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City's Group Home Ordinance Passes First Legal Challenge

NEWPORT BEACH, Ca. – The city of Newport Beach's precedent-setting new group residential use ordinance withstood the first round of its first major legal challenge yesterday when the judge hearing the case allowed much of the ordinance to stand while the litigation process goes forward. The Newport Beach City Council adopted the ordinance earlier this year and faces numerous lawsuits from both group home operators and community residents.

U.S. District Court Judge James V. Selna's preliminary ruling allows the city to implement large portions of the ordinance, meaning that homes holding more than 80 percent of Newport Beach's existing recovery beds must apply for use permits. It also means that the city's prohibition on most new homes in all residential zones except Multi-Family Residential (MFR) districts can proceed.

"This decision may be preliminary, but it's a critical first step," explained Mayor Ed Selich. "The city has worked long and hard on a use permit process that will help to address the secondary impacts associated with some group homes without affecting the right to housing for persons in recovery."

The hearing was in response to a motion filed by Sober Living by the Sea (Sober Living), the largest group home operator in Newport Beach, intended to block the city from enforcing the entirety of its new ordinance. The judge disagreed with Sober Living's claim that the ordinance, as written, is discriminatory.

Council Member Mike Henn explained, "This decision means that we can proceed as planned and the vast majority – more than 80 percent - of the recovery beds in our community may be regulated under a use permit process. Use permits work – they address trash, noise, smoking, and more. I am very pleased that so much of our ordinance can move forward. Now the real work begins as we implement a process that is both workable and fair for all concerned."

Judge Selna stayed the portion of the ordinance that let the city consider licensed, small clustered - treatment homes housing six or fewer persons - as one large network of homes. The judge indicated he believes California law preempts cities from regulating state-licensed treatment homes housing six people or fewer as a one or more larger integral facilities. The facilities are licensed by the California Department of Alcohol and Drug Programs (ADP).

Specifically, the judge's preliminary ruling means that:

- The city can require operators of *existing* state-licensed homes with more than six residents to obtain a use permit to remain at their current locations. This means that about 150 beds in seven facilities will be required to obtain a use permit to remain in operation, including:
 - Narcanon Southern California (one facility with 49 occupants);
 - Ocean Recovery (two facilities housing 22 and 16 occupants respectively);
 - Newport Coast Recovery (one facility housing 29 occupants);
 - Sober Living By the Sea (two facilities housing 12 occupants each); and
 - Balboa Horizons Recovery (one facility housing 11 occupants).

- The city can require operators of *existing* unlicensed "sober homes" in the community, regardless of size, to get a use permit to remain at their current locations. This means that about 312 beds in 45 facilities will be required to obtain a use permit to remain in operation, including:
 - Ocean Recovery (one facility, six occupants);
 - Sober Living by the Sea (18 facilities with 108 beds);
 - Morningside Recovery (10 facilities with 60 beds);
 - Pacific Shores Recovery (three facilities with about 36 beds);
 - Yellowstone Recovery (four facilities with about 52 beds);
 - Lynn House (two facilities with about 16 beds); and
 - Two to three homes, with about 28 beds, unaffiliated with any major operator.

Sober Living by the Sea, a subsidiary of CRC Health Group, operates 17 state-licensed treatment facilities and 18 unlicensed "sober homes" in Newport Beach. The company has about 220 total recovery beds in the city.

Operators of existing facilities (except small licensed facilities) who wish remain in operation must submit use permit applications to the city by next Thursday, May 22.

In addition, the judge disagreed with Sober Living's claim that the city acted in a discriminatory manner when it revised its code enforcement procedures in July 2008 and implemented the revisions.

In a lengthy discussion about recent changes to the Uniform Building Code relating to fire safety, the judge limited the city's fire marshal from considering an ADP-licensed facility with six or fewer residents in the context of an integral facility and enforcing the fire codes solely on that basis. But the judge clarified that the fire marshal could consider one structure that houses multiple licensed facilities with six or fewer persons per license as one structure under the Uniform Building Code.

City Attorney Robin Clauson explained the challenges with the "integral facility" concept. "This has always been a battle, especially with state ADP. For years, ADP has maintained that it's okay to license two or three or even more separate small facilities in one building. It's clear to us that applying for three licenses in one building is an attempt by the operators to get around local regulation, but the state just doesn't agree."

Special Counsel James Markman of Richards Watson Gershon, who worked on the ordinance since September 2007, said, "I am very pleased. We have a viable, non-discriminatory ordinance that can be implemented fairly and comprehensively."

For questions about the city's ordinance or the ruling today, please contact James Markman at 714-990-0901 or Robin Clauson at 949-644-3131.

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