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1 That it shouldn't be considered by -- it shouldn't be a  
2 consideration by you to say, "See what else is in that  
3 block."

4 MR. ALLEN: Okay. Thanks.

5 So, I mean, your proposed changes to my  
6 proposal is perfectly acceptable.

7 I have one other issue, and that was with, I  
8 believe, Finding Number 1 with this Resolution. And that  
9 was that the proposed location of the use -- I'm sorry.  
10 That was -- it was the -- it was the finding in reference  
11 to the 21 -- yes. Finding number 1.

12 MR. KIFF: Finding number 1 of -- let me catch  
13 up with you here.

14 MR. ALLEN: 21.91.035(a).

15 MR. KIFF: Okay. Property is located --

16 MR. ALLEN: I failed to mention, as I try to  
17 remember to do, that people should turn their cell phones  
18 off. Thank you.

19 MS. BROWN: Section 1.

20 MR. KIFF: Section 1, okay.

21 MR. KIFF: Okay. So Finding 1 of Section 1?

22 MR. ALLEN: And possibly you missed my e-mail  
23 or something on this, but my feeling was that this is the  
24 requirement in .035 that allows -- that gives  
25 consideration to whether to allow a use permit to be

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1 considered. And you can't even consider a use permit if  
2 the use is not in accordance with the objectives of this  
3 code was the way I read that.

4 And that, therefore, if overconcentration was,  
5 in fact, in existence here or would occur as a result of  
6 this use, then that would not constitute this use being  
7 in accordance with the objectives of the code.

8 MR. KIFF: I hear what you're saying.

9 MR. ALLEN: If you rejected that recommendation  
10 of mine, then I wanted to consider that, if you did.

11 MR. KIFF: Give me and Janet or moment to two  
12 to take a second to look at that.

13 (Pause in proceeding.)

14 MR. KIFF: Mr. Allen?

15 MR. ALLEN: Yes.

16 MR. KIFF: After conferring, because you have  
17 directed to us make a finding -- prepare a Resolution of  
18 Denial, and, in your judgment, the denial relates  
19 specifically to accordance with the objectives of the  
20 code and the purposes of the district, we would then  
21 change this finding to one that cannot be made.

22 And I think, as you expressed at the last  
23 hearing, this is a challenging application and a  
24 challenging issue. So I would -- if you give me a few  
25 minutes, I'll propose some wordsmithing to that, and you

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1 could just address us to adjust this finding, and then  
2 prepare it with the statement that that cannot be made,  
3 and then can you come in and execute the Resolution with  
4 that finding adjusted that way.

5 MR. ALLEN: I would prefer the latter.

6 MR. KIFF: Okay. I would, too.

7 MR. ALLEN: Okay. Let's do it that way. And  
8 with that, I don't have any other concerns. As I  
9 mentioned in our e-mail, I thought that the Resolution  
10 was well drafted and addresses all the issues that need  
11 to be addressed.

12 MR. KIFF: Okay.

13 MR. ALLEN: So that concludes this agenda item,  
14 unless staff or anyone has any further comments.

15 MR. KIFF: No, we don't.

16 THE COURT: Thank you.

17 MR. KIFF: All right. So our next item is  
18 Kramer Center of Newport beach, 207 28th Street. And  
19 this hearing is continued from a previous hearing on -- I  
20 believe it was December 10th.

21 And I see a gentleman at the podium. Would you  
22 like to address us, sir?

23 MR. COOKSEY: Yes, Mr. Allen. My name is David  
24 Cooksey. I'm an attorney from Costa Mesa. I am  
25 representing the Kramer Center.

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1 I just this afternoon received the  
2 recommendations from the staff, and I am not totally  
3 familiar with them. What I would seek at this time is a  
4 continuance of this hearing so that I may familiarize  
5 myself with the material, confer with Mr. Kiff, and see  
6 if there are some problems that we can iron out and  
7 possibly come to a resolution.

8 Not knowing the full scope of the problems,  
9 it's difficult for me to address the merits of it at this  
10 time. So I'd ask the matter be continued to a date.

11 I don't know what the timing is on future  
12 hearings, but with the exception of the first week in  
13 February, I can generally make myself available to meet  
14 with the City and try to get a resolution put together.

15 MR. ALLEN: What position does the City staff,  
16 legal staff, have with respect to continuing this matter?

17 I want to preface their comments, however, by  
18 saying that this is the second hearing for this item, and  
19 this item has been before the City since last summer, I'm  
20 quite certain.

21 And the issue here is that there are a lot of  
22 citizens who are very interested in these uses in their  
23 neighborhoods. And they give us their time to come to  
24 these hearings to assert their position and make their  
25 comments.

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1           This is very late for someone to come forward  
2 and now ask for a continuance on the basis that it so  
3 inconveniences so many people and City staff.

4           So with that preface, however, I'd certainly  
5 like to hear from staff insofar as their position.

6           MR. COOKSEY: By the way, I make apologies to  
7 those citizens who would be inconvenienced by such a  
8 continuance. I was the attorney representing Kramer  
9 Center in two federal lawsuits that involved the City of  
10 Newport Beach, both of which have been resolved as to the  
11 Kramer Center.

12           So I'm not totally new to the game, but with  
13 this CUP process, that is fairly new to me. I haven't  
14 dealt with it before.

15           MR. ALLEN: Okay.

16           MR. KIFF: Mr. Allen, the thoughts that you  
17 expressed about the folks in the audience and their  
18 interest in this item, I respect that. I also believe  
19 that in order for this process to remain effective, we do  
20 need to give the applicant and applicant's Counsel the  
21 time they need to review this material. Although, I will  
22 say what we did pretty good about posting it on time.

23           You said you're out next week?

24           MR. COOKSEY: First week in February.

25           MR. KIFF: Potentially, if you wanted to ask

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1 some questions about the application, maybe if you had  
2 some time tomorrow, potentially before you  
3 leave -- although we have another week, don't we?

4 MR. COOKSEY: Yes.

5 MR. KIFF: So the first week of February, we do  
6 have some hearings set up the 5th, and then the 12th, and  
7 I'll explain that in a little bit.

8 But so potentially, if you were amenable,  
9 Mr. Allen, maybe we could reschedule this for a week from  
10 today, potentially -- staying still staying in January?  
11 Because otherwise, we're talking about three weeks away.  
12 And if I could make myself available to meet with you as  
13 early as tomorrow or Monday --

14 MR. COOKSEY: All right. I know I'm free on  
15 Monday. I could meet with you on Monday.

16 MR. KIFF: Do you think a week from today seems  
17 reasonable to reschedule the hearing?

18 MR. COOKSEY: I hate to reschedule and then  
19 reschedule it again. Do these hearings take place always  
20 on a Thursday?

21 MR. KIFF: No, they don't. Depending on the  
22 availability of the room and Mr. Allen's availability, we  
23 are running up against the deadline of February 22 by  
24 which we need to have determinations hopefully on as many  
25 of the existing operations as possible, if not all of

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1       them.

2               So my goal is to allow, potentially -- if we  
3       schedule the hearing for next Thursday, and held the  
4       hearings, Mr. Allen has been very amenable to taking  
5       public comments and continuing things.

6               But I just don't want to get all jammed up near  
7       the end of February and overwhelm him and staff and the  
8       public and the applicant's with the hearing after  
9       hearing.

10              So my preference would be to try to stick with  
11      the week from today, if that's amenable to you.

12              MR. COOKSEY: I guess it will be amenable to  
13      me.

14              MR. ALLEN: And that would be the same time the  
15      Ocean Recovery hearing?

16              MR. KIFF: Ocean Recovery we've had to move  
17      back a week, so this would just be Kramer Center.

18              MR. ALLEN: Okay.

19              MR. KIFF: So we have the room reserved, don't  
20      we..

21              MR. ALLEN: Okay. Good. All right. Well  
22      then, if that's the position of the staff, then it would  
23      be appropriate to continue.

24              However, what I believe should always be done  
25      in instances like this is if there is someone here in the

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1 public who needs to speak to us who cannot be here a week  
2 from today, and I mean that sincerely, that this wouldn't  
3 be another opportunity just to talk about it, but if any  
4 of you cannot be here a week from today and need to make  
5 your comments for the record now, you're welcome to do  
6 so. But I would discourage it, but on the other hand,  
7 you should all have a chance to be heard one way or the  
8 other.

9 I see Mr. Mathena.

10 MR. MATHENA: Yes.

11 MR. LISKIN: What date again?

12 MR. ALLEN: January 29th, correct?

13 MR. KIFF: 4 o'clock on the 29th, a week from  
14 today.

15 MR. ALLEN: If you can't be here, you're  
16 welcome -- you realize --

17 MR. MATHENA: I can't be here.

18 MR. ALLEN: Okay. Well, you're very good about  
19 putting your comments in writing, and they are well done.  
20 And so if you need to say something, say it.

21 MR. MATHENA: A couple different points.  
22 Number one, I have reviewed this file in depth. I have  
23 looked at -- and actually, the City's superhuman efforts  
24 in attempting to get that out of this applicant, getting  
25 it, having an initial proceeding, naming a date for this,

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1 timely delivering the proposed -- the staff findings --

2 MR. ALLEN: I'm sorry, Mr. Mathena. But we  
3 need -- if you can't -- if you need to make comments  
4 about the substance of the application, that's what I  
5 think we should hear today, and the public hearing is for  
6 this purpose.

7 MR. MATHENA: My point in this is you are  
8 precluding me from doing so. And you are precluding me  
9 from so in a circumstance where, frankly, I rearranged my  
10 schedule in light of Ocean Recovery's hearing, and in  
11 light of his changing, and in light of it -- and now  
12 you're telling me I have to go back.

13 And you're doing it in a context where you have  
14 met due process in this readily, multiply. And  
15 using -- having an applicant throw "We hired an attorney  
16 yesterday at this," my God, I wish that you were doing  
17 the reviews of any other permit, because I'd eventually  
18 get it done just out of attrition.

19 I want this on the record. I want a copy of  
20 this transcript. I want an agenda of all the items that  
21 happened and when they happened. Because I personally,  
22 if this does pass, will appeal it, especially in light of  
23 the appropriate staff findings. Personally I will appeal  
24 it.

25 MR. ALLEN: Thank you.

1 MR. MATHENA: And I want that in the record.

2 Thank you.

3 MR. ALLEN: Sir, if you can't be here at the  
4 next time, and if you have to have --

5 MR. LISKIN: You know, my name is Matt Liskin.

6 MR. ALLEN: We cannot have more argument on  
7 continuing this matter. It's going to be continued.

8 MR. LISKIN: You know what? Sir, with due  
9 respect, I, and all these citizens, came here. And just  
10 because this gentleman and this organization -- it's  
11 inconvenient and they are not prepared, I'm not going to  
12 guess if I'm available next week. I'm here now, and I'd  
13 like to make a comment.

14 And my comment, which I think is significant,  
15 is that if you do review the file, which I have done, and  
16 if you take today into context, it's consistent with this  
17 operator really not doing a good job being responsible  
18 just in the process.

19 And what I think is pertinent is, how can they  
20 be responsible in the care of troubled people in the  
21 community when, once again, they can't be responsive to  
22 the City or to all these people who interrupt their day  
23 to come here to get resolution to what is a difficult  
24 issue?

25 That is a core competency issue in terms of

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1 running any business, and that's being responsible from a  
2 regulatory point of view. And in the case of health  
3 care, it's paramount. And I don't believe that the  
4 argument of, "Well, I got this file today, because they  
5 just hired me today," says very good things about this  
6 operator's ability to work with this community -- and  
7 I've made that comment about other operators -- but more  
8 importantly, about how they must be caring for their  
9 patients.

10 This is black-and-white stuff. You fill it  
11 out. Drug patients have a multitude of problems which  
12 have to be solved in a very careful and thoughtful way.  
13 And I think careful and thoughtfulness is anything but  
14 what we're seeing with the conduct of this operator.

15 MR. ALLEN: Okay. Thank you. That's a valid  
16 comment.

17 MR. LISKIN: Thank you.

18 MR. ALLEN: All right. So there's been a  
19 request by the applicant to continue this matter. Staff  
20 and the applicant's attorney has spoken here on the  
21 record here, and it's agreed that this matter, Kramer  
22 Center, 28th Street, will be continued to January 29th at  
23 4 p.m. And at that time, it will go forward.

24 All right. Any other business? I believe  
25 there's some business about the Ocean Recovery matter

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1 that needs to be focused on.

2 MR. KIFF: Let me just briefly tell the  
3 audience the upcoming group residential hearings.

4 Ocean Recovery is confirmed for February the  
5 5th. So same room, 4 o'clock. They will have two  
6 properties up at once, 1601 West Balboa and 1115 West  
7 Balboa.

8 Yellowstone Recovery, and they have four  
9 properties in Santa Ana Heights. This is a combined use  
10 permit and reasonable accommodation hearing. That is  
11 schedule for Thursday, February 12th. So a week later,  
12 same location, same time.

13 And there are others pending. Pacific Shores  
14 Recovery. That will -- they are approaching us with a  
15 reasonable accommodation hearing.

16 There's an organization called Balboa Recovery  
17 that has three unlicensed treatment homes they are  
18 proposing to ask for reasonable accommodation.

19 And then finally, Morningside Recovery has told  
20 us that they intend to ask for reasonable accommodation  
21 on some locations, and then potentially involving a use  
22 permit hearing for locations in a multi-family zone.  
23 That would be new locations.

24 MR. ALLEN: Okay. So the certain times right  
25 now are January 29th for Kramer, February 5th for Ocean

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1 Recovery, and February 12th for Yellowstone?

2 MR. KIFF: That's right.

3 MR. ALLEN: All right. Is there any other  
4 business to come before the hearing officer or hearing  
5 matters that the audience should be aware of?

6 MR. KIFF: I would make one final note,  
7 Mr. Allen. A number of folks have asked for the  
8 transcript from these hearings. And we're remiss in not  
9 putting them up on the Web site. I will do that for each  
10 of the hearings we've held and on a going-forward basis  
11 when we receive those transcripts. Those are available  
12 to the public, to the applicant, to anyone else who wants  
13 to see them.

14 MR. ALLEN: Thank you. And with that, we're  
15 adjourned.

16 (Ending time: 4:28 p.m.)

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I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

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

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

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

Dated: 1-26-09

  
\_\_\_\_\_  
Laura A. Millsap, RPR  
CSR No. 9266

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**Signed, Final Resolution (2/4/09)**

**RESOLUTION NO. HO-2009-001**

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP RESIDENTIAL USE TO CONTINUE AT 1216 WEST BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA (PA2008-104)**

**WHEREAS**, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

**WHEREAS**, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

**WHEREAS**, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

**WHEREAS**, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

**WHEREAS**, Newport Coast Recovery, located at 1216 West Balboa Boulevard ("Use Location") in Newport Beach, California is today a group residential care facility in an apartment complex housing seven units that is a state-licensed alcohol or drug residential treatment home for up to 29 persons (ADP License No. 300156AP); and

**WHEREAS**, Newport Coast Recovery ("Use") applied for Use Permit No. 2008-033 to continue its operations as an 18 bed facility under Ordinance No. 2008-05 within the applicable time period, and a noticed public hearing was held on Monday, December 8, 2008, at the Newport Beach City Council Chambers where public testimony was taken, including testimony from the applicant, and this hearing was continued to Monday, January 12, 2009, also at the Newport Beach City Council Chambers where more public testimony was received including testimony from the applicant; and

**WHEREAS**, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the Use Location is within the Nonstandard Subdivision Area as defined by Ordinance No. 2008-05; and

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**WHEREAS**, proximate to the Use Location are the following uses referred to in NBMC §20.91A.060 (D):

1. Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
2. Within 300 feet and across the street: Newport Elementary School for students in grades Kindergarden through 5<sup>th</sup> grade at located 1327 West Balboa Boulevard.
3. Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
4. Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15<sup>th</sup> Street and Fry's Market located at 115 E. 15<sup>th</sup> Street.

**NOW THEREFORE BE IT RESOLVED:**

**Section 1.** That Finding No. 3 of NBMC §20.91.035 (A) can be made for the following reasons:

**NBMC §20.91.035 (A) Finding No. 3:** That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Findings A and B of the NBMC §20.91A.060 and as described in Section 2 below.

**Section 2.** That Findings A - C and Findings E - G of NBMC §20.91A.060 can be made for the following reasons:

**NBMC §20.91A.060 Finding A:** The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

1. **No secondhand smoke can be detectable outside the property.**

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

- 2. Operations of the facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.**

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

- 3. A contact name and number must be provided to the City.**

Appropriate names and contact information numbers are provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

- 4. No services requiring a license can be provided if the facility does not have a license for those services.**

The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.

- 5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**

The facility is licensed for a maximum occupancy of 29 residents. The facility contains 9 bedrooms currently occupied by two persons per bedroom for a total of 18 residents. Approval of a use permit for the facility would include a condition of approval requiring the applicant to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.

- 6. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

Approval of a use permit for the facility would include a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification.

7. **All individuals and entities involved in the facility's operation and ownership must be disclosed.**

All employees and management personnel have been disclosed in the application documentation.

8. **No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of state violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010. While residents submitted evidence that the same operator managed an unlicensed adult recovery maintenance facility at 1219 West Balboa for a period of time, the City is not aware that this facility, which did not provide treatment onsite, was operated in violation of the law.

**NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work).

Newport Coast Recovery conducts regular family counseling sessions on weekends. Familial counseling for non-residents, while being an important part of the recovery of resident clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. The use of on-street parking by

the facility on weekends impacts the availability of on-street parking for use by residents of the neighborhood.

This finding could be made if a condition of approval is made part of the Use Permit requiring the applicant to : (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles; (3) require that all on-site spaces remain permanently clear and open for parking; (4) require all staff members to use the on-site parking for personal cars and transport vans; and (5) regulate family counseling activities including prohibiting family members from using on-street parking when visiting the facility and requiring either the use of on-site parking by family members visiting the facility or the use by family members of alternative transportation modes to and from the facility.

**NBMC §20.91A.060 Finding C: The property and existing structures are physically suited to accommodate the use.**

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

**NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and

than the narrower alley access at the rear of the building. Approval of a use permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double-parking in a traffic lane.

**NBMC §20.91A.060 Finding F:** Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

**NBMC §20.91A.060 Finding G:** Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

**Section 3.** That Findings Nos. 1, 2, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

**NBMC §20.91.035 (A) Finding No. 1:** That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

This proposed project is only partially in accord with the objectives of this code and the purposes of the district in which the site is located. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit 2008-033 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The intensity of the use, if limited to 14 residents housed in 9 bedrooms with 2 persons per bedroom, would be consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. However, the *subject property's proximity to another residential care facility at 1132 West Balboa Boulevard, to a large state-licensed day care facility at 1400 West Balboa Boulevard, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood.* The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is not in accord with all of the objectives of this code and the purposes of the district in which the site is located due to the proximity of the proposed use to another residential care facility at 1132 West Balboa Boulevard, to Newport Elementary School, to the large state-licensed day care facility, and to alcoholic beverage sales and service facilities; and therefore, this finding cannot be made.

**NBMC §20.91.035 (A) Finding No. 2: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

General Plan policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Testimony by an adjacent neighbor and other area residents includes statements that residents at this facility have been disrespectful to others in the neighborhood, including playing music loudly despite frequent requests not to do so, littering, using profanity, and allowing excessive secondhand smoke to

permeate adjacent residences. From this testimony, it does not appear to the City staff that the operator can adequately control the facility's caseload of clients in a manner that allows the neighbors to have quiet enjoyment of their properties.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

**NBMC §20.91.035 (A) Finding No. 4:** If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

This proposed project is only partially consistent with the purposes specified in Chapter 20.91A and does not conform to all the requirements of that Chapter. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-033 is in accord with the purpose and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The intended purpose of the code is to maintain the residential character of the neighborhood within which a facility is located, to reduce the potential for overconcentration of residential care facilities within a neighborhood, and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood and would result in an overconcentration of residential care facilities within the neighborhood.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300

Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between each side of Balboa Boulevard. However, the Hearing Officer can extend beyond smaller streets like 12<sup>th</sup> and 11<sup>th</sup> Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3.) to achieve a 617-foot block standard.

Within the 617-foot block where the proposed use is located there is already one 11 bed residential care facility (Balboa Horizons). The proposed use located at 1216 West Balboa Boulevard, within the same block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood.

The subject property's proximity to another residential care facility at 1132 West Balboa, to a large state-licensed day care facility at 1400 West Balboa, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is only partially consistent with the purpose of the code and does not conform to all the requirements of Section 20.91A; and therefore, this finding cannot be made.

**Section 4.** That Finding D of NBMC §20.91A.060 cannot be made for the following reasons:

**NBMC §20.91A.060 Finding D:** The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa

2. **The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and**
3. **Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.**

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard, and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The subject property is proximate (within 1250 feet) to two outlets for alcoholic beverages (American Legion Hall at 215 15<sup>th</sup> Street and Fry's Market at 115 15<sup>th</sup> Street) both within walking distance from the facility which allows residents of the use convenient access to alcohol sales and service which can affect the ability of the use to fully operate as an alcohol rehabilitation facility.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, the Hearing Officer may establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between blocks on each side of Balboa. However, the Hearing Officer can extend beyond smaller streets like 12<sup>th</sup> and 11<sup>th</sup> Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3) to achieve a 617-foot standard.

The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood. Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons).

**Section 5.** The Hearing Officer hereby denies with prejudice Use Permit No. 2008-033.

**Section 6.** The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED** this 4<sup>th</sup> day of February, 2009.

By: *Thomas W. Allen*  
Thomas W. Allen, Hearing Officer

**ATTEST:**

*Rebecca L. Brown*  
City Clerk



**RESOLUTION NO. HO-2009-001**

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP RESIDENTIAL USE TO CONTINUE AT 1216 WEST BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA (PA2008-104)**

**WHEREAS**, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

**WHEREAS**, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

**WHEREAS**, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

**WHEREAS**, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

**WHEREAS**, Newport Coast Recovery, located at 1216 West Balboa Boulevard ("Use Location") in Newport Beach, California is today a group residential care facility in an apartment complex housing seven units that is a state-licensed alcohol or drug residential treatment home for up to 29 persons (ADP License No. 300156AP); and

**WHEREAS**, Newport Coast Recovery ("Use") applied for Use Permit No. 2008-033 to continue its operations as an 18 bed facility under Ordinance No. 2008-05 within the applicable time period, and a noticed public hearing was held on Monday, December 8, 2008, at the Newport Beach City Council Chambers where public testimony was taken, including testimony from the applicant, and this hearing was continued to Monday, January 12, 2009, also at the Newport Beach City Council Chambers where more public testimony was received including testimony from the applicant; and

**WHEREAS**, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the Use Location is within the Nonstandard Subdivision Area as defined by Ordinance No. 2008-05; and

**WHEREAS**, proximate to the Use Location are the following uses referred to in NBMC §20.91A.060 (D):

1. Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
2. Within 300 feet and across the street: Newport Elementary School for students in grades Kindergarden through 5<sup>th</sup> grade at located 1327 West Balboa Boulevard.
3. Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
4. Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15<sup>th</sup> Street and Fry's Market located at 115 E. 15<sup>th</sup> Street.

**NOW THEREFORE BE IT RESOLVED:**

**Section 1.** That Finding No. 3 of NBMC §20.91.035 (A) can be made for the following reasons:

**NBMC §20.91.035 (A) Finding No. 3:** That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Findings A and B of the NBMC §20.91A.060 and as described in Section 2 below.

**Section 2.** That Findings A - C and Findings E - G of NBMC §20.91A.060 can be made for the following reasons:

**NBMC §20.91A.060 Finding A:** The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

1. No secondhand smoke can be detectable outside the property.

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

- 2. Operations of the facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.**

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

- 3. A contact name and number must be provided to the City.**

Appropriate names and contact information numbers are provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

- 4. No services requiring a license can be provided if the facility does not have a license for those services.**

The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.

- 5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**

The facility is licensed for a maximum occupancy of 29 residents. The facility contains 9 bedrooms currently occupied by two persons per bedroom for a total of 18 residents. Approval of a use permit for the facility would include a condition of approval requiring the applicant to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.

- 6. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

Approval of a use permit for the facility would include a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification.

7. **All individuals and entities involved in the facility's operation and ownership must be disclosed.**

All employees and management personnel have been disclosed in the application documentation.

8. **No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of state violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010. While residents submitted evidence that the same operator managed an unlicensed adult recovery maintenance facility at 1219 West Balboa for a period of time, the City is not aware that this facility, which did not provide treatment onsite, was operated in violation of the law.

**NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work).

Newport Coast Recovery conducts regular family counseling sessions on weekends. Familial counseling for non-residents, while being an important part of the recovery of resident clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. The use of on-street parking by

the facility on weekends impacts the availability of on-street parking for use by residents of the neighborhood.

This finding could be made if a condition of approval is made part of the Use Permit requiring the applicant to : (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles; (3) require that all on-site spaces remain permanently clear and open for parking; (4) require all staff members to use the on-site parking for personal cars and transport vans; and (5) regulate family counseling activities including prohibiting family members from using on-street parking when visiting the facility and requiring either the use of on-site parking by family members visiting the facility or the use by family members of alternative transportation modes to and from the facility.

**NBMC §20.91A.060 Finding C: The property and existing structures are physically suited to accommodate the use.**

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

**NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and

than the narrower alley access at the rear of the building. Approval of a use permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double-parking in a traffic lane.

**NBMC §20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

**NBMC §20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

**Section 3.** That Findings Nos. 1, 2, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

**NBMC §20.91.035 (A) Finding No. 1: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.**

This proposed project is only partially in accord with the objectives of this code and the purposes of the district in which the site is located. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit 2008-033 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The intensity of the use, if limited to 14 residents housed in 9 bedrooms with 2 persons per bedroom, would be consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. However, the subject property's proximity to another residential care facility at 1132 West Balboa Boulevard, to a large state-licensed day care facility at 1400 West Balboa Boulevard, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is not in accord with all of the objectives of this code and the purposes of the district in which the site is located due to the proximity of the proposed use to another residential care facility at 1132 West Balboa Boulevard, to Newport Elementary School, to the large state-licensed day care facility, and to alcoholic beverage sales and service facilities; and therefore, this finding cannot be made.

**NBMC §20.91.035 (A) Finding No. 2: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

General Plan policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Testimony by an adjacent neighbor and other area residents includes statements that residents at this facility have been disrespectful to others in the neighborhood, including playing music loudly despite frequent requests not to do so, littering, using profanity, and allowing excessive secondhand smoke to

permeate adjacent residences. From this testimony, it does not appear to the City staff that the operator can adequately control the facility's caseload of clients in a manner that allows the neighbors to have quiet enjoyment of their properties.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

**NBMC §20.91.035 (A) Finding No. 4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.**

This proposed project is only partially consistent with the purposes specified in Chapter 20.91A and does not conform to all the requirements of that Chapter. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-033 is in accord with the purpose and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The intended purpose of the code is to maintain the residential character of the neighborhood within which a facility is located, to reduce the potential for overconcentration of residential care facilities within a neighborhood, and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood and would result in an overconcentration of residential care facilities within the neighborhood.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300

Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between each side of Balboa Boulevard. However, the Hearing Officer can extend beyond smaller streets like 12<sup>th</sup> and 11<sup>th</sup> Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3.) to achieve a 617-foot block standard.

Within the 617-foot block where the proposed use is located there is already one 11 bed residential care facility (Balboa Horizons). The proposed use located at 1216 West Balboa Boulevard, within the same block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood.

The subject property's proximity to another residential care facility at 1132 West Balboa, to a large state-licensed day care facility at 1400 West Balboa, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is only partially consistent with the purpose of the code and does not conform to all the requirements of Section 20.91A; and therefore, this finding cannot be made.

**Section 4.** That Finding D of NBMC §20.91A.060 cannot be made for the following reasons:

**NBMC §20.91A.060 Finding D:** The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa

2. **The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and**
3. **Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.**

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard, and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The subject property is proximate (within 1250 feet) to two outlets for alcoholic beverages (American Legion Hall at 215 15<sup>th</sup> Street and Fry's Market at 115 15<sup>th</sup> Street) both within walking distance from the facility which allows residents of the use convenient access to alcohol sales and service which can affect the ability of the use to fully operate as an alcohol rehabilitation facility.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, the Hearing Officer may establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between blocks on each side of Balboa. However, the Hearing Officer can extend beyond smaller streets like 12<sup>th</sup> and 11<sup>th</sup> Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3) to achieve a 617-foot standard.

The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood. Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons).

**Section 5.** The Hearing Officer hereby denies with prejudice Use Permit No. 2008-033.

**Section 6.** The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of February, 2009.

By: *Thomas W. Allen*  
Thomas W. Allen, Hearing Officer

ATTEST:

*Richard L. Brown*  
City Clerk



NCR 00593

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

Agenda Item No. 10  
March 24, 2009

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

**FROM:** David R. Hunt, City Attorney  
Ext. 3131, [dhunt@city.newport-beach.ca.us](mailto:dhunt@city.newport-beach.ca.us)

**SUBJECT: APPEAL OF HEARING OFFICER'S DENIAL OF USE PERMIT  
1216 WEST BALBOA (NEWPORT COAST RECOVERY)**  
• (UP 2008-033) (PA2008-104)

**APPLICANT:** Newport Coast Recovery, LLC

**APPELLANT:** Newport Coast Recovery, LLC

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**RECOMMENDATION:**

The applicant/appellant has requested that the City Council continue this item to the April 14, 2009 meeting date due to a non-reconcilable conflict in its attorney's calendar. Based upon past practice in similar situations, staff recommends that this item be continued to the April 14, 2009 meeting date, with no further continuances to be allowed. Staff has informed the applicant/appellant that the hearing will not be continued beyond that date.

**PUBLIC NOTICE:**

Public notice was provided in accordance with all applicable laws.

**ENVIROMENTAL REVIEW:** This is not a project under CEQA.

Prepared by:



David R. Hunt,  
City Attorney

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

I am requesting that this letter be provided to all City Council members and become part of the public record for the March 24, 2009 public hearing regarding the Group Residential Use Permits for both 1115 W. Balboa Blvd. (Ocean Recovery, LLC) and 1216 W. Balboa Blvd (Newport Recovery).

**1115 W. Balboa Blvd (Ocean Recovery, LLC)**

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Drew Wetherholt  
P.O. Box 2255  
Newport Beach, CA 92656

**Brown, Leilani**

---

**From:** paul lopez [p.lopez@adelphia.net]  
**Sent:** Wednesday, March 18, 2009 9:49 PM  
**To:** Brown, Leilani  
**Subject:** Fw: 1115 W. Balboa and 1216 W. Balboa Sober Living Facilities--Appeal Hearings  
**Attachments:** Letter to City Clerk Mar 16 09.doc

Ms. Brown,

Please forward to each City Council member and please make part of the permanent record for the upcoming March 24th City Council meeting. Please confirm receipt of this email

Sincerely,

Paul

Paul A. Lopez  
1125 1/2 W. Balboa Blvd.  
Newport Beach, CA 92661  
949-673-0489  
[p.lopez@roadrunner.com](mailto:p.lopez@roadrunner.com)

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

I am requesting that this letter be provided to all City Council members and become part of the public record for the March 24, 2009 public hearing regarding the Group Residential Use Permits for both 1115 W. Balboa Blvd. (Ocean Recovery, LLC) and 1216 W. Balboa Blvd (Newport Recovery).

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Name

Address

**Brown, Leilani**

---

**From:** Ronel Mathena [ronelis@pacbell.net]  
**Sent:** Wednesday, March 18, 2009 10:15 PM  
**To:** Brown, Leilani  
**Subject:** City Council Submission for March 24th Hearing

Newport City Council

c/o Ms. Leilani I. Brown

City Clerk, Newport Beach

3300 Newport Blvd.

Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

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Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Sincerely,  
Tom Taylor  
901 W Balboa Blvd  
Newport Beach, Ca.92661

19 March 2009

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Victor and Wendela Sellier  
1116 W. Oceanfront  
Newport Beach, Ca. 92661

Mailing Address:  
3 Clarks Branch Rd.  
Great Falls, Va. 22066

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Joseph & Kristi Verdugo

1113 W. Balboa Bl., Newport Beach, CA 92661

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Name Terry and Laurie McKenzie

Address 1151 West Balboa Blvd.  
Newport Beach, CA 92661

RECEIVED

"RECEIVED AFTER AGENDA

PRINTED: #4 V 10

3-24-09

Thomas A. Techentin

444 S. Flower Street, Suite 2009, Los Angeles, CA 90071  
Tel: 213-362-9200, ext. 219 Fax: 213-627-7463

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

March 23, 2009

Newport City Council  
C/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

RE: Business Use/Residential Area

Dear Ms. Brown and the Newport City Council,

I have communicated to you earlier about the matter of conducting a business in residential areas on the Peninsula. I now sending you this draft created by my well-intended neighbors and I am requesting that this letter be provided to all City Council members and become part of the public record for the March 24, 2009 public hearing regarding the Group Residential Use Permits for both 1115 W. Balboa Blvd. (Ocean Recovery, LLC) and 1216 W. Balboa Blvd (Newport Recovery).

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Tom Techentin  
640 Magnolia Avenue  
Pasadena, CA 91106-3622

**Brown, Leilani**

**From:** BandCSisco@aol.com  
**Sent:** Saturday, March 21, 2009 4:37 PM  
**To:** lbrown@city.newport-beach.ca.us; p.lopez@adelphia.net  
**Subject:** 1115 W. Balboa Sober Living Facility--

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Name: Mr. and Mrs. George W. Sisco

Address: 1133 W. Balboa Blvd.  
Newport Beach, CA

---

Feeling the pinch at the grocery store? Make dinner for \$10 or less.

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

RECEIVED  
2009 MAR 24 AM 8:31  
OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

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Kim Flores  
1113 ½ W. Balboa Blvd.  
Newport Beach, Ca 92661

RECEIVED

2009 MAR 24 AM 8:31

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

Newport City Council  
c/o Ms. Leilani I. Brown  
City Clerk, Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92661

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Thank you,  
Bob and Laura Keane  
808 West Oceanfront  
Newport Beach, CA 92661

**Brown, Leilani**

---

**From:** cynthia koller [gracenb1@yahoo.com]  
**Sent:** Tuesday, April 14, 2009 3:22 PM  
**To:** Brown, Leilani  
**Cc:** Bludau, Homer; Curry, Keith; Wolcott, Cathy; Jeff Cole; Kiff, Dave; don2webb@earthlink.net; edselich@adelphia.net; Earl McDaniel; Susan/Barry Eaton; Gardner, Nancy; Henn, Michael; Robert Hawkins; JMarkman@rwglaw.com; Daigle, Leslie; Rosansky, Steven  
**Subject:** Newport Coast Recovery Hearing

Gentlemen and Women:

As I am not sure I will be able to attend tonight's Council meeting I would like this entered in the record;

I am in total agreement with the Hearing Officer's determination of denial to Newport Coast Recovery.

If you read the staff reports, Mike Newman states that he is in precarious position because the "other facilities" permits were submitted and completed before his(Newport Coast Recovery). If he was this concerned with the process, he should have originally followed the city rules and applied for an FEP. Since he did not apply the first time for a permit it seems to me he feels he does not have to regard the rules and codes as stated by the city in the ordinance.

NCR stating a denial of the use permit would "adversely impact treatment" is misleading. If they are providing a "different benefit" why have they NOT produced the necessary paperwork to substantiate their assertion?

Below you will find a copy of one of NCR's web pages as of April 13, 2009. It states **NCR IS PROBATIONER APPROVED. WHY WOULD THEY GO THROUGH THE PROCESS TO GET APPROVED AND ADVERTISE THIS, IF THEY WERE NOT SERVING PROBATIONERS?**

It is in our ordinance this is not permitted. Why would they again not follow the ordinance?

Between the horrendous adverse impacts that the neighbors have had to live with, the burden of having to document these for the city process and the example after example of NRC flipping it's nose at the resident's and the city of Newport's ordinance it should be obvious that they have failed their clients, the city and the neighbors time and time again.

Thank you for your time and consideration.

Respectfully,  
Cindy Koller



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- [Contact](#)
- [Free Consultation](#)

- [Info/FAQ](#)
- [Our Philosophy](#)
- [Program](#)
- [Resources](#)
- [Staff](#)
- [Why Us?](#)

## Talk to a Counselor Now

## Treatment Guide

Enter your email below and press submit to join our newsletter and receive a guide to finding a good addiction treatment program

E-mail: [       ]

[Submit]

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## Staff Email

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53500 Visitors This Month

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- [September 2008](#)
- [August 2008](#)

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## Brochure PDF

A copy of our print brochure for your convenience



## Activity Schedule

Wondering what you can expect from our program? Here's a sample rehab schedule, Schedules can be tailored to fit each client's needs



## Info Request

Thinking about addiction treatment for yourself or a loved one? Fill out this confidential form to receive more information based on your individual situation.



## Great Reputation

We're a state licensed treatment facility. We have a great BBB rating and we're a member of the NAATP



## Info/FAQ

<b>Facility Type</b>	Men's Inpatient Chemical Dependency Treatment
<b>Location</b>	Newport Beach, CA
<b>Programs offered</b>	30 day, 60 day, 90 day+
<b>Credentials</b>	Licensed by the California ADP, member of the National Association of Addiction Treatment Providers
<b>Probation Approved</b>	Yes
<b>Program Components</b>	Individual therapy, group therapy, outside group meetings (AA, NA, etc.), psychological and medical evaluation, Access to church, recreational opportunities, 24 hour staff, balanced

	diet, daily schedule
<b>Confidentiality</b>	All client records are kept confidential pursuant to California and Federal law. Your presence in our program is confidential; the client decides who has access.
<b>Electronic Equipment</b>	Electronics including laptops and cell phones are permitted in most situations, however you must be responsible for your own belongings.
<b>Housing</b>	Clients have their own bed in several shared apartments. Living with other people going through the same process as you is an important component of our program.
<b>Payment</b>	Credit cards, cash, checks or money orders are accepted as payment which is due upfront. Some insurance policies may cover part of the expense as well. Contact us and we'll help figure out the best way for you to pay for treatment.
<b>Detox Option</b>	Contact us for information regarding detox, which is often required before beginning the rehab program
<b>Interventions</b>	Please contact us for help with staging an intervention, a qualified interventionist should always be consulted beforehand.
<b>Contact Number</b>	1(800)990-9691

Mike, Dave-

RECEIVED

At City Council meeting tomorrow night, April 14<sup>th</sup>, we understand that the Council will consider the appeal of the operator of the Hearing Officer's denial of the CUP, and possibly other requests made by the applicant's recently retained counsel.

2009 APR 14 AM 10:13

We are concerned with the staff writeup and ~~OFFICE OF~~ representations of facts, circumstances and testimony that do not reflect the situation of this Use accurately.

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

Several examples:

1. The report suggests that the "median block length for the mid Peninsula are should be defined as 617 ft." In fact, the blocks in this area are in the 300-360 ft range each.

2. The report suggests that "there is the potential for Over-concentration" in the area. There is ACTUAL Over-concentration in the immediate area.

- At 1132 W. Balboa Blvd.: an 11 bed facility
- At 1115 W. Balboa Blvd.: a 22 bed facility
- At 1216 W. Balboa Blvd: a 29 bed facility(subject applicant)
- At 1129 W. Balboa Blvd.: a 12 bed facility(believe that this was just vacated)
- At 1217 W. Bay : a 6 plus 6 bed facility pending
- At 1120 W. Balboa Blvd.: sober living group

This list does NOT include other locations believed to be unlicensed 'sober living: facilities, or those several blocks away---this is 11<sup>th</sup> and 12<sup>th</sup> street alone.

3. The report makes general reference to "residents' complaints, but does not reflect the actual violations of physical and other codes which have been known to the City for as much as 5-6 years.

Specific examples:

- applicant failed to apply for or obtain previously required CUP, FEP permits.
- applicant made business license registration as a "Personal service" rather than "Residential Care and treatment" business.
- applicant operated an illegal facility at 1219 W. Balboa across the street from 1216 W. Balboa for some time, which he closed at an unspecified date.
- a number of physical code violations

4. This facility and its occupants have been the source of nuisances to neighbors for a number of years-----not only when residents are in the facility, but also when they congregate in the area---on beach, alleys and sidewalks. These have been repeatedly reported to facility managers for years.

5. This operator per his own admission, and that of two of his onsite managers, has "trouble controlling the men in his facility". Family members of residents have reported serious behavioral ,substance abuse and frequent drop-outs associated with this operator's program.

6. The visitors to this facility regularly litter the streets, smoke on the beach, and take up already-constrained street parking---in addition to the residents of the facility.

7. The confrontational behavior of the facility's residents and manager has occurred repeatedly with no relief from the City---in and around the facility, on the beach and playground next to the school in front, and alleys ,sidewalks, boardwalk.

8. The managers of subject operator have repeatedly purchased cigarettes and alcohol for their residents from local stores---illegal.

Issues and complaints have been reported by multiple neighbors to : Code enforcement, the City attorney, the Police Dept, and City Mgr. over the past 6 years. Not once was there a citation, and most of the time, citizens were told "there is nothing that we can do".

The City has allowed this residential neighborhood and area Around Newport Elementary School and playground to become so saturated that it is widely known as Rehab Beach. People go to this area regularly for drug activity.

At the December 2008 public hearing, 83 residents and local business owners attended, many of whom presented testimony concerning the applicant operator and requesting denial of this use. A group of 42 parents with children attending Newport Elementary and who use the playground and beach there submitted a letter petition into record at the hearing requesting that this establishment be denied a CUP due to problems and its close proximity to the elementary school and playground.

The City has a duty to protect its public's health and safety—and the integrity of its residential neighborhoods.

While all of these statements and facts were previously submitted into record, we note that many were omitted from previous reports. Therefore, we hereby request that this correspondence be entered into public record as reassertion of testimony and evidence previously submitted—and that this be distributed to the Mayor and Council members in advance of the April 14<sup>th</sup> hearing.

Denys H. Oberman, CEO

**OBERMAN**

Strategy and Financial Advisors

OBERMAN Strategy and Financial Advisors  
2600 Michelson Drive, Suite 1700  
Irvine, CA 92612  
Tel (949) 476-0790  
Cell (949) 230-5868 Fax (949) 752-8935  
Email: [d.oberman@obermanassociates.com](mailto:d.oberman@obermanassociates.com)

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