

**CITY OF NEWPORT BEACH  
CITY COUNCIL STAFF REPORT**

Agenda Item No. 13  
November 9, 2010

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Planning Department  
Janet Johnson Brown, Associate Planner  
949-644-3236, or [jbrown@newportbeachca.gov](mailto:jbrown@newportbeachca.gov)

Office of the City Attorney  
David R. Hunt, City Attorney  
949-644-3131, or [dhunt@newportbeachca.gov](mailto:dhunt@newportbeachca.gov)

**SUBJECT: Annual Review of Zoning Implementation and Public Benefit Agreement for Sober Living by the Sea, Inc. (PA2008-199)**

---

**ISSUE:**

City Council's annual review of the Zoning Implementation and Public Benefit Agreement (Zoning Agreement) between the City of Newport Beach and Sober Living by the Sea, Inc. (SLBTS) to determine if SLBTS has demonstrated good faith compliance with the terms of the Zoning Agreement.

**RECOMMENDATION:**

- 1) Conduct a public hearing; and
- 2) Find that the applicant has demonstrated good faith compliance with all but one term of its Zoning Agreement and establish milestones to address that one term; and
- 3) Receive and file documents submitted by SLBTS to demonstrate good faith compliance with the terms of the Zoning Agreement (Attachment CC 1)

**DISCUSSION:**

**Introduction:**

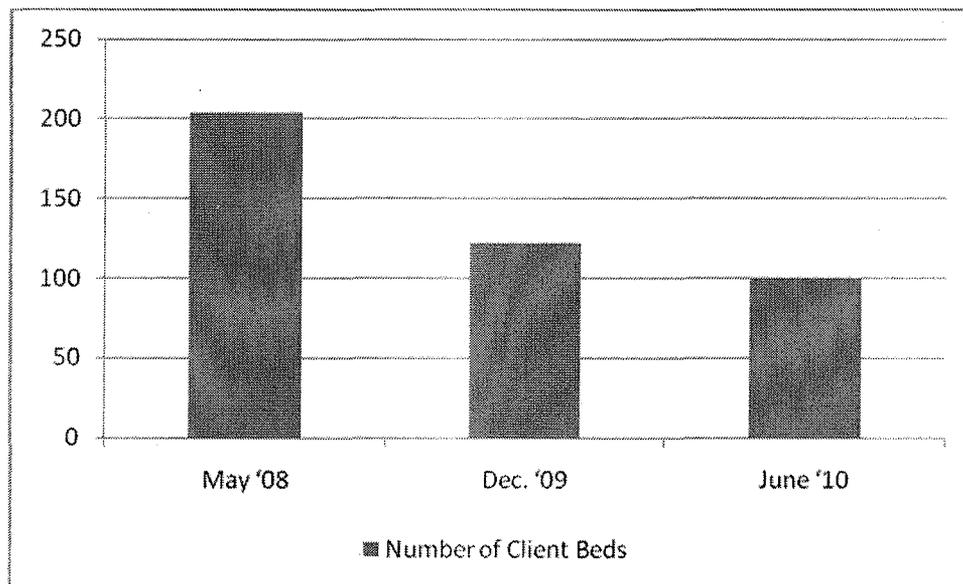
This is the first annual review of the SLBTS Zoning Agreement. Staff has conducted an extensive review of SLBTS's operations and the requirements of the Zoning Agreement. Staff's review indicates that SLBTS has made a good faith effort to comply with the terms of the Zoning Agreement throughout the year, and is currently in compliance with

all requirements except the parking lot requirement for SLBTS' Villa Way facility, discussed below.

Through the review process, staff has established mutually agreed-upon administrative protocol related to City inspection of the facilities, opening or relocation of facilities proposed by SLBTS, and procedures related to future annual compliance reviews. To the extent possible, all future annual reviews of the SLBTS Zoning Agreement will be conducted at the second regular City Council meeting in July of each year. Staff has summarized the administrative protocol in the Zoning Agreement Administration memorandum, which SLBTS has agreed to follow (Attachment CC 2).

Although the SLBTS Zoning Agreement makes reference to "beds occupied," the City and SLBTS recognize that reference to "beds occupied" does not present an easily verifiable criteria by which to determine compliance with the total number of occupied beds allowed pursuant to the Zoning Agreement. Both the City and SLBTS agree that all future references shall be "client beds" in order to provide an objective and accurate inventory of beds available for clients in individual facilities, and beds available for clients throughout the City. The City will conduct a further investigation should a facility have beds available that exceed the total number of "beds occupied" allowed under the Zoning Agreement.

Staff's review of SLBTS' facilities reveals that the number of client beds has declined from 204 beds in May 2008, when SLBTS submitted applications for use permits, to 122 beds in December 2009, to 100 beds in June 2010, as shown in the chart below. (See Attachment CC 3 Inventory of Client Beds listed by address.)



**Background:**

The final form of the Zoning Agreement was executed and entered into on September 30, 2009, and recorded with the County Recorder's Office on October 23, 2009. The

SLBTS Zoning Agreement was approved under California's statutes relating to development agreements (California Government Code Section 65864-65869.5).

The Zoning Agreement provides that the City and SLBTS shall conduct a review at least once every 12 months for good faith compliance with the terms of the agreement, consistent with California Government Code Sections 65865 and 65865.1, and with Section 15.45.080 (Development Agreements - Periodic Review) of the Newport Beach Municipal Code (NBMC). If the City Council finds and determines that the applicant has not complied in good faith with terms or conditions of the agreement, the City Council may pursue remedies as approved by the agreement.

The date for the annual review of the Zoning Agreement is muddled by the nuances of this particular agreement and its execution. The Zoning Agreement provides that the effective date shall be the ninety-first day following the City Council's passage of the ordinance approving the Zoning Agreement, that being May 12, 2009. Section 14 of the Zoning Agreement then requires the annual review to be conducted once every twelve months from the effective date. Unfortunately, the Zoning Agreement was not fully executed until September 30, 2009, and NBMC Section 15.45.080 requires annual review once every 12 months from the date of execution. In light of this ambiguity, the City and SLBTS have agreed to conduct the annual review in July of each year since it falls between the two competing dates. This also falls within the month following the submission of a Compliance Review Report by SLBTS as required by the Zoning Agreement. Thus, the next annual review will be presented to the Council for its consideration in July 2011.

#### Terms and Conditions of the Zoning Agreement:

The Zoning Agreement establishes the duties of both SLBTS and the City in regards to SLBTS' sober living homes and licensed treatment facilities (Attachment CC 4). As set forth in Exhibit B of the Zoning Agreement, a limit is set on the number of client beds permitted in SLBTS's facilities in the Peninsula Zone at 156 beds maximum, and 204 beds maximum city-wide.

The Zoning Agreement establishes required distancing of SLBTS' facilities from other similar facilities, and from certain other uses such as schools, parks and large licensed day care facilities. It also establishes operational regulations by which SLBTS is required to comply. Specific required conditions of the Zoning Agreement are summarized in the SLBTS Compliance Review Matrix (Attachment CC 7) discussed below.

#### *Compliance Review*

The Zoning Agreement provides that SLBTS shall submit a Compliance Review Report on or before December 31 and June 30 of each year of the term of the Zoning Agreement. The Compliance Review Report is required to document the current status of the SLBTS operations and provide information relating to facility locations and bed counts.

SLBTS has submitted its Compliance Review Reports within the deadlines required by the Zoning Agreement (Attachment CC 5). The accuracy of the information in the Compliance Review Report is verified by the City through on-site inspections of the facilities. The Code Enforcement Division conducted interior and exterior inspections of 11 SLBTS facilities at various times throughout the year. The dates and locations of facility inspections are summarized in the table below. Copies of Code Enforcement inspection reports are provided in Attachment CC 6.

Inspection Date	Facility Address	Inspection Results	Comments
<b>April 27, 2010</b>			
	6111 Seashore Dr.	In Compliance	
	112 40 <sup>th</sup> St.	In Compliance	
	100-102 Via Antibes, 208 Via Lido Soud	Improper use of bedroom as separate dwelling unit in 102 Via Antibes unit. Garage spaces not clear & accessible for parking.	Code Enforcement notified property owner; issues corrected. Note: 100-102 Via Antibes and 208 Via Lido Soud closed effective 7/31/10.
	4816 Seashore Dr.	In Compliance	
<b>July 28, 2010</b>			
	505 29 <sup>th</sup> St.	In Compliance	
	5004 Neptune Ave. Units A & B	In Compliance	
	5101 B River Ave.	In Compliance	
	4500-4504 Seashore Dr.	In Compliance	
<b>Sept. 29, 2010</b>			
	4711 & 4711 ½ Seashore Dr.	Improper disposal of medical waste.	Code Enforcement advised SLBTS on 9/30/10 of needed correction. SLBTS directed facility manager to revert to correct method.
	6110 W. Ocean Front	In Compliance	
	4183 Patrice Rd.	Improper disposal of medical waste.	Code Enforcement advised SLBTS on 9/30/10 of needed correction. SLBTS directed facility manager to revert to correct disposal method.
<b>Sept. 30, 2010</b>			
External Inspection of all facilities	505 29 <sup>th</sup> Street 5101 River Avenue 4500-04 Seashore Dr. 4800 Seashore Dr.	Improper maintenance and/or placement of trash receptacles.	Code Enforcement advised SLBTS on 9/30/10 that all receptacles must have lids and be store in contained area. Conditions have been corrected.

Staff's review of SLBTS' overall compliance during the past 12 months is summarized in the attached matrices (Attachment CC 7). Each matrix lists the specific regulations of the Zoning Agreement, the date and results of inspections conducted by the City, any complaints received by the City, and staff notes. Each matrix also reflects the areas in which SLBTS was advised to take corrective action, and the results of that corrective action.

- The first matrix summarizes the applicable regulations of the Zoning Agreement related to the overall operations of SLBTS' properties. It identifies where the City confirmed SLBTS is in compliance with specific requirements.
- The second matrix applies to the SLBTS office use at 2811 Villa Way and the conditions specified in Exhibit C of the Zoning Agreement ("Determination Letter" issued by the Planning Director on August 25, 2006). The matrix identifies where the City has been able to confirm SLBTS is in compliance with the conditions required in the Determination Letter, and where further good faith efforts are required.
- The third matrix includes separate sheets for each individual SLBTS facility, including facilities closed within the past year. This matrix identifies those areas where the City has confirmed that SLBTS is in compliance with the specific requirements of the Zoning Agreement at individual facilities. Where corrective action was required at individual facilities, recommendations and SLBTS responses are noted.

#### *Dispersal of Existing Facilities*

Under the Zoning Agreement, SLBTS is required to move certain of its operations so that, generally, no more than one building per block<sup>1</sup> or across a bordering street is occupied by any facility operated by SLBTS or other operators of a sober living or treatment facility.

Through negotiation of the Zoning Agreement, several exceptions to the dispersal requirement were created. SLBTS may keep the facilities located at:

Facility Address	Exception
112 B 40 <sup>th</sup> St. and 3960-3980 Seashore Drive	Located in same block
122 45 <sup>th</sup> Street, Units A & B <sup>2</sup> , and 4500-04 Seashore Drive	Across a bordering street

<sup>1</sup>Per the NBMC, a block is defined as "an area of land that is bounded on all sides by streets or by streets and a shoreline or by streets and a cul-de-sac or by any other form of termination of the street (i.e. dead-end not a cul-de-sac)."

<sup>2</sup> Although not required by the Zoning Agreement, SLBTS has closed the facilities at 122 45<sup>th</sup> Street, Units A & B.

Facility Address	Exception
6110 West Ocean Front and 6111 Seashore Drive	Across a bordering street
4800 Seashore Drive, Units A & B and either 4816 Seashore Drive, Units A & B Or 4711 and 4711 ½ Seashore Drive	Located in same block  Across a bordering street

SLBTS has taken a number of steps to comply with these provisions. To accelerate the dispersal process, it has closed all but one of its facilities subject to dispersal. The final facility subject to dispersal, 4816 Seashore Drive, is scheduled to relocate on or before December 30, 2010. This date is well within the 30 months required under the Zoning Agreement.

SLBTS has closed other facilities not subject to dispersal during the past year, primarily due to economic reasons. SLBTS facilities closed since October 2009 are:

- 5101 River Avenue, Unit A
- 100-102 Via Antibes, 208 Via Lido Soud (a single building containing 3 units)
- 116 34<sup>th</sup> Street, Units A and B
- 118 45<sup>th</sup> Street, Units A and B
- 122 45<sup>th</sup> Street, Units A and B
- 112 40<sup>th</sup> Street, Unit A (now SLBTS staff only)

As of October 1, 2010, there are 18 SLBTS facilities currently open providing a total of 94 client beds in 18 dwelling units. Of the facilities currently open, one is scheduled to relocate within the next two months (4816 Seashore Drive), one new facility has been opened (4138 Patrice Road), and use of a unit formerly used for staff only has been changed to allow two client beds (4711 ½ Seashore Drive).

The new facility located at 4138 Patrice Road is located in a residential district zoned for multifamily residential use (MFR) outside of the Peninsula Zone. This facility houses six or fewer female clients, and its state license is pending at this time. This facility was opened in violation of the terms of the Zoning Agreement due to the fact the opening occurred prior to the final dispersal required under the Zoning Agreement. However, the facility is located within an MFR zone as would be required under the terms of the Zoning Agreement. Additionally, since this facility was opened while SLBTS was in the process, and in fact, nearing the end of its final required dispersal, and the facility meets all the requirements of the Zoning Agreement for dispersal, staff views the opening of this facility as generally consistent with the terms and intent of the Zoning Agreement.

Please refer to Attachment CC 8 for a map showing the location of all open and closed SLBTS facilities as of October 1, 2010.

### *24-hour-per-day Hotline*

SLBTS has established a hotline that operates 24 hours per day for the purpose of receiving inquires and/or complaints regarding the operations of its facilities. SLBTS has indicated they will respond to all inquires and/or complaints within a 24-hour period. The hotline telephone number is **949-554-1147**. Complaints can also be submitted to the City's Code Enforcement Division at **949-644-3215**.

### *Villa Way Facility*

SLBTS has operated an office and meeting facility at 2811 Villa Way since 1998. The conditions related to the operations of this facility are specified in the Determination Letter (Exhibit C of the Zoning Agreement) issued in August 2006.<sup>3</sup>

Per the Determination Letter, SLBTS may conduct an average of 10 meetings per week at this facility (averages calculated over a four week period, with no more than 12 meetings permitted in any single week), attended by no more than 20 persons. A requirement of the Determination Letter is that SLBTS maintain records that document the number of meetings per week and number of persons in attendance. SLBTS discontinued maintaining the logs after 2007. Staff advised SLBTS to begin maintaining logs on an ongoing basis, which they have done. In order to confirm compliance with this requirement, SLBTS has prepared attendance logs based on other program records (these records are on file in the Planning Department). The program records indicate SLBTS is in compliance with this requirement.

Another requirement of the Determination Letter is that SLBTS construct a 13-space off-site parking lot on a vacant lot across the street at 2807 Lafayette Avenue. SLBTS does not own this property, but arranged a lease with the property owner, commenced improvements and applied for building permits from the City in 2007. However, SLBTS has still been unable to reach an agreement with the property owner regarding environmental cleanup of the site. In the meantime, the building permits issued by the City to construct the parking lot expired on April 17, 2010.

Staff requested SLBTS to provide an update on the progress it is making towards construction of the required off-site parking lot. SLBTS reports ongoing attempts to obtain cooperation from the property owners, and states that it has expended substantial amounts on improvements to remove and replace two driveway approaches, install an ADA ramp, and curb and gutter improvements. SLBTS reports it has made more than 15 attempts, directly and through its attorneys, to obtain cooperation in environmental cleanup of the site designated for off-site parking lot use. Copies of a portion of the correspondence from SLBTS attorneys to the property owner of the vacant lot are attached (Attachment CC 9) as an indication of SLBTS' continued good

---

<sup>3</sup> The detailed requirements are set forth in the Determination Letter, incorporated by reference in the Zoning Agreement and attached to the Zoning Agreement as Exhibit C. The requirements of the Determination Letter are summarized in the Villa Way facility matrix, Attachment CC 7 to this staff report.

faith best efforts to achieve compliance in this area. (The complete record of correspondence is on file with the Planning Department.)

Staff has determined that SLBTS is not in compliance with the requirement to provide an off-site parking lot. Staff proposes an eight-month timeline for material progress in this area. To bring SLBTS into compliance, staff proposes the following schedule and milestones for 2010 - 2011:

- Allow up to two months to work with the property owner and the Water Quality Control Board to reach a resolution on environmental cleanup and construction of the off-site parking lot.
- If SLBTS can not make material progress on cleanup and construction of the off-site parking lot within the two-month period, staff proposes SLBTS use the next two to four months to seek alternative locations for off-site parking and pursue and enter into an off-site parking agreement as needed.

#### *Parolees and Governmental Referrals*

To determine whether SLBTS is operating in compliance with the operational requirement that it house no parolees or government referrals at any of its Newport Beach facilities, the Newport Beach Police Department (NBPD) performed parolee checks for all SLBTS addresses on the following dates: January 28, 2010, April 29, 2010, July 29, 2010, September 30, 2010 and October 21, 2010. No SLBTS facility was listed as housing parolees. A memo from the NBPD is attached, summarizing the method used by the NBPD to confirm that no parolees are being housed at any SLBTS address. (Attachment CC 10)

The NBMC restricts any residential use from housing more than one probationer for monetary or non-monetary compensation. Like other residential uses, SLBTS is subject to this limitation. SLBTS reports that it treated a total of three probationers in 2010 for brief periods, and that each probationer was housed at a separate location.

SLBTS reports that it does not accept clients referred by any government agency for care and supervision at any SLBTS facility.

#### *Calls for Service and Other Complaints*

The NBPD has reviewed calls for service related to the SLBTS facility addresses from October 2009 to September 30, 2010. The NBPD found no complaints submitted by the public relating to any of the SLBTS facility addresses during the period the facilities were operated by SLBTS.

The City's Code Enforcement Division has reviewed other complaints received by the City during this period. The four complaints submitted by the public are summarized in the table below.

Location	Complaint	Resolution
100-102 Via Antibes	Residents smoking outside, intrusive behavior to passersby	Staff reported complaint to SLBTS; SLBTS addressed promptly; male clients relocated
4711 Seashore	Secondhand smoke detected off property	Staff reported complaints to SLBTS, SLBTS addressed promptly
2811 Villa Way	Excessive noise/congregation, smoking near adjacent office uses	Staff reported to SLBTS; SLBTS reports operational changes made to address complaint
Van #4	Failure to stop at stop sign; cell phone use	Staff reported date and location of reported incident to SLBTS; SLBTS reports addressing with van driver

There were no subsequent complaints received regarding these facilities. During the September 30, 2010, meeting with a SLBTS representative, staff recommended additional measures to reduce or eliminate the impact of secondhand smoke from the 4711 Seashore Drive facility on the adjoining properties, such as limiting the number of clients smoking in the side yard along 47<sup>th</sup> Street to no more than three or four clients at any given time.

Although not required by the Zoning Agreement, City staff reviewed the City's parking and moving violation records, and noted that SLBTS vans holding Master Parking Permits received a total of seven parking citations and three moving violations between October 2009 and October 2010. This does not represent a violation of the terms of the Zoning Agreement, but reflects the necessity for off-street parking arrangements. The table below summarizes parking violations and moving violations issued during calendar years 2009 and 2010 to SLBTS vehicles with Master Parking Permits.

Vehicle	Parking Violation	General Location	Date
Van	Parking in alley	46 <sup>th</sup> Street	10/08/10
Van	Parking & stopping over sidewalk	Villa Way	4/11/10
Van	Parking in alley	40 <sup>th</sup> Street	3/13/09
Minivan	Expired registration tags	Meters at 28 <sup>th</sup> St. & Balboa	7/1/09
Minivan	Parking at red curb	Villa Way	10/5/10
Minivan	Street sweeping parking violation	Seashore Dr.	2/1/10
Minivan	Prohibited park & stop – sidewalk	62 <sup>nd</sup> Street	8/28/09

Vehicle	Moving Violation	General Location	Date
Van	Cell phone use	W. Coast Hwy./Riverside Dr.	5/24/10
Minivan	Failure to stop at stop sign	38 <sup>th</sup> St. & Balboa Blvd.	6/14/10
Minivan	Seatbelt – non-use	32 <sup>nd</sup> St. & Balboa Blvd.	4/25/10

Conclusion:

In summary, staff believes that SLBTS has made good faith efforts to comply with all terms of the Zoning Agreement and is in compliance with all terms of the Zoning Agreement with the exception of the requirement to provide an off-site parking lot for its Villa Way office facility. Staff recommends that the City Council:

1. Find that SLBTS has demonstrated good faith compliance with the terms of the Zoning Agreement, except the requirement to provide an off-site parking lot to serve its Villa Way office facility; and
2. Accept staff's recommendation for the milestones to bring SLBTS into compliance with this required term of the Zoning Agreement; and
3. Receive and file the documents submitted by SLBTS to demonstrate compliance for the period of October 2009 through September 2010.

The next annual review will be brought back to the City Council for consideration in July 2011 consistent with the review protocol promulgated by the Office of the City Attorney.

Environmental Review:

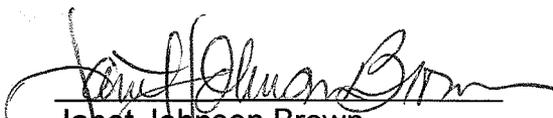
This annual review is exempt from environmental review pursuant to Section 15321 of the Guidelines for Implementation of the California Environmental Quality Act. This section exempts actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency.

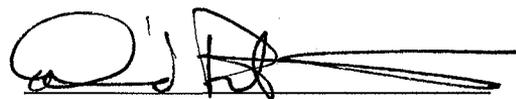
Public Notice:

Notice of this hearing was published in the Daily Pilot, mailed to all owners and occupants of property within 300 feet of the boundaries of each of the property locations, and mailed to the applicant at least 10 days prior to this hearing, consistent with the provisions of the NBMC. Notice of this hearing was also posted at each property location at least 10 days prior to this hearing. Additionally, the item was shown on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

  
Jahet Johnson Brown  
Associate Planner

  
David R. Hunt  
City Attorney

**Attachments:**

- CC 1 SLBTS Documents Demonstrating Compliance
- CC 2 Zoning Agreement Administration Protocol
- CC 3 Inventory of Client Beds
- CC 4 Zoning Agreement
- CC 5 SLBTS Compliance Review Reports
- CC 6 Code Enforcement Inspection Reports
- CC 7 SLBTS Compliance Matrices
- CC 8 Map of SLBTS Facilities – Open and Closed as of October 2010
- CC 9 SLBTS Correspondence Re: Vacant Lot (parking lot site)
- CC 10 NBPD Memorandum Re: Parolees and Probationers