



# CITY OF NEWPORT BEACH

## OFFICE OF THE CITY MANAGER

Homer L. Bludau, City Manager

February 11, 2008

Dear Residents:

**PLEASE TAKE A MINUTE  
TO READ THE YELLOW  
INSERT INCLUDED WITH  
THIS LETTER. THANKS!**

It's time I updated you about the issue of group homes in our community. Within the past few years, more group homes have established here, particularly on the Balboa Peninsula and in West Newport. Local residents have grown increasingly concerned about what they perceive as a change in their neighborhoods, and some feel as if the area had been rezoned from residential to an institutional zoning district. Between the group home residents, staff and deliveries at each facility, there are simply more people coming and going than an average home would generate.

The situation is related to state and federal efforts to de-institutionalize persons with disabilities so that they may live in typical residential communities. Because persons recovering from drug and alcohol addiction are a protected class, fair housing laws apply to them too. But we think that group home operators have gone too far by placing too many homes in close proximity to each other within one neighborhood. While this may serve the operator's business model, it recreates the institutional environment that the state and federal governments were trying to eliminate. This is a bad policy for the group home residents as well for as our neighborhoods.

I should note that there are group home operators that operate quality facilities. They're the ones we don't hear complaints about. Unfortunately, there are also absentee or inattentive operators whose facilities operate more like boarding houses and can regularly disrupt neighborhoods.

The City of Newport Beach agrees that an overconcentration of group homes *does* change the nature and feel of a community. In response to the community's concerns, we're changing the way we regulate group residential uses. The City Council recently approved a comprehensive plan intended to remedy the adverse impacts of overconcentration that should be effective while respecting our obligations under state and federal laws.

The plan revolves around Ordinance No. 2008-05. The ordinance lays out a permit process for those that wish to continue operating an existing group home or those that want to establish a new group home in Newport Beach. Effective February 20, 2008, operators of existing unlicensed sober living group homes and nearly all\* (please thumb to the back and read the explanatory endnote) existing state-licensed treatment homes will be required to apply for a Use Permit. All new facilities\* will be excluded from all residential zones except multi-family zones. Existing facilities can only stay at their current locations if they get a Use Permit and meet its conditions. Existing facilities that have not followed the City's laws or that illegally began operations during our moratorium period will not be eligible to continue operating.

Regrettably, some residents have sued the City because they think the ordinance should contain more restrictive regulations, including a 1,000-foot separation between group homes. They

suggested other changes, too – changes that the City has concluded, based on advice from three sets of attorneys, risk invalidation of the entire ordinance by the courts. We may face other lawsuits or discrimination filings from group home operators alleging that the ordinance is so restrictive that it violates federal law. The bottom line is this: Newport Beach has adopted a law that its special legal counsel has advised should be accepted by the courts as a reasonable non-discriminatory set of regulations to address valid adverse land use impacts.

There have been many questions raised at public hearings and community meetings about group homes and the steps the City is taking to resolve this issue. The following Q & A should help to explain the reasoning behind the City's plan, including some of the legal and planning considerations required.

**What is a “group home”? Why are some homes required to obtain a state (“ADP”) license while others are allowed to be unlicensed?** There are several different types of group homes.

- Residential Treatment Facilities (where treatment is provided onsite for persons with disabilities)
- “Sober Living” Homes (where residents live in a sober-living environment, but whose treatment may only be attending “AA” meetings as a part of their long-term recovery)
- Boarding Houses (places that rent rooms or sections of a house to individuals with separate leases - these are illegal in all of Newport Beach’s residential zones)
- Care Facilities (these can be elder care homes or homes for the developmentally disabled)

If a home is referred to as “licensed,” then it is a group residential use where people in recovery are provided treatment in the home where they live. These homes must be licensed by the California Department of Alcohol and Drug Programs (ADP or [www.adp.ca.gov](http://www.adp.ca.gov)), if they offer one or more of five different types of rehab treatment at the house. To ADP, “treatment” means non-medical detoxification, group counseling, one-on-one counseling, treatment plan development and educational sessions. Only ADP-licensed facilities can offer these treatment services.

There are also “unlicensed” homes (note: when we discuss “licensed v. unlicensed” in this context, we’re referring to state licenses, not City business licenses). These are commonly referred to as “sober living homes,” because to live in the house, the residents must agree to remain sober during their stay. Because no treatment is provided there, the home does not need an ADP license. As you can see, certain homes can legally operate without an ADP license as long as these homes do not offer treatment.

**Why does the City allow businesses that offer recovery & sober living services to operate in residential neighborhoods?** Local governments must comply with both federal and state law. Under the Federal Fair Housing Act, people in recovery are considered disabled and therefore constitute a class of persons protected from discrimination in housing.

**Can you legally regulate the state-licensed homes?** Some can be regulated, some cannot\*. The homes mentioned in the endnote and elder care homes cannot be regulated differently from typical residences. But the City and its special legal counsel believe that all other group homes can be regulated, as long as the regulations address land use impacts of the facilities’ operations and do not target the people residing in them.

**Some cities require a 500 or 1,000-foot distance between group homes. Does Newport Beach?** No. After closely reviewing federal law and court decisions, three sets of attorneys have told us that the federal courts with jurisdiction over California will find any distancing discriminatory on its face. Even the State Legislature's own attorneys have advised the Legislature that distancing is discriminatory. If the City were to include a distancing requirement, the court could immediately suspend our entire ordinance – leaving us with NO ordinance on the books for two, three, or more years.

**What happens if the operators don't apply for a permit?** The group home will have to close within one year or by the end of their property lease (most homes are leased – not owned - by operators) or at the conclusion of the normal length of stay for the existing residents of the home, whichever comes sooner.

**If the City grants a Use Permit, what happens if the group home fails to comply with the Permit's conditions?** If the group home operator is found to be in violation of the conditions of its use permit, we can revoke the permit and the home will have to close.

**What impacts are residents complaining about?** Residents complain about excessive secondhand smoke, profanity, trash not properly contained, deliveries (food, laundry, office supplies, etc.), too many transit vehicles (vans and shuttles), and other things that can come with having a large amount of people in a home nearby.

**Who are the persons in recovery and where do most come from?** Because most of the programs in Newport Beach are relatively expensive, their stay is usually at the direction or request of family, friends or employers. While some may be staying to comply with their conditions of release for an alcohol or drug-related crime, we have no substantiated evidence that persons in recovery in Newport Beach are being sent here in lieu of jail or prison time.

**How many group homes are located in Newport Beach?** There are about 76 homes (includes both state-licensed and unlicensed facilities) with about 500 beds, the vast majority of which are located on Balboa Peninsula and in West Newport. To put that in context, there are 11,000 residential units in that area of our City. Some information reported in the news indicates a higher number of group homes, but we investigated this thoroughly -- and verified our understanding of the facts.

**What *is* our fair share and why can't we limit the number of homes to that amount?** Newport Beach represents approximately 2.8% of the county's population, yet we have about 14.6% of all ADP-licensed beds in Orange County. That doesn't include the unlicensed beds, because the state doesn't count or track those. Though we believe Newport Beach has met its fair share of group homes, the California Attorney General recently wrote that ADP cannot stop licensing new rehab homes in a community. Many cities are grappling with this issue. Across Orange County, ADP shows that it has nearly doubled the amount of licensed facilities countywide since 2004.

**Does this ordinance go far enough?** As previously noted, three different legal firms have worked with us on the concepts implemented in the new ordinance. All three firms have concluded that this ordinance allows us to do as much as we can do under current state and

federal fair housing laws. This ordinance will adequately and fairly address secondary impacts and prevent overconcentration.

**Have the City's efforts been effective thus far?** Yes. The City has addressed, via code enforcement, what we see are illegal boarding houses masquerading as sober living homes. This can be a long process because it can involve a court action to enforce the citations. Early in 2008, we helped close one large (17 people lived there!) boarding house that had been of particular concern to the neighbors. The City is currently in court to attempt to block the operation of five other homes.

**What is the City doing to see that state and federal laws are changed?** We've spent the last two years working with our legislators to attempt to change state law to help us better address the adverse impacts of overconcentration. Thus far, those efforts have been unsuccessful. The prevailing thought in Sacramento is to limit the authority given to cities because they're concerned that cities will discriminate. Our district representatives have been our allies, but gaining the support of legislators in other parts of the state has been a challenge. We're not giving up. Newport Beach and a coalition of cities are working with the League of California Cities to craft new state legislation. Changing federal law is more challenging, but we will be contacting our members of Congress too.

**What happens next?** Letters have gone out to all known or presumed group homes and the Use Permit process has begun. Residents will need to remain engaged with us and share concerns and supportive information about specific homes. The fair and proper operation of the new ordinances depends on the active involvement of affected citizens in the permitting process.

**Where can I get more information?** Visit [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us), and select the "Group Residential Uses" link on the City's homepage. If you prefer to speak to someone directly, please call Assistant City Manager Dave Kiff at 949-644-3002.

As always, thank you for reading my newsletter. If you have any feedback for me or comments about City issues, don't hesitate to call me (949-644-3000) or e-mail me at [hbludau@city.newport-beach.ca.us](mailto:hbludau@city.newport-beach.ca.us).

Sincerely,



Homer L. Bludau  
City Manager

\* I apologize for using this endnote, but this one is important and would significantly lengthen this letter if I had to I keep writing it. There is a class of treatment homes, as we describe in this letter and is discussed more on the City's Web site and in our ordinance, that we call a "stand-alone ADP-Licensed 6 and Under" home. These homes are not integrally-linked with other homes under common management. They are specifically protected under California law (California Health and Safety Code §11834.23). This law says that cities must treat this size and type of home just like we treat any other residential use. Cities are specifically prohibited from classifying these homes as businesses, requiring a Use Permit of them, taxing them or prohibiting them from locating in any residential zone in the City.



# IMPORTANT NOTICE

PLEASE READ

FOR PERSONS WHO OWN AND/OR MANAGE A **GROUP HOME IN NEWPORT BEACH**: Please be aware that the City Council of the City of Newport Beach has adopted new regulations (Ordinance 2008-05) relating to Group Residential Uses. New or expanded uses of this type may be prohibited in your area. To retain an existing use, you may be required to apply for and receive a Use Permit with conditions. You must apply for a Use Permit by May 20, 2008. If you do not apply or do not receive a permit, the City may abate your use. Reasonable accommodation provisions apply. For more information, see [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) then *Group Residential Uses*.

FOR PERSONS WITH LEGAL BUT NON-CONFORMING USES IN RESIDENTIAL ZONES: Please be aware that the City's adoption of Ordinance 2008-05 may require you to seek a Use Permit for your **legal, non-conforming use in a residential zone** (these uses may include, but not be limited to, medical offices, day care centers, or shops in areas zoned as residential) or be abated no later than February 20, 2009. For more information, please contact the Newport Beach Planning Department at 949-644-3200.

FOR LANDLORDS WHO RENT TO RESIDENTIAL TENANTS IN NEWPORT BEACH: If your property is a **boarding house** and/or contains one or more **unpermitted (illegal) dwelling units** that you rent out, this use is illegal. The City actively enforces violations and will abate any illegal dwelling unit or boarding house use when it is made aware of such uses. The City's abatement effort may lead to evictions of tenants residing in these illegal dwelling units or boarding houses. **Please do not place tenants in units that are not permitted as dwelling units.** For more information, contact the City's Code and Water Quality Enforcement Division at 949-644-3215.

FOR ALL RESIDENTS OR PROPERTY OWNERS: In July 2007, the City increased its attention to **abating nuisances**, including properties with unkempt yards, trash not properly contained, peeling paint, improper materials storage in yards and setbacks, and more. If your property contains any of these nuisances (or other nuisances as described in Newport Beach Municipal Code §10.50.020), the City advises you to repair or remedy the nuisance as soon as possible to avoid a citation and penalties. For more information, contact the City's Code and Water Quality Enforcement Division at 949-644-3215.

DATE OF NOTICE:  
FEBRUARY 6, 2008