

RESOLUTION NO. HO-2009-016

A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH APPROVING A REQUEST FOR REASONABLE ACCOMMODATION FOR A RESIDENTIAL CARE FACILITY LOCATED AT 3206 AND 3206½ WEST BALBOA BOULEVARD AND OPERATED BY BALBOA RECOVERY, INC (PA 2009-013)

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 20.98 to the NBMC. Chapter 20.98 sets forth a process to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, an application was filed by Kevin Cullen, on behalf of Balboa Recovery Inc., with respect to property located at 3206 and 3206½ West Balboa Boulevard, and legally described as Lake TR 418 Lot 22 BLK 132 Portion of Lot and Portion of Lot 23 BLK 132 (P M 38-18 Par 1); and

WHEREAS, a public hearing was held on May 20, 2009, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Municipal Code and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

WHEREAS, the required findings of Section 20.98.025(B) of the NBMC and facts in support of such findings are as follows:

1. **Finding: The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.**

Facts in Support of Finding: Balboa Recovery Inc., submitted a statement signed under penalty of perjury that every resident of the facility is in recovery from alcohol and/or drug addiction. Federal regulations and case law have defined recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. **Finding: The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.**

Facts in support of finding:

As to current residents, this finding can be made. As this facility is a nonconforming use in a residential district and the applicant did not apply for or receive a use permit within the time period designated by Ordinance No. 2008-05, it is currently subject to abatement if a reasonable accommodation is not granted. If the facility is abated current residents will lose the opportunity to live in their current dwelling for the intended duration of their stay. Granting the accommodation allowing all current residents to complete their intended stay is necessary to allow these residents and equal opportunity to use and enjoy their current dwelling.

As to prospective residents, at the population level requested by the applicant, this finding cannot be made. The applicant requested accommodation for eight residents at this location and argued that it was necessary that to continue to operate in both units due to concerns about mixing recovery and certain non-recovery uses. While control of the entire building may be in the best interest of the resident clients, the Hearing Officer notes a similar tenant scenario may occur in adjacent or surrounding properties that would not be in the control of the applicant. This particular area has residential units in close proximity to one another with minimal setbacks of three feet.

The applicant has not submitted verified financial information to demonstrate that the population level requested is necessary for financial viability. In addition, the applicant has not submitted any information that would demonstrate that prospective residents of the facility would receive any greater therapeutic benefit from a facility with more than six residents.

Alternate finding - at a reduced number of permitted resident client beds for the duplex facility, this finding can be made. With a reduced facility population of six residents housed within the duplex building, the accommodation is necessary to afford disabled individuals an equal opportunity to use and enjoy a dwelling. There are limited opportunities within the City for individuals in recovery to live in a building with six or fewer other recovering individuals surrounded by other single housekeeping units. The reasonable accommodation is necessary to provide an opportunity for the disabled gender-specific residents of Balboa Recovery to live in a safe and sober, supportive, residential setting offering a self-paced recovery which then would allow residents to reintegrate into the world and workforce.

NBMC Section 20.98.025(C) also allows the City to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

- A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If the accommodation is granted, current and potential clients of Balboa Recovery Inc. will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from addiction. Disabled residents would have an opportunity to live in a safe and sober, supportive, residential setting offering a self-paced recovery which allows residents to reintegrate into the world and workforce. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society. This facility appears to be the only residential care facility of any description on this block, or any of the adjacent blocks.

Even though current residents are probably benefited by staying in their current sober living environment for the duration of their intended stay, the applicant has not submitted any information that would demonstrate that prospective residents of the facility will receive any greater therapeutic benefit from a facility with more than six residents.

- B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As to current residents: Balboa Recovery Inc. is requesting an exemption from the requirements of NBMC Section 20.10.020, to allow the continued operation of an existing unlicensed residential care facility located in an R-2 District, where the NBMC permits such uses only in an MFR District with approval of use permit. As a prohibited use, the facility is subject to abatement. Balboa Recovery seeks to continue to house up to eight disabled individuals in two units of a duplex building. The facility currently houses residents who could be denied housing if abatement proceeds while they are still in residence at the facility.

As to prospective residents: As discussed in Findings Nos. 3 and 4 below a condition of approval is included limiting maximum occupancy of the facility to six resident clients in the duplex building. As part of this condition of approval, the maximum occupancy of six residents would be achieved through the attrition of existing residents as they complete their recovery program.

- C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

Balboa Recovery Inc. has not provided adequate evidence or information clearly demonstrating that the size or type of facility requested is necessary for the facility's

financial viability. In addition, the information that has been provided by the applicant does not clearly state why exemption from the Residential District Land Use Regulations requirements is necessary to make its facilities viable in light of the current market for the type of services it provides. Balboa Recovery Inc. contends that closing or relocation of the facility would be a significant financial burden. Balboa Recovery Inc. has provided financial information regarding expenses and revenues. However, the information has not been verified by evidence of expenses, such as lease agreements and utility bills.

For this reason, the Hearing Officer is unable to conclude that granting the exemption to allow the continued use in the R-2 District at the population level of eight is necessary to make the facility financially viable, and is unable to analyze whether a particular number of residents in excess of six is required to make the facility financially viable.

D. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

The Municipal Code authorizes the City to consider other facilities that are of a "similar nature and operation." Based on an inventory conducted in April 2009, persons wishing to live in Newport Beach in an unlicensed sober living environment unaffiliated with a formal treatment program have the following housing opportunities that they can choose from:

- 4 beds at 900 West Balboa (operated by LMS Recovery, with reasonable accommodation issued to LMS Properties for as long as LMS Recovery operates the beds in accordance with the terms of the reasonable accommodation); and
- An undetermined number of beds at 494 and 492 Orange Street and 3309 Clay Street (operated by Pacific Shores Recovery, reasonable accommodation denied but subject to appeal and abatement); and
- 6 beds at 204 21st Street (operated by Balboa Recovery, with reasonable accommodation issued to Balboa Recovery for as long as Balboa Recovery operates the beds in accordance with the terms of the reasonable accommodation); and
- An unlimited number of beds via the use of any home in Newport Beach provided that the occupants reside there as a single housekeeping unit in compliance with the City's definition of a single housekeeping unit.

There are also sober livings beds affiliated with a formal treatment program, Sober Living by the Sea (SLBTS), which are approved and not subject to abatement. For individuals who wish to reside in a duplex occupied entirely by sober living residents, 60 beds (located in both units of five duplexes) will remain in their current location. Twenty-four additional beds (located in both units of two duplexes) are currently in operation but plan to close within 30 months, under the terms of the Zoning Agreement

between the City and SLBTS. SLBTS also operates six beds in one unit of a duplex, also due to close within 30 months.

A denial of the reasonable accommodation would not deprive prospective residents of the opportunity of live in a residential setting with seven to 12 individuals in recovery in two units of a duplex building. The alternate residential settings also provide self-paced recovery options that allow residents sufficient time for personal psychological growth while avoiding the use of alcohol and other substances.

3. **Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in Fair Housing Laws and interpretive case law.**

Facts in support of finding: Allowing the facility to remain at its current location so long as it is necessary to provide disabled individuals with an equal opportunity to use and enjoy a dwelling would not impose an undue financial or administrative burden on the City. To date, there have been no complaints made to the City regarding the operations of this facility.

4. **Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City’s zoning program, as “fundamental alteration” is defined in Fair Housing Laws and interpretive case law.**

Facts in support of finding, as to current residents: As analyzed below, allowing current residents to remain at the facility for the duration of their intended stay does not result in a fundamental alteration of a City zoning program.

Facts do not support the finding, as to prospective residents at the population level requested for the applicant, as analyzed below.

As to prospective residents, at the population level recommended by staff, the required finding is made because of the following facts:

Zoning District Considerations: NBMC Section 20.10.010 sets forth the basic purposes for establishing zoning districts which include locating residential development in areas which are consistent with the General Plan and with standards of public health and safety established by the Municipal Code, ensuring adequate light, air and privacy for each dwelling, protecting residents from the harmful effects of excessive noise, population density, traffic congestion and other adverse environmental effects, and providing public services and facilities to accommodate planned population and densities. The specific purpose of Section 20.10.010 of the NBMC for the R-2 District is that the district provide “areas for single-family and two-family residential land uses.” The specific purpose of the Multifamily Residential (MFR) District is to provide for “medium-to-high density residential development up to approximately 36 dwelling units per gross acre, including single-family (attached and

detached), two-family and multi-family.” Residential districts zoned R-2 in the Central Newport area provide medium density residential development. Therefore, if the facility population is reduced to achieve a medium level of density, the basic purpose of residential districts zoned R-2 is not undermined from a density perspective.

Section 20.10.020 of the NBMC establishes those uses that are permitted, conditionally permitted, and prohibited within the R-2 District. In accordance with NBMC Section 20.10.020, unlicensed residential care facilities are not permitted in the R-2 District, and are only permitted in the MFR District with the approval of a use permit.

By limiting the maximum occupancy to six residents with one full-time staff member housed among both units of the duplex building, the intensity of the use would be consistent with typical residential development intensity in the R-2 District, and would be compatible with the surrounding two-family residential properties.

Building Code and Life Safety Consideration: The State Fire Marshal has made the determination that residential care occupancies with more than six residents have characteristics that require a certain degree of extra protection for the safety of the residents. Pursuant to the provisions of the California State Building Code, facilities providing residential care and housing for more than six residents in a building are classified as an R-4 occupancy. This occupancy group includes buildings arranged for social rehabilitation, including alcoholism or drug abuse recovery or treatment for seven or more clients. A building housing an R-4 occupancy would have to further comply with building code requirements found in either the 2001 or 2007 California Building Code. These may include, but are not limited to, vertical and horizontal fire separation walls, fire suppression systems, alarm and detection systems, and unprotected window openings.

If the occupancy of the facility was reduced to provide housing for six residents and one full-time staff member within both units of the duplex, the building would be classified as an R-3.1 occupancy. Building code requirements for R-3.1 occupancies are similar to requirements for occupancies classified as R-3. The R-3 occupancy classification and requirements apply to single family homes and duplexes. If the occupancy of the facility was reduced to provide housing for six residents and one full-time staff member within one unit of the duplex, and the other unit was occupied by a single housekeeping unit, the building would be classified as a mixed occupancy. If the building was classified as a mixed occupancy, it would be subject to the same requirements as an R-3.1 occupancy. The code requirements of an R-3.1 occupancy are less stringent than an R-4 occupancy, and the existing duplex building can easily and cost-effectively be brought into compliance with the R-3.1 code requirements. R-4 requirements would present a greater challenge for Balboa Recovery.

Use Permit Consideration: Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or a designated “Residential Care

Facilities, Small Licensed" in residential districts. The basic purpose of these regulations is to ensure (1) that the fundamental purposes of the Zoning Code can be achieved, (2) that adverse secondary impacts produced by group residential uses not living as a single housekeeping unit can be eliminated, and (3) that the adverse secondary impacts that "Residential Care Facilities, General" and "Residential Care Facilities, Small Unlicensed" may have on the surrounding neighborhood can be mitigated. To accommodate the needs of the disabled for housing opportunities, Ordinance No. 2008-05 provides that non-conforming residential care facilities located in residential districts may be allowed to continue operating subject to approval of either a use permit or a request for reasonable accommodation.

Use permits are required for use classifications typically having operating characteristics requiring special consideration so that they may be located and operated compatibly with uses on adjoining properties and in the surrounding area. NBMC Section 20.91A.010 sets forth the purposes of requiring use permits in residential districts. The first stated purpose is "to promote the public health, safety, and welfare and to implement the goals and policies of the Newport Beach General Plan by ensuring that conditional uses in residential neighborhoods do not change the character of such neighborhoods as primarily residential communities." The second stated purpose is "to protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or over-concentrated in any particular area so as to institutionalize that area."

Even if the facility is exempted from Section 20.10.020 and permitted to remain in its current location, it is not exempt from reasonable controls the City might place on it. NBMC Section 20.98.015 states that the Hearing Officer shall approve, *conditionally approve*, or deny applications for reasonable accommodation. The City can impose the same conditions through an accommodation that it could impose under a use permit. A reasonable accommodation with appropriate conditions can mitigate adverse secondary impacts such as noise, overcrowding, parking and traffic impacts, excessive second-hand smoke, and unruly behavior by residents of applicant's facility to the detriment of neighbors.

Furthermore, unlike a use permit, a reasonable accommodation is not a land use entitlement that runs with the land to future owners and facility operators. A reasonable accommodation is a disability-related exemption that is specific to the housing provider or disabled individual(s) to whom it is granted, as well as specific to the dwelling. If Balboa Recovery Inc. ceased to provide disabled housing at this location, the accommodation would no longer be necessary and would also cease.

Balboa Recovery Inc. requested an exemption from the requirement of NBMC Section 20.10.020 that Residential Care, Small Unlicensed uses be established only in a

residential district zoned MFR, with a use permit. The City must grant the requested accommodation only if allowing the applicant's facility to continue operation in its current location does not result in a fundamental alteration of the City zoning program. "Fundamental alteration" has been described in cases interpreting the FHAA's reasonable accommodation requirement as "undermining the basic purpose which the requirement seeks to achieve." Therefore, the request must be granted only if granting the accommodation does not undermine the basic purpose of requiring Residential Care, Small Unlicensed facilities to establish only in districts zoned MFR, and does not undermine the basic purpose of requiring a use permit for such uses.

NBMC Section 20.98.015 states that the Hearing Officer shall approve, conditionally approve or deny applications for reasonable accommodation. Therefore, the hearing officer can impose the same conditions through an accommodation that he or she could impose under a use permit. A reasonable accommodation with appropriate conditions can mitigate adverse secondary impacts such as noise, overcrowding, excessive second-hand smoke, and unruly behavior by residents of applicant's facility to the detriment of neighbors.

Conditions should be and accordingly are applied to the use that will allow the accommodation to be granted consistent with the basic purposes of NBMC Sections 20.10.010, 20.10.020, and Chapter 20.91A. The conditions of approval are described below.

1. That the facility agree to a bed cap of no more than six resident clients plus one on-site resident manager, who shall be a qualified recovery specialist;
2. If the applicant obtains a license from ADP to operate a facility for six or less clients in one of the duplex units, the other unit may only be used to provide housing for a single housekeeping unit; and
3. Maintaining quiet hours from 10:00 p.m. to 8:00 a.m.;
4. Establishing quiet hours for television use from 10:00 p.m. to 8:00 a.m.;
5. Requiring compliance with the standards of NMBC Section 20.91A.050(A), relating to secondhand smoke detectable from off the parcel upon which the facility is located.

Essentially, these conditions require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. With these conditions, the findings required by NMBC Section 20.91A.060 for issuance of a use permit are made with regard to this facility. With conditions of approval, the use will conform to all applicable provisions of Section 20.91A.050.

As conditioned, the use will be compatible with the character of the surrounding neighborhood, and the continued maintenance of the use will not contribute to changing the residential character of the neighborhood or create an overconcentration of residential care uses in the vicinity. In considering whether the residential character

of the neighborhood would be changed the American Planning Association standard of one or two such uses per block is not exceeded by allowing the continued maintenance of this facility as there are no other residential care uses on this block, or any of the immediately adjacent blocks. There has been no evidence presented that indicates that there have been any issues with delivery of goods that adversely affect the peace and quiet of neighboring properties, or issues of trash generated in excess of surrounding properties.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

A. Whether the requested accommodation would fundamentally alter the character of the neighborhood.

Balboa Recovery, Inc. requests to continue to house up to eight disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of eight disabled individuals in recovery with two resident managers, all of whom are not living as a single housekeeping unit, to live on a block of single housekeeping units. As a condition of approval, the facility must limit the maximum occupancy to six residents and one full-time staff member in both units of the duplex building.

With the reduction in resident population as required by this condition of approval, the intensity of the use is consistent with the intensity of use that would be produced by single housekeeping units in two-family residential districts, and would be compatible with the surrounding two-family residential properties. The reasonable accommodation with appropriate conditions of approval to allow the facility to remain in its current location in the R-2 District does not undermine the basic purpose of this portion of the City's zoning program.

B. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

Parking: The facility provides two enclosed garage parking spaces. Of the two onsite spaces available, one is reserved for the resident manager. Use of the remaining space is assigned by the resident manager.

The Zoning Code requires one on-site parking space per three residential care facility beds. With eight beds, the required parking for the facility would be three spaces. As such, the facility currently does not meet the parking requirements.

Some residents are permitted to have personal vehicles while residing at the facility. A condition of approval has been included limiting the number of vehicles onsite at anytime to two, and must be parked in the garage. At most, one other resident client may have a vehicle and park on the street in a legally designated space. Client move-in and move-out shall be accomplished in a manner that does not block traffic, area driveways or alleys.

Traffic and Generated Trips: The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a duplex, the standard trip rate is based on 6.72 average daily trips per dwelling unit. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, a duplex would generate approximately 13.44 average daily trips, whereas an eight-bed residential care facility with two additional resident manager beds would generate approximately 27.4 average daily trips. If the population were limited to six residents and one on-site resident manager in both units of the duplex, a total of 19.18 trips would be generated

Due to the fact that the applicant limits and manages the use of personal vehicles by residents at the facility, with a reasonable accommodation limiting the maximum number of residents to six, the number of trips generated would not be substantially in excess of trips generated by that of a duplex. This reasonable accommodation includes conditions that restrict use of residents' personal vehicles while living at the facility.

C. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.

General Plan Policy LU 6.2.7 requires the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law to minimize impacts on residential neighborhoods. The City adopted Ordinance No. 2008-005 in order to implement General Plan Policy LU 6.2.7. Granting the reasonable accommodation with the recommended conditions of approval enables the City to apply appropriate reasonable regulations on the facility, consistent with the express purpose of the General Plan with regard to these facilities.

D. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

There are no other documented facilities similar in nature or operation to the subject facility within this block or any of the immediately adjacent blocks. Thus, the granting of the reasonable accommodation with a condition of

approval limiting the maximum occupancy of the facility to six residents and one full-time staff member does not create an institutionalized environment.

- 5. Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.**

Facts in support of finding: A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." See 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

WHEREAS, the project qualifies for a Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA; and

NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby approves Reasonable Accommodation No. 2009-013, subject to the Conditions set forth in Exhibit "A," attached hereto and made part hereof.

Section 2. This action shall become final and effective fourteen 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 2ND day of JULY, 2009.

By: _____


Thomas W. Allen, Hearing Officer

ATTEST:



Deputy Shana Stanley
City Clerk

EXHIBIT "A"

CONDITIONS OF APPROVAL

REASONABLE ACCOMMODATION NO. 2009-013

BALBOA RECOVERY INC. at 3206 and 3206½ West Balboa Boulevard

1. **Grant of Reasonable Accommodation.** Reasonable Accommodation No. 2009-013 is granted solely to Balboa Recovery Inc. to operate an adult sober living facility in both units or one of the units located at 3206 and 3206 ½ W. Balboa Blvd. The occupancy of the facility is limited to six client beds and one on-site resident manager. No more than six persons in recovery may reside at the facility.
2. **Staffing.** Operator shall have one qualified manager on-site at all time (24 hours a day, seven days a week) to appropriately and responsibly manage the facility.
3. **Governmental Referrals.** Operator shall not provide any services to any client or house any client who has been referred or caused to be referred to this facility by any governmental agency, including but not limited to probationers or parolees.
4. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.
5. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.
6. **Trash.** Operator shall abide by the City's regulations regarding trash disposal including providing the proper amount of trash cans for the property's use (so that cans do not overflow), placing the cans out no earlier than 7:00 pm the evening prior to collection, and placing the cans back in the side yard (or other contained area) no later than 6:00 pm the day of collection.
7. **Smoking & Cigarette Litter.** Per NBMC Section 2091A.050(A), no clients, guests, or any other users of the subject property may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which the use is located. Balboa Recovery Inc. will enforce house rules against litter, including allowing clients, staff, or residents from littering cigarette butts on the ground, sidewalk, gutter or street.
8. **Parking & Garages.** Operator shall keep the two (2) designated garage parking spaces at the facility open and available for parking for staff and resident clients at all

times. One space shall be designated for use by the on-site resident manager. The second space shall be designated for use by one client resident.

9. **Transportation.** No transportation services are provided by the facility operator
10. **Quiet Hours.** The on-site facility manager shall maintain "Quiet Hours" between 10:00 pm to 8:00 am, daily, where persons on the street or on adjacent properties cannot hear any noise (including music, TV's, voices) from the facility except in an emergency.
11. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity at a level audible to neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.
12. **Deliveries.** Any deliveries of business products and other packages and goods to the facility during weekdays shall be made between the hours of 9:00 am to 5:00 pm.
13. **Contact Information.** Operator shall provide area residents and the City with a 24/7 contact name, phone number and e-mail address to assist residents and the City with problems or concerns arising from the facility. E-mails or messages left for the Operator's designated contact shall be returned in prompt manner within the next 24-hour period.
14. **Building and Zoning.** Operator recognizes that the subject property has specific setbacks from the side yards, front yard, and/or back yard per the City's Building and Zoning Codes. Operator will keep these setbacks clear of obstruction, including building obstruction. The orderly storage of trashcans is acceptable in setbacks.
15. **Facility Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regards to any of these issues, Operator shall correct the violation with seven days or contact the City directly to negotiate a mutually agreeable timeline.
16. **Beaches and Other Common Gathering Areas.** Operator's use of the beaches for meetings, prayer, conversation, or other gatherings shall show due respect to non-resident visitors, residents, and other beachgoers, thus allowing them to take full enjoyment of the beach. Operator shall not conduct business on the beach (per NBMC 10.08.030)
17. **Services to Facility's Clients or Residents.** Operator will use industry's best practices to ensure that the facility's clients or residents stay in recovery (including scheduled substance testing, random substance testing, and encouragement of 12-Step meetings or counseling). Operator has represented that the facility operates with an average client stay of 300-days. Operator shall use best efforts to maintain,

at a minimum, average client stays of 300-days. Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.

18. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this reasonable accommodation shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code and Fire Code.
19. **Additions or Modifications to Conditions of Approval, or Revocation of Reasonable Accommodation.** The Hearing Officer or City Council may add or modify conditions of approval to this reasonable accommodation, or revoke this Reasonable Accommodation upon a finding of failure to comply with the conditions set forth. The City Council may also revoke, modify, or amend this Reasonable Accommodation if it determines the conditions under which this facility is being operated or maintained are detrimental to the public health, safety, peace, morals, comfort, or general welfare of the community, or if the facility is materially injurious to property or improvements in the vicinity, or if the facility is operated or maintained so as to constitute a public nuisance. In any proceeding to revoke this Reasonable Accommodation, the cumulative effect of violation of two or more conditions shall be considered.
20. **Compliance with Conditions of Approval. Per NMBC Section 20.98.035 (Amendments), a request for changes in conditions of approval shall be treated as a new application unless they are minor, do not involve a substantial alteration to the plan or conditions of approval, and are consistent with the intent of the original approval. Any changes in operational characteristics, including but not limited to the following, shall require amendment to this reasonable accommodation or issuance of a new reasonable accommodation:**
 - a. Increase in number of client residents.
 - b. Change in on-site staffing affecting the ability of the operator to adequately manage the facility and provide supervision of its residents.
 - c. Increase in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
 - d. Request for amendment to any condition or conditions or approval.
 - e. Change in property ownership in a manner that causes the majority of the property to be owned by a person or entity not identified in the Reasonable Accommodation or its application.
 - f. Alteration and/or loss of approved on-site parking.

- g. Upon determination by the Planning Director, a change in facility management, a change in facility ownership, or a change in the population served by this facility. The term "change in facility management" shall include but not be limited to a change in the current management of Balboa Recovery Inc. and/or the conveyance, sale or assignment of Balboa Recovery Inc. rights and obligations as to the facility at 3206 and 3206 ½ W. Balboa Blvd. to any successors in interest or assignees of Balboa Recovery Inc.
- h. Any other material change in the operational characteristics that is not in substantial conformance with the Operation and Management Plan, upon determination by the Planning Director.

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