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February 5, 2012

To: Members of the Denver City Council (via email)

Re: Opposition to Proposed Amendment to Ordinance 333, Series of 2010, enacting the new Denver Zoning Code.

Dear Council Members:

**We oppose this Amendment as written.** I speak on behalf of myself, my family and many of the immediate resident-owner neighbors of 740 Clarkson St. We do not oppose the attempt to fix a purported error in Ordinance 333 regarding permits issued during the “dual-code” period from June 25, 2010 to December 30, 2010, so long as it does not undermine our efforts to protect against the over-institutionalization of our Capitol Hill neighborhoods.

**We oppose** the December 30, 2010 issuance of the rooming and boarding (R&B) permit to Open Door Ministries (ODM) for the house next door to us at 740 Clarkson. It was obtained with no notice or outreach to the neighbors, our RNO or our Councilperson. The property is purportedly being operated as the “LightHouse” R&B house for “men in recovery, including non-violent offenders, recovering alcoholics, recovering drug users, and/or recovering homeless men.” The permit was an unlawfully issued “change of use” permit. It was not an “erect or alter” permit, which was the only one allowed for R&B under Section 59-26(d) of the old code.

**The Amendment as written arguably legitimizes the R&B permit.** It not only undermines an appeal I have filed with the Denver District Court (2011cv7597) asking the court to declare the permit void from the date of issuance, but it also undermines our efforts to preserve the residential fabric and stability of our neighborhoods.

**We propose** that if Council wants to correct the purported error, it should rewrite the Amendment to **(1) exclude those uses that Council has in the past deemed inappropriate for a particular zoning district, such as R&B, or (2) exclude all permits where the validity of the permit has been challenged by a third party.** The Amendment as now written creates new rights for about 300 property owners by authorizing permits that previously were unlawfully issued. In our proposal we are only asking that Council limit uses to which these new rights apply.

**Please let us have our day in court.** In addition to our contention that the permit is void, we contend that ODM unreasonably relied on the permit to buy the property for the operation of their LightHouse Program. **Court is our only practical remedy and also provides ODM with a practical remedy.** If we prevail in the above appeal on the grounds that the permit was void, ODM can preserve their right to operate R&B by prevailing in a lawsuit where the facts can be determined at trial and where this matter belongs. If ODM can prove by a preponderance of the evidence that it reasonably and detrimentally relied on the issuance of the permit to buy the property to operate its LightHouse Program, it will be entitled to operate a R&B house under its

permit. This should not be a burden on ODM since they are being provided legal services through an organization that provides legal assistance to similar organizations.

I contend that when ODM pulled the R&B permit and began operations at 740 Clarkson, it was nothing but a disingenuous attempt to game the system. The evidence shows that the LightHouse Program was a “large residential care use” (Large RCU or “special care home”) facility and that ODM was either aware of that fact or if they were unaware it was because they stuck their heads in the sand to avoid finding out (“**willingly blind**” as one judge called it). **I contend and believe I can prove that ODM pulled the R&B permit to avoid giving public notice required by law and they did so because from previous experience they knew they would be opposed, they knew it could take significant time to obtain permits and they had no back up plans to house the 16-20 participants in the Program.** I do not for a moment believe the reliance was reasonable. Should ODM assert detrimental reliance in any action involving the City of Denver, I am committed to refuting the reasonableness of such reliance. (For more information on the dispute, search “740 Clarkson” at [westword.com](http://westword.com) and [lifeoncaphill.com](http://lifeoncaphill.com).)

R&B does not fall under the 1993 group living spacing ordinance (Sections 11.2.5 and 11.12.2.2 of the new Zoning Code) that governed ODM’s 3 previous failed attempts to expand its programs further into the Capitol Hill neighborhood as either a Large or Small RCUs. Since being challenged, and with the stroke of a pen, ODM has turned its allegedly successful “Program” into a non-program for the same special needs population. The differences are in the level of “on-premises, treatment, supervision, custodial care or special care due to physical condition, illness, mental condition or illness or behavioral or disciplinary problems” (“supervision”). The Program has gone from the supervision required of a “Large” RCU (more than 12 hours per day of supervision) to a “Small” (regardless of the size) RCU (less than 12 hours of supervision) to R&B (no mandatory supervision required and no mandatory program participation and no guarantee that this special needs population is less of a safety risk).

I have attached a copy of 2 Maps prepared by the Zoning Administrator’s (ZA) office that visually illustrate the disparities in the concentrations of RCUs in Denver. These were prepared by the ZA in preparation for a decision on ODM’s application for a transitional housing (Small RCU) permit for the LightHouse Program. The ZA denied the permit and determined “that the subject property is located in a neighborhood with an over concentration of uses contributing to the institutionalization of the neighborhood.” ODM appealed the decision to the BOA, who unanimously upheld the ZA’s decision. (Case #174-11) In offering a reason for the need to be at this location, the Executive Director of ODM stated the need to be close to their constituents. But as the Chairman of the BOA noted, providing these services at this location just draws more constituents into the neighborhood. From the record in that case, I also note the following statistical disparities: (1) 25 of the 78 Denver statistical neighborhoods have no RCU facilities, and (2) Capitol Hill is the most concentrated in terms of number of RCUs to area and is tied for 5th-7th of the number of RCUs per neighborhood. And these do not include the ones operating under the radar.

Of the 10 historic houses left on our Block in the 7<sup>th</sup> Avenue Historic District, 7 are owner-occupied residences: 1 is the Pomegranate Community Center (an “institution” by dictionary definition); 1 is the Zang Mansion (commercial offices) and 1 is the LightHouse (an “institution” by dictionary definition). We are “over-institutionalized.” Of the 7 resident-owners, 6 of us

have opposed ODM's operations. Of the 8 owner-occupied residential houses on the Emerson St. side of our alley, all 8 have opposed ODM's operations.

A concentration of 16 or more men in multiple stages of some type of "recovery" in a house (that practically speaking should be limited to no more than 9 or 10 people) is difficult to understand at this location in the middle of a mostly owner-occupied neighborhood with a recent budding amount of young families.

**We do not believe the amendment is necessary** – the time periods to challenge any unlawful permits have run.

**We believe it is a flawed amendment and will not withstand a constitutional challenge** – for being special legislation, unlawful retrospective legislation and/or a denial of equal protection. This is not a remedial bill. It creates new rights and discriminates substantively.

Please see my letter of January 9, 2012 to the Land Use Committee opposing the Amendment.\* It provides more detail.

**CONCLUSION.** Please do not legitimize a sham. ODM's mission might be noble but their execution regarding 740 Clarkson was not, especially not giving notice, and they should not be rewarded. We understand there are big problems to solve and ODM is active in trying to solve them. But we already have a law on the books to deal with special needs populations in a zoning context and the stated intent of that law should not be subverted.

Give us the opportunity to oppose the R&B use in our neighborhood. Please allow us our day in court. It is the **fair** thing to do.

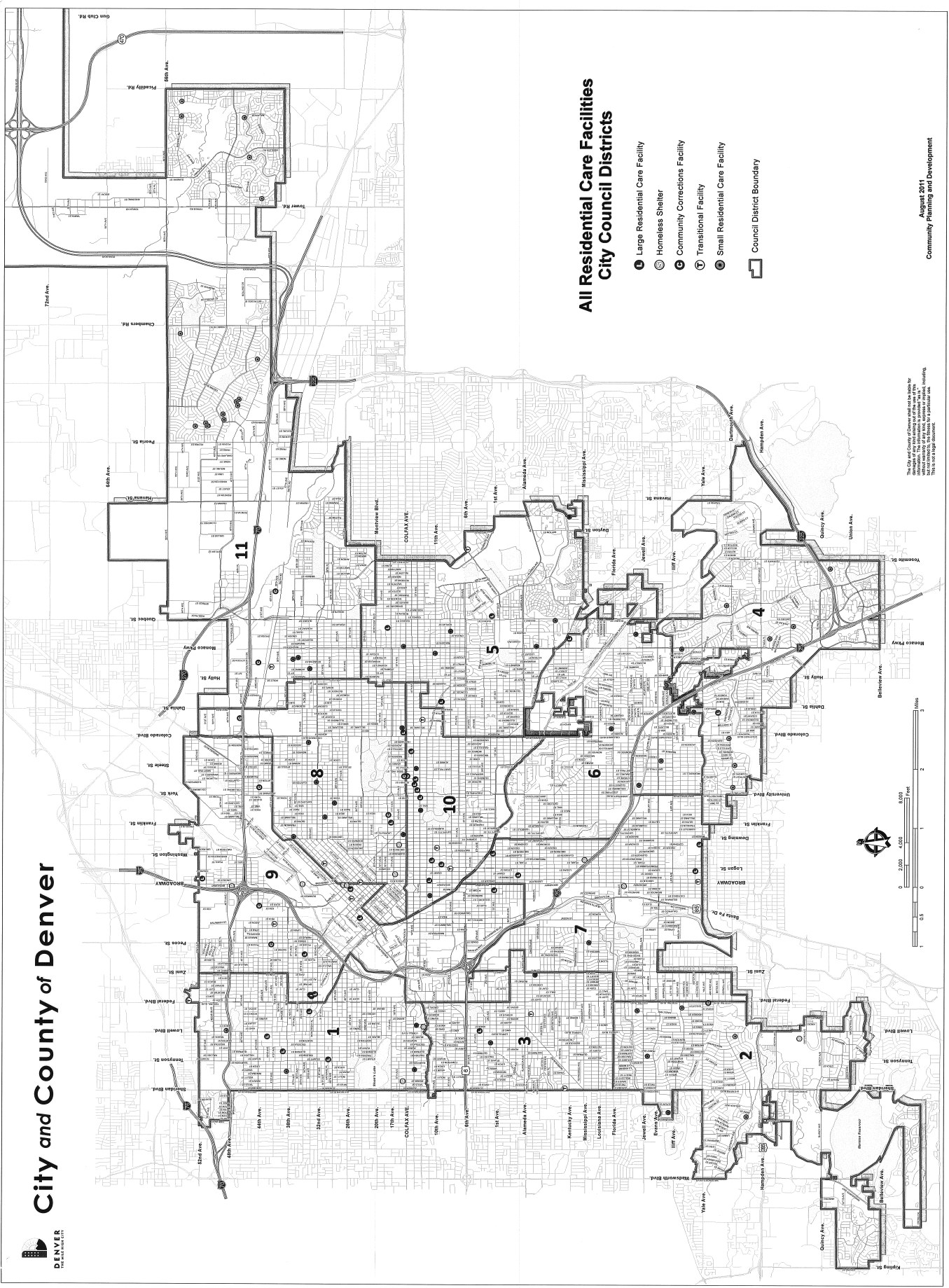
Thank you.

/S/

Jesse Lipschuetz

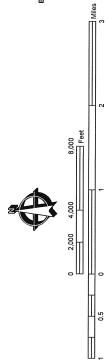
\* Since the January 9 letter, I have entered into a Stipulation with ODM regarding my other Denver District Court lawsuit for an injunction (2011cv3175). The Preliminary Injunction against ODM operating a RCU facility without a proper permit is now a Permanent Injunction. My claims to void the R&B permit has been dismissed "without prejudice," meaning they can be asserted in the future and will not affect my pending appeal of the BOA decision in Denver District Court (2011cv7597).





**All Residential Care Facilities  
City Council Districts**

- ① Large Residential Care Facility
- ② Homeless Shelter
- ③ Community Corrections Facility
- ④ Transitional Facility
- ⑤ Small Residential Care Facility
- Council District Boundary



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