

CERTIFIED COPY

PUBLIC HEARING ON
BALBOA HORIZONS RECOVERY SERVICES, LP
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, DECEMBER 4, 2008

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6 Public hearing was taken on behalf of
7 the City of Newport Beach at 3300 Newport Boulevard,
8 Newport Beach, California, beginning at 4:00 p.m., and
9 ending at 5:30 p.m., on Thursday, December 4, 2008,
10 before LAURA A. MILLSAP, RPR, Certified Shorthand
11 Reporter No. 9266.
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1 APPEARANCES:

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8 CITY OF NEWPORT BEACH
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1 NEWPORT BEACH, CALIFORNIA; THURSDAY, DECEMBER 4, 2008

2 4:00 P.M. - 5:30 P.M.

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4 MR. ALLEN: For the audience, I'm Thomas W.
5 Allen. I'm an attorney at law. I've been designated by
6 the City as a contract Hearing Officer to conduct this
7 hearing in accordance with the rules adopted by the City.

8 I'm a retired city attorney. I was a city
9 attorney for about 30 years here in the county for
10 various cities. I'm not a city attorney for any cities
11 now, and I don't work for the City of Newport Beach
12 except in this capacity as a Hearing Officer.

13 I do not have any affiliation with any group
14 homes, recovery homes, or any business of that nature. I
15 own property in Newport Beach, but it's over by Lido
16 Village, Lido Bridge area. So I don't have any close
17 contacts or relationships with the immediate vicinity of
18 this property.

19 So far, we've received the staff report, or I
20 have received, for this matter prepared by Janet Brown.
21 There's been an e-mail received by me from Mr. Rucker
22 (phonetic), who was transmitted by the City, and there's
23 been a lengthy letter from Larry Mathena that's come in
24 as a part of the record.

25 Are there any other communications that have

1 come in since or any other matters that we need to be
2 concerned about before we commence?

3 MS. BROWN: Yes. That's this one e-mail that
4 arrived on December 1st from Paul Lopez.

5 MR. ALLEN: Paul Lopez. Has this been
6 transmitted to anybody besides Mr. Kiff?

7 MR. KIFF: No. It's provided out front with
8 the agenda packet, however.

9 MR. ALLEN: Okay. So it's available for the
10 Applicants to review and anyone else who wishes to?

11 MR. KIFF: Yes.

12 MR. ALLEN: Is this an opposition or favor of
13 this application or anything in between?

14 MR. KIFF: This letter states concerns about
15 two applications, including this one. The second one is
16 the Newport Coast Recovery facility, the subject of a
17 hearing next week.

18 MR. ALLEN: Okay. We'll review it then before
19 we finalized.

20 Are there any preliminary matters or motions or
21 concerns that anyone needs to make before we commence the
22 hearing?

23 (No audible response.)

24 MR. ALLEN: All right. We'll commence with the
25 agenda as set forth. And the beginning will be a

1 presentation by the City of the staff report commencing
2 with Mr. Kiff, and then, I believe, Ms. Brown.

3 MR. KIFF: Thank you, Mr. Allen.

4 I'm going to present a brief bit of background,
5 and then Janet Brown will provide some more detail about
6 this specific item.

7 Today's hearing will include the brief
8 presentation by me, then Janet's time, then the Applicant
9 has an opportunity to make comments. Public hearing
10 would be open; public hearing would then close. The
11 Applicant can return to the podium to rebut or clarify
12 comments made. And then the Hearing Officer -- actually,
13 the Hearing Officer can ask questions at any time, but
14 generally that's the time.

15 And then for the folks in the public, the
16 Hearing Officer can do one of three things today, approve
17 with conditions, deny, or continue the hearing to a date
18 certain.

19 So this use permit hearing is held under the
20 Newport Beach Municipal Code Chapter 20.91 Use Permits in
21 Residential Districts. This is reflective of Ordinance
22 2008-05, which took effect in February of 2008, and it
23 calls out this process.

24 It says that,

25 "Most existing group residential uses had to

1 apply for a use permit to stay in operation,
2 and they had to apply by May 22nd. And then
3 with a complete application, the Hearing
4 Officer shall make a determination to approve
5 or deny that use permit.

6 "The Hearing Officer's decision, appeal" --
7 I'm sorry -- "approval or denial can be
8 appealed to the City Council. The City
9 Council's decision maybe not be appealed, but a
10 reasonable accommodation may be requested.

11 "This is a term in federal law which says
12 that an Applicant representing persons who are
13 a protected class can ask for reasonable
14 accommodation from a local ordinance or local
15 laws.

16 "These accommodation requests go before a
17 hearing officer at a public hearing and can
18 also be appealed to the City Council."

19 This is all spelled out in that ordinance.

20 Now, Ordinance 2008-05 exempts one type of home
21 from the use permit process, and that is an ADP
22 licensed -- sorry -- State Alcohol and Drug Program,
23 that's what ADP stands for, licensed treatment homes
24 housing six or fewer people, and which do not operate
25 integrally with other facilities. This is an integral

1 facilities term that you'll hear a little bit about,
2 especially in future hearings.

3 Importantly, U.S. District Judge Selna in May
4 2008 blocked or enjoined the City from requiring
5 integrated or networked ADP licensed six and under
6 facilities from going through the use permit process.
7 Our major provider in town that does this is Sober Living
8 By The Sea. So most of their homes were exempted from
9 going through this process.

10 As of May, operators representing about 400
11 beds filed for use permits. These are Sober Living By
12 The Sea, with 204 beds; Yellowstone Recovery in Santa
13 Heights with 56 beds in four facilities; Narconon
14 Southern California, one facility with 27 beds but
15 authorized for 49 persons in the daytime.

16 And Ocean Recovery, two facilities with 38
17 beds. Ocean Recovery also operates a six and under or is
18 attempting to open a six and under on West Bay. These
19 are all licensed facilities, except for Yellowstone.

20 And continuing, these 400 beds include Newport
21 Coast Recovery at 1216 West Balboa, one facility licensed
22 for 29 beds. This is a licensed treatment home. The
23 Kramer Center is a duplex with 12 beds. This is on 28th
24 Street. This is an unlicensed sober home. Their
25 treatment for those clients is provided behind City Hall

1 here at 3388 Via Lido.

2 Balboa Horizons Recovery is the subject of the
3 hearing today. This is one facility with 11 beds. It is
4 a licensed treatment home.

5 Now, according to the City's count, operators
6 representing about 220 beds -- and almost all of these
7 are unlicensed sober homes -- did not apply by the
8 deadline.

9 These included Pacific Shores Recovery,
10 Morningside Recovery, the Shores Treatment, a home called
11 the Beach House on 39th Street, Lynn House, and about
12 seven to eight other locations. These facilities were
13 issued abatement notices on May 23rd, and abatement is
14 required by February of 2009.

15 Now, there is an abatement agreement that is on
16 the City's Web site. This is with Narconon Southern
17 California. This has been executed. Narconon agreed to
18 close its facility at the end of his licensure term, and
19 that's February of 2010.

20 They agreed to operate on conditions between
21 now and then. And then and if they decide to continue in
22 Newport Beach, it must be at another location, it must be
23 in a new facility within the multi-family residential
24 zone, and subject to the granting of a use permit, they
25 have to operate as if they are coming into town for the

1 first time.

2 There are also abatement proceedings or civil
3 administrative actions under way at these three homes,
4 900 West Balboa, 508 Clubhouse, and 1053 Grandville, for
5 opening a sober living home without a permit.

6 This map, hopefully, is isn't too difficult to
7 read, but we'll come back to this as Mr. Allen asks. And
8 it shows the proximity to here, the subject property,
9 Balboa Horizons. This is the 11-bed facility.

10 Across the street a little bit is a 22-bed
11 facility with Ocean Recovery. 29-bed facility is up the
12 road a little bit. That's Newport Coast. This is
13 another Ocean Recovery facility, 16 beds. This is
14 Narconon with 49 occupants, and that's a different color
15 because it's closing.

16 I've also indicated some hash mark sites that
17 are sites that are either subject to abatement or closed
18 as a result of ordinance.

19 So now, Janet is going to talk a little bit
20 more specifically about the application.

21 MS. BROWN: Thank you. I'm Janet Brown,
22 Associate Planner.

23 This application for use permit number 2008-032
24 was filed by Bill Hanck on behalf of Balboa Horizons on
25 May 22nd, consistent with requirements of the Municipal

1 Code.

2 Balboa Horizons was established at this
3 location in July 2004 as a residential care facility that
4 provides alcohol and/or drug abuse recovery and treatment
5 for females only.

6 The facility is licensed by the State of
7 California, as Dave indicated. And there are licensed to
8 provide recovery and treatment for a maximum of 11
9 persons within the existing three-unit building. Units A
10 and C are licensed to allow five and six persons
11 respectively, and Unit B is utilized for administrative
12 offices, counseling, and treatment.

13 This use is what we would classify as a
14 residential care facility general licensed. In other
15 words, it's for seven or more individuals. And under the
16 current Code, this use would not be allowed at that
17 location. Therefore, the existing use may only be
18 continued with the approval of this use permit.

19 The Hearing Officer is designated to approve,
20 conditionally approve or disapprove the application for a
21 use permit. And there are a number of findings that must
22 be made in order to take an affirmative action.

23 Staff believes that most of the findings can be
24 made. One exception, though, is Finding Number 6, which
25 reads that, "The property and existing structures are

1 physically suited to accommodate the use."

2 This is as relates to life safety issues. And
3 the City is unable to confirm this structure is
4 physically suited for the use, as the Fire Marshall has
5 not received a Code Analysis of the existing structure.
6 Fire Marshall Mr. Steve Bunting is here to speak on this
7 matter today.

8 If at the conclusion of the hearing the Hearing
9 Officer is inclined to take an action to conditionally
10 approve the use permit, staff has prepared some revised
11 conditions of approval to address some of these issues,
12 which I'll be happy to share with you later or now,
13 whenever. And with that, that concludes my comments.

14 MR. ALLEN: All right. Any other staff
15 comments or questions at this point?

16 (No audible response.)

17 MR. ALLEN: Let's then proceed. Does the
18 Applicant wish to make a presentation?

19 MR. HANCK: Well, I won't make a presentation,
20 but I wanted to make a couple of comments to you and just
21 introduce myself and let you know who I was and what
22 we're up to and what we've been up to for the past four
23 and a half years or so, which is that Balboa Horizons was
24 started, as Janet mentioned, back in July of 2004.

25 And we started the facility in recognition of

1 the fact that there was a great need for a facility that
2 was designated specifically for women who are in
3 recovery. As we looked around the County of Orange, we
4 found that there were very few facilities dedicated
5 specifically to women and the issues that they face as
6 they try to recover from debilitating -- the debilitating
7 illness of addiction.

8 So we came together, me and my partners, to
9 create a facility specifically for these individuals.
10 It's not a co-ed facility. It's not a facility that
11 serves men and has a women's division or women's home.
12 It is a company that was created exclusively for the
13 service of women who are recovering from this disability.

14 As we went about researching the requirements
15 for opening up this facility, we did understand from the
16 City of Newport Beach and from the County and from the
17 State that there were some rules, regulations, and codes
18 that we had to meet in order to get our license.

19 We duly went about getting those licenses. We
20 duly went about getting our codes taken care of. And, in
21 fact, the City of Newport Beach and the Fire Marshall at
22 that point told us that in order to pass clearance and
23 get our approval from the City, we were to install a
24 centralized alarm system with a control panel in the B
25 Unit, which is the unit that we use for our offices and

1 to hold our meetings.

2 We then spent roughly \$7,000 to hire a licensed
3 contractor to go install that alarm system. And at that
4 point, we were told that we were in compliance, and we
5 were issued our fire clearance. At which point, we then
6 went to the State of California requested and were issued
7 a license.

8 As we were getting our organization started and
9 as we were forming the treatment team and the residential
10 team, the staff, and so forth, we went about creating
11 this structure and this organization and this operation
12 with the understanding that we were moving into a
13 residential neighborhood.

14 And, in fact, when he moved into this
15 particular facility, it was at best a very run down
16 place. We invested several hundred thousand dollars of
17 our money, our own money, to rehabilitate the facility to
18 bring it up to conditions that would be worthy of our
19 clients' requirements.

20 And we understood that there would be some
21 potential concern and impact to our neighborhood. So we
22 went about talking to neighbors on all four corners of
23 our property to let them know what we were going to be
24 doing and how we were going to be operating.

25 And to a person, the feedback was very

1 positive. Because what they had been experiencing was a
2 population of people that were living in this home who
3 were uncontrolled, they were drinking, coming home late,
4 they were loud, they were voicetrous and generally not
5 very good neighbors to the neighborhood.

6 In fact, the record -- if you go back and look
7 at the City of Newport Beach Police Department's records,
8 they were being called on average about one and a half
9 times per week every single month.

10 So we replaced was a rundown facility with a
11 facility that was kept up and rehabbed very, very nicely.
12 We became what we thought were very, very good neighbors.
13 And indeed, as we talked to our neighbors, even to this
14 day, we find that they're very appreciative of the fact
15 that we have extreme control over these individuals.

16 We tell them what time they are to be up. We
17 tell them what time they are to be at their meetings. We
18 tell them what time they are to be eating. We tell them
19 what time they are to be at home, inside, with lights out
20 and in bed.

21 This is a great degree of control that,
22 unfortunately, renters that would be put in the facility
23 should we not be granted our conditional use permit, we
24 would have none. We would have none of that control over
25 that particular population.

1 In fact, I find it rather ironic that they
2 would -- that some parties would seek to return this
3 particular property to what it once was, which was a
4 residential or a rental property that's being rented out
5 on either a weekly or monthly basis. Because that
6 population, obviously, we don't have the degree of
7 control over that we do over the population currently
8 residing there.

9 So, it's really with a great deal of
10 disappointment, frankly, that I'm standing before you
11 today. Because we have set about creating our business
12 using the rules and regulations that were put before us.
13 We were told that if you do this, you will be granted a
14 license to operate.

15 We operated under extreme good faith to the
16 point, again, of surveying our neighbors and making sure
17 that they were happy with what we were doing. We
18 operated there for four years without a single call to
19 the Newport Beach Police Department. There's been no
20 problems there whatsoever.

21 Yet, we've been told that by virtue of the fact
22 that we're part of this group of recovery providers, that
23 we're bad, and we're bad people, and we don't belong, and
24 we should be kicked out and closed down.

25 And frankly, I find that shocking. I'm shocked

1 that anybody would take a long look at our property and
2 our operation, and what we've done for the neighborhood
3 in terms of property values and bringing peace and quiet,
4 stability and serenity to this area, and tell us that we
5 have to go. So, it is with a great deal of
6 disappointment that I stand before you today.

7 However, I am also confident of the fact that
8 the facts will show that we have complied with the rules
9 and regulations that the State has put before us. The
10 City came to us and asked us to perform an
11 application -- submit an application and, frankly, jump
12 through many, many hoops in order to make that happen.

13 We have a obliged. We have obliged with a
14 smile on our face and said, "Okay, if this is what you
15 need, this is what we will do, because we are good
16 neighbors."

17 We believe that, in fact, some regulation
18 perhaps is required of this population of operators,
19 because perhaps not all of them have been staffing their
20 facilities 24-7 like we do, and drug testing their
21 employees and their inhabitants or residents like we do,
22 and enforcing rules such that we are good neighbors like
23 we do.

24 So we believe that, indeed, there is perhaps a
25 need for some of this regulation. However, we are

1 disappointed to know that the due diligence and the
2 investigation of our property hasn't revealed that, in
3 fact, we've been doing this all along.

4 With that said, here we stand today with our
5 application before you. We hope that you do find that
6 the facts reveal us to be worthy of the conditional use
7 permit.

8 I would ask you today if you know whether or
9 not these conditions do comply with the Federal Fair
10 Housing Laws and Acts? Have we looked into that and
11 researched that?

12 MR. KIFF: Our special Counsel Richards,
13 Watson, Gershon believes that it does.

14 MR. HANCK: Okay. But we don't know that for
15 sure? The Hearing Officer --

16 MR. KIFF: We've done an analysis of the
17 ordinance itself, and the conditions are based on the
18 ordinance.

19 MR. HANCK: Because we obviously -- we see
20 these conditions as being somewhat onerous and hope that
21 they would apply to some of the other businesses being
22 operated out of a residential area, namely, rental
23 properties.

24 Rental properties are, by definition, a
25 business as well. We are next to several rental

1 properties that in no way, shape or form comply with any
2 of the requirements that we've already been asked to meet
3 by the State, nor do they seem to comply with any of the
4 requirements that are being put before us through this
5 conditional use permit process.

6 They are not asked to submit route maps. They
7 are not asked to submit a minimum number of vehicle trips
8 a day. And, indeed, were we to lose our ability to
9 operate and move to a rental status, likely it would be
10 that our neighbors would see a vastly increased amount of
11 traffic, amount of noise. Because again, our renters
12 would have cars. Currently, our residents are not
13 allowed to have them.

14 Again, the renters that would come into this
15 property -- we're the owners of this property, so we
16 would convert it to a rental -- they would not be subject
17 to any of the control that we place over that population
18 now.

19 We would ask that those conditions also be
20 applied to those businesses being operated in that
21 residence. The lack thereof would seem to discriminate
22 against the providers as a group.

23 And we certainly believe that if these
24 conditions are levied against us as a business operating
25 in a residential area, that it would be leveled across

1 all of the businesses, rentals in particular, in this
2 particular area.

3 So, with that said, in closing, I do appreciate
4 the opportunity to participate in the process. I
5 appreciate the opportunity to work with the City. I have
6 found them to be very, very agreeable to work with.
7 We've been able to open a dialog here that has worked
8 well between us.

9 Thank you for your time and your effort in
10 making sure that we did everything that needed to be done
11 in order to meet the requirements of this process. I
12 know that's been challenging for us all.

13 And with that, said we certainly do look
14 forward to operating as a good neighbor, as a solid
15 operator as we have been for the past four years going
16 forward.

17 MR. ALLEN: Just a couple of questions. Have
18 you gone through the staff report that was prepared by
19 the staff and particularly looked at the conditions that
20 are proposed to be imposed on you should this permit be
21 granted?

22 MR. HANCK: Yes.

23 MR. ALLEN: And can you abide and accept them
24 as obligations on your operation? Albeit, I understand
25 that you don't necessarily agree that they should be

1 done, but the City has decided that that's the direction
2 it has to go. And so that question is posed to you.

3 MR. HANCK: Sure. And I will say that 90
4 percent of those conditions we abide by anyway. So we do
5 what is being asked that we do in these conditions. We
6 limit our secondhand smoke. We have designated smoking
7 areas. There's a second floor balcony where the smoking
8 typically happens. So they are up on a second floor.

9 We load and unload our van on the street,
10 because we have recognized in the past that an alley
11 where the homes are up against, the alley creates kind of
12 an audio canyon by which sounds reverberate up and down.
13 So we've always loaded and unloaded on the street.

14 We've never tolerated loitering in front of our
15 facility. We've never tolerated cigarettes butts and
16 trash. This is part of your clients' recovery process,
17 that they abide by a cleanliness in their environment and
18 in their body. That is part of their recovery. So I
19 don't have any concerns about those.

20 The one concern I do have and the one condition
21 that I see being very, very onerous for the
22 survival -- the financial survival of our business is
23 this notion of complying with a new set of fire codes
24 that have been imposed after we've already
25 gotten -- after we've already received clearance from the

1 City of Newport Beach, from the County Fire Marshall.

2 And that particular Code Analysis, which will
3 require many, many hours from a specialized engineer,
4 which we -- unfortunately, we all find ourselves at a
5 very, very challenging time in the economic cycle.

6 This particular cycle, this stage of the cycle
7 is hitting us particularly hard, because we are a small
8 facility. We don't have a big marketing mechanism. We
9 typically go word of mouth.

10 And we would find that the expense of having to
11 provide, A, a Code Analysis, and, B, what I'm being told
12 is the potential of having to install sprinklers at \$4 to
13 \$5 a square foot on a 5,000 square foot facility, would
14 virtually put us out of business.

15 Everything else I see as being absolutely no
16 problem whatsoever. Unfortunately, that particular item
17 is one that is onerous on many levels.

18 MR. ALLEN: Thank you.

19 All right. We can now open the -- are there
20 any questions or issues that staff would like to respond
21 to right at the moment, or are you ready to proceed with
22 this?

23 MR. KIFF: Ready to proceed.

24 MR. ALLEN: Then let's proceed with opening the
25 public hearing, and invite anyone in the audience that

1 would wish to come forth and make a presentation to do
2 so. We're imposing a time limit of three minutes on each
3 presenter, with the expectation that a number of you may
4 wish to talk. But please come forward and give us your
5 us your thoughts.

6 MR. VAN DEN BOSSCHE: Hello. My name --

7 MR. ALLEN: Please identify yourself for the
8 record first.

9 MR. VAN DEN BOSSCHE: My name is Ed Van Der
10 Bossche. I live on 40th Street. Just only thing I had
11 was in the Findings, page 9, or handwritten 9, it says,
12 page 7 on the top, that "The intensity of the use (11
13 residents in 5 bedrooms) is consistent with typical
14 residential development intensity in the R2 zoning
15 district." I don't think so. I'm a real estate broker,
16 and that's not been my experience.

17 As far as anything else about this particular
18 Applicant, I don't have any comment on it, just that for
19 this hearing, since this is the first one, I just don't
20 think this is an appropriate, correct finding.

21 Thank you.

22 MR. ALLEN: Thank you.

23 Anyone else wish to speak?

24 MR. MATHENA: My name is Larry Mathena.

25 David, good to see you.

1 I'm the one that's submitted the rather lengthy
2 written objections. I will limit my comments as your
3 agenda stated to the application directly.

4 I will begin by observing that Route Map Number
5 1, Item Attachment Number 6, discusses regular trips to
6 Hoag Hospital. I assume to, quote, unquote, see doctors.
7 I assume that, in some cases, that is an order for the
8 people to deal with detox. I would observe that having
9 detoxed individuals a block and a half from an elementary
10 school doesn't seem very appealing to me.

11 Second thing I would observe is keep in mind
12 that this entity is, despite its, you know, generally
13 socially favorable motivation, it's a for-profit entity.
14 And I would argue that no due favor should be accorded it
15 merely because it apparently is serving a social purpose.

16 I would also observe that its address at 1134
17 West Balboa Boulevard is, as stated in the report, less
18 than a thousand feet from the elementary school. I also
19 observe that the propose settlement with other entities
20 precludes this sort of use so close to a school.

21 I find the staff report totally ignoring that
22 point, despite the fact that it's directed to do so,
23 frankly offensive and negligent.

24 And if and when someone is hurt and/or damaged
25 because of the presence of this facility without the City

1 considering it at all, I think potentially the City is in
2 for a substantial amount of grief, duly and
3 appropriately, enforced as a result of failing to even
4 consider the issue at all.

5 Again, limiting my comments directly to the
6 application as submitted, the facility is stated for 11
7 people, 11 residents, excuse me. According to the staff
8 report, based on parking, there should only be three.

9 And we actually start to get a little
10 Alice-in-Wonderlandy here. The operator affirms that
11 people aren't allowed to drive actually in the letter.
12 In another place, he actually corrects that, and he says
13 "Really, what I mean to say is, frankly, they are not
14 allowed to park."

15 Am I done, or can I keep going?

16 MR. ALLEN: Well --

17 MR. VAN DEN BOSSCHE: I've got a few more.

18 MR. ALLEN: We have an extensive written report
19 you've done.

20 MR. VAN DEN BOSSCHE: Yes.

21 MR. ALLEN: We'll certainly consider every one.

22 MR. VAN DER BOSSCHE: Briefly, I guess, the
23 last thing is the Code specifically states what the
24 requirements are regarding is secondhand smoke. If the
25 regulation is valid, I believe it should be enforced on

1 its face.

2 The proposed conditions are nowhere near what
3 the Code is. And I would request that any conditional
4 approval, if you do get to that point, comply with the
5 regulations that have been passed.

6 THE COURT: Thank you.

7 Anyone else?

8 MS. OBERMAN: Thank you, Mr. Allen. My name is
9 Denys Oberman. And I'm a resident, and I live in fairly
10 close proximity to that area. I also happen to be the
11 leader of a nonpartisan community organization called
12 Concerned Citizens of Newport Beach.

13 One of the things that Mr. Mathena said, which
14 we agree with and we ask this Council to consider very
15 carefully, is the standard and the appropriateness of
16 having a standard that a drug rehabilitation facility be
17 not too proximate to an elementary school, or also -- and
18 also to areas where there are children that play. There
19 are children's parks adjacent to that area and tot lots.

20 The fact of the matter is that people within
21 this subject facility, and also other facilities, their
22 movement throughout their day is not limited even in
23 well-supervised facilities, such as this one appears to
24 be.

25 So the people do move around. They do loiter.

1 They do smoke. They do exercise profanity. And
2 unfortunately, sometimes they fall off and fall out and
3 do partake in substances. So it is not a use that is
4 compatible with the area. This area is a very -- do we
5 have the Newport Elementary School?

6 MR. KIFF: It's here (indicating).

7 MS. OBERMAN: Okay.

8 MR. KIFF: This is the subject facility.

9 MS. OBERMAN: Yep. Yep. So it is a little
10 over a block, which is approximately 350 feet from the
11 Newport Beach Elementary School. We ask that that be
12 carefully considered in making a finding.

13 Also, we are aware that, in fact, this operator
14 does allow cars. And he represented to the Concerned
15 Citizens Group that people are allowed to have cars after
16 a 30-day stay, and there are also some other discretions.
17 So to suggest that there is not a parking impact is not
18 appropriate.

19 MR. HANCK: We've changed that, just so you
20 know. There's no cars allowed by our clients.

21 MS. OBERMAN: Okay. Thank you.

22 And lastly, with respect to this smoking, there
23 is smoking that does occur. And again, I commend you,
24 but there still is a proliferation of cigarette butts
25 that does regularly surround the facility.

1 And I don't live immediately adjacent to the
2 facility, so I can't attest that I breath these people's
3 secondhand smoke. But I can say that's a concentration
4 of residents that do smoke, and they do throw their
5 cigarette butts out onto the sidewalk.

6 Lastly -- and this is a general comment. We do
7 have an overconcentration of facilities in this area.
8 And we collectively have a very challenging task of
9 trying to do something to mitigate for that
10 overconcentration.

11 And somehow, we are going to have to find a way
12 to be fair and equitable to the operators. And had there
13 been a use permit process, and there was one before it
14 was taken away that was in force, we probably wouldn't
15 have that situation.

16 But, you know, we want to see something that's
17 equitable for the operators. But having said that, in
18 the aggregate, we've got on overconcentration. We have a
19 lot of facilities in a family area near the school.

20 So we request your help. We do believe that
21 this subject operator -- and I am just closing, so I
22 thank you for your patience.

23 Our observation is that this operator does have
24 supervision that's superior to others in the immediate
25 area. And if there is some kind of decision that's made,

1 it is our observation that, with maybe is some particular
2 conditions, that this -- an exception for this facility
3 could be made, and it would be considered reasonable to,
4 on a conditional basis, consider it, even though it is
5 very close to the school.

6 Thank you.

7 MR. ALLEN: Thank you.

8 Anyone else like to comment?

9 MR. LONGRIDGE: My name is David Longridge.
10 I'm not a -- well, I guess I am, since I'm part property
11 owner of the facility. I just want to say that we try to
12 do the right thing. We've got a minimal, if any -- I
13 don't think we've any complaints.

14 And regarding the situation with the facility
15 close to the school, again, we haven't had any problems
16 or complaints since we've been there in four years. And
17 I would probably prefer to have sober people trying to
18 get their lives right with their family and friends
19 rather than -- there's a lot of bars that are probably
20 closer than our facility is. And I would prefer to have
21 our people walking sober down the street and driving.

22 MR. ALLEN: Mr. Longridge, we're going to make
23 a provision here where, after the public gets all done,
24 you, being the Applicant, you can have an opportunity to
25 come back up and maybe address some of these issues.

1 So would you mind delaying your comments until
2 we get all the public comments, then you, as the
3 Applicant, can respond accordingly?

4 MR. LONGRIDGE: Absolutely.

5 MR. ALLEN: Thanks.

6 MR. LONGRIDGE: I didn't know how the program
7 went, sorry.

8 MR. ALLEN: Anyone else from the public like to
9 speak?

10 MR. WOOD: Yes. My name is Douglas Wood, and I
11 live -- my property is at 1119 West Bay Avenue, directly
12 behind subject property.

13 My family has owned that property for 60 years,
14 and we've had tenants in there for there -- there are two
15 units. One of them has been in there for three years,
16 and one has been there for eight years.

17 And we are not a ghetto, as described by the
18 Applicant. It's a nice neighborhood with long-term
19 people. And I just -- they have never spoken to us about
20 their situation, never once tried, as they say.

21 And I guess the last point I want to make is
22 that the facility is within a thousand feet of the
23 Newport Beach Elementary School, and that's just wrong.

24 Thank you.

25 MS. LOPEZ: Hi. My name is Dierdre Lopez, and

1 I reside at 1125 1/2 West Balboa Boulevard, and I
2 appreciate the opportunity to speak.

3 I have a general --

4 MR. ALLEN: I'm sorry. What was your address
5 again?

6 MS. LOPEZ: 1125 1/2 West Balboa.

7 MR. ALLEN: Okay. Thanks.

8 MS. LOPEZ: Actually, I'm situated just between
9 two recovery homes.

10 I want to make actually a general comment. I
11 think one of my concerns, along with those pointed out by
12 all the other folks who came up, is how are these
13 conditions going to be enforced? I don't have a good
14 understanding of that. And I would like to have a better
15 understanding of that before something gets granted to a
16 facility.

17 And I also am sort of unclear as to whether or
18 not these sober living homes or the Applicants have to
19 come up for consideration again in another period of
20 time? So that's one general comment that I have
21 before -- or a concern, I suppose, before any sort of use
22 permit is granted.

23 And secondly, I just wanted to reiterate, the
24 neighborhood there is not a ghetto. In fact, my husband
25 and I used to be renters in the general facility -- area

1 there, and we now own our home. So I sort of take issue
2 with the fact that area has been referred to as rife with
3 tenants who are regularly drunk. So I just want to make
4 that comment.

5 Thank you very much.

6 MS. ROY: Mr. Allen, my name is Barbara Roy,
7 and I'm a resident of Balboa Peninsula.

8 The parking -- parking is a great concern to us
9 on the peninsula. It was sort of covered on that, but my
10 concern is the number of vans that are whipping around
11 the peninsula taking these people. Do they go to their
12 Probation Officer? Do they go to Hoag? I'm just trying
13 keep track of the traffic.

14 I was concerned there was a staff on 24 hours,
15 but apparently that has been answered.

16 I wanted to know about the population of the
17 ladies that are here. It says -- are they the patients
18 in any special program? For example, are they placed at
19 that site as a condition of probation or parole? Or are
20 they part of an alternative sentencing program? I
21 just --

22 MR. ALLEN: Can we answer that at the
23 conclusion or the wrap-up or right now, either one?

24 MS. ROY: I'd just like to know that.

25 Thank you.

1 MR. KIFF: Okay.

2 MR. DIAMOND: Yes. Good evening. My name is
3 David Diamond. I live on 39th Street on the peninsula.

4 A few thoughts. One are whether or not this
5 hearing or you, as Hearing Officers, should take into
6 consideration gender as to the residents, because I don't
7 believe that was any part of the consideration of the law
8 that is now in effect.

9 Second, the issue of parking. The Applicant
10 has indicated there's been a change in their use of
11 parking, and that residents will not be permitted to park
12 vehicles on off-site locations. I'd like to know how
13 that's going to be enforced by the Applicant and/or the
14 City.

15 The indication is we've got 11 individuals that
16 are living in that facility, plus additional people that
17 are working in that facility at one of the other units.
18 I question how many on-site parking positions there are,
19 and whether or not these will be used by just the staff
20 that is there.

21 Now, in addition, there will be many service
22 men that are necessary, as there are in almost
23 more -- almost all residents, plumbers, electricians, and
24 things of that nature. Of course, this is intensified
25 when you have 11 people living there as compared to a

1 normal unit, which may have four or five in a duplex.

2 I believe that your Findings and Conditions
3 should deal with these subjects is so that you can
4 mitigate the amount of on-street parking, which creates
5 massive problems from homes such as this.

6 Thank you.

7 MR. ALLEN: Anyone else wish to raise questions
8 or make comments?

9 (No audible response.)

10 MR. ALLEN: All right. So hearing none and
11 seeing none, we'll return it. And maybe we can leave the
12 public hearing open for the time being, just bypass the
13 fact it's proposed to be closed.

14 Any objection to that?

15 MR. KIFF: It's up to you sir.

16 THE COURT: Let's leave it open just briefly.

17 At this point, our agenda calls for the
18 Applicant to make any responses it would like to with
19 respect to the comments of that been made here. If you
20 want to do that now, Mr. Longridge, or however you
21 propose to do that, concisely but nevertheless
22 comprehensively.

23 MR. HANCK: First of all, I'd like to say thank
24 you to everybody who did make comments. It's nice to
25 know what people think and where people stand.

1 And I'd like to say, first of all, I hope I
2 didn't give people the impression that I'm referring now
3 to a neighborhood as a ghetto. What I was making
4 reference to earlier was the fact that our particular
5 facility, when we moved in, was in severe disrepair,
6 broken windows, inoperable kitchens and bathrooms, eight
7 people living in the back unit with a dog, and with
8 terrible, terrible, terrible conditions. So it was
9 really what we moved into that was quite severe.

10 The neighborhood now is a place that we are
11 proud to be a part of. It's why we're there. It's why
12 we're there, because we really do appreciate the
13 neighborhood and the appeal and the peace and serenity
14 and the cleanliness of the neighborhood.

15 So please don't take any offense to my
16 comments, because they certainly were not meant to imply
17 that we're living in an area that's anything less than a
18 place that we want to be a part of. So I just want to
19 put that out there first.

20 Then secondly, the issue of parking. I'll
21 juxtapose that if we were to close this facility as it
22 currently operates and rent our property out to renters,
23 like yours, sir, we would -- our renters would have the
24 ability to use public parking that is available.

25 And again, there would be no control over how

1 many cars they were able to bring down. And you can
2 conceivably put two people per bedroom. And back again,
3 the way it was being operated prior, we had many, many
4 people in this back unit, all of whom owned cars.

5 So at this stage of the game, what we've done,
6 we've found that in order to maintain maximum control
7 over our clients' schedule, not allowing them to have
8 automobiles allows us to control where they are going and
9 when they are going there.

10 So we do have a van. That van does make
11 regularly scheduled trips. The trip it does make to Hoag
12 Hospital is not for detox. Our detox contractor works
13 over at College Hospital. There's one there. We also
14 have another that's out in the Fountain Valley area.

15 So these are not people that are detoxing.
16 These are people that have been detoxed. Their drugs are
17 out of their system. And, in fact, we test them
18 randomly.

19 Should they test positive for any drugs at all,
20 they are removed from the premises. They are not allowed
21 to stay. They are removed from the premises. They are
22 taken to detox. They are give one such opportunity to
23 come back. Should they relapse and use again, they are
24 removed from the facility permanently and not allowed to
25 come back.

1 Now, I'd like to point that out, because it
2 also speaks to our proximity to school. I personally
3 have two young boys. I have an 8-year-old and a
4 5-year-old boy, both of whom go to Newport Heights
5 Elementary School, which is up the street. It's not
6 Newport Beach Elementary School. But I am
7 extraordinarily sensitive to the goings on here.

8 I'm on the school board at Newport Beach
9 Heights Elementary. I'm actively involved in what goes
10 on within the school and school environment. We do not
11 allow our patients to walk around drunk or high or using
12 in any way, shape or form. Should they do so, they are
13 removed immediately from the area, not just the premises.
14 They are gone.

15 Okay. We believe, based on what we know about
16 some of the other folks that were there prior to us, that
17 this is a vastly improved situation. In fact, one of our
18 other neighbors, Mr. Rucker, I'll read his comments.

19 "Why do we support Balboa Horizons? Balboa
20 Horizons assumed the property. It was a
21 triplex before they got there. Normal renters
22 were mostly young folks attracted to the beach
23 environment. It was awful. They would come
24 home after the bars closed about 2:30 in the
25 morning, often falling down drunk and partying

1 on until 5:30 in the morning. It was terribly
2 unpleasant, bordering on dangerous."

3 We have sought to change that and change the
4 neighborhood, change the look and the feel of the
5 neighborhood through improvements in the physical
6 property itself. We do seek to be good neighbors and
7 control the environment 24/7 with people on staff
8 literally every single day, 24-hours a day.

9 We do seek to control the cigarette smoke and
10 cigarette butts. We do ask them to smoke in certain
11 places. If we see cigarette butts, we ask them to pick
12 them up. We don't know if the cigarettes butts there on
13 the sidewalk are from our folks.

14 We certainly do attempt to control that in all
15 ways, shapes and forms, because we believe, again, first
16 of all, that a clean environment is paramount to clean
17 one's body and mind as part of the recovery. But we also
18 are aware of the constant fact that our neighbors don't
19 like it.

20 But I will, again, juxtapose our current
21 situation with what could be potentially put there, which
22 are renters who will come and go as they please, who will
23 smoke as they please, who will drink and stay up as late
24 as they want as they please.

25 MR. ALLEN: That's good input. We need to

1 address a couple of questions here that have been raised.

2 Can you amplify the comments with respect to
3 the automobiles that you allow?

4 MR. HANCK: We don't allow automobiles and --

5 MR. ALLEN: Can you be more specific when you
6 say, "We don't allow automobiles"?

7 MR. HANCK: When somebody comes in, they are
8 typically being dropped off, or they are pick up at the
9 airport by the van. They are not coming in in their own
10 vehicles. And so they are not allowed to come -- they
11 are not allowed to drive themselves there, park the
12 vehicle and be with us for 90 days.

13 MR. ALLEN: Would that become a part of your
14 management or operating plan that then would be imposed
15 as a condition, if you will, of your operation? Is that
16 acceptable to you?

17 MR. HANCK: Well, it's how we operate now. So
18 if that is, indeed, what needs to happen in order to
19 engender comfort with that particular issue, then we can
20 live with that. Because again, that's how we are
21 operating now.

22 MR. ALLEN: Okay. So we can form it in that
23 fashion. Okay.

24 Do you have something else that you'd like to
25 address here that you feel the audience has stated that

1 should be of concern to us?

2 MR. HANCK: I know that Mr. Longridge is
3 attempting to address this issue of people in recovery
4 and their state of mind being close to a school. And I
5 just want to reiterate, I think I've touched on it
6 earlier, that people don't come into our facility high or
7 drunk or using drugs. They come into our facility clean
8 and sober, and they are desperately seeking a sober
9 lifestyle.

10 They have, in many cases, hit bottom, and they
11 are considered disabled people. In fact, these homes in
12 the past used to be called halfway homes. And that term
13 has been used in kind of derogatory way to imply that we
14 are less than a full home.

15 But, in fact, halfway homes, that term was
16 created to describe the fact that people are halfway to
17 getting back home. They are -- they have removed
18 themselves from the clinical and medical environment, and
19 they are now in a residential environment that is
20 directly clean and sober, and that brings him halfway to
21 where they want to be.

22 These people are our mothers; they are our
23 daughters; they are our grandmothers. And we have
24 treated them, all of them. We have had all of these
25 types of people coming through our facility.

1 And the bottom line is that their state of mind
2 is not to go out and disturb children at an elementary
3 school or any of the other neighbors. Their
4 desire -- their greater wish in life is to get back to
5 their families and be whole people again.

6 I'd like to address that, and let all of you
7 know who are in the neighborhood that these are the kinds
8 of conditions that we impose upon our clientele. And
9 should they not abide by those rules, they are kicked
10 out. They are gone.

11 MR. ALLEN: Okay. Thank you. Do you want to
12 put a wrap? Do you need to say anything else to us here
13 as far as your concerns?

14 MR. HANCK: None, other than, again, that --

15 MR. ALLEN: We need work on the fire marshall
16 issue. I understand that. But other than that?

17 MR. HANCK: Other than to reiterate, again, we
18 hope that the conditions imposed upon us as a business
19 operating within a residential area are those that would
20 be imposed on other business so as not to be
21 discriminatory.

22 MR. ALLEN: We are working in that area. Right
23 now we're sticking with your operation.

24 MR. HANCK: So -- and my operation, obviously,
25 being one of them.

1 MR. ALLEN: Sure.

2 MR. HANCK: That would be my only final parting
3 comment.

4 MR. KIFF: Mr. Allen, if it's okay with you, I
5 had one question I think wasn't address or that
6 potentially could be answered by Mr. Hanck, and that was
7 the discussion about how -- how clients come to you. Are
8 there -- do people come on probation, or would they come
9 through an alternative sentencing program, or can you
10 speak a little bit about that?

11 MR. HANCK: They do not. They come to us
12 typically from a referral provider, like a Hoag Hospital.
13 So that the process is typically a two-step one, in that
14 when somebody seeks to get help, they go and detox
15 typically through a medical facility, like Hoag Hospital,
16 a facility down in Arizona, like Cottonwood. Other
17 providers that provide immediate detox.

18 Those providers then seek to put their clients
19 into an environment where they can start to create
20 behaviors and lifestyles that will keep them in a lasting
21 sobriety. And so they refer those clients typically to
22 us.

23 And we call this residential recovery, because
24 they come to a residence to start to form behaviors and
25 behavior patterns that are consistent with living in a

1 residence.

2 And so we don't have a license or any contracts
3 to take parolees. We don't have the certification to
4 take people in lieu of jail. You actually have to be
5 certified to take those kinds of people. We do not have
6 that certification, nor are we seeking it. So there are
7 no parolees. There are no people that are convicted and
8 are sent to us in lieu of going to jail.

9 These are people typically that are private
10 pay. Their families, their loved ones, are paying for
11 this service. They are being referred to us by these
12 primary providers that I mentioned before, like Hoag
13 Hospital and Cottonwood and Promises, and some of these
14 others.

15 MR. KIFF: Thank you. Thank you.

16 Mr. Allen?

17 MR. ALLEN: Yes.

18 MR. KIFF: There's one speaker that raised a
19 couple of issues that Mr. Hanck probably can't answer but
20 that I could, and --

21 MR. ALLEN: I was thinking possibly this would
22 be a good time to close the public hearing, and then
23 let's focus in on some of those issues, because they are
24 is significant.

25 So the public hearing is closed. That doesn't

1 mean that the Applicant can't speak again if we need to
2 discuss something, but, nevertheless, it's closed.

3 Please address those.

4 MR. KIFF: Mr. Allen, Ms. Lopez had asked a
5 couple of questions. One, how are conditions enforced?
6 And then, is there an opportunity for a use permit
7 review?

8 The conditions are enforced by our -- as
9 any -- back up a tiny bit. The City issues many use
10 permits. They could involve a restaurant use, different
11 types of commercial uses, which require a use permit,
12 either approved by the Planning Director or the Planning
13 Commission.

14 We enforce those with our code enforcement
15 officers. We have five of them. We have five positions
16 in code enforcement. And typically we get wind of a
17 problem via complaint by the direct neighbor. We go out
18 and do an investigation.

19 Enforcement could be a variety of ways,
20 including an administrative citation from \$100 to \$500
21 per day per event. And also the other avenue that's
22 available to us is to call up the use permit and
23 potentially revoke it if it's for a significant and/or
24 repeated violation.

25 The use permit does not literally come up

1 again. It runs with the property once it's issued;
2 however, it can be revoked, as I noted, at virtually any
3 time if there's a violation of the conditions.

4 One of the conditions that I'll point out to
5 you in this case is that Balboa Horizons continues to be
6 a ADP licensed treatment facility, which requires that
7 certain amount of standards. In the event that Balboa
8 Horizons were to lose that license, their use permit
9 could be revoked.

10 So I hope I answered those two questions for
11 Ms. Lopez.

12 MR. ALLEN: So the permit would run, and the
13 license would be permanent and would not come back up.

14 However, what about the instance where an
15 Applicant seeks to -- needs to attempt to change the mode
16 of operation sufficiently so that it would no longer
17 comply with the existing operating plan, which is
18 certainly a significant part of this?

19 MR. KIFF: I'll ask Janet to speak to that,
20 because she sees these more than I do.

21 MS. BROWN: What we would do is require that
22 they come back and seek a request to amend their use
23 permit based on whatever operational characteristics they
24 wish to change. So that should be included as a
25 condition of approval, that any change to the operations

1 as it is now would require another review and amendment
2 to the permit.

3 MR. ALLEN: Would that require a public hearing
4 to amend the permit?

5 MS. BROWN: Yes.

6 MR. ALLEN: You're going to add that as a
7 condition?

8 MS. BROWN: Yes.

9 MR. ALLEN: Mr. Kiff, I bet you're qualified to
10 at least address this. Mr. Diamond raised this question
11 about gender with respect to this. And it's being
12 proposed as a female-only facility. But I don't think
13 that's anything in the City requirements that says it
14 must be a female-only operation. Is that true or --

15 MR. KIFF: That's true. Mr. Allen, the
16 ordinance does not speak to gender, but the facility
17 operator's state license does. They operate under an ADP
18 license, and they have to spell out exactly what
19 their -- who their clientele is. They only have a
20 license to serve women at this facility.

21 So by incorporating the licensure within this
22 use permit, if they were to decide to change and offer
23 either co-ed environment or male-only environment, they
24 would have to come back and revise the use permit.

25 MR. ALLEN: Okay. Thanks.

1 There was considerable -- certainly
2 considerable caution about parking and use of
3 automobiles. It sounds as though, with the commitment
4 being made by the Applicant, that the patients or clients
5 would not possess or have vehicles during their stay;
6 that that concern is significantly mitigated, almost
7 eliminated, particularly when you realize that if it
8 wasn't a facility, there could be 20 cars there.

9 And furthermore, I noticed that there were some
10 pretty solid provisions with regard to not blocking the
11 alley with vans and delivery trucks that come in, for
12 instance, that those service facilities come in only
13 during regular business hours and not on the weekends.

14 So it seems like between those conditions that
15 are in here and the limitation on the clients having
16 automobiles, the parking concerns have been mitigated
17 down significantly.

18 MR. KIFF: Yes.

19 MR. ALLEN: Could we address this fire issue?
20 I don't know whether -- we have a very significant
21 concern here, legitimate.

22 Mr. Kiff, you believe you understand this, and
23 certainly we have a true expert here. Shall we start
24 with the true expert or with you to explain what your
25 situation is, and then see what we can do to work through

1 this?

2 MR. KIFF: I'll give a little bit of
3 background, and then we'll defer to Fire Marshall Steve
4 Bunting.

5 The license facilities -- State license
6 facilities require the Applicant, before their
7 application is approved by the State, to come to a local
8 fire prevention office and get a sign-off or clearance by
9 the local fire marshall.

10 And in this case, as we know, Balboa Horizons
11 has been operating as a State licensed facility, so they
12 were able to achieve fire clearance at the time they
13 filed their application.

14 State ADP does not have an expiration date on
15 those fire clearances. So ADP licenses are also up for
16 renewal every two years. And ADP has allowed Applicants
17 to resubmit an original fire clearance, even though the
18 fire clearance is two years, two years, ten years old,
19 because, again, the clearances do not have an expiration.
20 That is what Balboa Horizons has done and other operators
21 have done as well and, again, ADP accepts those.

22 So -- however, the code changes over time. And
23 in addition, fire marshals change over time. So the
24 interpretation of Mr. Bunting, as he'll talk about, is
25 that previous fire clearances, in some cases, were not

1 issued appropriately. The fire marshall may not have
2 interpreted the code appropriately, and, therefore, a
3 previous fire clearance may not be valid.

4 We have some concern of that with Balboa
5 Horizons in that what we had requested of Balboa Horizons
6 was, in order to start to make that determination, to
7 provide a Code Analysis. And the code analysis is by a
8 licensed architect that comes in and looks to see how
9 compliant that facility is with potentially the current
10 fire code, the 2008 California Building Code, or the fire
11 code at the time that this facility was licensed and
12 cleared.

13 I understand Mr. Hanck's concern that a Code
14 Analysis is quite expensive, and these are difficult
15 economic times. So this is in part why Steve is here and
16 in part why we're discussing this with you, as the
17 Hearing Officer, to determine maybe an appropriate
18 work-around to reflect the concerns that the folks in
19 this facility should be safe, and that we're recognizing
20 on the one hand that the State has already accepted these
21 fire clearances as the appropriate document.

22 So with that, I may let Steve refine my
23 comments a little bit there.

24 MR. BUNTING: Thanks. Steve Bunting, Fire
25 Marshall.

1 The Code -- the Building Code that was in
2 effect at the time the facility opened was the 2001
3 California Building Code. And that building code has a
4 specific section for residential group care facilities,
5 which specifically includes alcoholism or drug abuse
6 recovery or treatment facilities.

7 Within that small section of the building code,
8 there were two specific provisions -- there were two
9 provisions that discuss the location on property of a
10 building.

11 Now, when Dave said the previously fire
12 marshall may have made a mistake or may have made an
13 error, I believe a lot of people in California made the
14 same mistake.

15 "Location on property" is a discussion of where
16 the exterior walls of a building are in relation to the
17 property line. And depending on the type of occupancy,
18 the code will tell you how close that wall could be to
19 the property line, and, more specifically, how close or
20 whether or not you can even have openings in that
21 exterior wall. So that's the issue with the "location on
22 property."

23 Now, within that code section, as I said, there
24 were two provisions for determining location on property.
25 In 2002, the deputy fire marshall from the Alameda Fire

1 Department observed this ambiguity, and asked the State
2 Fire Marshall for an interpretation on that.

3 As I read it, it seemed to me that the code was
4 saying that for a facility with more than six clients in
5 the building, the exterior wall couldn't be closer than 5
6 feet to the property line, couldn't have openings in it
7 if it was.

8 MR. ALLEN: Now, these are standards
9 particularly applicable to recovery-type facilities?

10 MR. BUNTING: Yes, sir.

11 MR. ALLEN: Not to all apartment buildings?

12 MR. BUNTING: That's correct. This is an
13 appendix to the Building Code, and it only applies
14 to -- it doesn't apply specifically to recovery
15 facilities, but they are included in the group.

16 MR. ALLEN: Okay.

17 MR. BUNTING: So when I read this code, it
18 seemed to me that a facility with more than six people in
19 the building couldn't have openings within 5 feet of the
20 property line, which a lot of the facilities on the
21 peninsula do.

22 When I looked at this interpretation from the
23 state fire marshall, and the interpretations are
24 official, the state fire marshall, in effect, supported
25 my belief, how I read this, and said to apply another

1 section of the building code when determining the
2 location on property for facilities with more than six
3 clients in the building.

4 It was also -- the answer by the state fire
5 marshall -- although it seemed clear to us, we thought
6 that it could possibly be not fully understood. So I
7 submitted -- in August of 2007, I submitted another
8 interpretation request on the same subject. And I broke
9 it down. I refined the question into two questions,
10 and -- so that we could be very specific.

11 In January of '08, the state fire marshall
12 again ruled according to how I believe the code should
13 read, and supported their previous interpretation in
14 2002, and I'll give you both of those.

15 Now, when you consider the way the state fire
16 marshall is saying to apply these regulations, a facility
17 that has openings in their exterior wall within 5 feet of
18 the property cannot be there. It simply cannot be there,
19 according to the 2001 Building Code.

20 And so then the question is, what do you do
21 with the facilities that are there? In January of '08,
22 the State adopted a new building code. And low and
23 behold, it had different provisions in it. The State
24 attempted to clean up some of their regulations with
25 regard to care facilities. And specifically, they spent

1 a lot of time addressing residential care facilities for
2 drug and alcohol treatment and recovery.

3 The new code, it turned out, would allow a
4 facility to be in existence, be in place, with openings
5 within 5 feet of the property line. So that was good for
6 the operators.

7 Now, we have a facility that the code did not
8 allow to be there the new code did allow to be there, but
9 you had to comply with all of the provisions in the new
10 code. So it was starting to get complicated, as you can
11 tell.

12 In January of that year, after I received the
13 interpretation from the California State Fire Marshall, I
14 sent a letter to the operator, specifically to the Balboa
15 Horizons operators, and I said, "There's an
16 interpretation," and I included it in my letter.

17 And I said, " In order for me to grant you an
18 additional fire safety clearance in the future, I need an
19 architectural Code Analysis of the building. I need for
20 an architect to tell me where your building is in
21 compliance with the regulations and where it isn't. And
22 in the areas where it isn't, what sort of things would
23 the architect recommend that we do to bring it into
24 compliance."

25 We didn't get any response. And I sent another

1 letter in June of '08, six months later, reminding them
2 that I sent them the letter earlier and, again, reminding
3 them that I needed that architectural interpretation.

4 When I say it's a lot of regulations that
5 apply, I have it condensed on our Web page, and it's 17
6 pages of regulations that apply. So it is something that
7 needs to be looked at but by a design professional.

8 It's not something myself or my inspectors can
9 run down there. For instance, we can't determine a wall
10 is a rated wall assembly without opening up that wall,
11 and we're not going to start doing that. So that's
12 why -- that's the reason we asked for the Code Analysis
13 to begin with.

14 Once I get that Code Analysis, then I
15 can -- then we can start looking at how -- whether or not
16 this building does comply with the code and in what ways
17 we can make it comply with the code.

18 I have also offered the operators the
19 opportunity to choose whichever code they want. They can
20 be reviewed by the code that was in effect at the time
21 they opened, or I can review them based on the new
22 regulations, either one. But an analysis has to be done
23 by a design professional to see where we're at. I have
24 to get these projects baselined.

25 Now, the Applicant has talked about fire

1 sprinklers. And again, that is one of the issues. But,
2 like I said, there's 17 pages of issues, and some of them
3 are maybe just as comprehensive. So they shouldn't be
4 focusing just on fire sprinklers.

5 MR. KIFF: Steve, do you want to speak to
6 alternative means and measures? I'm going to
7 mispronounce or misrepresent what that means, but what
8 the Building Code or -- allows you to do in some cases?

9 MR. BUNTING: The Building Code allows the
10 local code official, and the state fire marshall also
11 does, to adopt alternative means and methods for
12 struck -- buildings uses that do not strictly comply with
13 the code. And we allow alternatives to be submitted to
14 us.

15 The Applicant would tell us how the alternative
16 mean or method complies with the code or complies with
17 the intent of the code. And then the code official can
18 decide whether it does or not.

19 To be truthfully honest, we do these all the
20 time. There's provisions in both the Building Code and
21 the Fire Code for submitting alternative means and
22 methods. So it's certainly something we're open to.
23 Again, we can't begin to have a discussion about that
24 until we know what's there.

25 MR. KIFF: So Mr. Allen, if you'd allow me,

1 we've talked about this extensively at the staff level
2 and a little bit with Balboa Horizons, because it is a
3 challenging issue to get your arms around.

4 What I think we would like is to, if you're
5 predisposed to or disposed at the conclusion of this
6 hearing to grant the application, is that one of the
7 conditions would at least speak to directing Balboa
8 Horizons to work with the fire marshall and to try and
9 resolve our concerns over the Building Code.

10 I'm not quite sure how that might work as to
11 whether or not this is an absolute condition that the use
12 can't continue if that isn't successfully dealt with, or
13 we bring that back to you at a future date with an
14 analysis.

15 Again, as you can see, it's a challenging
16 issue, and we struggle with it, too, given the fact that
17 the State still accepts these, regardless of the age, and
18 the State may say, "Well, City, you're the one that
19 screwed up when you wrote this fire clearance years ago
20 and didn't interpret it correctly."

21 MR. ALLEN: If the Applicant wanted to address
22 something?

23 MR. HANCK: I have a quick question, which is,
24 has any of this been done with any other operators at
25 this stage of the game? Do we know what is at stake in

1 terms of the financial implications of requiring one of
2 these analyses and discussions? And that's directed
3 towards the fire marshall, too, Mr. Bunting.

4 MR. BUNTING: Cathy Lee (phonetic), do you know
5 what your analysis cost?

6 MS. LEE: It's roughly, depending on who you
7 use, it can run you anywhere from \$8 to \$12,000.

8 MR. ALLEN: You heard that, right?

9 THE REPORTER: (Nods negatively.)

10 MR. BUNTING: For the record, I asked an
11 operator in the audience who had recently completed a
12 Code Analysis what they paid for it, and they probably
13 have a facility that's very similar.

14 MR. KIFF: Yet larger.

15 MR. BUNTING: Larger?

16 MR. KIFF: Yeah. This is Ocean Recovery,
17 looking back at Jim halfway. But did they do a Code
18 Analysis on both properties?

19 MR. BUNTING: No, no.

20 MR. KIFF: I'm sorry.

21 MR. BUNTING: The one on West Bay.

22 MR. KIFF: Sorry. So it's a smaller facility.
23 That's a facility that they're seeking a six and under
24 license for?

25 MR. BUNTING: Yeah. However, the issues would

1 be the same. When they came to us, they were seeking a
2 license for more than six. And after the Code Analysis,
3 it was determined that the facility wouldn't be
4 sufficient for more than six, so they limited their
5 facility to six and under.

6 MR. ALLEN: I see someone in the audience
7 raising his hands. Do you have expertise and ability to
8 assist with resolving this problem?

9 UNKNOWN SPEAKER: I'm addressing, if you'll
10 permit me to do so, Mr. Kiff, what I wanted to know is if
11 Ordinance 2008-005 deals with what code must be in effect
12 or complied with in order to obtain an initial use
13 permit?

14 MR. KIFF: No, it does not.

15 MR. BUNTING: The Building Code is very
16 specific in that matter, and it says that you must use
17 the code that was in effect at the time the facility was
18 opened.

19 However, because we're going through a new
20 process, because I may be asked to sign a new clearance,
21 I'm willing to use the Code that's in effect currently
22 for that purpose, and I think that's very fair.

23 MR. ALLEN: Well, obviously I don't have any
24 magic answers here. The City is saying that this is the
25 law that's applicable to them, and they are willing to be

1 as flexible as they can.

2 MR. HANCK: I'd like to go on record saying
3 that if an analysis is anywhere close to that, it would
4 absolutely put us out of business.

5 THE COURT: I understand.

6 MR. HANCK: That's a huge amount of money that
7 we don't have.

8 MR. ALLEN: All right. Somebody else has their
9 hand up. Do you have something incisive and hopefully
10 that will resolve the issue for us?

11 MS. OBERMAN: Yes, I do. I believe I do. It's
12 up to you to make the ultimate decision.

13 We talked to the ADP directly about this issue
14 of fire clearance and land uses, and they conceded that
15 they are not aware of every locale or every neighborhood
16 land use characteristic.

17 And they told our citizen group directly that
18 it's incumbent on the local government to take into
19 account the particular land use characteristics that
20 exist in its city or it's specific neighborhood.

21 And what we have, Mr. Allen, is we have an
22 exceptionally dense situation here, where you have lots
23 that are between 20 -- average lot 20 to 30 feet, and
24 there are very narrow setbacks.

25 Each structure is set -- and there are a lot of

1 older structures. It isn't a master-planned community.
2 So structures are sitting less than 3 feet from the
3 property line frequently. So you have a cumulative of
4 less than 6 feet. So there's an exceptional fire risk.

5 MR. ALLEN: Yeah, we understand that.

6 MS. OBERMAN: Okay. So I guess what I'm saying
7 is it's a health and safety issue that's particularly
8 intense in our area because of the land characteristics.

9 THE COURT: Sure, it is. It's that way all
10 over the peninsula, as you know.

11 MR. KIFF: I do, but it is not the case in like
12 the upper coast. That's my only point.

13 MR. ALLEN: But the peninsula is that way
14 whether there's a recovery facility there or an apartment
15 building, you know that.

16 MS. OBERMAN: Right, I do.

17 MR. KIFF: Mr. Allen, I can appreciate
18 Ms. Oberman's thoughts there, and certainly the ADP
19 is -- it's about what I would have expected from them is
20 to kind of punt this back.

21 However, the fire marshall's interpretation of
22 the California Building Code is fairly literal and fairly
23 strict. So -- and it is -- in our jurisdiction, we rely
24 on the fire marshall to make those interpretations.

25 So again, I guess what I would suggest is to

1 maybe propose a condition asking us to do some further
2 work with the Applicant and see what outcome we can
3 reach, given his financial constraints. And then we
4 probably would have to come back to you with a
5 recommendation based on that discussion.

6 And I apologize that we weren't able to reach
7 that point prior to the hearing, but as you can see, it's
8 a very challenging issue.

9 MR. ALLEN: I'm certainly willing to move
10 forward on that basis. I don't imagine there's
11 any other -- the other alternative is so to deny the
12 permit, because the Applicant says he can't do it the way
13 the fire marshall states that it must be done right now.

14 And that doesn't seem to be a viable
15 alternative, and -- nor is it a viable alternative to
16 approve the permit and say there need not be any
17 compliance with the fire law.

18 So I think the best we can all do here is to
19 work, as Mr. Kiff suggested, with a condition that you
20 work together in an effort to solve it. And we'll either
21 propose a time limit to come back with that condition, or
22 if it's worked out satisfactorily without further
23 involvement by the Hearing Officer, then that would be
24 perfectly acceptable with me as well.

25 MR. KIFF: Okay. I think I understand what

1 you've said. And we'd also then include -- I guess I'm
2 still struggling if you would prefer that this be a
3 condition associated with an issuance or an approval of
4 the use permit, say a condition to come back within a
5 time certain with a solution, and if we are successful,
6 arguably, you would not have to review that again?

7 MR. ALLEN: Right.

8 MR. KIFF: If we're not successful, then you
9 probably would. So maybe that would be how the condition
10 is written?

11 MR. ALLEN: I think that's responsible.

12 MR. KIFF: Okay. And then the additional
13 conditions, just as we've talked about throughout this
14 discussion, would be a provision blocking -- requiring
15 Balboa Horizons to prohibit car/auto use by their
16 clients.

17 We had one that we think should be added, which
18 says "Any change to the existing operator's operations
19 should be -- would require an amendment to the use permit
20 at a public hearing." And with that, I think we have the
21 scope, at least, of the conditions that we're suggesting.

22 MR. ALLEN: I think so. The question I have in
23 reviewing the entire package is, how are the management
24 and operating conditions of the Applicant that seems to
25 be spread through the application woven into the

1 staff -- into the resolution as conditions?

2 In other words, those provisions are very
3 important to everyone, including the Applicant, to know
4 exactly what they are. And to have to later go back and
5 dig through the application -- in other words, I think
6 there's a list of them, that that would be included in
7 the resolution. Would that be true right now?

8 MR. KIFF: Do you want to speak to that, Janet?

9 MS. BROWN: I want to make sure I understand
10 what you --

11 MR. ALLEN: Good.

12 MS. BROWN: -- the full -- the overall
13 operating characteristics of this facility. And it's, as
14 you've stated, it's throughout various pages within the
15 application and not narrowed down into a single state.

16 I think what we should do is bring all of that
17 to a central point in a single document and include it as
18 an attachment to the resolution or within the resolution
19 and with conditions of approval, so that it's spelled out
20 clearly in one document.

21 THE COURT: I think that's really advisable,
22 because, otherwise, there would be too much -- there's
23 been representations made, the audience is counting on
24 certain things happening as a result of our discussions.

25 And at the same time, we wouldn't want to have

1 ambiguity or uncertainty as to what those operating
2 conditions were, and neither does the Applicant. So that
3 should work. We should be able to do that.

4 MR. KIFF: So, Janet, are you suggesting that
5 be in the resolution or that be a condition that
6 incorporates all of the operational descriptions within
7 the use permit application?

8 MS. BROWN: Within the conditions.

9 MR. KIFF: Okay.

10 MS. BROWN: Yeah.

11 MR. ALLEN: That's best, I believe.

12 MR. KIFF: All right.

13 MR. ALLEN: If anybody needs to look at the few
14 things, let's do it for a couple of minutes here. I need
15 to look at my notes.

16 MR. KIFF: We're conferring with special
17 Council there. We would recommend that you direct us to
18 come back potentially at your Wednesday hearing, the one
19 with Kramer Center, and maybe the first item of business
20 could be a relatively short item of business that would
21 provide the actual resolution.

22 We would -- our staff recommendation's
23 resolution to approve with the conditions existing in the
24 packet today and with the modifications we talked about
25 today, so that the public would have a chance to see that

1 hopefully by this Friday. We post it on the Web site.

2 And it would allow us some additional time to
3 sit down with Balboa Horizons and try to work through the
4 fire code issue. I'm not guaranteeing that we will, but
5 at least at your meeting on Wednesday, you and the public
6 would have a full and complete list of those conditions
7 as written.

8 MR. ALLEN: I think that's an excellent
9 suggestion. So let's point in that direction, then.
10 Because I, as a Hearing Officer, am certainly
11 inclined -- not inclined, I would approve this use based
12 upon the fact that it's a non-conforming use that has
13 been brought into the requirements of these recent
14 ordinances.

15 And while there are concerns about all of these
16 operations, this one seems to sound like a very well run
17 operation. And I am impressed by the fact that I'm not
18 seeing the elementary school teachers or the principal or
19 anyone from the church down here complaining about the
20 conduct of the people there.

21 So, in other words, I'm in favor of proceeding
22 to approve this one. And the idea of bringing back a
23 resolution at the next -- next Wednesday, and hopefully
24 we can do it quickly, because we'll have another one, but
25 we won't make it a public hearing. But I like your

1 suggestion of having the folks in the audience have an
2 opportunity if they can get on the Web site to look at
3 what's being proposed.

4 The overconcentration issue -- we do have a few
5 minutes. So the overconcentration issue here in the
6 City, like it is everywhere, is a compelling issue. And
7 we just have to continue to be mindful of that as we look
8 at these in future applications and recognize that
9 overconcentration is probably the biggest problem that
10 occurs with these uses.

11 However, I hasten to add that if they are run
12 like that one, they sound like this is a very sound
13 operation. And so it's all in how they operate. Like so
14 many, whether it is successful businesses or whether it's
15 of any kind, I've been doing this for a long time, and
16 the most depends so frequently almost always on the
17 nature of the operators and the controls that they put
18 into place to control the operation.

19 So anyway, let's go forward on that basis,
20 then. If you can, prepare that resolution and bring it
21 back, and we'll look at it at the Wednesday meeting.
22 That would be appropriate.

23 MR. KIFF: Thank you. And then for the members
24 of the audience, then, that is Wednesday, December 10th,
25 4 o'clock, same location.

1 MR. ALLEN: All right. Thank you. And
2 then -- so then, we'll adjourn to that time. Thank you
3 very much everyone for appearing and making your
4 presentations.

5 (Ending Time: 5:30 p.m.)
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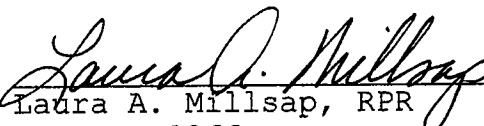
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2
3
4 I, the undersigned, a Certified Shorthand
5 Reporter for the State of California, do hereby certify:

6 That prior foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed
18 my name.

19
20 Dated: DEC 17 2008

21
22 
23 Laura A. Millsap, RPR
24 CSR No. 9266
25

WORD INDEX

A	66:11	age 56:17	43:17,21	amend 45:22
abatement	added 62:17	agenda 5:8	44:4 45:12	46:4
9:13,13,15	addiction	5:25 24:3	46:3,6,9	amendment
10:2,17	13:7	34:17	46:15,25	46:1 62:19
abide 20:23	addition	aggregate	47:19 51:8	amount 19:10
21:4,17	33:21	28:18	51:11,16	19:11 25:2
41:9	48:23	ago 56:19	55:25	34:4 45:7
ability 19:8	additional	agree 20:25	56:21 57:8	59:6
35:24 58:7	33:16	26:14	58:6,23	amplify 39:2
able 20:7	53:18	agreeable	59:8,21	analyses
36:1 48:12	62:12 65:2	20:6	60:5,13,17	57:2
61:6 64:3	address	agreed 9:17	61:9 62:7	analysis
absolute	12:11	9:20	62:11,22	12:5 18:16
56:11	24:16	agreement	63:11	22:2,11
absolutely	29:25 31:4	9:15	64:11,13	49:7,7,14
22:15 30:4	39:1,25	airport 39:9	65:8 67:1	53:19
59:4	40:3 41:6	Alameda	alley 21:10	54:12,14
abuse 11:4	42:5 44:3	50:25	21:11	54:22
50:5	46:10	alarm 13:24	47:11	56:14 57:5
accept 20:23	47:19	14:3	allow 11:10	57:12,18
acceptable	56:21	Albeit 20:24	27:14	58:2 59:3
39:16	addressing	alcohol 7:22	37:11 39:3	and/or 11:4
61:24	53:1 58:9	11:4 53:2	39:4,6	24:24
accepted	adjacent	alcoholism	53:3,8,8	33:13
49:20	26:19 28:1	50:5	55:13,25	44:23
accepts	adjourn 67:2	Alice-in...	65:2	Angeles 3:5
48:21	administ...	25:10	allowed	answer 32:22
56:17	3:9 10:3	Allen 1:9	11:16	43:19 52:4
accommodate	11:11	4:4,5 5:5	19:13	answered
12:1	44:20	5:9,12,18	25:11,14	32:15 42:6
accommod...	adopt 55:11	5:24 6:3	27:15,20	45:10
7:10,14,16	adopted 4:7	10:7 12:14	36:20,24	answers
accorded	52:22	12:17	39:10,11	58:24
24:14	ADP 7:21,23	20:17,23	48:16	anybody 5:6
account	8:5 45:6	22:18,24	allowing	17:1 64:13
59:19	46:17	23:7,22	36:7	anyway 21:4
accurate	48:14,15	25:16,18	allows 36:8	66:19
68:11	48:16,21	25:21 26:8	55:8,9	apartment
achieve	59:13	29:7,22	alternative	51:11
48:12	60:18	30:5,8	32:20 42:9	60:14
action 11:22	advisable	31:4,7	55:6,11,15	apologize
12:9 68:14	63:21	32:6,22	55:21	61:6
actions 10:3	affiliation	34:7,10	61:11,15	apparently
actively	4:13	38:25 39:5	61:15	24:15
37:9	affirmative	39:13,22	alternat...	32:15
Acts 18:10	11:22	41:11,15	55:13	appeal 7:6
actual 64:21	affirms	41:22 42:1	ambiguity	35:13
add 46:6	25:10	42:4 43:16	51:1 64:1	appealed 7:8

7:9,18 appealing 24:10 APPEARANCES 3:1 appearing 67:3 appears 26:23 appendix 51:13 applicable 51:9 58:25 Applicant 6:8,11 7:12 12:18 23:18 29:24 30:3 30:18 33:9 33:13 34:18 44:1 45:15 47:4 48:6 54:25 55:15 56:21 61:2 61:12 62:24 63:3 64:2 Applicants 5:10 31:18 48:16 application 5:13 7:3 10:20,23 11:20 17:11,11 18:5 24:3 25:6 48:7 48:13 56:6 62:25 63:5 63:15 64:7 applicat... 5:15 66:8 applied 19:20 applies 51:13 apply 7:1,2	9:7 18:21 51:14,25 52:16 54:5 54:6 appreciate 20:3,5 31:2 35:12 60:17 apprecia... 15:14 appropriate 23:20 27:18 49:17,21 66:22 appropri... 25:3 49:1 49:2 appropri... 26:15 approval 7:7 11:18 12:11 13:23 26:4 45:25 62:3 63:19 approve 6:16 7:4 11:19 11:20 12:10 61:16 64:23 65:11,22 approved 44:12 48:7 approxim... 27:10 architect 49:8 53:20 53:23 architec... 53:19 54:3 area 4:16 17:4 18:22 19:25 20:2 26:10,19 27:4,4 28:7,19,25	31:25 32:2 35:17 36:14 37:13 41:19,22 60:8 areas 21:7 26:18 53:22 arguably 62:6 argue 24:14 Arizona 42:16 arms 56:3 arrived 5:4 asked 17:10 19:2,6,7 21:5 44:4 51:1 54:12 57:10 58:20 asking 61:1 asks 10:7 assembly 54:10 assist 58:8 Assistant 3:8,9 Associate 3:8 10:22 associated 62:3 assume 24:6 24:7 assumed 37:20 attachment 24:5 63:18 attempt 38:14 45:15 attempted 52:24 attempting 8:18 40:3 attest 28:2 attorney 4:5	4:8,9,10 68:15 attracted 37:22 audible 5:23 12:16 34:9 audience 4:4 22:25 39:25 57:11 58:6 63:23 66:1 66:24 audio 21:12 August 52:7 authorized 8:15 automobiles 36:8 39:3 39:4,6 47:3,16 available 5:9 35:24 44:22 avenue 3:5 30:11 44:21 average 15:8 59:23 aware 27:13 38:18 59:15 awful 37:23	61:21 62:4 63:4 64:18 65:22 66:21 background 6:4 48:3 bad 16:23,23 Balboa 1:8 8:21 9:2 10:4,9,24 11:2 12:23 24:17 31:1 31:6 32:7 37:19,19 45:5,7 48:10,20 49:4,5 53:14 56:2 56:7 62:15 65:3 balcony 21:7 Barbara 32:6 bars 29:19 37:24 based 18:17 25:8 37:15 45:23 54:21 61:5 65:11 baselined 54:24 basis 16:5 29:4 61:10 66:19 bathrooms 35:6 Bay 8:18 30:11 57:21 beach 1:10 2:7,8 3:3 3:7,10 4:1 4:11,15 6:20 9:11 9:22 13:16 13:21 15:7 16:19 22:1 26:12
--	--	--	---	--

27:11	10:19	6:2,5	C	certain 6:18
30:23 37:6	42:10 44:9	10:21,21	C 11:10	38:10 45:7
37:8,22	48:2 49:23	45:21 46:5	CA 3:5,10	62:5 63:24
bed 15:20	56:2	46:8 63:9	California	certainly
bedroom 36:2	block 24:9	63:12 64:8	1:10 2:8	19:23
bedrooms	27:10	64:10	4:1 8:14	20:13
23:13	blocked 8:4	building	9:17 11:7	25:21
beds 8:11,12	blocking	11:9 49:10	14:6 49:10	35:16
8:13,14,17	47:10	50:1,3,3,7	50:3,13	38:14
8:20,22,23	62:14	50:10,16	53:13	45:18 47:1
9:3,6	board 37:8	51:5,13,19	60:22 68:4	47:23
10:13	BOBKO 3:4	52:1,3,19	call 16:18	55:22
beginning	body 21:18	52:22	42:23	60:18 61:9
2:8 5:25	38:17	53:19,20	44:22	65:10
behalf 2:6	bordering	54:16 55:8	called 9:10	certific...
10:24	38:2	55:9,20	15:8 26:11	43:3,6
behavior	Bossche 23:6	56:9 58:15	40:12	certified
42:25	23:9,10	60:15,22	calls 6:23	2:10 43:5
behaviors	25:17,20	buildings	34:17	68:3
42:20,24	25:22	51:11	canyon 21:12	certify 68:4
behold 52:23	bottom 40:10	55:12	capacity	68:13
belief 51:25	41:1	Bunting 12:6	4:12	challenging
believe 6:2	Boulevard	48:4,24	care 11:3,14	20:12 22:5
17:17,24	2:7 3:9	49:24,24	13:20 50:4	28:8 56:3
19:23	24:17 31:1	51:10,12	52:25 53:1	56:15 61:8
25:25	boy 37:4	51:17 55:9	carefully	chance 64:25
28:20 33:7	boys 37:3	57:3,4,10	26:15	change 33:10
34:2 37:15	breath 28:2	57:15,19	27:12	38:3,3,4
38:15	Bridge 4:16	57:21,25	cars 19:12	45:15,24
47:22	brief 6:4,7	58:15	27:14,15	45:25
50:13	briefly	business	27:20 36:1	46:22
52:12	25:22	4:14 16:11	36:4 47:8	48:23
59:11	34:16	18:25	car/auto	62:18
64:11	bring 14:18	19:24	62:15	changed
believes	36:1 53:23	21:22	case 45:5	27:19
11:23	56:13	22:14	48:10	changes
18:13	63:16	41:18,20	60:11	48:22
belong 16:23	66:20	47:13 59:4	cases 24:7	Chapter 6:20
best 14:15	bringing	64:19,20	40:10	characte...
61:18	17:3 65:22	businesses	48:25 55:8	59:16
64:11	brings 40:20	18:21	Cathy 57:4	characte...
bet 46:9	broke 52:8	19:20 20:1	caution 47:2	45:23
better 31:14	broken 35:6	66:14	Center 8:23	59:19 60:8
big 22:8	broker 23:15	butts 21:15	64:19	63:13
biggest 66:9	brought	27:24 28:5	central	children
Bill 10:24	65:13	38:10,11	63:17	26:18 41:2
bit 6:4 8:1	Brown 3:8	38:12	centralized	children's
10:10,12	4:20 5:3	bypass 34:12	13:24	26:19

choose 54:19	clear 52:5	28:21	36:23,25	4:25
church 65:19	clearance	Clubhouse	37:23	community
cigarette	13:22 14:5	10:4	38:22	26:11 60:1
27:24 28:5	21:25 48:8	coast 5:16	39:10 40:6	company
38:9,10,11	48:12,17	8:21 10:12	40:7 42:7	13:12
cigarettes	48:18 49:3	60:12	42:8,8,11	compared
21:15	53:18	code 6:20	42:24	33:25
38:12	56:19	11:1,16	44:25	compatible
citation	58:20	12:5 22:2	45:13,22	27:4
44:20	59:14	22:11	46:24	compelling
cities 4:10	clearances	25:23 26:3	47:11,12	66:6
4:10	48:15,19	44:14,16	48:7 61:4	complaining
citizen	48:25	48:22 49:2	61:21 62:4	65:19
59:17	49:21	49:7,7,10	64:18	complaint
Citizens	cleared	49:10,11	comes 39:7	44:17
26:12	49:12	49:13 50:1	49:8	complaints
27:15	clearly	50:1,3,3,7	comfort	29:13,16
city 2:7 3:3	63:20	50:18,23	39:19	complete 7:3
3:7,8 4:6	clientele	51:3,13,17	coming 9:25	65:6
4:7,8,8,10	41:8 46:19	52:1,12,19	15:3 39:9	completed
4:11,22	clients 8:25	52:22 53:3	40:25	57:11
6:1 7:8,8	14:19	53:7,8,10	commence 5:2	compliance
7:18 8:4	21:16	53:19	5:21,24	14:4 53:21
8:25 12:3	27:20 36:7	54:12,14	commencing	53:24
13:16,21	42:7,18,21	54:16,17	6:1	61:17
13:23 15:7	47:4,15	54:19,20	commend	compliant
17:10 20:5	51:4 52:3	55:8,9,10	27:23	49:9
21:1 22:1	62:16	55:13,16	comment	complicated
24:25 25:1	clinical	55:17,17	23:18 28:6	53:10
33:14 44:9	40:18	55:20,21	29:8 31:10	complied
46:13	close 4:16	56:9 57:12	31:20 32:4	17:8 58:12
56:18	6:10 9:18	57:17 58:2	42:3	complies
58:24	24:20	58:11,15	comments 6:9	55:16,16
59:20 66:6	26:10 29:5	58:17,21	6:12 12:13	comply 18:9
City's 9:5	29:15	60:22 65:4	12:15,20	19:1,3
9:16	35:21 40:4	codes 13:17	24:2 25:5	26:4 45:17
civil 10:2	43:22	13:20	30:1,2	53:9 54:16
clarify 6:11	50:18,19	21:23	34:8,19,24	54:17
class 7:13	59:3	collecti...	35:16	55:12
classify	closed 10:17	28:8	37:18 39:2	complying
11:13	16:24	College	49:23	21:23
clean 38:16	34:13	36:13	commercial	comprehe...
38:16 40:7	37:24	color 10:14	44:11	55:3
40:20	43:25 44:2	come 4:23	Commission	comprehe...
52:24	closer 29:20	5:1 10:7	44:13	34:22
cleanliness	51:5	19:14 23:1	commitment	conceded
21:17	closing	23:4 29:25	47:3	59:14
35:14	10:15 20:3	31:19	communic...	conceivably

36:2	12:11	continue	18:12	date 6:17
concentr...	14:18 18:9	6:17 9:21	counseling	48:14
28:3	18:17,20	56:12 66:7	11:12	56:13
concern	19:19,24	continued	count 9:5	68:16
14:21	20:19 21:4	11:18	counting	Dated 68:19
21:20	21:5 26:2	continues	63:23	daughters
31:21 32:8	29:2 31:13	45:5	county 4:9	40:23
32:10 40:1	34:2 35:8	continuing	13:3,16	Dave 3:8
47:6,21	41:8,18	8:20	22:1	11:7 50:11
49:4,13	44:5,8	contract 4:6	couple 12:20	David 23:25
concerned	45:3,4	contractor	20:17 39:1	29:9 33:3
5:2 26:12	47:14 56:7	14:3 36:12	43:19 44:5	day 15:14
27:14	62:13,21	contracts	64:14	19:8 26:22
32:14	62:24 63:1	43:2	course 33:24	38:8,8
concerns	63:19 64:2	control	COURT 26:6	44:21
5:14,21	64:8,23	13:24	34:16 59:5	days 39:12
21:19	65:6	15:15,21	60:9 63:21	daytime 8:15
31:11	conduct 4:6	15:24 16:7	covered 32:9	deadline 9:8
41:13	65:20	19:17	co-ed 13:10	deal 16:9
47:16	conferring	35:25 36:6	46:23	17:5 24:8
49:18 56:9	64:16	36:8 38:7	create 13:9	34:3
65:15	confident	38:9,14	42:19	deals 58:11
concisely	17:7	66:18	created	dealt 56:12
34:21	confirm 12:3	controls	13:12	debilita...
concludes	consider	66:17	40:16	13:6,6
12:13	25:4,21	convert	creates	December
conclusion	26:14 29:4	19:16	21:11 34:4	1:11 2:9
12:8 32:23	52:15	convicted	creating	4:1 5:4
56:5	consider...	43:7	14:10	66:24
condensed	47:1,2	corners	16:11	decide 9:21
54:5	consider...	14:22	CSR 68:22	46:22
condition	31:19 33:6	correct	cumulative	55:18
21:20	33:7	23:20	60:3	decided 21:1
32:19	considered	51:12	current	decision 7:6
39:15	27:12 29:3	correctly	11:16	7:9 28:25
45:25 46:7	40:11	56:20	38:20 49:9	59:12
56:11 61:1	considering	corrects	currently	dedicated
61:19,21	25:1	25:12	16:7 19:12	13:4
62:3,4,9	consistent	cost 57:5	35:22	defer 48:3
64:5	10:25	Cottonwood	58:21	definition
conditional	23:13	42:16	cycle 22:5,6	18:24
15:23 18:6	42:25	43:13	22:6	degree 15:21
19:5 26:3	constant	Council 7:8		16:6
29:4	38:18	7:18 26:14	D	delaying
conditio...	constraints	64:17	damaged	30:1
11:20 12:9	61:3	Council's	24:24	delivery
conditions	contacts	7:9	dangerous	47:11
6:17 9:20	4:17	Counsel	38:2	DEN 23:6,9

dense 59:22	detoxing	discrimi...	26:16 50:5	employee
deny 6:17	36:15	41:21	53:2	68:14
7:5 61:11	development	discuss 44:2	drugs 36:16	employees
Denys 26:9	23:14	50:9	36:19 40:7	17:21
Department	dialog 20:7	discusses	drunk 32:3	enforce
16:19 51:1	Diamond 33:2	24:5	37:11,25	44:14
Departme...	33:3 46:10	discussing	40:7	enforced
15:7	Dierdre	49:16	due 18:1	25:3,25
depending	30:25	discussion	24:14	31:13
50:17 57:6	different	42:7 50:15	duly 13:19	33:13 44:5
depends	10:14	55:23 61:5	13:20 25:2	44:8
66:16	44:10	62:14	duplex 8:23	enforcement
deputy 50:25	52:23	discussions	34:1	44:14,16
Der 23:9	difficult	57:2 63:24	E	44:19
25:22	10:6 49:14	disposed	earlier 35:4	enforcing
derogatory	dig 63:5	56:5	40:6 54:2	17:22
40:13	diligence	disrepair	eating 15:18	engender
describe	18:1	35:5	economic	39:19
40:16	direct 44:17	district 8:3	22:5 49:15	engineer
described	64:17	23:15	Ed 23:9	22:3
30:17	directed	Districts	effect 6:22	enjoined 8:4
descript...	24:22 57:2	6:21	33:8 50:2	entire 62:23
64:6	directing	disturb 41:2	51:24	entities
design 54:7	56:7	division	54:20	24:19
54:23	direction	13:11	58:11,17	entity 24:12
designated	21:1 65:9	doctors 24:6	58:21	24:13
4:5 11:19	68:11	document	effort 20:9	environment
13:2 21:6	directly	49:21	61:20	21:17
desire 41:4	24:3 25:5	63:17,20	eight 9:12	37:10,23
desperately	30:11	dog 35:7	30:16 35:6	38:7,16
40:8	40:20	doing 14:24	either 10:17	40:18,19
despite	59:13,17	16:17 18:3	16:5 32:23	42:19
24:12,22	Director	54:11	44:12	46:23,23
detail 6:5	44:12	66:15	46:23	equitable
determin...	disability	dollars	54:22	28:12,17
7:4 49:6	13:13	14:16	61:20	error 50:13
determine	disabled	Douglas	electric...	especially
49:17 54:9	40:11	30:10	33:23	8:2
determined	disappoi...	drink 38:23	elementary	ESQ 1:9 3:4
58:3	18:1	drinking	24:9,18	established
determining	disappoi...	15:3	26:17 27:5	11:2
50:24 52:1	16:10 17:6	drive 25:11	27:11	estate 23:15
detox 24:8	disapprove	39:11	30:23 37:5	evening 33:2
36:12,12	11:20	driving	37:6,9	event 44:21
36:22	discretions	29:21	41:2 65:18	45:7
42:14,17	27:16	dropped 39:8	eliminated	everybody
detoxed 24:9	discrimi...	drug 7:22	47:7	34:24
36:16	19:21	11:4 17:20		exactly

46:18 63:4	47:24	27:8,25	faith 16:15	financially
example	extensive	28:2 29:2	fall 27:2,2	68:13
32:18	25:18	29:11,14	falling	find 15:14
excellent	extensively	29:20	37:25	16:1,25
65:8	56:1	30:22	families	18:5 22:4
exception	exterior	31:16,25	41:5 43:10	22:10
11:24 29:2	50:16,21	33:16,17	family 28:19	24:21
exceptional	51:5 52:17	35:5,21	29:18	28:11
60:4	extraord...	36:24 40:6	30:13	finding
exceptio...	37:7	40:7,25	far 4:19	11:24
59:22	extreme	42:15,16	23:17	23:20
exclusively	15:15	45:6 46:12	41:13	27:12
13:12	16:15	46:16,20	fashion	findings
excuse 25:7	e-mail 4:21	47:8 48:11	39:23	11:21,23
executed	5:3	49:9,11,19	favor 5:12	23:11 34:2
9:17		50:2 51:4	24:14	fire 12:4,6
exempted 8:8	F	51:18	65:21	13:21 14:5
exempts 7:20	face 13:5	52:16 53:4	favorable	21:23 22:1
exercise	17:14 26:1	53:7 57:13	24:13	41:15
27:1	facilities	57:22,23	February	47:19 48:3
exist 59:20	7:25 8:1,6	58:3,5,17	6:22 9:14	48:8,9,12
existence	8:13,16,19	60:14	9:19	48:15,17
53:4	9:12 13:4	63:13	federal 7:11	48:18,23
existing	17:20	fact 13:1,21	18:9	48:25 49:1
6:25 11:9	26:21,23	14:14 15:6	feedback	49:3,10,10
11:17,25	28:7,19	15:14 16:1	14:25	49:21,24
12:5 45:17	47:12 48:5	16:21 17:7	feel 38:4	50:11,25
62:18	48:6 50:4	17:17 18:3	39:25	50:25 51:2
64:23	50:6 51:9	24:22	feet 24:18	51:23,24
expectation	51:15,20	26:20	27:10	52:4,11,15
23:3	52:2,21,25	27:13	30:22 51:6	53:13,18
expected	53:1	31:24 32:2	51:19	54:25 55:4
60:19	facility	34:13 35:4	52:17 53:5	55:10,21
expense	5:16 8:14	36:17	59:23 60:2	56:8,19
22:10	8:21 9:3	37:17	60:4	57:3 59:14
expensive	9:18,23	38:18	females 11:5	60:4,21,24
49:14	10:9,11,11	40:11,15	female-only	61:13,17
experience	10:13 11:3	40:16	46:12,14	65:4
23:16	11:6,14	56:16	fewer 7:24	first 10:1
experien...	12:25 13:1	65:12,17	filed 8:11	23:8,19
15:1	13:9,10,10	facts 17:8	10:24	34:23 35:1
expert 47:23	13:15	18:6	48:13	35:19
47:24	14:15,17	failing 25:3	final 42:2	38:15
expertise	15:10,11	fair 18:9	finalized	64:19
58:7	15:22	28:12	5:19	five 11:10
expiration	21:15 22:8	58:22	financial	34:1 44:15
48:14,19	22:13	fairly 26:9	21:22 57:1	44:15
explain	24:25 25:6	60:22,22	61:3	flexible
	26:16,21			

floor 3:5 21:7,8	friends 29:18	goes 37:9	19:22	hash 10:16
focus 43:23	front 5:7	going 6:4	27:15 50:4	hasten 66:11
focusing 55:4	21:14	8:6,9	51:15	health 60:7
folks 6:15	full 40:14	10:19	59:17	hear 8:1
31:12	63:12 65:6	14:23,24	guarante...	heard 57:8
37:16,22	fully 52:6	20:15	65:4	hearing 1:7
38:13	further 61:1	25:15	guess 25:22	1:9 2:6
49:18 66:1	61:22	28:11	29:10	4:6,7,12
foot 22:13	68:11,13	29:22	30:21 60:6	5:17,22
22:13	furthermore	31:13	60:25 62:1	6:7,9,10
force 28:14	47:9	33:13 36:8	H	6:12,13,16
foregoing	future 8:2	36:9 43:8	half 12:23	6:17,19
68:5,7,11	53:18	46:6 54:11	15:8 24:9	7:3,6,17
form 19:1	56:13 66:8	55:6 58:19	halfway	7:17 9:3
37:12	G	goings 37:7	40:12,15	11:19 12:8
39:22	game 36:5	good 15:5,12	40:16,20	12:8 18:15
42:24	56:25	16:15	57:17	22:25
forming 14:9	gender 33:6	17:15,22	Hall 8:25	23:19 33:5
forms 38:15	46:11,16	20:14	Hanck 10:24	33:5 34:10
forth 5:25	general	23:25	12:19	34:12
14:10 23:1	11:14 28:6	31:13 33:2	18:14,19	43:22,25
68:6	31:3,10,20	38:6,25	20:22 21:3	46:3 49:17
forward	31:25	43:22 53:5	27:19	56:6 61:7
20:14,16	generally	63:11	34:23 39:4	61:23
23:4 61:10	6:14 15:4	gotten 21:25	39:7,17	62:20
66:19	24:12	government	40:2 41:14	64:18
for-profit	Gershon 3:4	59:18	41:17,24	65:10,25
24:13	18:13	Grand 3:5	42:2,6,11	hearings 8:2
found 13:4	getting	grandmot...	43:19	Heights 8:13
20:6 36:6	13:19,20	40:23	56:23 59:2	37:4,9
Fountain	14:8 40:17	Grandville	59:6	held 6:19
36:14	ghetto 30:17	10:4	Hanck's	Hello 23:6
four 8:13	31:24 35:3	grant 53:17	49:13	help 28:20
12:22	give 23:4	56:6	hand 49:20	42:14
14:22	35:2 36:22	granted	59:9	he'll 48:24
16:18	48:2 52:14	15:23	hands 58:7	Hi 30:25
20:15	given 56:16	16:13	handwritten	high 37:11
29:16 34:1	61:3	20:21	23:11	40:6
frankly	go 7:16 14:3	31:15,22	happen 17:12	hire 14:2
16:10,25	15:6 17:5	granting	26:10	hit 40:10
17:11	21:2 22:9	9:24	39:18	hitting 22:7
24:23	32:11,12	great 13:1	happening	Hoag 24:6
25:13	37:4 38:22	15:21 16:9	63:24	32:12
frequently	41:2 42:14	17:5 32:8	happens 21:8	36:11
60:3 66:16	44:17 59:2	greater 41:4	happy 12:12	42:12,15
Friday 65:1	63:4 66:19	grief 25:2	16:17	43:12
		group 4:13	hard 22:7	hold 14:1
		6:25 16:22		home 7:20

8:22,24	husband	include 6:7	7:25	50:21 56:3
9:4,10	31:24	8:20 62:1	integrally	56:16
10:5 13:11	I	63:17	7:25	59:10,13
15:2,3,19	idea 65:22	included 9:9	integrated	60:7 61:8
32:1 37:24	identify	45:24	8:5	65:4 66:4
40:14,17	23:7	51:15	intense 60:8	66:5,6
homes 4:14	ignoring	53:16 63:6	intensified	issued 9:13
4:14 7:23	24:21	includes	33:24	14:5,6
8:8 9:7	illness 13:7	50:5	intensity	45:1 49:1
10:3 21:11	imagine	including	23:12,14	issues 12:2
31:9,18	61:10	5:15 44:20	intent 55:17	12:11 13:5
34:5 40:11	immediate	63:3	interested	22:20
40:12,15	4:17 28:24	incorpor...	68:14	29:25
honest 55:19	42:17	64:6	interpret	43:19,23
hoops 17:12	immediately	incorpor...	56:20	44:9 55:1
hope 18:5,20	28:1 37:13	46:21	interpre...	55:2 57:25
35:1 41:18	impact 14:21	increased	48:24 51:2	item 6:6
45:10	27:17	19:10	51:22 52:8	22:16 24:5
hopefully	implicat...	incumbent	52:13	64:19,20
10:6 59:9	57:1	59:18	53:13,16	J
65:1,23	imply 35:16	indicated	54:3 60:21	jail 43:4,8
Horizons 1:8	40:13	10:16 11:7	interpre...	Janet 3:8
9:2 10:9	important	33:10	51:23	4:20 6:5
10:24 11:2	63:3	indicating	60:24	10:19,21
12:23	Importantly	27:6	interpreted	12:24
37:19,20	8:3	indication	49:2	45:19 63:8
45:5,8	impose 41:8	33:15	introduce	64:4
48:10,20	imposed	individuals	12:21	Janet's 6:8
49:5,5	20:20	11:15 13:9	invested	January
53:15 56:2	21:24	15:15 24:9	14:16	52:11,21
56:8 62:15	39:14	33:15	investig...	53:12
65:3	41:18,20	inhabitants	18:2 44:18	Jim 57:17
Hospital	imposing	17:21	invite 22:25	JOHNSON 3:8
24:6 36:12	23:2	initial	involve	Judge 8:3
36:13	impressed	58:12	44:10	July 11:3
42:12,15	65:17	inoperable	involved	12:24
43:13	impression	35:6	37:9	jump 17:11
hours 22:3	35:2	input 38:25	involvement	June 54:1
32:14	improved	inside 15:19	61:23	jurisdic...
47:13	37:17	inspectors	ironic 16:1	60:23
House 9:11	improvem...	54:8	issuance	juxtapose
9:11	38:5	install	62:3	35:21
housing 7:24	incisive	13:23 14:3	issue 25:4	38:20
18:10	59:9	22:12	32:1 33:9	K
huge 59:6	inclined	instance	35:20	K 3:4
hundred	12:9 65:11	45:14	39:19 40:3	keep 24:11
14:16	65:11	47:12 54:9	41:16	25:15
hurt 24:24		integral	47:19	

32:13	41:7 47:20	64:14 65:9	50:17,19	29:9,9,22
42:20	48:10	66:19	51:6,20	30:4,6
kept 15:11	55:24	level 56:1	53:5 60:3	34:20 40:2
kicked 16:24	56:25 57:4	leveled	list 63:6	long-term
41:9	58:10	19:25	65:6	30:18
Kiff 3:8 5:6	60:10,15	levels 22:17	literal	look 15:6
5:7,11,14	63:3	levied 19:24	60:22	17:1 20:13
6:2,3	Kramer 8:23	license	literally	38:4 64:13
18:12,16	64:19	13:18 14:7	38:8 44:25	64:15 66:2
22:23 27:6		16:14 43:2	little 8:1	66:7,21
27:8 33:1	L	45:8,13	10:10,12	looked 13:3
34:15 42:4	lack 19:21	46:17,18	10:19 25:9	18:10
43:15,18	ladies 32:17	46:20 48:5	27:9 42:10	20:19
44:4 45:19	land 59:14	48:5 57:24	48:2 49:23	51:22 54:7
46:9,15	59:16,19	58:2	56:2	looking
47:18,22	60:8	licensed	live 23:10	54:15
48:2 55:5	larger 57:14	7:22,23	26:9 28:1	57:17
55:25	57:15	8:5,19,21	30:11 33:3	looks 49:8
57:14,16	Larry 4:23	8:22 9:4	39:20	Lopez 5:4,5
57:20,22	23:24	11:6,7,10	lives 29:18	30:25,25
58:10,14	lasting	11:14 14:2	living 8:7	31:6,8
60:11,17	42:20	45:6 48:11	8:11 10:5	44:4 45:11
61:19,25	lastly 27:22	49:8,11	15:2 31:18	Los 3:5
62:8,12	28:6	licenses	33:16,25	lose 19:8
63:8 64:4	late 15:3	13:19	35:7,17	45:8
64:9,12,16	38:23	48:15	42:25	lot 28:19
66:23	Laura 2:10	licensure	load 21:9	29:19
kind 21:11	68:21	9:18 46:21	loaded 21:13	50:13
28:25	law 4:5 7:11	Lido 4:15,16	local 7:14	51:20 53:1
40:13	33:7 58:25	9:1	7:14 48:7	54:4 59:23
60:20	61:17	lieu 43:4,8	48:9 55:10	59:25
66:15	laws 7:15	life 12:2	59:18	lots 26:19
kinds 41:7	18:10	41:4	locale 59:15	59:22
43:5	leader 26:11	lifestyle	location	loud 15:4
kitchens	leave 34:11	40:9	9:22 11:3	loved 43:10
35:6	34:16	lifestyles	11:17 50:9	low 52:22
know 12:21	Lee 57:4,6	42:20	50:15,21	LP 1:8
14:23 18:1	legitimate	lights 15:19	50:24 52:2	Lynn 9:11
18:8,14	47:21	limit 21:6	66:25	
20:12	lengthy 4:23	23:2 24:2	locations	M
24:12	24:1	61:21	9:12 33:12	machine 68:9
27:20	letter 4:23	limitation	loiter 26:25	magic 58:24
28:16 30:6	5:14 25:11	47:15	loitering	maintain
32:16,24	53:14,16	limited	21:14	36:6
33:12	54:1,2	26:22 58:4	long 17:1	major 8:7
34:25	let's 12:17	limiting	66:15	making 16:16
37:15	22:24	25:5	longer 45:16	20:10
38:12 40:2	34:16	line 41:1	Longridge	27:12 35:3
	43:23			67:3

male-only 46:23	55:6	money 14:17 14:17 59:6	need 5:1 13:1 17:15	new 9:23 21:23
management 39:14 62:23	mechanism 22:8	month 15:9	17:25	52:22 53:3
Manager 3:8	medical 40:18 42:15	monthly 16:5	38:25	53:8,9
map 10:6 24:4	meet 13:18 19:2 20:11	months 54:1	41:12,15	54:21
maps 19:6	meeting 65:5 66:21	morning 37:25 38:1	44:1 53:18	58:19,20
mark 10:16	meetings 14:1 15:17	Morningside 9:10	53:19	Newport 1:10
marketing 22:8	members 66:23	mothers 40:22	61:16	2:7,7,8
marshall 12:4,6 13:21 22:1 41:15 48:3 48:9 49:1 49:25 50:12,25 51:2,23,24 52:5,11,16 53:13 55:10 56:8 57:3 60:24 61:13	mentioned 12:24 43:12	motions 5:20	64:14	3:3,7,9,10
marshall's 60:21	merely 24:15	motivation 24:13	needed 20:10 54:3	4:1,11,15
marshals 48:23	method 55:16	mouth 22:9	needs 5:21 39:18	5:16 6:20
massive 34:5	methods 55:11,22	move 19:9	45:15 54:7	8:20 9:22
master-p... 60:1	Millsap 2:10 68:21	moved 14:14 35:5,9	64:13	10:12
Mathena 4:23 23:24,24 26:13	mind 24:11 30:1 38:17 40:4 41:1	movement 26:22	negatively 57:9	13:16,21
matter 4:20 12:7 26:20 58:16	mindful 66:7	moving 14:12	negligent 24:23	15:7 16:19
matters 5:1 5:20	minimal 29:12	multi-fa... 9:23	neighbor 20:14 44:17	22:1 26:12
maximum 11:8 36:6	minimum 19:7	Municipal 6:20 10:25	neighbor... 14:13,21 15:5 17:2	27:5,11
mean 25:13 44:1 55:16	minutes 23:2 64:14 66:5	name 23:6,9 23:24 26:8 29:9 30:10 30:25 32:6 33:2 68:17	30:18	30:23 37:4
means 55:6,7 55:11,21	misprono... 55:7	Narconon 8:13 9:16 9:17 10:14	31:24 35:3	37:6,8
meant 35:16	misrepre... 55:7	narrow 59:24	35:10,13	nice 30:18 34:24
measures	mistake 50:12,14	narrowed 63:15	35:14 38:4	nicely 15:11
	mitigate 28:9 34:4	nature 4:14 33:24 66:17	38:5 41:7	Nods 57:9
	mitigated 47:6,16	near 26:2 28:19	59:15,20	noise 19:11
	mode 45:15	necessarily 20:25	neighbors 14:22 15:5 15:12,13	nonpartisan 26:11
	modifica... 64:24	necessary 33:22	16:16	non-conf... 65:12
	moment 22:21		17:16,22	normal 34:1 37:21
			19:10	noted 45:2
			37:18 38:6	notes 64:15
			38:18 41:3	noticed 47:9
			neither 64:2 68:13	notices 9:13
			networked 8:5	notion 21:23
			never 21:14 21:15	number 10:23 11:21,24 19:7 23:3 24:4,5 32:10
			30:19,20	
			neverthe... 34:21 44:2	O
				oath 68:8
				Oberman 26:8 26:9 27:7 27:9,21 59:11 60:6 60:16

Oberman's	18:15	opened 50:2	operator	outcome 61:2
60:18	32:12	54:21	20:15	overall
objection	49:17	58:18	25:10	63:12
34:14	61:23	opening 10:5	27:13	overconc...
objections	65:10	13:15	28:21,23	28:7,10,18
24:2	officers	22:24	53:14	66:4,5,9
obligations	33:5 44:15	54:10	57:11	owned 30:13
20:24	Officer's	openings	operators	36:4
obliged	7:6	50:20 51:6	8:10 9:5	owner 29:11
17:13,13	offices	51:19	17:18	owners 19:15
OBORNEY 3:9	11:12	52:17 53:4	28:12,17	o'clock
observation	13:25	operate 7:24	48:20 53:6	66:25
28:23 29:1	official	9:20,25	53:15	
observe 24:8	51:24	16:14 19:9	54:18	P
24:11,16	55:10,17	39:17	56:24	Pacific 9:9
24:19	off-site	46:17	66:17	package
observed	33:12	66:13	operator's	62:23
51:1	okay 5:9,18	operated	46:17	packet 5:8
observing	17:14	16:15,18	62:18	64:24
24:4	18:14 27:7	18:22	opportunity	page 23:11
obtain 58:12	27:21 31:7	19:20 36:3	6:9 20:4,5	23:12 54:5
obviously	33:1 37:15	operates	29:24 31:2	pages 54:6
16:6 18:19	39:22,23	8:17 35:22	36:22 44:6	55:2 63:14
41:24	41:11 42:4	operating	54:19 66:2	paid 57:12
58:23	46:25	14:24	opposition	panel 13:24
occupancy	51:16 60:6	19:24	5:12	paramount
50:17	61:25	20:14	Orange 13:3	38:16
occupants	62:12 64:9	39:14,21	order 11:22	park 25:14
10:14	old 48:18	41:19	13:18,22	33:11
occur 27:23	older 60:1	45:17	17:12	39:11
occurs 66:10	once 16:3	48:11	20:11 24:7	parking 25:8
Ocean 8:16	30:20 45:1	62:24	36:6 39:18	27:17 32:8
8:17 10:11	54:14	63:13 64:1	49:6 53:17	32:8 33:9
10:13	onerous	operation	58:12	33:11,18
57:16	18:20	7:1 14:11	ordinance	34:4 35:20
offense	21:21	17:2 20:24	6:21 7:14	35:24 47:2
35:15	22:17	39:15	7:19,20	47:16
offensive	ones 43:10	41:23,24	10:18	parks 26:19
24:23	one's 38:17	45:16	18:17,18	parole 32:19
offer 46:22	on-site	46:14	46:16	parolees
offered	33:18	65:17	58:11	43:3,7
54:18	on-street	66:13,18	ordinances	part 4:24
office 48:8	34:4	operational	65:14	16:22
officer 1:9	open 6:10	45:23 64:6	organiza...	21:16,18
4:6,12	8:18 20:7	operations	14:8,11	29:10
6:12,13,16	22:19	45:25	26:11	32:20 33:7
7:4,17	34:12,16	62:18	original	35:11,18
11:19 12:9	55:22	65:16	48:17	38:17
				39:13

45:18	27:15	permits 6:20	45:4 60:12	present 6:4
49:15,16	29:17,21	8:11 44:10	61:7 63:17	presenta...
partake 27:3	30:19	permitted	65:9	6:1,8
participate	32:11	33:11	pointed	12:18,19
20:4	33:16,25	person 14:25	31:11	23:1
particular	34:25,25	personally	Police 15:7	presenta...
14:15	35:2,7	37:2	16:19	67:4
15:25 16:3	36:2,4,15	persons 7:12	population	presenter
20:1,2	36:16 38:7	8:15 11:9	15:2,25	23:3
22:2,6,16	40:3,6,11	11:10	16:6,7	pretty 47:10
23:17 29:1	40:16,22	phonetic	17:18	prevention
35:4 39:19	40:25 41:5	4:22 57:4	19:17	48:8
59:19	42:8 43:4	physical	32:16	previous
particul...	43:5,7,9	38:5	posed 21:2	48:25 49:3
20:19 22:7	50:13	physically	positions	52:13
47:7 51:9	51:18	12:1,4	33:18	previously
60:7	65:20	pick 38:11	44:15	50:11
parties 16:2	people's	39:8	positive	primary
68:15	28:2	place 14:16	15:1 36:19	43:12
parting 42:2	percent 21:4	19:17	possess 47:5	principal
partners	perfectly	25:12	possibly	65:18
13:8	61:24	35:10,18	43:21 52:6	prior 36:3
partying	perform	53:4 66:18	post 65:1	37:16 61:7
37:25	17:10	68:6	potential	68:5,7
pass 13:22	period 31:19	placed 32:18	14:21	private 43:9
passed 26:5	permanent	68:8	22:12	probably
patience	45:13	places 38:11	potentially	28:14
28:22	permanently	plan 39:14	25:1 38:21	29:17,19
patients	36:24	45:17	42:6 44:23	43:19
32:17	permit 6:19	Planner 3:8	49:9 64:18	57:12 61:4
37:11 47:4	7:1,5,21	10:22	precludes	62:9 66:9
PATRICK 3:4	8:6 9:24	Planning	24:20	probation
patterns	10:5,23	44:12,12	predisposed	32:12,19
42:25	11:18,21	play 26:18	56:5	42:8
Paul 5:4,5	12:10	please 23:4	prefer 29:17	problem
pay 43:10	15:23 18:7	23:7 35:15	29:20 62:2	22:16
paying 43:10	19:5 20:20	38:22,23	preliminary	44:17 58:8
peace 17:3	28:13	38:24 44:3	5:20	66:9
35:13	31:22 44:6	plumbers	premises	problems
peninsula	44:11,22	33:23	36:20,21	16:20
32:7,9,11	44:25 45:8	plus 33:16	37:13	29:15 34:5
33:3 51:21	45:12,23	podium 6:11	prepare	proceed
60:10,13	46:2,4,22	point 12:15	66:20	12:17
people 7:24	46:24	13:22 14:4	prepared	22:21,23
15:2 16:23	58:10,13	14:5 16:16	4:20 12:10	22:24
24:8 25:7	61:12,16	24:22 26:4	20:18	proceeding
25:11	62:4,19	30:21	presence	65:21
26:20,25	64:7	34:17 37:1	24:25	proceedings

10:2 68:5	24:19	65:25	reach 61:3,6	8:12,16,17
68:7,9	34:21 61:1	punt 60:20	read 10:7	8:21 9:2,9
process 6:23	61:21	purpose	37:18 51:3	9:10 10:11
7:21 8:6,9	proposed	24:15	51:17,25	10:13 11:4
19:5 20:4	20:20 26:2	58:22	52:13	11:8 13:3
20:11	34:13	put 15:22	reads 11:25	16:22
21:16	46:12 66:3	16:12 17:9	ready 22:21	21:16,18
28:13	protected	19:4 22:14	22:23	31:9 38:17
42:13	7:13	35:19 36:2	real 23:15	40:3 42:23
58:20	proud 35:11	38:21	realize 47:7	50:6 51:14
profanity	provide 6:5	41:12	really 16:9	53:2 57:16
27:1	11:8 22:11	42:18 59:4	25:13 35:9	60:14
professi...	42:17 49:7	66:17	35:12	recovery...
54:7,23	64:21	p.m. 2:8,9	63:21	51:9
program 7:22	provided 5:7	4:2,2 67:5	reason 54:12	refer 42:21
30:6 32:18	8:25		reasonable	reference
32:20 42:9	provider 8:7	Q	7:10,13	35:4
prohibit	42:12	qualified	29:3	referral
62:15	providers	46:9	rebut 6:11	42:12
projects	16:22	question	received	referred
54:24	19:22	21:2 33:18	4:19,20,21	32:2 43:11
prolifer...	42:17,18	42:5 46:10	12:5 21:25	referring
27:24	43:12	52:9,20	53:12	35:2
Promises	provides	56:23	recognition	refine 49:22
43:13	11:4	62:22	12:25	refined 52:9
properties	provision	questions	recognize	reflect
18:23,24	29:23	6:13 12:15	66:8	49:18
19:1 57:18	62:14	20:17	recognized	reflective
property	provisions	22:20 34:7	21:10	6:21
4:15,18	47:10 50:8	39:1 44:5	recognizing	regard 47:10
10:8 11:25	50:9,24	45:10 52:9	49:19	52:25
14:23 16:3	52:23 53:9	quick 56:23	recommend	regarding
16:4 17:1	55:20 63:2	quickly	53:23	25:24
17:3 18:2	proximate	65:24	64:17	29:14
19:15,15	26:17	quiet 17:3	recommen...	regardless
29:10	proximity	quite 35:9	61:5	56:17
30:11,12	10:8 26:10	49:14	recommen...	regular 24:5
30:13	37:2	56:10	64:22	47:13
35:22	public 1:7	quote 24:6	record 4:24	regularly
37:20 38:6	2:6 6:9,10		15:6 23:8	27:25 32:3
45:1 50:9	6:15 7:17	R	57:10 59:2	36:11
50:15,17	22:25	raise 34:7	68:9	regulation
50:19,22	29:23 30:2	raised 39:1	records 15:7	17:17,25
50:24 51:6	30:8 34:12	43:18	recover 13:6	25:25
51:20 52:2	35:24	46:10	recovering	regulations
52:18 53:5	43:22,25	raising 58:7	13:13	13:17
60:3	46:3 62:20	randomly	recovery 1:8	16:12 17:9
propose	64:25 65:5	36:18	4:14 5:16	26:5 52:16
		rated 54:10		

53:21 54:4	replaced	reside 31:1	34:18	57:6
54:6,22	15:10	residence	responsible	route 19:6
rehabbed	report 4:19	19:21	62:11	24:4
15:11	6:1 20:18	42:24 43:1	restaurant	Roy 32:6,6
rehabili...	24:17,21	resident	44:10	32:24
14:17	25:8,18	26:9 32:7	resubmit	RPR 2:10
rehabili...	Reporter	residential	48:17	68:21
26:16	2:11 57:9	6:21,25	result 10:18	Rucker 4:21
reiterate	68:4	9:23 11:3	25:3 63:24	37:18
31:23 40:5	represen...	11:14 14:9	retired 4:8	ruled 52:12
41:17	63:23	14:13 16:4	return 6:11	rules 4:7
relapse	represented	18:22	16:2 34:11	13:17
36:23	27:14	19:25	reveal 18:6	16:12 17:8
relates 12:2	represen...	23:14	revealed	17:22 41:9
relation	7:12 8:10	40:19	18:2	run 14:15
50:16	9:6	41:19	reverberate	45:12 54:9
relation...	request 26:3	42:23 50:4	21:12	57:7 65:16
4:17	28:20	53:1	review 5:10	66:11
relative	45:22 52:8	residents	5:18 44:7	rundown
68:14	requested	17:21	46:1 54:21	15:10
relatively	7:10 14:6	19:12	62:6	runs 45:1
64:20	49:5	23:13 25:7	reviewed	R2 23:14
rely 60:23	requests	28:4 33:6	54:20	
reminding	7:16	33:11,23	reviewing	S
54:1,2	require 22:3	residing	62:23	S3 5
removed	44:11	16:8	revise 46:24	safe 49:19
36:20,21	45:21 46:1	resolution	revised	safety 12:2
36:24	46:3 48:6	63:1,7,18	12:10	53:18 60:7
37:13	62:19	63:18 64:5	revoke 44:23	Santa 8:12
40:17	required	64:21,23	revoked 45:2	satisfac...
renewal	9:14 17:18	65:23	45:9	61:22
48:16	requirem...	66:20	Richards 3:4	saying 51:4
rent 35:22	10:25	resolve 56:9	18:12	52:16
rental 16:4	13:14	59:10	rife 32:2	58:24 59:2
18:22,24	14:19 19:2	resolving	right 5:24	60:6
18:25 19:9	19:4 20:11	58:8	12:14	says 6:24
19:16	25:24	respect	22:19,21	7:11 23:11
rentals 20:1	46:13	27:22	29:12,18	25:12
rented 16:4	65:13	34:19 39:2	32:23	32:17
renters	requires	46:11	34:10	46:13
15:22	45:6	respecti...	41:22 57:8	58:16
19:11,14	requiring	11:11	59:8 60:16	61:12
31:25	8:4 57:1	respond	61:13 62:7	62:18
35:22,23	62:14	22:20 30:3	63:7 64:12	schedule
37:21	researched	response	67:1	36:7
38:22	18:11	5:23 12:16	risk 60:4	scheduled
repeated	researching	34:9 53:25	road 10:12	36:11
44:24	13:14	responses	roughly 14:2	school 24:10
				24:18,20

26:17 27:5	sees 45:20	show 17:8	smaller	44:1 45:19
27:11	Selna 8:3	shows 10:8	57:22	46:16 55:5
28:19 29:5	sensitive	sidewalk	smile 17:14	56:7 63:8
29:15	37:7	28:5 38:13	smoke 21:6	speaker
30:23 37:2	sent 43:8	sign 58:20	25:24 27:1	43:18 58:9
37:5,6,8	53:14,25	significant	28:3,4	speaks 37:2
37:10,10	54:2	43:24	38:9,10,23	special
40:4 41:3	sentencing	44:23	smoking 21:6	18:12
65:18	32:20 42:9	45:18	21:7 27:22	32:18
scope 62:21	serenity	47:20	27:23	64:16
screwed	17:4 35:13	signific...	sober 8:7,11	specialized
56:19	serve 46:20	47:6,17	8:24 9:7	22:3
Sea 8:8,12	serves 13:11	sign-off	10:5 29:17	specific 6:6
second 5:15	service	48:8	29:21	39:5 50:4
21:7,8	13:13	similar	31:18 40:8	50:8 52:10
24:11 33:9	33:21	57:13	40:8,20	58:16
secondhand	43:11	simply 52:18	sobriety	59:20
21:6 25:24	47:12	single 15:9	42:21	specific...
28:3	SERVICES 1:8	16:18 38:8	social 24:15	10:20 13:2
secondly	serving	63:15,17	socially	13:5,9
31:23	24:15	sir 34:15	24:13	25:23 50:5
35:20	set 5:25	35:23	solid 20:14	50:19
section 50:4	16:11	51:10	47:10	51:14
50:7,23	21:23	sit 65:3	solution	52:25
52:1	59:25 68:6	site 9:16	62:5	53:14
see 18:19	setbacks	32:19 65:1	solve 61:20	spell 46:18
19:10	59:24	66:2	somebody	spelled 7:19
21:21	settlement	sites 10:16	39:7 42:14	63:19
22:15	24:19	10:17	59:8	spent 14:2
23:25 24:6	seven 9:12	sitting 60:2	somewhat	52:25
28:16	11:15	situated	18:20	spoken 30:19
38:11	severe 35:5	31:8	sorry 7:7,22	spread 62:25
47:25 49:8	35:9	situation	30:7 31:4	sprinklers
54:23	shape 19:1	28:15	57:20,22	22:12 55:1
56:15 58:6	37:12	29:14	sort 24:20	55:4
61:2,7	shapes 38:15	30:20	31:17,21	square 22:13
64:25	share 12:12	37:17	32:1,9	22:13
seeing 34:11	SHIRLEY 3:9	38:21	53:22	stability
65:18	shocked	47:25	sought 38:3	17:4
seek 16:2	16:25	59:22	sound 65:16	staff 4:19
38:6,9	shocking	six 7:24 8:5	66:12,12	6:1 11:23
42:18	16:25	8:17,18	sounds 21:12	12:10,14
45:22	Shores 9:9	11:10 51:4	47:3	14:10
seeking 40:8	9:10	51:18 52:2	Southern	20:18,19
43:6 57:23	short 64:20	54:1 57:23	8:14 9:16	22:20
58:1	shorthand	58:2,4,5	speak 12:6	24:21 25:7
seeks 42:14	2:10 68:3	small 22:7	23:23 30:9	32:14
45:15	68:10	50:7	31:2 42:10	33:19 38:7

56:1 63:1	stay 7:1	subscribed	system 13:24	testing
64:22	27:16	68:16	14:3 36:17	17:20
staffing	36:21	substances		thank 6:3
17:19	38:23 47:5	27:3	T	10:21 20:9
stage 22:6	Steve 12:6	substantial	take 11:22	22:18
36:5 56:25	48:3 49:15	25:2	12:9 17:1	23:21,22
stake 56:25	49:22,24	successful	32:1 33:5	26:6,8
stand 17:6	55:5	62:5,8	35:15 43:3	27:21
18:4 34:25	sticking	66:14	43:4,5	28:22 29:6
standard	41:23	successf...	59:18	29:7 30:24
26:15,16	street 8:24	56:12	taken 2:6	32:5,25
standards	9:11 10:10	sufficient	13:20	34:6,23
45:7 51:8	21:9,13	58:4	28:14	41:11
standing	23:10	sufficie...	36:22 68:5	43:15,15
16:10	29:21 33:3	45:16	talk 10:19	66:23 67:1
stands 7:23	37:5	suggest	23:4 48:24	67:2
start 25:9	strict 60:23	27:17	talked 15:13	Thanks 30:5
42:19,24	strictly	60:25	54:25 56:1	31:7 46:25
47:23 49:6	55:12	suggested	59:13	49:24
54:11,15	struck 55:12	61:19	62:13	thereof
started	structure	suggesting	64:24	19:21
12:24,25	12:3,5	62:21 64:4	talking	68:12
14:8	14:11	suggestion	14:22	thing 23:10
starting	59:25	65:9 66:1	task 28:8	24:11
53:10	structures	suited 12:1	teachers	25:23
state 7:22	11:25 60:1	12:4	65:18	29:12
11:6 13:17	60:2	superior	team 14:9,10	things 6:16
14:6 17:9	struggle	28:24	tell 15:16	26:13
19:3 40:4	56:16	supervision	15:17,18	33:24
41:1 46:17	struggling	28:24	15:18 17:4	53:22
48:5,7,11	62:2	support	50:18	63:24
48:14	subject 5:16	37:19	53:11,20	64:14
49:20 51:1	9:2,24	supported	55:15	think 23:15
51:23,24	10:8,17	51:24	ten 48:18	23:20 25:1
52:4,11,15	19:16	52:13	tenants	29:13
52:22,23	26:21 27:8	suppose	30:14 32:3	31:11
53:13	28:21	31:21	term 7:11	34:25 40:5
55:10	30:12 52:8	sure 16:16	8:1 9:18	42:5 46:12
56:17,18	subjects	18:15	40:12,15	56:4 58:22
63:15 68:4	34:3	20:10 21:3	terms 17:3	61:18,25
stated 24:3	submit 17:11	42:1 56:10	57:1	62:11,17
24:17 25:6	19:6,7	60:9 63:9	terrible	62:20,22
39:25	submitted	surround	35:8,8,8	63:5,16,21
63:14	24:1 25:6	27:25	terribly	65:8
states 5:14	52:7,7	surveying	38:1	thinking
25:23	55:13	16:16	test 36:17	43:21
61:13	submitting	survival	36:19	Thomas 1:9
status 19:9	55:21	21:22,22	testifying	4:4
			68:8	

thought	22:11	29:17	understood	64:7 65:11
15:12 52:5	59:17	32:12	14:20 52:6	65:12
thoughts	tolerated	turned 53:3	unfortun...	uses 6:25
23:5 33:4	21:14,15	two 5:15	15:22 22:4	44:11
60:18	top 23:12	8:16 30:14	22:16 27:2	55:12
thousand	tot 26:19	31:9 36:2	unit 11:11	59:14
14:16	totally	37:3 45:10	13:25,25	66:10
24:18	24:21	48:16,18	34:1 35:7	utilized
30:22	touched 40:5	48:18 50:8	36:4	11:11
three 6:16	town 8:7	50:8,24	units 11:9	U.S 8:3
10:3 23:2	9:25	52:9	30:15	
25:8 30:15	track 32:13	two-step	33:17	V
three-unit	traffic	42:13	UNKNOWN 58:9	valid 25:25
11:9	19:11	type 7:20	unlicensed	49:3
throw 28:4	32:13	50:17	8:24 9:7	Valley 36:14
Thursday	transcribed	types 40:25	unload 21:9	values 17:3
1:11 2:9	68:10	44:11	unloaded	van 21:9
4:1	transcri...	typical	21:13	23:6,9,9
time 6:8,13	68:12	23:13	unpleasant	25:17,20
6:14 10:1	transmitted	typically	38:2	25:22
15:16,17	4:22 5:6	21:8 22:9	unquote 24:6	36:10,10
15:18,19	trash 21:16	39:8 42:12	upper 60:12	39:9
20:9 22:5	treated	42:13,15	use 6:19,20	vans 32:10
23:2 31:20	40:24	42:21 43:9	7:1,5,21	47:11
34:12	treatment	44:16	8:6,11	variety
43:22 45:3	7:23 8:22		9:24 10:23	44:19
48:12,22	8:25 9:4	U	11:13,16	various 4:10
48:23	9:10 11:4	ultimate	11:17,18	63:14
49:11 50:2	11:8,12	59:12	11:21 12:1	vastly 19:10
53:1 54:20	14:9 45:6	unable 12:3	12:4,10	37:17
55:20	50:6 53:2	uncertainty	13:25	vehicle 19:7
58:17	tried 30:20	64:1	15:23 18:6	39:12
61:21 62:5	trip 36:11	unclear	19:5 23:12	vehicles
63:25 65:2	triplex	31:17	24:20 27:3	33:12
66:15 67:2	37:21	uncontro...	28:13	39:10 47:5
67:5 68:6	trips 19:7	15:3	31:21	verbatim
times 15:9	24:5 36:11	undersigned	33:10	68:8
49:15	trucks 47:11	68:3	35:24	viable 61:14
tiny 44:9	true 46:14	understand	36:23 44:6	61:15
today 6:16	46:15	13:15	44:9,10,11	vicinity
9:3 12:7	47:23,24	20:24	44:22,25	4:17
16:11 17:6	63:7	41:16	45:8,22	Village 4:16
18:4,8	truthfully	47:22	46:22,24	violation
64:24,25	55:19	49:13 59:5	47:2 56:11	44:24 45:3
Today's 6:7	try 13:6	60:5 61:25	57:7 58:12	virtually
told 13:22	29:11 56:8	63:9	58:16,21	22:14 45:2
14:4 16:13	65:3	understa...	59:16,19	virtue 16:21
16:21	trying 28:9	14:12	62:4,15,19	voicetrous
		31:14,15		15:4

W	15:9	30:14	33:17	\$5 22:13
W 1:9 4:4	weekends	33:15 36:5	41:22	\$500 44:20
walk 37:11	47:13	36:6 56:1	works 36:12	\$7,000 14:2
walking	weekly 16:5	62:13	work-around	\$8 57:7
29:21	well-sup...	whatsoever	49:18	
wall 50:18	26:23	16:20	worthy 14:18	0
50:21 51:5	went 13:14	22:16	18:6	08 52:11, 21
52:17 54:9	13:19, 20	WHEREOF	wouldn't	54:1
54:10, 10	14:6, 10, 22	68:16	28:14 58:3	
walls 50:16	30:7	whichever	63:25	1
want 28:16	weren't 61:6	54:19	woven 62:25	1 24:5
29:11	West 8:18, 21	whipping	wrap 41:12	1st 5:4
30:21	10:4 24:17	32:10	wrap-up	1/2 31:1, 6
31:10 32:3	30:11 31:1	willing	32:23	10th 66:24
34:20	31:6 57:21	58:21, 25	written 24:2	1053 10:4
35:18, 18	we'll 5:18	61:9	25:18	11 9:3 11:8
38:24 40:5	5:24 10:7	wind 44:16	62:10 65:7	23:12 25:6
40:21	25:21	windows 35:6	wrong 30:23	25:7 33:15
41:11	34:11 48:3	wish 12:18	wrote 56:19	33:25
54:19 55:5	61:20	23:1, 4, 23		11-bed 10:9
63:8, 9, 25	65:24	34:7 41:4	Y	1119 30:11
wanted 12:20	66:21 67:2	45:24	Yeah 57:16	1125 31:1, 6
31:23	we're 12:22	wishes 5:10	57:25 60:5	1134 24:16
32:16	16:22, 23	WITNESS	64:10	12 8:23
56:21	16:23	68:16	year 53:12	1216 8:21
58:10	19:15 23:2	witnesses	years 4:9	16 10:13
wasn't 42:5	29:22	68:7	12:23	17 54:5 55:2
47:8	35:11, 12	women 13:2, 5	16:18	
Watson 3:4	35:17	13:13	20:15	2
18:13	41:23	46:20	29:16	2:30 37:24
way 10:3	49:16, 19	women's	30:13, 15	20 47:8
19:1 28:11	54:11, 23	13:11, 11	30:16	59:23, 23
36:3 37:12	55:22	Wood 30:10	48:16, 18	20.91 6:20
40:13	58:19 62:8	30:10	48:18, 18	2001 50:2
52:15 60:9	62:21	word 22:9	56:19	52:19
60:13	64:16	words 11:15	Yellowstone	2002 50:25
61:12	we've 4:19	63:2, 5	8:12, 19	52:14
ways 38:15	12:22	65:21	Yep 27:9, 9	2004 11:3
44:19	16:21 17:2	work 4:11	young 37:3	12:24
54:16	18:3, 16	20:5, 6	37:22	2007 52:7
Web 9:16	19:2 20:7	41:15		2008 1:11
54:5 65:1	21:13, 14	47:25 56:8	Z	2:9 4:1
66:2	21:15, 24	56:10 61:2	zone 9:24	6:22 8:4
Wednesday	21:25	61:19, 20	zoning 23:14	49:10
64:18 65:5	27:19	64:3 65:3		2008-005
65:23	28:18	worked 20:7	\$	58:11
66:21, 24	29:12, 13	61:22	\$100 44:20	2008-032
week 5:17	29:16	working	\$12,000 57:7	10:23
			\$4 22:12	2008-05 6:22

7:20	5:30 2:9 4:2			
2009 9:14	38:1 67:5			
2010 9:19	508 10:4			
204 8:12	56 8:13			
213 3:6				
22nd 7:2	6			
10:25	6 11:24 24:5			
22-bed 10:10	60:4			
220 9:6	60 30:13			
23rd 9:13	626-8484 3:6			
24 32:14	644-3002			
24-hours	3:10			
38:8				
24-7 17:20	7			
24/7 38:7	7 23:12			
27 8:14				
28th 8:23	8			
29 8:22	8-year-old			
29-bed 10:11	37:3			
3	9			
3 60:2	9 23:11, 11			
30 4:9 59:23	90 21:3			
30-day 27:16	39:12			
3300 2:7 3:9	900 10:4			
3388 9:1	90071-3101			
350 27:10	3:5			
355 3:5	92658-8915			
38 8:16	3:10			
39th 9:11	9266 2:11			
33:3	68:22			
	949 3:10			
4				
4 1:11 2:9				
4:1 66:25				
4:00 2:8 4:2				
40th 3:5				
23:10				
400 8:10, 20				
49 8:15				
10:14				
5				
5 23:13 51:5				
51:19				
52:17 53:5				
5,000 22:13				
5-year-old				
37:4				