

County of Santa Clara

Office of the County Executive

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DATE: August 18, 2023

TO: Honorable Board of Supervisors
James R. Williams, County Executive

FROM: Ky Le, Deputy County Executive ^{DS} *KL*
Sherri Terao, Director of Behavioral Health Services ^{DS} *ST*

SUBJECT: Residential Care Facilities and Independent Living Homes

At the Board of Supervisors' meeting on February 7, 2023 (Item No. 16), Supervisor Chavez and Supervisor Lee requested information on strategies to expand and improve Residential Care Facilities (RCFs, aka licensed board and care homes) and Independent Living Homes (aka unlicensed board and care homes). At the Health and Hospital Committee Meeting on May 24, 2023 (Item 12), Supervisor Lee requested an off-agenda report that includes responses to the Behavioral Health Board (BHB) recommendations for Independent Living Homes.

This report summarizes the differences between RCFs and Independent Living Homes and the roles that County Departments or cities play in enforcing their respective ordinance codes (**Attachment A**). The report also outlines strategies that the Administration has implemented or plans to implement to increase or improve RCFs and Independent Living Homes. The BHB's recommendations are briefly addressed in this report, and a more detailed response is included as **Attachment B**.

I. Background

Residential Care Facilities (aka Licensed Board and Care Homes)

A “**Residential Care Facility (RCF)**” is licensed by the California Department of Social Services’ (CDSS) Community Care Licensing division (CCL) to provide 24-hour a day, non-medical care and supervision for adults or older adults with disabling conditions and/or functional impairments.¹ The services are provided in a home-like environment and typically operate in single-family residences. RCFs differ from other permanent housing programs or residential unit types (e.g., apartments or rented rooms) in that RCF residents need or prefer assistance with activities of daily living (ADLs)

¹ Under CCL’s Adult and Senior Care Program there are nine facility types and the definitions for each can be found at: <https://www.cdss.ca.gov/inforesources/community-care/ascp-centralized-application-units>. Adult Residential Facilities (ARFs) and Residential Care Facilities for the Elderly (RCFE) are the two facility types most often used by the Behavioral Health Services Department to meet the long-term housing needs of individuals with a serious mental illness. The other seven facility types are less common because they are subcomponents of other programs, primarily serve individuals with intellectual or developmental disabilities, or are day programs operating for less than 24 hours a day.

such as dressing, feeding, toileting, bathing, and grooming. Specific assistance depends on the needs of individuals. Residents also receive three meals per day. Living accommodations and meals (i.e., room and board) and assistance with ADLs (care and supervision) are the “basic services” provided by RCF operators who, when appropriate, may coordinate care with residents’ medical, behavioral health, and/or supportive housing providers.

CCL is responsible for receiving and approving licensing applications, monitoring compliance with licensing requirements, fielding and resolving complaints about facilities, and recertifying facilities. RCFs in Santa Clara County are in CCL’s Field Operations 2 region, and CCL maintains a field office in San Jose. Requirements for RCFs are found in the California Code of Regulations, Title 22, Divisions 2 and 6. RCFs must also comply with local zoning ordinances and building codes which are investigated and enforced by municipalities usually following complaints.

While RCFs can be used to meet the permanent or long-term housing needs of adults and older adults with a serious mental illness (SMI) who also need assistance with ADLs, the Behavioral Health Services Department (BHSD) primarily uses pays RCFs a “supplemental rate” to meet individuals’ needs as they transition from acute, subacute, or another community residential setting (e.g., crisis residential treatment facility).

Independent Living Homes (aka Unlicensed Board and Care Homes)

Independent Living Homes are similar to RCFs in that Independent Living Homes usually operate out of single-family residences and exclusively rent to individuals with health, behavioral health, or other challenges. However, Independent Living Homes are not licensed by CCL, and operators are not obligated to help renters with ADLs or provide other support services (e.g., scheduling a client’s appointments, reminding them to take medication). Independent Living Homes may not even have staff at the facility every day, much less 24/7. Some Independent Living Homes choose to provide meals, have an onsite facilities manager, or provide other services onsite, but it is a case-by-case basis without formal regulation or oversight from a state licensing entity.

While Independent Living Homes may not offer the same services as RCFs they are an important part of the housing system. Even if an individual can manage their ADLs, they may need or want to have more onsite support (e.g., reminders about appointments) and/or to live with others for social or emotional support.

Generally speaking, there are two groups of Independent Living Homes. The first group consists of homes that have a formal, contractual relationship with the County directly or through one of its contractors. Depending on the program, these homes serve a particular subgroup (e.g., women with substance use disorders) and may be established as temporary housing or may meet individuals’ permanent housing needs. For these types of Independent Living Homes, the County or its contractors monitor the habitability of the facilities and the quality of the contracted onsite services.

For example:

- BHSD contracts with 5 organizations (i.e., Countywide Alcohol and Drug Services [CADS], Crossroads, LifeMoves, Pathway, and Solace) to provide “Recovery Residences” to individuals who are participating in County-operated or funded substance use disorder outpatient programs. On any given night, the program has a capacity to serve about 311 individuals in 42 facilities, most of which are large single-family residences. The typical length of stay is 90 days although extensions are often granted. In addition to basic living accommodations, BHSD’s contract with the Recovery Residences sets other requirements such as having an onsite manager and providing all clients with three meals per day.
- BHSD contracts with community-based organizations (CBOs) for intensive outpatient services to support individuals who have a serious mental illness and who have had substantial hospitalizations or other challenges. Some of these organizations are also funded to lease single family residences and to sublet rooms to their clients. These “Master Leased Homes” provide long-term, but temporary housing to clients of intensive outpatient programs. BHSD’s contract requires the CBOs to provide basic living accommodations, clients with three meals a day, onsite 24/7. management, and supportive services to help clients transition to living in a community.
- The County acquired a single-family residence and contracted with a property management company to maintain the property and to have an onsite site manager. The home provides permanent housing for up to five men who are monolingual Vietnamese or are limited English speakers with serious mental illness. The onsite, live-in manager helps residents access services and helps the clients develop a sense of community. The clients receive ongoing outpatient services from one of BHSD’s contracted providers.

The second group of Independent Living Homes are those that operate without a contract or other formal arrangement with the County or one of its contracted providers. Homes in this group include those that rent to individuals who – while they may receive treatment services from the County or County contracted provider – do not receive any rental assistance from the County. Other homes in this group include ones in which only some of the renters receive ongoing or time-limited rental assistance from the County. There are an unknown number of facilities or operators in the second group of Independent Living Homes.

Independent Living Empowerment Project (ILEP)

The County-funded Independent Living Empowerment Project (ILEP) was developed to improve the quality of accommodations and services offered at Independent Living Homes without formal relationships with the County or other agencies. Using a model akin the Better Business Bureau, the

ILEP is attempting to create an Independent Living Association² of homes and operators who voluntarily commit to and receive assistance with maintaining certain standards. In exchange, member homes/operators receive assistance filling units and establish working relations with the County and service providers in meeting the behavioral health challenges of shared clients/tenants. The ILEP started in April 2022, and has recruited 5 homes and 3 operators as of August 17, 2023.

II. Challenges and Opportunities

Like other communities, Santa Clara County has a significant shortage of housing that is affordable and available to extremely low-income (ELI) households, especially individuals with disabling conditions such as a serious mental illness and who rely on Supplemental Security Income (SSI) to meet their basic needs.³ According to the National Low Income Housing Coalition's March 2023 report, there are only 33 units available for every 100 ELI renters. The high cost of housing – including costs to develop, acquire and lease properties – and the very limited incomes of clients served by the BHSD result in a shrinking pool of RCFs and Independent Living Homes, especially ones that are willing to assist BHSD clients with substantial needs. Moreover, resource constraints and the lack of alternatives mean that some operators are not able to maintain standards at their facilities.

To mitigate the impacts of the affordable housing crisis counties and cities have been investing in rental assistance programs of all types to help lower income households afford and access the rental market. Counties and cities have also made investments in developing new affordable and supportive housing to increase the housing inventory. For example, in Santa Clara County supportive housing programs – consisting of both rental assistance programs and housing units – served approximately 2,635 households per year in 2015. By 2023, supportive housing programs had the capacity to assist up to 5,500 households per year with over 1,300 additional units or subsidies in development.⁴

The growth in supportive housing programs has primarily come in the form of: a) rental subsidies to help individuals rent apartments; and b) the development of new apartment buildings. As discussed during the Administration's reports on the behavioral health public crisis and as outlined below,

² The Independent Living Association (ILA) provides peer-driven oversight of member homes and support to operators in meeting the quality standards. To become a member of the ILA, a home must pass an inspection by Peer Review and Accountability Team (PRAT). PRAT determines if quality standards are met and provides the operator of the home with feedback on what needs to be done to meet the standards. ILA staff assists the home operator with any next steps required to meet the standards fully and only then the home can become a member of the ILA. In cases where concerns about quality arise, ILA has a grievance procedure that includes corrective actions.

³ In 2023, the Supplemental Security Income (SSI) Federal Benefit Rate (FBR) is approximately \$914 for an eligible individual.

⁴ April 4, 2023, Board of Supervisors Meeting (Item No. 13). Slide 12 from staff presentation (<http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=236379&MeetingID=14889>)

Administration has proposed several strategies to expand the supportive housing system by increasing the number and quality of RCFs and Independent Living Homes.

III. Strategies

Infrastructure and Administration

- 1) **BHSD Housing Team.** BHSD is establishing a small team to oversee all the Department's temporary shelter and permanent housing programs. The team will partner directly with the Office of Supportive Housing on various housing strategies including strategies to increase and improve RCFs and Independent Living Homes.
- 2) **Management Information System (MIS).** One of the team's tasks is to develop a management information system that allows the Department to more easily track and report on the inventory, availability, utilization and impact of its temporary shelter and housing programs. If effective, the same MIS could be used for certain treatment programs such as mental health community residential and substance use disorder residential treatment programs. Until its efficacy can be determined, this internal system will run alongside the public-facing portal that BHSD developed in FY 2021-2022 in response to the Board's inquiries and consistent with **the Behavioral Health Board's Recommendation #1.**
- 3) **Standards.** When considering contracts or housing placements, BHSD Housing Team will ensure that staff and contractors ensure that facilities meet the U.S. Department of Housing and Urban Development's (HUD) Housing Quality Standards (HQS) as a minimum and the ILA's Quality Standards ideally. The standards were developed with ILEP workgroup, which includes representatives from CBOs; County Behavioral Health Directors Association of California (CBHDA); National Alliance on Mental Illness (NAMI); Community Living Coalition (CLC); operators of independent living homes; and community members with lived experience as consumers of mental health services and tenants in a variety of living arrangements (**Behavioral Health Board Recommendation #2**).
- 4) **Coordination and Enforcement.** Having a centralized team in BHSD to implement or coordinate BHSD's various housing programs will improve housing programs, RCFs' and Independent Living Homes' compliance with contractually required standards. In addition, the team can be a consistent presence to address housing quality issues in coordination with CCL, other County Departments (e.g., Department of Aging and Adult Services), and cities. County staff have an existing relationship with the CCL local field office and will ensure that the working relationships are transitioned to the BHSD Housing Team. This summer, County staff met with City of San Jose Planning, Building, and Code Enforcement leaders to understand their processes. As the BHSD Team is formed, they will establish relationships with City of San Jose staff and counterparts in other cities. These relationships will enable agencies to receive early notification of facilities experiencing trouble and create opportunities

to jointly develop solutions that preserve housing options for the county's most vulnerable residents.

- 5) **Current Monitoring of RCFs.** Monitoring and support to contracted RCFs and Independent Living Homes will be based on some the BHSD's current procedures. The BHSD currently contracts with some RCF operators, providing them with supplemental rates to support BHSD clients with special needs. BHSD collaborates and partners with CCL through scheduled quarterly meetings to discuss facilities under contract that are not meeting community care regulations. BHSD coordinates site visits and activities based on needs of the client or requests/complaints received. In addition, annual site reviews are also conducted with each contracted facility. The site reviews are conducted based on a checklist of minimum requirements developed by BHSD and the CCL. If deficiencies are found, the facility receives a Plan of Correction Notice and has approximately 14 days from the date of the receipt of the notice to correct the deficiencies. BHSD staff return to the facilities for a follow up review, and failure to complete the plan of corrections could result in 30 days suspension of new supplemental referrals and/or provider may be at risk of contract termination based on breach of the contracted terms.

Preservation and Improvement

- 1) **Preserving and Improving RCFs.** The County received \$8 million in grant funding through the Community Care Expansion Program's Preservation component (CCE Preservation). Funding will be used to provide operating subsidies or capital improvement grants to existing RCFs that serve clients receiving SSI or Cash Assistance Program for Immigrants (CAPI). Administration issued a solicitation and is still finalizing contracts. These funds will help ensure that existing RCFs do not close, that they have the operating resources to continue providing quality accommodations and services, and that significant facility needs are addressed.

In addition, the County will use \$5.8 million in Behavioral Health Bridge Housing funds (BHBH) to provide supplemental rates to RCFs. The BHBH funding would support approximately 100 BHSD clients daily. Through the CCE Preservation and BHBH funds. The County intends to establish contracts with more RCFs, thus increasing BHSD clients' access to this level of care.

- 2) **Preserving and Improving Independent Living Homes.** To preserve and improve the quality of existing Independent Living Homes the BHSD is consolidating the administration of rental assistance provided to clients of intensive outpatient programs. Some of the 1,400+ clients currently reside in Independent Living Homes. Through the consolidation process, these Independent Living Homes will be offered contracts with the BHSD, thus providing the operators additional and more stable revenue. In exchange, the operators would have to meet certain housing quality standards and provide a minimum set of services. Some operators may

receive more financial assistance depending on the needs of the clients/tenants. Through this process, the BHSD will develop contractual relationships with Independent Living Homes that previously had none. These actions are consistent with the goal of the **Behavioral Health Board's third recommendation**, which is to stabilize and improve the quality of Independent Living Homes through "supplemental rates." Concurrently, the BHSD will provide small grants to the newly contracted Independent Living Homes to correct facility deficiencies and/or address deferred maintenance. The facility improvements will be funded through the County's BHBH grant, which totals over \$51 million.

Increasing RCFs and Independent Living Homes

The strategies described above will primarily increase access to and/or improving the quality of RCFs and Independent Living Homes that are currently in operation. However, their impact will ultimately be constrained by existing housing stock. The following strategies would lead to new RCFs or Independent Living Homes through acquisition and renovations or, ideally, new construction.

- 1) **Independent Living Homes for Adults with SMI.** In FY 2024, the BHSD will utilize \$8 million from the California Health Facilities Finance Authority (CHFFA) to acquire properties for use as Independent Living Homes for adults and older adults with behavioral health disorders and who are participating in justice system programs. The grants may enable the County to assist up to 26 individuals daily by adding approximately 26 additional beds. These beds would provide immediate access to community housing upon being released from a correctional facility. Similarly, the BHSD's Mental Health Services Act (MHSA) plan calls for BHSD contractors to acquire and operate 4 additional properties as Independent Living Homes and serving up to 26 individuals daily.
- 2) **Constructing New RCFs.** To establish a new RCF development pipeline, Administration is working with an RCF operator and a non-profit housing developer to consider constructing and operating RCFs on three County-owned properties. Administration reached out to the two organizations after solicitation process yielded no proposals. Developing RCFs on the three County-owned properties would help establish an ongoing program.

Encl: **Attachment A** – Role of Code Enforcement
Attachment B – Responses to Behavioral Health Board Recommendations

Cc: Chief Board Aides
 Greta S. Hansen, Chief Operating Officer
 James R. Williams, County Counsel
 Tiffany Lennear, Clerk of the Board of Supervisors
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ATTACHMENT A: The Role of Code Enforcement

Violations of the County Ordinance Code are public nuisances and nuisances per se (as a matter of law) subject to enforcement by: (1) any County department responsible for enforcing that law, ordinance, or regulation, (2) the Office of the County Counsel, and (3) the Office of the District Attorney. The County has jurisdiction to civilly enforce its police power in the unincorporated areas of the county and has concurrent nuisance abatement authority and the authority bring actions under California's Unfair Competition Law (UCL) and False Advertising Law (FAL) throughout the county. In addition, the certain County departments have countywide authority to enforce State law, for example the Public Health Department and the Department of Environmental Health ("DEH").

County Counsel assists several County Departments to respond to complaints related to residential facilities, including the Department of Planning and Development ("Planning Department") and DEH that enforce County Ordinances in response to complaints of violations. For complaint-based matters, the enforcement process begins with a department's intake of a public complaint. A department's enforcement officers (such as Code Enforcement Officers for the Planning Department, or Registered Environmental Health Specialists for DEH) investigate these complaints, including inspecting premises, interviewing witnesses, and gathering other information to establish evidence of violations.

The Fourth Amendment to the United States Constitution authorizes property inspections pursuant to consent, exigency, or a warrant, although most inspections are conducted pursuant to a property owner's consent. If an inspection reveals violations of County Ordinance or State law, where applicable, enforcement officers issue a notice directing abatement of cited violations. The notice may have several legal implications, including requiring a property owner, business operator, or other responsible party to abate violations within a time certain or pay administrative fines until they do so.

When a responsible party fails to take corrective action, County Counsel may bring a civil action against them—especially where violations threaten public health, safety, and welfare—and may include injunctive relief such as temporary Restraining Orders and Preliminary Injunctions. The County may also seek to summarily abate exigent violations, which involves the County correcting the violations and recovering the costs for correction from the responsible parties. For non-exigent violations where judicial intervention is unnecessary, enforcement officers' citations will result in the accrual of administrative fines until the responsible party abates the violations. Additionally, responsible parties are also liable for staff costs and attorney's fees associated with enforcement actions. In addressing violations likely to occur in residential care homes, the County has several different enforcement tools at its disposal, as described above, and uses those tools in collaboration with incorporated cities, where applicable.

County Counsel and County staff have worked collaboratively with cities that may have parallel or concurrent jurisdiction over a matter, as well as the District Attorney's Office, including joint enforcement actions to compel the responsible party to comply, up to and including civil

prosecution. To further improve the collaborative process for residential care homes and Independent Living Homes, the Behavioral Health Services Department (BHSD) is developing a centralized team to implement or coordinate various housing programs to improve these programs' compliance with contractually required standards. In addition, the team can be a consistent presence to address housing quality issues in coordination with CCL, other County Departments (e.g., Department of Aging and Adult Services), and cities.

County staff have an existing relationship with the CCL local field office and will ensure that the working relationships are transitioned to the BHSD Housing Team. This summer, County staff met with City of San Jose Planning, Building, and Code Enforcement leaders to understand their processes. As the BHSD Team is formed, they will establish relationships with City of San Jose staff and counterparts in other cities. These relationships will enable agencies to receive early notification of facilities experiencing trouble and create opportunities to jointly develop solutions that preserve housing options for the county's most vulnerable residents.

ATTACHMENT B: Responses to BHB Recommendations

- 1) Behavioral Health Board (BHB) Recommendation #1: Develop and maintain a web-based, searchable data base that tracks all licensed and unlicensed board and care facilities in Santa Clara County that accept clients who receive services from BHSD or their contract partners with the identification of the type of housing and the offered care, if any. The status of available facilities be reported to the Board of Supervisors regularly.**

Response: In FY 2022, BHSD developed a web-based, searchable database (<https://bhdp.sccgov.org/analytics-reporting/ar-dashboards>) that tracks licensed facilities in Santa Clara County that accepts County clients vetted through 24-Hour Care Team, the Forensic, Diversion and Reintegration Team, and other necessary reviews for appropriate placements. This database includes instructions for referrals, navigation, and is searchable based on service focus, facility name, geography, and level of care. It also includes capacity, date updated, facility name, address, phone number, and fax numbers (if applicable). Types of services included in this dashboard include acute psychiatric hospitals, adult residential treatment, adult transitional services, crisis residential, crisis stabilization units, IMDs, Skilled Nursing Facilities, RCFs, Recovery Residences, residential services, shelters, supplemental services, Transitional Housing Units, and Withdrawal Management.

BHSD modeled its database after lessons learned from Los Angeles County's database, which also does not include unlicensed facilities with no contractual relationship with the county. Los Angeles County learned that unlicensed facilities with no contractual relationship will not respond to requests for capacity and regular capacity updates (even after many attempts to contact these facilities) due to lack of incentive on the unlicensed facility's end to respond and lack of authority to monitor, enforce, and ensure accuracy on the County's end. Los Angeles County also noted that they did not list unlicensed RCFs in their database as they did not want the public to interpret the listing of the facility as a county endorsement or that placement in these facilities by the County was possible despite concerns regarding quality of care.

- 2) Recommendation #2: Develop, along with the Independent Living Association (ILA), a Working Group that includes peer representatives, and representation of all county and municipal departments that oversee housing codes (i.e., Code Enforcement, Fire, Housing, etc.). that would oversee the implementation and development of the ILA Quality Standards.**

Response: The ILA quality standards that were developed with ILEP workgroup, which includes representatives from community-based organizations; County Behavioral Health Directors Association of California (CBHDA); NAMI; Community Living Coalition (CLC); operators of independent living homes; and community members with lived experience as consumers of mental health services and tenants in a variety of living arrangements. BHSD also works closely with County departments overseeing housing codes, ILEP/ILA, consumer representatives, and the ILEP workgroup partners which include representation throughout the County and community.

The ILA quality standards are implemented through the ILA membership application process, annual reviews, free trainings to operators and tenants on issues related to quality such as pest

control and de-escalation of challenging situations, and ongoing responses to grievances from tenants and community members. The ILA membership application process includes a PRAT) visit to the applicant home. PRAT consists of ILEP staff as well as community members, including operators and tenants. PRAT provides detailed feedback to the operator on quality standards and required improvements. ILEP staff assists operators to meet ILA quality standards and the PRAT assures that all standards were implemented prior to granting ILA membership. The PRAT reviews each member home annually including scheduled and unscheduled visits. If these follow up reviews discover that quality standards are not met, the operators are offered support to correct, and membership can be suspended or terminated. In addition, ILEP staff notifies BHSD if they discover substandard living conditions during community outreach activities. BHSD works with ILEP to notify specific BHSD programs serving individuals housed in these arrangements for further follow up. BHSD also works closely with Code Enforcement, County Counsel, Community Care Licensing, and ILA/ILEP to address issues raised by the community and stakeholders. BHSD will work with the ILA Advisory Group to expand membership where appropriate and possible.

In addition, the aforementioned focus group to solicit feedback from unlicensed providers and landlords would also be an opportunity to develop the appropriate and feasible incentives to meet the needs and support sought by these providers to improve living standards to contract with the County to serve more clients.

3) Recommendation #3: Develop a program that provides landlords who have facilities that meet the ILA Quality Standards and who house persons who are receiving any services from BHSD or its contract partners can apply to receive up to \$35 per day for each such person housed (in addition to any supplemental services already provided). If they provide meals, they could apply to receive up to \$50 per person per day. These payments will be subject to audit and oversight by the ILA Working Group. Funding for these payments will be provided by MHSA funding, grants or general funds.

Response: To preserve and improve the quality of existing Independent Living Homes the BHSD is consolidating the administration of rental assistance provided to clients of intensive outpatient programs. Some of the 1,400+ clients currently reside in Independent Living Homes. Through the consolidation process, these Independent Living Homes will be offered contracts with the BHSD, thus providing the operators additional and more stable revenue. In exchange, the operators would have to meet certain housing quality standards and provide a minimum set of services. Some operators may receive more financial assistance depending on the needs of the clients/tenants. Through this process, the BHSD will develop contractual relationships with Independent Living Homes that previously had none. These actions are consistent with the goal of the BHB's third recommendation, which as to stabilize and improve the quality of Independent Living Homes through "supplemental rates." Concurrently, the BHSD will provide small grants to the newly contracted Independent Living Homes to correct facility deficiencies and/or address deferred maintenance. The facility improvements will be funded through the County's BHBH grant, which totals over \$51 million.