision is unnecessary, given the steps that MCHC has already agreed to take to ensure that no more than 24 guests stay per night. However, in the spirit of cooperation, MCHC is willing to accept the proposed fine provision

provided that Special Condition 1 is revised to clarify that the limit is the number of overnight guests rather than the number of beds.

Below is the City's proposed revision to Special Condition 1, with MCHC's proposed changes:

The total number of ~~beds~~ overnight guests at the emergency shelter shall not exceed 24 each night. An increase in the number of ~~beds~~ overnight guests is not permitted unless a Minor Use Permit or Use Permit Amendment is applied for and obtained. If this provision is violated, operator shall pay a code violation fee, as determined by the City's Fee Schedule, for each occurrence of violation.

Special Condition 2:

MCHC is willing to accept the periodic inspections that the City proposes under Special Condition 2. However, MCHC proposes that the language in that condition be revised to reflect that Hospitality House is limited to 24 guests rather than 24 beds.

Below is the City's proposed revision to Special Condition 2, with MCHC's proposed changes:

The emergency shelter operator shall permit periodic inspections by City staff, which may be conducted without prior notification, to ensure that the limitation on the number of ~~beds~~ overnight guests is not exceeded.

Special Condition 8:

Proposed Special Condition 8 is aimed at ensuring that Hospitality House establishes, maintains and enforces rules and policies aimed at curtailing behaviors that are unlawful and/or disturb the peace. As reflected in Special Condition 8a of the revised staff report, Hospitality House agreed to this condition with the following changes:

Hospitality House shall establish rules of conduct for clients, aimed at curtailing behaviors that are unlawful and/or disturb the peace.

Clients who violate the rules of conduct shall be denied service by Hospitality House in accordance with policies approved by the MCHC Board of Directors.

At their meeting with MCHC on July 27, 2017, City staff indicated that the revised staff report would propose that MCHC keep a “ban list” of individuals who would be denied service at Hospitality House, and install security cameras on the outside and public areas inside of the Hospitality House property. City staff described these proposals, but did not provide specific language.

City staff described that MCHC would give the Police Department the opportunity to *recommend* that certain individuals be included on the proposed Hospitality House ban list. MCHC agreed to this proposal in principle, subject to specific language to be provided in the revised staff report. MCHC did not agree that the Police Department would have the authority to unilaterally ban people from receiving services at Hospitality House, and does not agree to that now. The City has failed to show a compelling necessity for this extraordinary extension of the police power, or any assurance that such an extension could be implemented without an adverse discriminatory impact on people with disabilities or other protected groups.

At the meeting, MCHC agreed to consider posting security cameras on the outside of its building, and in public areas inside the building (excluding sleeping areas, bathrooms and showers). MCHC indicated that it would explore any privacy concerns to sharing the video footage with the police.

City staff declined MCHC’s request to review the proposed language for a ban list and security cameras prior to the issuance of the revised staff report. Consequently, the language in proposed Special Condition 8b does not accurately reflect the agreement of the parties. Below is the City’s proposed revision to Special Condition 8, with MCHC’s proposed changes:

8c. Hospitality House shall establish rules of conduct for clients, aimed at curtailing behaviors that are unlawful and/or disturb the peace. Clients who violate the rules of conduct shall be denied service by Hospitality House in accordance with policies approved by

the MCHC Board of Directors. The Hospitality House shall establish a “ban list” that identifies individuals who are temporarily and/or permanently banned from the Hospitality House property. The names of the individuals on the “ban list” shall be shared with the Police Department and the Police Department may ~~add the names~~ recommend the addition of individuals who have been cited and/or arrested for illegal actions (including actions occurring in locations other than the Hospitality House premises). ~~The Police Department shall use its judgment as to whether an individual should be temporarily banned or permanently banned from the Hospitality House depending upon the severity and frequency of repetition of the crime(s) committed.~~ The Hospitality House shall abide by the “ban list.” Closed loop surveillance cameras shall be installed in the interior and exterior public spaces of the Hospitality House (excluding sleeping areas, bathrooms and showers) and ~~footage shall be shared with the Police Department upon request.~~ With regard to sharing video footage with the Police Department, MHCH and Hospitality House will comply with their obligations to their clients under state and federal privacy laws, including but not limited to HIPAA.

Special Condition 12:

As reflected on page 21 of the revised staff report, MCHC and City staff discussed revising Special Condition 12 “to ensure that Hospitality House staff is competent to successfully manage the facility.” MCHC did not agree to guarantee, and cannot reasonably be expected to agree to guarantee, that Hospitality House will always be “successfully managed.” What they can do is take steps to ensure that managers have the training and experience needed to successfully manage the shelter. Below is the City’s proposed revision to Special Condition 12, with MCHC’s proposed changes:

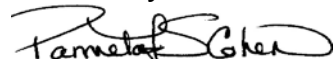
12c. The Hospitality House shall be ~~successfully~~ managed by a competent person who has both the requisite training and experience to successfully manage an emergency shelter.

The Planning Commission does not have sufficient evidence to adopt the City's recommended Findings.

Finally, MCHC urges the Planning Commission not to adopt the City's recommended Findings because they are inappropriate for this type of proceeding and lack adequate support in the record. The Findings, which attribute problematic behavior to Hospitality House guests, are supported only by correspondence from neighbors, police logs and "police officer testimony" to which MCHC has not had an adequate opportunity to respond. The identities of the sources of some of the complaints have been redacted, affecting their evidentiary value and the ability of MCHC to respond. The "police officer testimony" allegedly supporting some of the Findings is not even provided. Because the Planning Commission lacks sufficient information on which to base the recommended Findings, MCHC requests that they not be adopted. Instead, MCHC requests that the Planning Commission adopt MCHC's recommended Proposed Resolution No. PC____-2017, attached hereto as Attachment 1.

Thank you for your consideration. We look forward to discussing these issues at the Planning Commission meeting on August 23.

Sincerely,



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