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SITING RESIDENTIAL SOCIAL SERVICE PROGRAMS: THE PROCESS AND THE OPTIONS

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Siting Residential Social Service Programs: The Process and the Options

Executive Summary

The siting of residential social service programs is a difficult process nationwide, and has been particularly contentious in Worcester during the past several months. Citizens fear the impact of these facilities on their families, their neighborhoods, and their schools. They object to their concentration in particular areas of the City. And when our elected representatives openly argue over whose district is more “oversupplied” with various residential treatment programs and group homes, it is an indication of a defect in the policymaking process. In order to begin to address the siting issue the Research Bureau offers some observations and recommendations:

- Recent controversies over the establishment of a Community Healthlink treatment program for teenage girls recovering from drug addiction on Highland Street (across from Doherty High School), along with the plans by SMOC (South Middlesex Opportunity Council) for a “sober” house for those recently residing at the PIP shelter on Main Street, have highlighted civic concern over the siting of such facilities.
- While the siting of programs for those with mental illness or a history of substance abuse often causes concern among neighborhood residents, the directors of **carefully supervised** programs for addressing these problems report that in practice, they rarely generate complaints among neighborhood residents.
- By contrast, the PIP shelter, an emergency shelter for the homeless who may also be currently addicted to drugs and alcohol, has been the source of many problems (including crime, the scattering of syringes and other debris) in its Main Street neighborhood.
- While Massachusetts’ Dover Amendment exempts educational and religious facilities from local zoning ordinances, the Amendment clearly does not apply to the PIP shelter. In addition, its application to the proposed “sober house” in Newton Square, the “educational” component of which is a requirement that recent residents of the PIP attend Alcoholics Anonymous meetings during the first 90 days of residency and individual or group counseling during the first year of residency, should be questioned.¹ The Massachusetts Supreme Judicial Court has not ruled that recovery programs constitute an educational use. Hence the City should consider **challenging** the claim that the siting of the facility at Newton Square is invulnerable to local zoning requirements.
- Nor does the Federal Fair Housing Act apply to residences housing current substance abusers. That Act explicitly excludes such individuals from the category of “disabled” persons for whom the siting of housing may not be blocked by local zoning. A Bureau study of cities in other states (which lack a counterpart to the Dover Amendment) shows that zoning ordinances typically prohibit the siting of

¹ SMOC Sober Housing Manual, p. 10.

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shelters for addicts of controlled substances from residential or mixed-use neighborhoods, at least without a special permit from the local government.

- Given the widespread neighborhood problems caused by the PIP shelter, as documented in police records, newspaper accounts and public testimony, the Research Bureau believes that no such shelter for active substance abusers belongs in a residential or mixed-use neighborhood. There is also reason to fear that “sober” houses like the SMOC center proposed for Newton Square will adversely affect residential neighborhoods as well, since the behavior of the house’s residents is not going to be closely monitored (unlike that of residents in the nearby Community Healthlink program for teenagers on Highland Street), and their presence will inevitably attract others to the neighborhood whose behavior is likely to be incompatible with the peace and safety of the neighborhood. Unlike other “sober” houses operated by such agencies as the Henry Lee Willis Center, the proposed SMOC center will not be the culmination of a treatment program lasting three to six months, but will draw its residents from the PIP shelter after a brief stay in a detoxification program, with minimal conditions placed on their admission.² Similar concerns must be raised regarding SMOC’s plan to establish four other such facilities in other Worcester neighborhoods.
- In the opinion of the general counsel of the regional office of the Department of Housing and Urban Development (HUD), the City would not be violating the Fair Housing Act if it applied its zoning ordinance in a nondiscriminatory manner to prevent facilities like SMOC, which provide residence for more than six unrelated persons, from operating in neighborhoods zoned for single-family occupancy. (“Sober houses” are in a different category from treatment programs like the Community Healthlink facility which are licensed by the State.)
- The City ought to encourage and assist social-service agencies to locate residential facilities for recovering as well as current alcoholics and drug users in such locations as the grounds of Worcester State Hospital, or some part of the vacant Wyman-Gordon brownfield site off Madison Street, where the residents can be offered a range of services without impacting a residential or mixed-use neighborhood. Locating a broader range of social services in such areas would also mitigate complaints from residents of neighborhoods like Main South that they are currently being asked to house more than their fair share of such services.
- A survey of all state-licensed residential programs in the Worcester area shows that the City has eight homes licensed by the Bureau of Substance Abuse Services. Worcester is the *only* community in the area with such facilities, even though it is likely that some clients come from other area towns (and, according to public testimony, other states). The Bureau of Substance Abuse Services should make every effort to **disperse** treatment facilities throughout the region rather than concentrating them all in Worcester.

² Ibid.

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- The State Legislature should revise the Dover Amendment so as to make clear that it covers only facilities that have a **predominantly** educational (in the instructional sense) or religious mission. The Worcester City Council should work with other cities in the Commonwealth similarly affected by a disproportionate number of residential substance-abuse programs to submit a Home Rule petition requesting such a modification to the Dover Amendment.
- The state's Executive Office of Health and Human Services should be urged to reinstate and carry out the **siting guidelines developed in 1994** for residential programs under its jurisdiction, which were set aside by subsequent administrations.
- Residential social service agencies should be required to screen their residents for Level 2 or Level 3 **sexual offenders**, and to notify the neighborhood if such a person is to be admitted to residence there.

I. Introduction

The siting of residential social service programs has proved to be a difficult process in many communities across the country. Residential programs provide services and housing for the mentally ill, mentally retarded, physically disabled, active and recovering addicts, and others in need of such services. Often, neighbors have reservations about these programs and are surprised to learn that they have been sited in their neighborhoods. In Massachusetts, many group residences are exempt from local zoning by state statute.

Two recent examples in Worcester illustrate these problems well. Community Healthlink, a UMass Memorial affiliate, has purchased property on Highland Street across from Doherty High School and plans to establish a licensed group home for teenage girls who are recovering from addiction. The program will have 24-hour awake monitoring and will accept only immediate family visitors (who will be admitted only on Sundays). Just a quarter of a mile away, at 2 June Street, the South Middlesex Opportunity Council (SMOC), manager of the PIP (People in Peril, formerly, and still legally, known as the Public Inebriate Program) shelter, purchased a former nursing home and plans to establish a housing program for individuals with substance abuse problems who sign an agreement to remain sober and are expected to participate in educational programs. The SMOC program would not be licensed by a state agency. It would have a resident building manager/supervisor who might be drawn from the pool of program participants. (SMOC plans to establish five such programs in various Worcester neighborhoods.) These two programs face different regulations and may have different effects on the neighborhood. Both properties have generated concerns and opposition from neighbors, although both are viewed by their sponsors as important means of providing housing for the homeless and services to those in need.³

³ There are many providers of residential social services in Worcester and the surrounding region, including Community Healthlink, SMOC, Alternatives, The Bridge of Central Massachusetts, Spectrum, Henry Lee Willis Center, Catholic Charities, Seven Hills Foundation, Rehabilitation Resources, YOU Inc, and others.

Community meetings and public hearings in Worcester have revealed a significant level of frustration among City residents who learn that agencies are buying property in their neighborhoods. Questions like the following were common: “Why weren’t we told about this?” and “Why didn’t someone do something about this?” They are often surprised to learn that there is no mandate for “community input” and no direct role for their elected officials in choosing where group homes or other services are located.

The Mayor of Worcester has appointed a task force to examine the problems and options associated with this issue, and the Worcester City Council voted unanimously to request that social service agencies agree to a voluntary moratorium on the siting of new programs until the task force has completed its work.⁴ Although the Research Bureau is not affiliated with the Mayor’s task force, we hope this report will help to inform that body as well as the community at large.

This report will examine the process by which residential social service facilities are sited in Worcester and in Massachusetts generally, as well as procedures followed in other cities in other states. The report is divided into two sections. First, the “Status Quo” section describes the process as it is currently understood and practiced, including the legal constraints on public officials. Section Two, “Other Options,” discusses avenues for influencing or modifying the current process available to citizens, local and state officials, and service providers.

II. Status Quo: Siting Residential Programs in Massachusetts

For the purpose of this report, we separate homes into four primary types, although this categorization does not capture all of the possible kinds of residential services: Group Homes, Sober Housing, Leased Housing, and Emergency Shelters.

A. Types of Facilities

1. Group Homes are licensed by the state to provide a service to a population with a disability. Such homes have 24-hour staff, but can vary greatly in their structure, population served, program types, and policies. Group homes may house children who are mentally retarded or adults who are suffering from both mental illness and addiction. Some programs for adults require strict sobriety and perform drug tests at intake or periodically during a stay, while others have a motivational component that encourages—but does not require—sobriety. Some have admissions policies that exclude registered sex offenders, while others do not. Homes for the mentally ill similarly vary in their program characteristics as well as the kinds of illness treated. Some programs may have 24-hour staff who are awake all the time, while others may have 24-hour staff who sleep in the facility at night. Some have extensive professional medical involvement, while others have little. Group homes are typically funded by the state department that licenses their work under the Commonwealth’s Executive Office of Health and Human

⁴ City Council Order 10h, May 31, 2005.

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Services and/or by Federal grants (particularly from the U.S. Department of Housing and Urban Development).

2. Sober Houses provide lodging sometimes for six to twelve months for a number of residents who rent bedrooms (at a reduced rate) while they are considered to be still in recovery from addiction. Sober houses are typically intended as the last step on the road to recovery before the individual returns to independent living. Sober houses are minimally supervised and much less structured than group homes. Residents work outside the house and make their own transportation arrangements. Many sober houses require that individuals have been sober for at least 30 days and sign a pledge to remain sober before being admitted. A growing number of such facilities have been established in Worcester in recent years.⁵ They provide group living arrangements with shared kitchen and bathroom facilities, or each unit might have a small kitchen (and possibly a bathroom) of its own. They may or may not have on-site programming or educational components. Sober houses, which are generally licensed as lodging houses by the City, are often funded by the Commonwealth Department of Housing and Community Development, Department of Transitional Assistance, Department of Public Health, and/or various Federal HUD grants.

3. Leased Housing Programs distribute rental vouchers or rent apartments at reduced rates to those who cannot afford market-rate housing. The Worcester Housing Authority is the largest provider of subsidized rental units in the City. Rental vouchers are also used as a component of various kinds of social service programs. Social service providers lease apartments or provide vouchers to clients for housing and also provide case management as well as on- or off-site services for a variety of populations. Increasing the number of rental vouchers in Massachusetts is one of the goals of the Department of Housing and Community Development, so this is likely to be an expanding area of the provision of residential social services.⁶ Agencies lease individual units in various apartment buildings in the city, creating a decentralized program under which participants are immersed in the general population as apartment renters. Leased Housing programs include Section 8 housing vouchers from the Federal government and similar programs, including vouchers that target specific populations such as the mentally ill or mentally retarded. The PIP shelter uses a slightly different model at the Aurora Hotel on Main street where it houses 32 residents drawn from the PIP shelter. Rather than provide rental vouchers, the PIP leases the rooms and provides the units to PIP residents who have demonstrated **one week** of sobriety. This requirement is considerably less than is required by most sober houses, according to social-service administrators with whom we have spoken. This program is funded by a Federal Emergency Shelter Grant which is disbursed at the discretion of the City of Worcester.

4. Emergency Shelters are facilities that provide a place to stay overnight for a large number of individuals who are homeless. Worcester's PIP shelter is one of

⁵ Director of Neighborhood Services, "Location of Social Service Agencies," Submitted to City Council, July 6, 2004.

⁶ Commonwealth Department of Housing and Community Development, "Streamlined 5-year Plan for Fiscal Years 2005-2009," Revised June 1, 2005.

these structures and is licensed by the City to operate with 88 beds. The Veterans' Shelter on Grove Street is another such facility. Emergency shelters may or may not permit visitors who are intoxicated to use the facility. Worcester and Framingham both have emergency shelters operated by SMOC that admit intoxicated persons. Programs that target homelessness specifically often have relationships with providers that serve other needs. For instance, homeless people may also be afflicted with mental illness and hence are assigned to a program for their particular problem. Emergency shelters like the PIP are described as intake points in a "continuum of care:" after having been admitted, residents are supposed to be offered other placement options that are most appropriate for their needs.⁷ Emergency shelters can be funded by the State's Departments of Transitional Assistance or Public Health, and the U.S. Department of Housing and Urban Development, which provides Emergency Shelter Grants.

Worcester's chief of police attests to the **need** for a shelter like PIP, since persons arrested for disorderly behavior while under the influence of alcohol would otherwise have to be jailed. In addition, pressure has grown for the expansion of PIP, since the current facility reportedly houses as many as 150 persons in the winter, well beyond the limit specified in its license. This pressure has generated the plans for sober homes at Newton Square and four other locations for those recently released from the PIP facility.

B. Community Concerns

Among the concerns city residents have expressed about recently publicized new sitings as well as the activities of the existing PIP shelter are the possibility of the following: increased crime, decreased property values, increased taxes, changes to the character of a neighborhood, changes in parking and traffic conditions. Particularly prominent in the statements of Worcester residents at public hearings were the well-reported public-safety problems that surround the PIP, which admits residents who are visibly intoxicated. The PIP has been the subject of recurring complaints concerning crime, prostitution, drug use, drug sales, violence and discarded drug paraphernalia.⁸ The PIP shelter currently houses

⁷ Department of Housing and Urban Development. *Trainer Guide to Continuum of Care Planning and Implementation*. "What is the Continuum of Care and Why is it Important?,"

<http://www.hud.gov/offices/cpd/homeless/library/coc/tcocguide/index.cfm>, March 16, 2001.

⁸ *Telegram and Gazette* stories on this issue: Kathleen Shaw, "Neighbors Say PIP 'Monster' Already Too Big" February 25, 1997, page B1; Mary Anne Magiera, "New Course Considered for PIP/ Needs of Neighbors, the Indigent," February 9, 1998, page B1; Mark Melady, "PIP Breakup Backed/Smaller Sites Are Planned," December 21, 2000, page B1; Donna Daley, "SMOC, PIP Complaints Escalate," July 10, 2002, page A1; Martin Luttrell, "PIP: It's Not Our Fault," July 26, 2002, page B1; Donna Daley, "PIP Stops Using Co-Op as a Shelter," August 6, 2002, page B1; Mark Melady, "PIP Move Plan Draws New Criticism," August 22, 2002, page B1; Chris Echegaray, "Neighborhood Hangout Area Business Aim To Curb Shelter Clients on Sidewalks," September 5, 2002, page B1; Nick Kotsopoulos, "PIP Camera Plan Draws Yeas, Nays," August 29, 2003, page B1. Nick Kotsopoulos, "PIP Shelter Critics Test City's Resolve to Help Homeless," September 7, 2003, page B2; Nick Kotsopoulos, "Neighbors Demanding PIP Shelter Be Closed," September, 11, 2003, page A1. Martin Luttrell, "The Perils of PIP—Downsizing Welcome, Transitional Housing Feared," March 7, 2004, page B1; Chris Echegaray, "Police Crackdown on Drug Dealing Near PIP Results in 4 Arrests," April 17, 2004, page A1; "The Right Direction—Steering Away from Wet-Shelter Model," June 14, 2005, page A10; Milton Valencia, "Plan Revived to Close PIP Shelter—Foes Say SMOC Progress is Lacking," July 28, 2005; page B1.

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five Level 3 sex offenders.⁹ (Level 3 offenders are those with a history of violent abuse who are deemed most likely to repeat their crimes.)

Many other lodging houses, treatment programs, and social services are also located in the vicinity of the PIP, creating what some have called an over-saturation of that neighborhood with programs serving potentially disruptive populations. In 2004, the City reported 140 residential programs in Worcester, 82 of which were located in City Council District 4.¹⁰

C. Community Support

While the PIP shelter has undoubtedly generated major problems for its surrounding neighborhood, advocates of **group homes**, which are licensed by the state, maintain that they have a good record of success, despite initial neighborhood opposition. For instance, an informal survey of local group homes for the mentally ill conducted by the *Worcester Telegram and Gazette* in 1992 reported that “neighbors of three of the most bitterly opposed group homes” indicated that they no longer objected to the presence of these facilities. One neighbor who lived next to a home for homeless mentally ill adults said, “The group home is less trouble than some other neighbors I’ve had. I’d welcome them anytime.”¹¹ In June, 2005, a neighbor of a group home for emotionally disturbed youth which had been opposed by neighborhood residents when it was established in 1993, was quoted as saying, “There has been absolutely no problem with the home.”¹²

D. Preliminary Inventory

Providers and state agencies do not generally disclose the addresses of programs even upon request. For this report, the Commonwealth of Massachusetts Executive Office of Health and Human Services released a count of licensed residential facilities by town. Tables 1-4 include data reported by the Department of Mental Retardation (DMR), Department of Transitional Assistance (DTA), the Department of Youth Services (DYS), the Department of Mental Health (DMH), and the Bureau of Substance Abuse Services (BSAS).¹³ All of the data reported are for 2005.

The majority of programs in the state are licensed by the Department of Mental Retardation (2,130 programs or 75% of all programs reported by the Commonwealth). The Department of Mental Health is the second largest licenser of residential services (388 or 14% of the total). Using these necessarily incomplete data, we can begin to ask whether Worcester has its “fair share” of programs. **Table 1** shows the number of licensed

⁹ Neighborhood in Peril Association, Press Release, July 26, 2005.

¹⁰ Paul LaCava, Director, Executive Office of Neighborhood Services, “Location of Social Service Agencies,” submitted to council July 6, 2004. Numbers include group homes and all lodging houses (many of which have no social-service programs); numbers do not include Worcester Housing Authority or other public housing.

¹¹ Lee Hammel. “Fears Prove Baseless Group Homes are Good Neighbors,” *Telegram & Gazette*, Sunday, June 7, 1992. Page A-1.

¹² Dianne Williamson, “NIMBY Impulse Surfaces—Fear of Group Homes Resonates, but is Unfair,” *Telegram & Gazette*, June 9, 2005, Page B1.

¹³ This inventory does not include unlicensed facilities or data from the Department of Social Services, the Department of Public Health/AIDs or the Massachusetts Rehabilitation Commission homes.

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residential facilities in the 25 cities and towns with the most programs in Massachusetts.¹⁴ The top 25 cities have 37% of the state’s population and 46% of licensed facilities.

Table 1 Number of State Licensed Residential Facilities by City/Town (Top 25)

	Population	DMR	DTA	DYS	DMH	BSAS	Total
Boston	589,100	130	43	11	55	27	266
Springfield	152,100	55	7	8	16	5	91
Worcester	172,600	36	9	5	15	8	73
Waltham	59,200	47	6	0	7	1	61
Lynn	89,100	39	4	1	9	3	56
Taunton	56,000	42	1	3	9	0	55
Pittsfield	45,800	36	2	1	13	1	53
New Bedford	93,800	39	3	0	6	3	51
Brockton	94,300	32	6	7	5	1	51
Framingham	66,900	28	5	3	10	2	48
Somerville	77,500	26	3	2	6	3	40
Randolph	31,000	37	0	0	3	0	40
Quincy	88,000	25	3	1	6	3	38
Plymouth	51,700	34	0	2	0	1	37
Peabody	48,100	29	3	0	4	1	37
Lowell	105,200	21	4	1	9	1	36
Attleboro	42,000	30	1	0	3	1	35
Chicopee	54,700	27	0	0	7	0	34
Fall River	91,900	22	1	1	6	2	32
Newton	83,800	24	1	0	5	1	31
Beverly	40,000	25	0	0	6	0	31
Cambridge	101,400	5	9	1	11	1	27
Needham	29,000	24	0	0	0	0	24
Canton	20,800	24	0	0	0	0	24
Pembroke	17,000	22	0	0	1	0	23
Malden	56,000	16	2	0	4	1	23
Top 25 Total	2,357,000	875	113	47	216	66	1,317
Total State*	6,349,000	2,130	154	75	388	93	2,841
% of State**	37.1%	41.1%	73.4%	62.7%	55.7%	71.0%	46.4%

Data source: Commonwealth of Massachusetts, Executive Office of Health and Human Services

Prepared by: The Research Bureau

* Includes all cities/towns and programs reported, not just those pictured here.

** Percentage of all state programs that are in the 25 cities and towns with the most programs

Table 2 shows the number of programs in the 15 most populous cities in Massachusetts. Overall, these cities contain approximately 30% of the state’s population and 30% of the total number of programs. Worcester has 2.7% of the state’s population and 2.6% of all programs. The largest cities and towns, however, have less than 30% of programs for the

¹⁴ This list only includes programs from the named agencies that are licensed by the Commonwealth of Massachusetts. Unlicensed sober houses and subsidized housing units are not a part of this tally. For instance, Framingham has 48 licensed homes, but one provider in Framingham, the South Middlesex Opportunity Council, owns 60 properties with 523 units. Similarly, City Councilor Barbra Haller has created a list of 150 social service agencies in Worcester’s City Council district 4 alone. The list includes residential and non-residential programs as well as properties owned by the Worcester Housing Authority.

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DMR and well over 30% of other agencies' programs. Large cities and towns have 64% of homes for the DTA, and 66% of homes for the Bureau of Substance Abuse. They have 43% of DMH programs and 56% of the DYS programs in the Commonwealth. Worcester has 1.7% of DMR, 5.8% DTA, 6.7% of DYS, 3.9% of DMH, and 8.5% BSA facilities. In general, the larger cities have a disproportionate share of residential programs, particularly those that serve populations other than the mentally retarded.

Table 2 Programs in the Most Populous Cities and Towns

	DMR	DTA	DYS	DMH	BSAS	Total	Population
Boston	130	43	11	55	27	266	589,141
Worcester	36	9	5	15	8	73	172,648
Springfield	55	7	8	16	5	91	152,082
Lowell	21	4	1	9	1	36	105,167
Cambridge	5	9	1	11	1	27	101,355
Brockton	32	6	7	5	1	51	94,304
New Bedford	39	3	0	6	3	51	93,768
Fall River	22	1	1	6	2	32	91,938
Lynn	39	4	1	9	3	56	89,050
Quincy	25	3	1	6	3	38	88,025
Newton	24	1	0	5	1	31	83,829
Somerville	26	3	2	6	3	40	77,478
Lawrence	5	1	1	9	2	18	72,043
Framingham	28	5	3	10	2	48	66,910
Total	487	99	42	168	62	858	1,877,738
% Total	22.9%	64.3%	56.0%	43.3%	66.0%	30.2%	29.6%
Worcester %	1.7%	5.8%	6.7%	3.9%	8.5%	2.6%	2.7%

Data source: Commonwealth of Massachusetts, Executive Office of Health and Human Services

Prepared by: The Research Bureau

Table 3 shows data for communities adjacent to I-495, which contain 3% of the state's population and 2.3% of the state-licensed programs. Together, all of the I-495 communities have a larger population than Worcester and a smaller number of programs when compared with Worcester.

Compared to its own bordering communities, however, Worcester's concentration is more pronounced. **Table 4** shows that while Worcester has 60% of the population of the region, it is home to 72% of the state-licensed residential programs. For programs other than DMR, the concentration is more dramatic. Worcester, Millbury, and Shrewsbury are the only area communities with programs licensed by an agency other than the Department of Mental Retardation, and Worcester is the only community with homes licensed by the Bureau of Substance Abuse Services or the Department of Transitional Assistance. It also has five of the six Department of Youth Services facilities in the area. (We have not been able to determine what percentage of the residents of these facilities come from Worcester or its surrounding towns.)

Table 3 Licensed Facilities by City/Town in I-495 Communities

	Population	DMR	DTA	DYS	DMH	BSAS	Total
Westboro	17,997	9	0	4	2	3	18
Marlboro	36,255	10	1	0	3	0	14
Milford	26,799	7	2	0	2	0	11
Northboro	14,013	5	0	0	2	0	7
Ashland	14,674	2	2	0	1	0	5
Hudson	18,113	3	0	0	1	0	4
Bourne	18,721	2	0	0	1	0	3
Hopkinton	13,346	1	0	0	0	1	2
Southboro	8,781	0	0	0	2	0	2
Berlin	2,380	0	0	0	0	0	0
Bolton	4,148	0	0	0	0	0	0
Boxboro	4,868	0	0	0	0	0	0
Harvard	5,981	0	0	0	0	0	0
Upton	5,642	0	0	0	0	0	0
I-495 Totals	191,718	39	5	4	14	4	66
I-495 %	3.0%	1.8%	3.2%	5.3%	3.6%	4.3%	2.3%
Worcester	172,648	36	9	5	15	8	73
Worcester %	2.7%	1.7%	5.8%	6.7%	3.9%	8.5%	2.6%

Data source: Commonwealth of Massachusetts, Executive Office of Health and Human Services
 Prepared by: The Research Bureau

Table 4 State Licensed Residential Programs in Border Communities

	Population	WRTA Service	DMR	DTA	DYS	DMH	BSAS	Total
Worcester	172,648	Yes	36	9	5	15	8	73
Auburn	15,901	Yes	4	0	0	1	0	5
Grafton	14,894	No	4	0	0	0	0	4
Holden	15,621	Yes	3	0	1	0	0	4
Leicester	10,471	Yes	4	0	0	0	0	4
Paxton	4,386	No	3	0	0	0	0	3
Shrewsbury	31,640	Yes	2	0	0	1	0	3
West Boylston	7,481	Yes	3	0	0	0	0	3
Millbury	12,784	Yes	1	0	0	1	0	2
Boylston	4,008	No	0	0	0	0	0	0
Border Total	289,834		60	9	6	18	8	101
Worcester % Region	59.6%		60%	100%	83%	83%	100%	72%

Data source: Commonwealth of Massachusetts, Executive Office of Health and Human Services

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Providers contend that many programs require access to public transportation or other services that are only available in larger communities. **Table 4** also shows which communities are included in the Worcester Regional Transit Authority scheduled bus service.

E. The Rules of the Game: Zoning and State Law

The question of what kind of properties can be sited where begins with zoning. Municipal zoning ordinances determine what kinds of structures may be built in various areas of the city. But although specific zoning decisions are made at the local level, all zoning ordinances must comply with the State of Massachusetts Zoning Act, Section 40A of the Massachusetts General Laws. Many nonprofit social service agencies fall under a provision of that law that exempts them from local zoning requirements. The “Dover Amendment” (originally passed in 1950 and named for the town of Dover, which had tried to limit the siting of religious schools), Chapter 40A Section 3, states the following:

No zoning ordinance or by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

In order to qualify for the exemption, an organization must meet two criteria:¹⁵

- The structure must be intended for an educational purpose (which is broadly defined in state case law, as discussed below).
- The corporation must be either a state agency (or state-licensed agency) or a nonprofit educational corporation.

If a social service agency or other aggrieved party believes that the building inspector has made an incorrect determination of its status, it can appeal the ruling to the Zoning Board of Appeals (ZBA), and ZBA decisions may be appealed to state courts (Land Court, Housing Court, or Superior Court).

Chapter 40A, Section 3 limits the City’s legal authority to restrict the siting of many kinds of residential social service agencies. The following actions are acceptable under current law and within the scope of the City’s authority:

¹⁵ Religious institutions are also exempt under the law but will not be discussed in this report; as a result, we omit discussion of the portion of the law that applies to religious organizations.

1) Local Zoning Enforcement and Exemptions

At the local level, a city council adopts zoning ordinances and local officials enforce it. For zoning and land use issues, the building inspector is the first interpreter of state law and the local ordinance, including who qualifies for zoning exemptions. In FY03 in the wake of staffing cuts, the City of Worcester limited its own zoning enforcement by suspending zoning inspections for lodging houses, apartment houses and churches, leaving some private, public, and nonprofit properties without the required oversight.¹⁶ The City can make a priority of zoning enforcement and be sure that all developers are complying with current zoning and code requirements and that complaints are investigated.

The building inspector makes decisions at the local level about what structures qualify for an “educational use” exemption and which do not.¹⁷ These decisions are made in light of case law in Massachusetts that has defined “educational use” broadly. The following uses have been declared educational by Massachusetts courts:¹⁸

- Special-needs school with live-in accommodations
- Residential facility for formerly institutionalized adults
- Residential facility for elderly mentally ill individuals
- Residential facility for interns in professional, business, and other fields
- Residential facility with educational programs for homeless families, single mothers, persons with AIDS, and other physical disabilities
- Residential facilities for persons recovering from addiction (not emergency shelters).¹⁹ This educational-use exemption was upheld by the Massachusetts Land Court; but there is no Supreme Judicial Court case cited on whether or not residential programs aimed at recovery from addiction constitute an educational use. In an April 2004 report, SMOC describes its strategy of aggressively using the Dover Amendment to overcome community opposition to the siting of sober housing as well as group homes.²⁰

¹⁶ City of Worcester, FY04 Budget, Department of Code Enforcement Budget, “Impact Statement,” p. 5. These enforcement operations are in the process of being reinstated.

¹⁷ The City of Worcester’s official Zoning Enforcement Officer is the Code Commissioner, according to Worcester’s Zoning Ordinance. That duty has been delegated, however, to the City’s Building Inspector.

¹⁸ Mark Bobrowski, *Handbook of Massachusetts Land Use and Planning Law, Second Edition* (New York: Aspen Law & Business, 2002), pp. 130-135.

¹⁹ The case referenced by Bobrowski for homes for recovering addicts is *Congregation of the Sisters of St. Joseph of Boston & Bethany Sch., Inc. v. Town of Framingham*, Misc. Case No. 194216 (Land Ct. 1994).

²⁰ “Creating and Sustaining a Housing Continuum for Disadvantaged Single Adults,” South Middlesex Opportunity Council, April, 2004, p. 27.

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All of these facilities do have some kind of “on-site” programming to assist/develop the major life functions of the individuals residing there. Other organizations have sought the exemption for uses that have been denied (and hence these uses would not be exempt from local zoning):²¹

- Private for-profit dance school
- Nursing home facility
- Adult social day care

2) Reasonable Building Regulations

Chapter 40A, Section 3 permits “reasonable” regulation in eight areas for buildings that are exempt from zoning. Cities may regulate the bulk and height of structures and set minimum yard sizes, lot area, setbacks, open space, parking and building coverage. As a result, a city can apply regulations such as the following on educational uses: Maximum building height, required setback from other properties, and parking spaces required.

The Massachusetts courts have defined some of the limits of “reasonable” regulation in these areas, and have often found a regulation to be reasonable so long as it does not preclude the use entirely. In other words, if the provider can meet the regulation and still operate the facility, then it is reasonable, but if the regulation might prohibit the use, then it may be deemed unreasonable.²²

Cities can establish a process whereby scrutiny is applied to every application before an exemption from local zoning is granted. If local zoning enforcement officers are strict in their analysis of eligibility for exemptions, then cities can avoid granting unnecessary exemptions. The City of Worcester, for instance, requires group homes to provide a copy of their state license and in the case of programs that will not be licensed by the state, makes a case-by-case determination of whether a property qualifies for an educational-use exemption from local zoning. According to the Worcester building inspector, a social service agency developing property intended to house recovering addicts but without offering on-site programming would not be considered exempt from local zoning. “Sober houses” may fall into this category of non-exempt social service use, depending on the character of each program/structure.²³ Any non-exempt use must conform to the local zoning regulations.

Emergency shelters do not qualify for the exemption under Section 3 of Chapter 40A and are licensed at the municipal level. There are “lodging house” license requirements which apply to any structure intended to house more than three unrelated individuals per housing unit. For instance, the PIP shelter at 701 Main Street is licensed by the City to have 88 or fewer residents. Moreover, since the Federal fair housing laws do not protect people who

²¹ *Ibid.* P.134, citing *Trustees of Tufts College v. City of Medford*, 33 Mass. App. Ct. 580, 581-582 (1992) (citations omitted).

²² Mark Bobrowski, p. 134.

²³ David Holden, City of Worcester Building Inspector, Interview by Research Bureau, July 18, 2005.

are actively using illegal drugs, the City is under no Federal obligation to allow housing for active addicts. The City could require that any shelters that admit intoxicated individuals be placed outside of residential or mixed-use neighborhoods. (See conclusions for discussion of potential alternative sites in Worcester.)

3) Appeals Process

An abutter or other legitimate “aggrieved party” can appeal the decision of the building inspector to the Zoning Board of Appeals (ZBA) so that the board may consider the merits of the claim to an exemption. Decisions of the ZBA can in turn be appealed to state courts (Land Court, Housing Court, or Superior Court).

4) Application of Zoning Code

The City could amend its zoning ordinance, which is currently under review, to not allow wet shelters in residential neighborhoods. It could also require that sober houses located in residential or mixed use neighborhoods make 30 days of sobriety a prerequisite for admission to the facility. Since there is no legal definition for the length of time an individual should be substance-free to be considered “in recovery,” providers of programs for those who have been addicted make that determination. Based on conversations with several providers as well as the general counsel of HUD’s regional office, 30 days of sobriety should be the bare minimum to be considered “in recovery” from addiction. Since sober houses are minimally supervised, those located in residential neighborhoods should not admit anyone who cannot demonstrate 30 days of sobriety. This requirement would seem to be in the best interest of both clients and residents. In addition, such licenses should be subject to yearly renewal.

5) Funding Decisions

Cities control decisions about how to allocate Community Development Block Grant funds and other discretionary funds,²⁴ some of which are distributed to agencies that provide residential services. The City cannot put discriminatory restrictions on these funds. For instance, the City cannot make community notification a prerequisite for receiving grant funds, as this would violate Federal fair housing laws. The City of Worcester attempted this in 1996, denying grant funds to a Janna Corporation home for recovering addicts and alcoholics because of a failure to notify the community. The City’s action was challenged as a violation of the Federal Fair Housing Act. Although there was no official finding in the case, the City of Worcester settled with the plaintiffs for \$12,000, reportedly out of a concern that its liabilities if the case went to trial could be significantly greater. (The program was never established.²⁵)

Although the City may not impose discriminatory requirements on the siting of homes for the treatment of the disabled, including those recovering from addiction, it has a legitimate role to play in the **distribution** of grant funds that it oversees, and it can employ non-discriminatory practices as it evaluates programs that are seeking funds (for instance, requiring demonstration of professional ability to provide the proposed service). The City

²⁴ These include Emergency Shelter Grants and HOME grants.

²⁵ David Moore, Worcester City Solicitor, “Neighborhood Notification, Zoning, and the Fair Housing Act,” submitted to Worcester City Council September 10, 1996.

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is currently providing the PIP shelter with discretionary Emergency Shelter Grant funds of \$90,000 in FY06 to operate the Aurora housing program. Other operators of residential programs to which the City is also currently directing Federal funding support include the Central Massachusetts Housing Alliance, Friendly House, Dismas House, Worcester Veterans, Inc., and YWCA Daybreak.

6) Incentives for Providers

According to HUD and the Department of Justice, a state or local “government that believes a particular area within its boundaries has its ‘fair share’ of group homes, could offer incentives to providers to locate future homes in other neighborhoods.”²⁶ The City or state could therefore establish financial incentives for agencies and providers to place facilities in areas where they are currently underrepresented. This may provide a way to “regionalize” the presence of some social service agencies and address the clustering of many kinds of homes in large cities and towns. At the state level, funding could be increased by a designated factor for programs that are targeted to underserved areas, creating a general incentive to locate facilities in areas without a concentration of programs. This practice was not found in other cities surveyed by the Research Bureau, but was recommended as an option by the Federal government.

E. The Rules of the Game: Federal Law

Zoning and land use rules are defined at the state and local levels, and as a result developers, citizens, and land-use lawyers typically deal with local and state rules more often than Federal laws. However, the Federal Fair Housing Law bears on local actions concerning zoning and land use rules.²⁷ The Federal Fair Housing Act as amended in 1988 is intended to prevent discrimination against certain protected classes of people, including the disabled. Disabilities are defined in the law as impairment to any major life function, and the law explicitly excludes active use or addiction to a controlled substance from the definition.²⁸ Generally speaking, the Federal law prohibits localities from treating people with disabilities as legally defined differently from the way they treat other residents.

The local actions discussed below have been deemed unacceptable under the Federal Fair Housing Act (in decisions of the U.S. Supreme Court or U.S. Circuit Courts). We stress that these limitations apply to homes that house the disabled, and that under Federal Law, active addicts/users are *not* considered disabled. Hence, the PIP shelter would not be able to claim protection under the Federal Fair Housing Act, while a program for mentally ill adults could.

²⁶ Department of Justice and the Department of Housing and Urban Development. Joint Statement, “Group Homes, Local Land Use, and the Fair Housing Act,” August 18, 1999.

²⁷ Federal Fair Housing Act, Title 42, Chapter 45.

²⁸ Title 42 U.S.C 3602 ‘Definitions’ states the following: “Handicap means . . . a physical or mental impairment which substantially limits one or more of such person’s major life activities . . . **but such term does not include current, illegal use of or addiction to a controlled substance.**”

1) Required notification

Mandatory notification rules for facilities covered by the Fair Housing Act have been found to violate the law. One court opinion stated its objection to notification rules as follows: “The requirement [of notification] is as offensive as would be a rule that a minority family give notification and invite comment before moving into a predominantly white neighborhood.”²⁹

The Department of Housing and Urban Development and the Department of Justice, the agencies that enforce the Fair Housing laws, have stated that if community opposition is perceived as the reason why a group home is prevented from locating, that fact itself may constitute evidence of discrimination: “If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.”³⁰

2) Limited family definition

Definitions of a family for purposes of defining who can reside in residential areas are invalid if they treat groups of disabled persons differently from other groups of unrelated persons. Hence a community could not have a rule that permitted college fraternities but excluded group homes.³¹

3) Discriminatory special permits

Some special-permit requirements for homes for retarded adults have been struck down as discriminatory. However, according to the HUD Regional Counsel in Boston, not all special-permit requirements on groups of unrelated persons are illegal. For instance, an ordinance requiring a special permit for all non-related groups of more than eight persons seeking to locate in a residential neighborhood is acceptable.³²

4) Required distance from other group homes

Most requirements that homes be a certain distance from one another are also considered discriminatory, although if it is demonstrated that the requirement is genuinely in the interest of the protected classes of people and not just the result of neighborhood opposition, the requirement may stand.³³

²⁹ John H. Foote, “The Fair Amendments Act of 1988 and Group Homes for the Handicapped,” reprinted from *Journal of the Section on Local Government Law of the Virginia State Bar*, Vol III. No. 1, September, 1997. Oxford House website, <http://www.oxfordhouse.org/fairhouse.html>.

³⁰ Department of Justice and the Department of Housing and Urban Development, Joint Statement, “Group Homes, Local Land Use, and the Fair Housing Act,” August 18, 1999.

³¹ Ibid.

³² HUD Regional Counsel, Boston Office, Interview with Tom Rodick by Research Bureau, Friday, April 23rd, 2005.

³³ Ted Gathe, “Group Homes: Local Control and Regulation Vs. Federal and State Fair Housing Laws,” Article prepared for the Washington State Bar Association Land Use Conference, 1997. Reprinted by Municipal Research & Services Center of Washington, <http://www.mrsc.org/Subjects/Legal/gathe.aspx>.

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5) Failure to make reasonable accommodation

If a zoning or land use rule is non-discriminatory but still prevents disabled people (and therefore the agencies that purchase and operate housing for them) from locating in a certain area, local officials are expected to make reasonable accommodations to the local regulations to allow the protected class of people into the neighborhood. In other words, there need not be a discriminatory intent, but only discriminatory results to violate the Federal law.³⁴

It is clear that the Federal Fair Housing Act has extensive reach. Notification, for instance, was a topic brought up a number of times in public hearings held by the Mayor's Task Force. But the City cannot require such notification for facilities that will house individuals covered by the Act without becoming subject to liability under the Federal law.

F. Status Quo: Conclusion

The discussion above provides a range of ways by which public officials who want to participate formally in the process by which social service agencies are sited can do so. Some programs, like homeless shelters, clearly fall under the City's oversight. City officials shape the zoning ordinances which govern all non-exempt properties, and City officials carry out zoning inspections and enforcement. Some programs require judgments to be made by City officials about whether a property qualifies for an exemption under state law. Federal courts have ruled that the Federal Fair Housing Act does not "supersede local zoning," and that "there is a difference between laws which directly regulate individuals and laws which regulate institutions." All of these factors create room for local participation in the siting process.³⁵

III. Other Options

Residents and officials who are dissatisfied with the status quo as described above can advocate legal changes at the state and Federal level, as well as encourage cooperative relationships among state agencies, providers, and localities. The following is a list of possible practices or approaches to further regulating the siting of social service agencies. These possibilities are broken into three categories: 1) State-level options; 2) Cooperative relationships; 3) Municipal practices from other states, many of which would require changes at the state level in Massachusetts.

³⁴ Department of Justice and Department of Housing and Urban Development, Joint Statement, "Reasonable Accommodations Under the Fair Housing Act" May 14, 2004.

³⁵ Ted Gathe, "Group Homes: Local Control and Regulation vs. Federal and State Fair Housing Laws," Article prepared for the Washington State Bar Association Land Use Conference, 1997. Reprinted by Municipal Research & Services Center of Washington, <http://www.mrsc.org/Subjects/Legal/gathe.aspx>.

A. State Law Options—Chapter 40A, section 3

If the process for siting residential social service programs in Massachusetts is to be fundamentally changed, then it is the state law (Chapter 40A, Section 3, the Dover Amendment) that will need to be amended. It has broader reach than the Federal Fair Housing Act because it covers more kinds of programs and directly shapes the parameters for local zoning ordinances.³⁶

As noted earlier, the Dover Amendment has been given a broad interpretation by Massachusetts courts. The Amendment could be amended to apply only to those institutions that are *primarily educational* (or religious), thus limiting the kinds of organizations that can qualify for the state exemption. In all likelihood this modification would restore the Legislature’s original intent in enacting the Amendment. (It is doubtful that legislators or their constituents had anything like “sober houses” in mind when the Amendment was enacted in 1950.)

The law could also be amended to add areas of “reasonable regulation” outside of zoning. For instance a bill before the Massachusetts legislature, the Land Use Reform Act, includes changes to Section 3 of Chapter 40A. It adds areas of “reasonable regulation” for educational uses in facilities that exceed 7,500 square feet. Frontage, ingress/egress, drainage, landscape and buffering, and traffic management considerations are added as well as a process whereby agencies may apply locally for a waiver from reasonable regulations by special permit from the Zoning Board of Appeals.³⁷ Such a change would affect larger providers of residential social services and could also affect YMCAs and other large community facilities.

B. State Agency Options—Information Sharing and Siting Policies

1) Previous State Agency Practices

Various state agencies, including the Department of Mental Health, the Department of Mental Retardation, the Department of Public Health, the Department of Youth Services, the Department of Transitional Assistance, and the Department of Social Services, each of which operates under the Commonwealth’s Executive Office of Health and Human Services, establish policies regarding the siting, licensing, and funding of residential programs. The state role in this process is central, as most providers establish residential programs in response to a state Request For Proposals (RFPs), and then receive their funding from state contracts or grants.

In 1987, the Department of Mental Health distributed a “community acceptance policy” that included a number of “responsibilities for DMH personnel with respect to siting community residential programs.”³⁸ The policy statement is noteworthy for its emphasis

³⁶ As already noted, the state law protects all educational facilities, not just residential facilities. Also, the state law explicitly protects institutions, while the Federal law is written to protect individuals.

³⁷ City Solicitor and Town Counsel Association of Massachusetts, “Massachusetts Land Use Reform Act,” Redline edition, www.massmunilaw.org/pdf/lura40Aredline.pdf.

³⁸ This policy document, promulgated in 1987, was published before the passage of the Federal Fair Housing Amendments of 1988.

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on sharing information with public officials and the community at large. The policy included the following responsibilities:³⁹

The Department of Mental Health will provide public officials with regular information on the following:

- Number and type of clients and programs in each city and town
- Number and types of clients needing each category of residential program within the area
- Number and nature of programs planned for the next year and next five years with projected targeted communities.

Currently there is no uniform siting policy at the state level. In 1994, the Commonwealth's Executive Office of Health and Human Services, under Secretary Charles D. Baker, developed and promulgated a policy aimed at "promoting the facilitation and coordination of residential development for consumers served by EOHHS agencies".⁴⁰ Although this policy is no longer in force, we summarize it here because it offers a useful model for how the state should supervise sitings under its jurisdiction:

- State agencies should **disperse sitings** so as to avoid clustering them in one community in a region.
- Agencies should **share siting information**, so each agency knows what the others are planning to do (and have done).
- Agencies should **inform elected officials and representatives of the community** with general information on future development activities in each region and specific localities as needed.
- Agencies should publicize the name of a **liaison** to whom neighbors could address concerns after the program was established.
- Agencies should attempt to develop a **cooperative agreement** with the municipality that defines the responsibilities of all parties in the access and development of housing including communication, education efforts, and responsibilities of municipal officials, agencies, and providers.

In addition, the 1994 document offers recommendations for vendors that provide services for the EOHHS including directives to **avoid concentration** in certain neighborhoods/ or areas, to foster partnerships with community leaders, elected officials, consumers and others in an on-going public education effort and "good neighbor" policy.

According to a spokesman for the Department of Mental Health in HHS with whom we spoke, the Baker policy guidelines were subsequently abandoned only because of a lack of

³⁹ Stephen Day, Assistant Commissioner Executive Office of Health and Human Services, "Memo re: Community Acceptance Policy," August 13, 1987.

⁴⁰ Charles D. Baker, Secretary, Commonwealth Executive Office of Health and Human Services, "Initiatives to Promote the Facilitation and Coordination of Residential Development for Consumers Served by EOHHS Agencies," September 1994.

interest on the part of subsequent administrations, which had other “priorities.” **The state government should be urged to reinstate** the policies outlined in the 1994 statement.

2) State-Local/Provider Cooperation

State agencies and local governments can work together and share information about plans for residential programming. Worcester and Boston officials have met in the past with service providers to discuss their communities’ needs in this regard. In 1994, the City of Boston formalized the relationship with the state agencies that sponsor group homes and became a partner in the siting of social service agencies by agreeing to help agencies find appropriate sites.⁴¹ The committee would “share information regarding the distribution of existing sites and current capacity of residential programs” in each neighborhood in Boston and by city and town in the metro area, as well as information about potential funding sources. The committee would produce a chart with plans for approved programs which will need sites over the next five years. Projects would be listed by neighborhood, program type and funding source. The committee did not have the authority to approve or reject any particular project. The document also articulated siting standards, including the following:

- Sites will integrate residents and foster independence. Sites shall be located throughout the City of Boston and the Commonwealth, including places where they have not been traditionally located, and shall include currently under-represented neighborhoods and communities. Those proposals for communities with a relatively low share of programs may be rated more favorably than those proposals sited in communities with a relatively high share.
- An advisory committee will work with developers/providers to develop a community introduction process for each site. Key leaders and community groups will be identified for discussions.

The Boston agreement is an example of City/State cooperation to shape the process for siting social service agencies. The agreement did not have the force of law and it did not change practices in Boston dramatically. However, it may provide some useful points of agreement between City officials and service providers.

C. What Do Other Cities Do?

The Research Bureau reviewed the zoning ordinances from cities in Massachusetts and elsewhere regarding the zoning requirements for various residential social service programs.⁴² Most Massachusetts cities and towns have ordinances that allow “educational” service programs to operate free from of local zoning (as required by the state law). Cities in other states, however, have adopted a much broader range of zoning

⁴¹ Executive Office of Health and Human Services, “Statement of Principles and General Guidelines Regarding the Siting of Residential Programs in the City of Boston,” 1994.

⁴² Some cities were selected because of demographic similarities to Worcester, (e.g. Hartford), while others were selected because they were reported to have recently addressed this issue in their zoning ordinances.

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ordinances. Special-permit requirements, for instance, are common in Connecticut. Dayton, Ohio, requires that neighbors within 250 feet be invited to a Zoning Board of Appeals hearing for a special permit. **Table 5**, below, shows some of the zoning restrictions placed on various kinds of social-service agencies in cities and towns outside of Massachusetts. Each of the uses included may have a residential element. (Use definitions are included in the appendix.⁴³) The table indicates whether a given use is permitted in single-family zones, high-density residential zones only, or commercial zones. If a use requires a special permit (SP), that means that the local Zoning Board of Appeals must approve the application. **Table 6** shows some of the additional requirements placed on uses in other cities.

Table 5 **Permitted Uses in Cities Outside Massachusetts**
 Permitted? (Yes = Permitted, No = Not Permitted, SP = Special Permit)

City and Uses	Single Family Residential	High-Density Residential	Business
Bridgeport			
Community Residence (less than six)*	Yes	Yes	Yes
Group Living	No	Yes	Yes
Social Service Provider	No	Yes	SP
Hartford			
Transient Lodgings	No	SP	SP
Rehabilitation Home	No	SP	SP
Stamford			
Residential Rehab	No	No	Yes
Emergency Shelter	No	No	SP
Dayton			
Community Care	No	SP	SP
Allentown			
Small Group Home	SP	SP	SP
Large Group Home	No	SP	SP
Residence for Handicapped**	No	No	No
Personal Care Center	No	SP	Yes
Drug Rehab Facility	No	SP	No
Temporary Shelter	No	SP	SP
Manchester			
Congregate Homes	No	Yes	SP
Worcester			
Any Licensed Group Home	Yes	Yes	Yes
Educational Lodging House***	Yes	Yes	Yes
Non-Educational Lodging House	No	SP	No
Temporary (Emergency) Shelter	SP	SP	SP

* Connecticut state law exempts group homes for the mentally retarded with fewer than six residents from zoning. This applies to all Connecticut Cities listed here. In June 2005, the Connecticut legislature expanded its exemption to include some other small group homes.

** Only permitted in institutional zones in Allentown.

*** Exempt from zoning under Chapter 40A section 3. This use could include Sober Homes and other group housing that is not licensed by a state agency but is deemed to be "educational" in nature by the building inspector. This is not a separate use in Worcester's ordinance.

Data Source: City Zoning Ordinances

Prepared By: The Research Bureau

⁴³ Full appendix is available at www.wrrb.org.

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The above zoning practices are, in many cases, far more restrictive than those employed in Worcester and have not been overturned under the Federal Fair Housing Law. We do not know whether they would survive legal challenges under that law, should such challenges be made. In Massachusetts, however, these ordinances could not be applied to facilities deemed “educational,” under the Dover Amendment.

Table 6 **Sample Use Conditions from Cities Outside Massachusetts**

Hartford
Transient Lodgings: Facility must be 1,000 feet from other transient lodgings, rehabilitation homes, boarding houses, rooming houses, and lodging houses. Facility must include an indoor waiting area for use by residents when closed. Maximum occupancy 100. Minimum lot size 10,000.
Rehabilitation Home: 20% of facility can be for program participants. Twenty-four hour staff required for homes of more than 4 program participants. Annual license required.
Dayton
Community Care: All necessary permits and licenses are obtained. Exterior lights are shaded to keep direct light off residential property. The proposed use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public. Abutters within 250 feet of the property line must be notified of the Zoning Board of Appeals hearing for a special permit.
Allentown
Group Home (Large and Small): Facility must be licensed. Facility shall not generate traffic greater in volume or different in nature than would normally occur in the neighborhood in which it is proposed. Facility will be no closer than 1,000 feet to another group home. For each staff person greater than one, one off-street parking space shall be provided, using the largest daily shift per week as a base.
Personal Care Center: No facility shall be erected nearer than 30 feet from any lot line within a residential district. Landscaping and loading area restrictions are also applied.

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IV. Conclusions

A. PIP shelter versus other residential facilities

Within the constraints of existing state and Federal law, as the preceding survey has made evident, a clear distinction must be made between the status of a supervised and directed residential treatment facility for recovering teenage substance abusers, such as the Community Healthlink center on Highland Street, in which the teenaged residents will be constantly monitored and not allowed to roam the neighborhood (and from which visits by persons other than their parents will be prohibited) and a “shelter” for current addicts of illegal drugs and alcohol, such as the PIP shelter on Main Street.

First of all, while Massachusetts courts have broadly interpreted the Dover Amendment so as to categorize treatment centers such as the Healthlink program as protected, “educational” facilities, limiting the capacity of local communities to regulate their location via the application of zoning ordinances, the courts have **not** held, nor by any reasonable reading of the law could it be held, that wet shelters like PIP are predominantly “educational” facilities. Thus Worcester city officials have the right and we believe the duty to regulate the siting of such shelters so as to minimize damage to the surrounding neighborhood and the City as a whole.

It should be noted that the effects of locating a program like the Highland Street Healthlink facility, assuming it is operated in accordance with the promises of its sponsors, in a residential neighborhood are far less likely to be negative for the neighborhood than those of a PIP shelter, or a “sober” house such as SMOC has proposed for Newton Square. Since Healthlink officials pledge to monitor the behavior of the facility’s residents, not allowing them to wander the neighborhood unsupervised, and to exclude visitors other than immediate family members, neighbors should have little reason to fear negative effects on the neighborhood from the presence of the facility. (Whether the Highland Street location is appropriate, given the lack of outdoor space on the property, and its proximity to several schools, is another issue, which we shall not pursue here; but in any case, the City itself cannot legally use such considerations, in all likelihood, in order to try to block the siting.) Of course, City police should thoroughly monitor Healthlink activities at the Highland Street site to make sure that the administering officials live up to their promises that recovering addicts will not be allowed to congregate near the schools, synagogue, or other public facilities immediately nearby.

But the effects of a wet shelter like the PIP on a neighborhood are another story entirely. Community organizations like the Main South Alliance for Public Safety have long documented the negative effects of the existing PIP shelter on a neighborhood of mostly hard-working, law-abiding people of relatively low incomes who are striving to advance themselves, their families, and their community. Frequent arrests in the neighborhood of individuals for such crimes as burglary and prostitution, who give the PIP shelter as their address, confirm these reports. (Though PIP advocates claim that some of those arrested don’t really live at the PIP shelter, it is unlikely that most of these reports are false.)

Similarly, at the City Hall hearing on the siting issue, one woman who taught at the Jacob Hiatt Magnet School near the PIP shelter described how custodians at the building must go through the school's playgrounds **every morning** to remove drug paraphernalia and condoms scattered there by unwanted "visitors" – most of them, in all likelihood, residents of the PIP shelter or their associates. And Main South activists must engage in a constant battle to clean up needles and condoms scattered through their neighborhood by those drawn to the area by the PIP shelter.

Understandably, residents of neighborhoods like Main South complain of the "dumping" of residential programs on their neighborhood, when more prosperous areas of the City are largely unaffected. Arguably, there are good reasons for siting many of the *well-supervised* programs in neighborhoods like the Main South area (housing costs are lower, and more multifamily residences are available there). But there is no good reason that residents of any neighborhood should be asked to endure the detrimental effects of a program like the PIP shelter. Nor, we believe, should "sober" houses be sited in residential neighborhoods unless they are the final stage in a treatment process, rather than residences for the overflow from the PIP, as the proposed SMOC house for Newton Square and four other locations in the city are designed to be.⁴⁴

B. Sober houses

The legal status of a so-called "sober" house like the one proposed for June Street/Newton Square is more ambiguous. In its zoning certificate (as summarized in its attorney's opinion conveyed to Commerce Bank, the lender for the June Street property) SMOC has explained that residents of the proposed facility will be required to participate in educational programs provided by SMOC to assist them in "securing permanent housing, employment, economic independence," and "peer support and self-sufficiency." These are highly laudable goals. Nonetheless, it is doubtful that such programming suffices to constitute an "educational" facility within the meaning of the Dover Amendment, so as to render it immune to local zoning requirements. At the same time, the Regional Counsel of HUD has stated that the Federal Fair Housing Act would not prohibit the application of a **nondiscriminatory** zoning ordinance to prohibit the siting of residences for more than six unrelated persons in a residential neighborhood. The chief purpose of zoning legislation is to protect the integrity of neighborhoods, by excluding from residential neighborhoods the siting of uses (whether for industry or other purposes) that are incompatible with residents' full and secure use of their property. The City Solicitor should explore whether the proposed SMOC center can be excluded from Newton Square, and from other residential neighborhoods, on the ground that it violates the City's zoning ordinance for such neighborhoods and is not covered by the Dover Amendment.

Unlike the PIP shelter also operated by SMOC, the SMOC center proposed for Newton Square is to be a "sober" or "dry" shelter, in which residents are prohibited from using

⁴⁴ John Monahan, "Shelter Funding Undone-Chandler Move Devastating Blow." *Telegram & Gazette*, June 4, 2005, p. A1.

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alcohol or illegal drugs during their period of residence. However, one must question how far it will be possible to maintain this distinction in practice. We wonder whether SMOC administrators, having admitted residents who promise to be “dry,” but who have been admitted from the PIP shelter after only a brief period of sobriety (along with a pledge of continuing abstinence),⁴⁵ will be able effectively to supervise the adult residents’ behavior when off the premises to ensure that they live up to the promise. If alcoholism and drug addiction are regarded as disabling diseases, it would appear overly optimistic to assume that all or most of those admitted to the Newton Square program without first having participated in lengthy rehabilitation programs can be counted on to stick to their pledges without close monitoring. According to SMOC’s “Sober Housing Manual,” residents may remain out until midnight or away from the premises for up to 24 hours without notifying the house manager.⁴⁶ Under these conditions, it is inevitable that they will be wandering the neighborhood – which includes three schools, a synagogue, and a large public park, the adjacent part of which is undeveloped open space – when they are not participating in the shelter programming. Additionally, since the residents may entertain guests until midnight during the week and 1:00 a.m. on weekends, the presence of recent alcoholics and drug users will inevitably attract a “visiting” population to the neighborhood, some of whom may well be active substance abusers or even dealers, thus worsening the situation for neighborhood residents.

For the foregoing reasons the Bureau believes that shelters for current or very recent alcoholics and addicts (as distinguished from group homes offering comprehensive treatment programs, such as those run by The Bridge, or the Healthlink center on Highland Street) do not belong in residential neighborhoods. And given the harm that a lodging house for “recent” drug users and alcoholics is likely to cause to a residential neighborhood and the fact that it is **not** clearly a violation either of the State Dover Amendment or the Federal Fair Housing Act to use zoning ordinances to exclude such group residences from residential neighborhoods, the City should make every effort to persuade SMOC to locate its facilities to sites (such as those suggested below) that are located outside of residential areas.

C. Addressing the overall geographic concentration of treatment facilities

Above and beyond the problem of siting the PIP shelters and “sober” houses that do not limit their residents to those who have completed extensive treatment programs, there is the broader issue of the **concentration** of facilities for drug and alcoholism treatment and other behavioral problems within the Main South neighborhood, about which residents of that neighborhood have understandably complained, charging that other parts of the City are not accepting their “fair share” of the facilities. The Research Bureau believes that the siting of treatment facilities and homeless shelters should not be viewed as an “us vs. them” affair, whether among neighborhoods or between the City as a whole and the homeless. When state representatives engage in a loud fight over whose neighborhood is “oversupplied” with drug or alcohol treatment facilities, as occurred outside a recent hearing of the Mayor’s siting committee, it is a sign that something has gone wrong with

⁴⁵ Ibid.

⁴⁶ SMOC Sober Housing Manual, p. 11.

the policymaking process.⁴⁷ Similarly, when protests from a couple of local businesses can dissuade the City from allowing the PIP shelter to relocate out of the residential neighborhood where it has generated numerous problems, as reportedly occurred a couple of years ago, we wonder whether the public interest as a whole has been adequately represented in the siting process.⁴⁸

Among the options that should be considered for the future siting of a “wet” shelter, as well as for “sober” houses that are not the culmination of an extensive, prior residential treatment process, are the following:

- The buildings and grounds of Worcester State Hospital, which currently have vacant space and are expected to have more in the future.
- The enormous Wyman-Gordon brownfields site, which the company is seeking to sell. Social-service agencies could be encouraged to purchase a large enough portion of this land to house present facilities with room for further expansion.
- Industrial areas along Southbridge Street. (As noted above, an effort to relocate the existing PIP shelter to the Southbridge Street area several years ago unfortunately fell through owing to complaints from the owners of businesses adjacent to the proposed site. Had a location been found farther down the street in its industrial section, perhaps the complaints would have been fewer.)

Doubtless, there will be complications to be addressed in arranging for the siting of social service agencies at any of these locations. But the broader well-being of the City and its neighborhoods demands that City government make every effort to help overcome those difficulties so that recent and future siting controversies involving residential areas can be overcome and (in the future) avoided.

We have focused in this report on things that the City can do to protect residential neighborhoods against erosion and to mitigate controversy among neighborhoods over the location of drug- and alcoholism-treatment facilities. But we shall conclude by mentioning things that should be done at the State level with respect to these issues for the benefit of Worcester and other Massachusetts communities:

- The Dover Amendment should be amended so as to make clear that it covers **only** facilities that have a **predominantly** educational (in the instructional sense) or religious mission. This presumably would confirm the Legislature’s original intent, in contrast to subsequent judicial broadening of the Amendment’s import. Clarifying the Amendment in this way would enable Worcester and other communities to apply zoning laws to the siting of treatment facilities so as to preserve the integrity of residential neighborhoods – as each of the non-Massachusetts cities covered by our survey already does. The request to revise the

⁴⁷ Lee Hammel, “Fresolo, Spellane Face Off—East/West Side Siting of City Social Services,” *Telegram & Gazette*, June 24, 2005, page A1.

⁴⁸ Nick Kotsopoulos, “PIP Forced to Back Off on Relocation—Deadline to Buy Property,” *Telegram & Gazette*, October, 2002, page B1.

Siting Residential Social Service Programs: The Process and the Options

Dover Amendment would be most effective if it came in the form of a Home Rule petition from the Worcester City Council to the state legislative delegation.

- The Bureau of Substance Abuse Services should endeavor to disperse treatment facilities for the **region** rather than concentrating them in Worcester. (As noted in Table 4 above, Worcester currently holds all eight of the state-licensed programs in this vicinity, with none in the surrounding towns – even though it is likely that some clients come from those towns, and testimony at the hearing held by the Mayor’s siting review committee indicated that some clients came from as far away as Boston, New Hampshire, and New Jersey). Currently, it would appear that Worcester is doing more than its fair share for the region.
- In addition, some inquiry is recommended as to the proportion of residents of treatment facilities and group homes, as well as shelters, who come from Worcester and its region as distinguished from **other states** and regions. Are Worcester and Central Massachusetts attracting clients for such programs when other states, or other Massachusetts regions, are not doing their own fair share of providing treatment facilities and shelters?
- The State, as the Main South Alliance for Public Safety has urged,⁴⁹ should require residential social service agencies like Community Healthlink and SMOC to carefully screen their clients for **sexual offenders**, and inform all neighborhood residents when a Level 2 or 3 offender is being given residence there. Perhaps state law should be amended so as to require the State to notify all residents of a neighborhood whenever a Level 2 or 3 offender is moving there, rather than depend on citizens to look up entries by neighborhood in the State’s registry.

⁴⁹ See Bronislaus B. Kush, “Sex-Offender Placements Anger Residents,” *Telegram and Gazette*, March 4, 2005, p. B1; “Sex Offenders in City a Concern,” *Telegram and Gazette*, March 2, 2005, p. B1.

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