Community Meeting
Sober Living Homes, Group Homes, and State-Licensed Residential Care Facilities
Newport Beach Library Friends Room

Introductions

• Residents
• City Representatives
• County Representatives
• State Representatives
Fair Housing Act and American Disabilities Act

• Provide an individual with any disability an equal opportunity to use and enjoy a dwelling.

• Unlawful to utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons.

• An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

Drug and Alcohol Addiction is a Disability

• Handicap is defined as (1) a physical or mental impairment which (2) substantially limits (3) one or more of a person’s major life activities.

• Persons recovering from addiction to drugs and/or alcohol are considered to be disabled under state and federal law.

• The Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.
Where we started?

- **Early 2000’s:**
  - Group homes on the rise.
  - Overconcentration and lack of local regulations identified as a growing issue in neighborhoods City-wide.

- **In 2007/2008:**
  - Licensed: 26 facilities with 213 beds
  - Unlicensed: 55 facilities with 401 beds
  - **614 total number of beds**

City Ordinance

*Adopted in 2008*

- Established location regulations
- Revised for compliance with Fair Housing Laws
- Added Reasonable Accommodation provisions
Types of Residential Care Facilities

- **Drug and Alcohol recovery** – state license obtained from the Department of Health Care Services
- **Social Rehabilitation Facility for mental illness** – state license from the Department of Social Services

**Elderly**

- **Adult Day Care** - licensed 6 beds treated the same as Residential Care Facilities and allowed in all residential zones – state license from the Department of Social Services

- **Must be treated as a single-family use in California, and no zoning requirement may be applied to that facility that is not applied to other single-family residences in the same zone.**

- **This applies to all of California cities and counties.**
Newport Beach Matrix of Allowed Uses

**Applicability:** New and retroactively to existing facilities

**Nonconforming Uses:** Must be abated or seek Reasonable Accommodation

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Single-Family</th>
<th>Two-Family</th>
<th>Multi-Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensed 6 and Under</td>
<td>Allowed</td>
<td>Allowed</td>
<td>Allowed</td>
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<tr>
<td>Unlicensed 6 and Under</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Use Permit</td>
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<tr>
<td>7 and Over (Licensed or Unlicensed)</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Use Permit</td>
</tr>
<tr>
<td>Integral – Not Licensed by State</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Use Permit</td>
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<tr>
<td>Parolee Probationer</td>
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Effects since 2008 Zoning Ordinance

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<tr>
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<td>Facilities</td>
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<td>33</td>
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<td>27</td>
<td>25</td>
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<td>26</td>
<td>27</td>
<td>28</td>
<td>29</td>
<td>30</td>
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<tr>
<td>Beds</td>
<td>614</td>
<td>237</td>
<td>200</td>
<td>195</td>
<td>181</td>
<td>187</td>
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<td>187</td>
<td>192</td>
<td>198</td>
<td>204</td>
<td>210</td>
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</table>

- **Use Permits**
  - 3 Approved / 5 Denied
- **Reasonable Accommodations**
  - 5 Approved / 6 Denied
- **Zoning Agreements**
  - 2 Approved / 1 Revoked

All new facilities since 2009 have been state licensed 6 and under
1. Two drug/alcohol residential state licensed (6 beds each)
2. One elderly care licensed facility (6 bed)
3. Two existing Yellowstone homes within same neighborhood (discussed on next slide)
Litigation challenging the 2008 ordinance was settled prior to the court entering final judgment. No changes were made to the 2008 ordinance.

Properties at 1621 Indus and 20172 Redlands were part of litigation, which the City settled, without requiring Yellowstone to obtain a CUP.

Judge issued a preliminary injunction prohibiting the City from treating two state licensed facilities as “integral facilities.”

Notice of application filed received from the Community Care Licensing Division of the California Department of Social Services

Transitional (30-90 days) Social Rehabilitation Facility (SRF) for mental illness

24 hour a day non-medical care and supervision in a group setting to adults recovering from a mental illness who temporarily need assistance, guidance or counseling.

300 feet min. separation from any other state licensed facility (Not within 300 feet)

Strict regulations and monitoring by the Orange County Community Care Licensing Division Regional Office 714-703-2840

6 bed licensed facility allowed in all residential areas
### Newport Beach v Costa Mesa

#### Comparison Summary

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<th>Multi-Family</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>Newport Beach</strong></td>
<td><strong>Costa Mesa</strong></td>
<td><strong>Newport Beach</strong></td>
</tr>
<tr>
<td>Licensed 6 and Under</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Unlicensed 6 and Under</td>
<td>X</td>
<td>Special Use Permit</td>
<td>X</td>
</tr>
<tr>
<td>7 and Over (Licensed or Unlicensed)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

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**Licensing and Enforcement**

- **DHCS** - Department of Health Care Services for drug and alcohol recovery homes 916-322-2911 or 877-685-8333
- **DSS** - Orange County Community Care Licensing Division of Department of Social Services regional office for mental health facilities and elderly facilities 714-703-2840
1. Establish overconcentration standards to avoid changing the neighborhood into a commercial setting and threatening the intent of promoting recovery in a normal residential setting.

2. Require distancing and maximum allowed homes within a neighborhood or block.

3. Allow annual City fire inspections to ensure compliance with license.

4. Additional funding for State inspections.

5. Return local control.

For more information contact
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Community Development Director
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sjurjis@newportbeachca.gov
www.newportbeachca.gov

Thank you
## Recent Legislation

<table>
<thead>
<tr>
<th>BILL NUMBER</th>
<th>SUMMARY</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 1228 (Lara) 2018</td>
<td>Prohibits facilities that are licensed or certified by DHCS from gaining financially for referring a person to treatment</td>
<td>Signed</td>
</tr>
<tr>
<td>AB 919 (Petrie-Norris) 2019</td>
<td>Establishes enforcement arm at DHCS • Limits facilities offering housing, transport as inducement to treatment</td>
<td>Signed</td>
</tr>
<tr>
<td>SB 406 (Pan) 2019</td>
<td>Requires DHCS take action against unlicensed facility disclosed as recovery residence</td>
<td>Signed</td>
</tr>
<tr>
<td>AB 1158 (Petrie-Norris) 2021</td>
<td>Require a recovery residence that contracts with a government entity or substance abuse recovery or treatment facility that is licensed by the government to maintain minimum insurance coverage levels.</td>
<td>Signed</td>
</tr>
<tr>
<td>SB 434 (Bates &amp; Petrie-Norris) 2021</td>
<td>Prohibits facilities from making false statements or providing false information in advertising or marketing</td>
<td>Signed</td>
</tr>
<tr>
<td>SB 541 (Bates &amp; Petrie-Norris) 2021</td>
<td>Requires substance use disorder treatment services to disclose information about its license or certification</td>
<td>Signed</td>
</tr>
<tr>
<td>AB 920 (Petrie-Norris) 2019</td>
<td>Establishes licensure program for all recovery treatment programs under DHCS</td>
<td>Vetoed</td>
</tr>
<tr>
<td>AB 77 (Petrie-Norris) 2021</td>
<td>Builds on AB 920 • Establishes licensure program for all recovery treatment programs under DHCS</td>
<td>2 Year Bill</td>
</tr>
<tr>
<td>SB 349 (Umberg)</td>
<td>Establishes a client bill of rights for persons receiving treatment for a SUD and imposes requirements and proscribes unlawful acts relating to marketing and advertising with respect to SUD treatment providers.</td>
<td>2 Year Bill</td>
</tr>
</tbody>
</table>
Bi-Partisan Working Group on Substance Abuse Treatment

- Stop exploitation in the recovery industry
- Establish standards for treatment programs and providers
- Ensure that taxpayer dollars are being directed to proven programs that work

AB 1158: Insuring Safety in Recovery Settings for Consumers

Effective January 1, 2022:

- Ensures patients and workers are made whole if harmed by a unscrupulous operator
- Establishes a mechanism for consumer attorneys to go after bad operators
- Allows the California Department of Insurance to do more regulation and investigations in the recovery industry

Contracted Recovery Residences & Licensed Facilities > 6

- Commercial general liability, min $1M per occurrence
- Workers’ compensation and employer’s liability, min $100K
- Commercial or business automobile liability, min $1M
- Professional liability with contractual liability, min $1M per occurrence and $2M aggregate

Smaller Licensed Facilities < 6

- General Liability (Residential)
Insurance Fraud: Investigations and Prosecution

- Fraud in the Recovery Industry = Fastest Growing Insurance Fraud in California

- CA Department of Insurance Investigations Unit - 300+ including law enforcement personnel

- Recent Actions:
  - January 2020 - Orange County District Attorney’s (OCDA) Office and California Department of Insurance (CDI) shut down a $3.2 million health care fraud ring which preyed on vulnerable substance abuse patients in order to bilk an insurance company out of millions.
  - June 2020 - OCDA and CDI charged five additional defendants in a $60 million sober living home fraud scheme designed to traffic vulnerable substance abuse patients from outside California into treatment facilities in Orange and Riverside counties and to bilk insurance companies out of millions of dollars.

Next Steps: Oversight and Enforcement

- Oversight Hearing: Department of Healthcare Services

- Additional Resources Needed

- Legislation to Strengthen Local Enforcement
  - Reintroduce AB 572 (Quirk-Silva, 2017)
    - Would require the Department of Health Care Services to place an investigator “within a participating county” to investigate problems with local licensed adult alcoholism and drug-abuse treatment and recovery facilities.
Questions?

For more information contact
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949-644-3200
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www.newportbeachca.gov
Background

- 2015- Costa Mesa adopted Sober Living Home Ordinance
- 2017- Costa Mesa adopted and amended
- July 2019- federal district jury trial before Judge Selna results in defense verdict for Costa Mesa against Yellowstone, confirming the ordinance is lawful and non-discriminatory
- September 2019- County of Orange adopted sober living home ordinance modeled off City of Costa Mesa ordinance
Key Similarities:
County vs. Costa Mesa Ordinances

- Grace period to comply with ordinances and apply for permits
- Both require permits for group homes of 7 or fewer;
- Similar application requirements and house management protocols
- Both prohibit the location of a group home being within 650 feet of another sober living home or any state-licensed alcohol and drug treatment facility;
- Both require a house manager present 24 hours a day;
- Both require 48-hour notice before eviction;
- Both prohibit sex offenders, violent felons, arsonists, and drug dealers from operating sober living homes;
- Both require a no-drug/alcohol and "good neighbor" policy;
- Both require house guests to actively participate in legitimate recovery programs
- Both prohibit services related to: detoxification, educational counseling, individual or group counseling, and treatment or recovery planning
- Similar enforcement and permit revocation

Key Differences:
County vs. Costa Mesa Ordinances

- County ordinance prohibits in any unincorporated area not included in the ordinance, in other words, prohibited in multi-family, commercial, and industrial zones
- Permitting process and notice procedures different as to homes for six or fewer; but both require permits for six or fewer as well as seven or more whether state licensed or not
- County allows denial, revocation, or cancellation of a permit if any owner/operator/staff member is recovering with less than one year of sobriety; for failure to remove an abusing resident; if located within 1,000 feet of a sober living home; or for repeated violations of law or regulation
- County requires automatic expiration if you discontinue or abandon for six months
Legal Challenges to Costa Mesa (Federal)

**Yellowstone v. Costa Mesa**
- Requested a "reasonable accommodation" to be exempted from R1 ordinance's requirement of 6 or fewer occupants
- Request denied by Planning Commission
- Challenged the R1 ordinance in federal court primarily under FHA & ADA
- City prevailed at trial. Jury concluded the ordinance was not discriminatory as applied to the sober living homes in this case.
- **Ninth Circuit affirmed the jury verdict in September 2021**

The Court said: "A reasonable jury could conclude that the substantial, legitimate nondiscriminatory interests supporting Ordinance 14-13 would not be served by another practice that has a less discriminatory effect" and a "reasonable jury could also conclude that the passage of Ordinance 14-13 was not more likely than not motivated by a discriminatory reason." Thus, according to the Ninth Circuit, there was adequate evidence to support the jury’s verdict for the City on the sober living homes’ disparate treatment and disparate impact claims.

Relevant Litigation

**Federal:**
- City obtained summary judgement in 5 federal actions (Casa Capri, SoCal, Pacific Shores, Summit, and National Therapeutic); five appeals pending

**State:**
- City obtained judgement in 5 state court nuisance abatement actions (Casa Capri, SoCal, Pacific Shores, National Therapeutic, and Raw Recovery)
Next Steps from District 2

- Monitor and continue to request investigation and inspection of state licensed facilities
- Assist development services in updating the registry and mapping sober living homes in the unincorporated areas
- Research procedure to create a countywide registry
- Provide technical assistance to cities interested in adopting regulatory schemes to protect patients and neighbor
- Partner with Assembly member Cottie Petrie-Norris and others to advocate for state reforms

County Public Works

- **1-866-552-8120**
Contact Our Office

Email me at Katrina.Foley@ocgov.com

If you live in these cities and need assistance, please contact our office at: 714-834-3220.

Follow our social media!
@SupervisorFoley

For weekly updates from our office, please sign up for our newsletter at D2.OCGOV.COM.