

**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

June 11, 2010  
Agenda Item #1

**TO:** Judy Sherman, Hearing Officer

**SUBJECT:** Balboa Recovery, Inc. (PA2009-012)  
124 30<sup>th</sup> Street

- Reasonable Accommodation No. 2009-002

**APPLICANT:** Kevin Cullen

**PLANNER:** Janet Johnson Brown, Associate Planner  
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**PROJECT SUMMARY**

An amendment to a reasonable accommodation application for relief from the requirements of Newport Beach Municipal Code (NBMC) Section 20.10.020, (*Residential Districts: Land use Regulations*) due to changed factual circumstances. The applicant requests an amendment to Reasonable Accommodation No. 2009-002 to allow the continued operation of an existing sober living home with a reduced population from 10 female adult resident clients and two resident managers to no more than six female adult resident clients and two resident managers in the two units of a duplex building. The facility is located in the R-2 District, where such uses are not permitted. The applicant requests an amendment to its original application for an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit.

**RECOMMENDATION**

Staff recommends the Hearing Officer conduct a public hearing to consider the applicant's amended request for reasonable accommodation, and receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

1. Approve the request for Reasonable Accommodation No. 2009-002 based on the findings discussed in this report, and
2. Adopt a Resolution of Approval with Conditions of Approval for Reasonable Accommodation No. 2009-002 (Attachment 1); or
3. Issue a written determination and findings within 10 days of this public hearing, and direct staff to prepare a resolution based on the Hearing Officer's written determination and findings, with appropriate conditions, for adoption by the Hearing Officer.

## **BACKGROUND**

On May 20, 2009, Hearing Officer Thomas Allen conducted a public hearing to consider an application for reasonable accommodation requesting relief from the provisions of Newport Beach Municipal Code Section 20.10.020 (*Residential Districts: Land Use Regulations*). The applicant requested an accommodation to allow the continued operation of an existing sober living facility for up to 10 female adult resident clients and two resident managers in two units of a duplex building. A copy of the May 20, 2009 staff report is attached as Attachment 2.

Section 20.10.020 of the NBMC establishes permitted land uses or conditionally permitted land uses in residential districts. The applicant's existing facility would be classified as a "Residential Care Facilities, General" use (seven or more resident clients). Per Section 20.10.020, "Residential Care Facilities, General" uses that are licensed or unlicensed, and "Residential Care Facilities, Small Unlicensed" uses (six or fewer resident clients) are permitted only within a Multi-Family Residential (MFR) District subject to the approval of a use permit issued by a Hearing Officer. The existing facility is located in the R-2 District, where such uses are not permitted. The applicant requested an accommodation from the requirements that unlicensed "Residential Care Facilities, General" are permitted only in MFR Districts with approval of a use permit.

During the May 20, 2009 public hearing, staff reported that they had discussed their initial recommendation with the applicant, which was to recommend that the Hearing Officer grant approval for no more than six resident clients occupying one unit of the duplex building or no more than six resident clients in the whole building. Staff stated that with a resident population of no more than six adult females in the duplex building, it would have been able to provide facts in support of all five findings required by NBMC Chapter 20.98 to grant the requested accommodation. However, the applicant indicated that it would not be financially feasible to maintain the sober living facility with no more than six resident clients in this location. The applicant indicated that he would like the opportunity to maintain operations at the existing sober living facility with 10 resident clients for a one-year period of time in order to find a facility where he could house six resident clients in an economic environment that allowed the facility's continued operation. A copy of the May 20, 2009 hearing transcript is attached as Attachment 3.

On July 2, 2009, the Hearing Officer adopted a resolution denying without prejudice the applicant's request for reasonable accommodation. The Hearing Officer determined that the findings required by Section 20.98.025(B) of the NBMC could not be made to grant a reasonable accommodation to allow 10 resident clients and two resident managers in a duplex building. The Hearing Officer allowed the applicant to continue the operations for a one-year period, subject to certain conditions of operation, after which time he ordered that the nonconforming use of the facility shall abate. A copy of Resolution No. HO-2009-015 is attached as Attachment 4.

## AMENDED REQUEST FOR REASONABLE ACCOMMODATION

In late 2009 the applicant contacted City staff stating there had been a change in circumstances, and that with an upcoming reduction in rent for the property, he could afford to continue operations at this facility with no more than six resident clients. In February 2010, the applicant submitted a letter (Attachment 5) to the City of Newport Beach requesting to amend the original reasonable accommodation application due to changed factual circumstances.

Balboa Recovery has requested to remain in operation at the same location with a reduced population of six female resident clients and two resident managers in the two units of the duplex building. Staff communicated with the applicant on May 28, 2010, to verify there had been no other changes in the information submitted in the original reasonable accommodation application. This was confirmed by the applicant the same date. (Attachment 6). Staff requests that the Hearing Officer refer to the May 20, 2009 staff report attached hereto for a complete description of the facility and operations.

During a conversation with the applicant on June 5, 2010, staff was further informed that the sober living facility currently provides housing for eight resident clients and two resident managers in the two units of the duplex, and has since March 2010. The applicant stated that by the end of September 2010 at the latest, the two current resident clients in excess of six would complete their intended stay at the facility, and he could then permanently reduce the population to three resident clients in each unit.

## DISCUSSION

As discussed in the May 2009 staff report, the federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits housing discrimination based on a resident's disability. Under the FHAA, it is discriminatory for government entities to refuse to make reasonable accommodations from rules, policies, and practices when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling (42 U.S.C. § 3604(f)(3)(B)).

The Ninth Circuit has repeatedly emphasized this requirement, stating that under the Fair Housing Act, "*unlawful discrimination includes refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. We have repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the needs of disabled individuals.*" *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9<sup>th</sup> Cir. 2004) (italics added).

Cases interpreting the FHAA have held that a government agency has an affirmative duty to grant a requested reasonable accommodation if: (1) the request is made by or on behalf of a disabled individual or individuals, (2) the accommodation is necessary to

afford the disabled applicant an equal opportunity to use and enjoy a dwelling, and (3) the request is reasonable.

Cities may find an accommodation request unreasonable if granting the request would: (1) result in a fundamental alteration in the nature of a City program (often described as undermining "the basic purpose which the requirement seeks to achieve"), or (2) would impose undue financial or administrative burdens on the City (See *U.S. v. Village of Marshall*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991)). Whether a requested accommodation is reasonable and necessary must be determined on a case-by-case basis.

### **Analysis**

Balboa Recovery requests a reasonable accommodation to allow the continued operation of the existing sober living facility in this location with a reduced number of resident clients of no more than six adult female resident clients and two resident house managers in the two units of the duplex building. Specifically, the applicant is requesting a reasonable accommodation exemption from the Newport Beach Municipal Code (NBMC) Section 20.10.020 *Residential Districts: Land Use Regulation*. This section of the NBMC establishes permitted land uses or conditionally permitted land uses in residential districts, and includes special requirements, if any, for specific uses.

Ordinance No. 2008-05, adopted by the City in February 2008, codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City of Newport Beach. The Hearing Officer is designated to approve, conditionally approve, or deny all applications for reasonable accommodation. The ordinance also establishes the required findings that must be made to grant approval, and factors the Hearing Officer may consider when making those findings.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the City, or (2) results in a fundamental alteration in the nature of a City program, often described as undermining "the basic purpose which the requirement seeks to achieve."

As stated earlier in this report, in May 2009 the Hearing Officer determined not all of the five findings required pursuant to Section 20.98.025(B) to grant a reasonable accommodation could be made. Specifically, the Hearing Officer determined Finding No. 2 and Finding No. 4 could not be made to allow the continued operation of the existing sober living facility with 10 resident clients and two resident managers. However, staff believes with the reduced number of six female resident clients and two resident managers in two units of the duplex building, all five findings can be made. Following are analyses of Finding No. 2 and Finding No. 4 under the new conditions proposed by the applicant, and the facts in support of these findings.

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

It is the applicant's burden to demonstrate that the requested accommodation is necessary. "The 'necessary' element requires the demonstration of a direct linkage between the proposed accommodation and the 'equal opportunity' to be provided to the handicapped person." *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 460 (3<sup>rd</sup> Cir. 2002)

In the *Lapid-Laurel* case, the court found that the necessity element was established as to disabled elderly residents' need to live in a single-family residential area. However, the need for the facility to house the number of residents requested by the facility operator was not demonstrated. The court said that for the operator to show necessity for the size of the facility, the operator would have to show either that: (1) the size of the facility was necessary for the facility's financial viability (which the court appeared to equate with giving the disabled an equal opportunity to use and enjoy a dwelling); or (2) the size of the facility was necessary to provide a therapeutic benefit (and thus ameliorate an effect of the handicap.) The court found the facility operator had not demonstrated that the proposed size of the facility was necessary for either financial viability or therapeutic benefit. 284 F.3d at 460-461.

The Ninth Circuit followed the same requirement that a sober living facility operator show a certain number of residents was necessary for financial viability or therapeutic benefit to the residents in order to demonstrate the necessity of a reasonable accommodation in *City of Edmonds v. Washington State Building Council*, 18 F.3d 802 (9<sup>th</sup> Cir. 1994) In that case, the court noted that a sober living home had made a preliminary showing of necessity because it had shown that it required six or more residents to ensure financial self-sufficiency, and to provide a supportive atmosphere for successful recovery. 183 F.3d at 803.

Similarly, in *Advocacy and Resource Center v. Town of Chazy*, 62 F.Supp.2d 686 (N.D.N.Y. 1999), the court declined to find that the plaintiff facility operator had established necessity because, in part, the plaintiff offered "only conclusory allegations . . . without any substantiation in the form of financial records demonstrating that the residence would not be economically viable without a larger (population) . . ." 62 F.Supp.2d at 689-690.

Consistent with court decisions, the City requires that applicants for reasonable accommodation demonstrate the necessity of reasonable accommodation requests by showing therapeutic benefit to residents at the requested population levels and/or location (also referred to as "affirmatively enhancing the quality of life" of a disabled individual or individuals), or by showing that the requested number of residents is necessary for the financial viability of the facility.

Reasonable Accommodation No. 2009-002 was denied in July 2009. However, the Hearing Officer allowed the continued operations of the sober living facility with the requested 10 resident clients for a one-year period, subject to certain conditions of operation, after which time he directed the use of the facility to cease. Thus, the existing facility is currently subject to abatement in July 2010.

Facts in support of finding:

The applicant has submitted an amended request for reasonable accommodation to allow six resident clients and two resident managers in the two units of the duplex building. The applicant has stated that continued operation in this location provides a therapeutic benefit to its clients, and that it is necessary to provide a resident manager in each unit in order to monitor the residents' activities and ensure their safety.

In the interim, between now and the end of September, the applicant has requested that the current population level of eight resident clients be allowed to remain in the two units of the duplex building. This would allow the current resident clients to complete their intended stay, and provide these residents an equal opportunity to use and enjoy their current dwelling.

With a reduced facility population of six female resident clients in both units of the duplex building, the amended accommodation will continue to afford disabled individuals an equal opportunity to use and enjoy a dwelling in a small sober living environment. There are limited opportunities within the City for females in recovery to live in a female-only building with six or fewer other recovering individuals, surrounded by other single housekeeping units. At this time, staff is aware of only one similar facility which provides housing to no more than three disabled female clients per unit in a duplex building. That facility is also operated by Balboa Recovery, pursuant to a reasonable accommodation granted on May 20, 2009. The requested reasonable accommodation is necessary to provide an opportunity for disabled female residents to live in a small self-paced recovery environment in a residential setting which allows the residents to reintegrate into the world and workforce.

NBMC Section 20.98.025(C) 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 requested accommodation is granted, the applicant's current and potential clients will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from addiction. 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 with the exception of an all-male sober living facility located at 127 29<sup>th</sup> Street which is currently subject to abatement. The operators of the 29<sup>th</sup> Street facility are in the process of entering an abatement agreement with the City which requires closure of the facility by August 31, 2010, at the latest.

*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.*

The applicant requests 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. The applicant seeks to continue the operations of the existing sober living facility with no more than six disabled individuals in the two units of a duplex building. In May 2009, staff provided facts that supported a finding that an accommodation that allowed the facility to continue at its current location with no more than six female resident clients would afford females with a disability an equal opportunity to enjoy the housing type of their choice in a small, gender-specific recovery environment.

*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.*

The applicant contends that relocation of the current facility would be a significant financial burden, and reports that, with the requested accommodation, changed circumstances now allow the facility to be financially viable under conditions similar to those at other facilities of a similar nature and operation.

*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 2010, females in recovery from alcoholism or chemical dependency wishing to live in Newport Beach in a sober living environment have the following housing opportunities that they can choose from:

- Balboa Recovery operates a single comparable facility, with housing for six female resident clients in two units of a duplex at 204 21<sup>st</sup> Street under a reasonable accommodation granted in May 2009; and

- Pacific Shores Properties operates one female-only sober living home, in one unit of its 492 and 492 ½ Orange Street facility. This unit was granted a reasonable accommodation allowing it to continue to house up to 12 resident clients in each unit; 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 single housekeeping unit.

There are also sober living 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 with up to six individuals *per duplex unit*, 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 of the effective date of the agreement, 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 of the effective date of the agreement. The City is not aware of how many of these beds are available specifically to female clients.

Currently, the City is in the process of entering a similar zoning agreement with Morningside Recovery, which would allow Morningside Recovery to continue operation of sober living facilities housing up to 36 resident clients in five duplex units and one single-family condominium dwelling. The City is not currently aware of how many of these beds are available specifically to female clients.

A denial of the reasonable accommodation would not deprive prospective residents of Balboa Recovery of the opportunity of live in a residential setting with 11 other individuals in recovery in two units of a duplex building. These 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. However, to the best of staff's knowledge, the only other sober living facility in the City that offers housing for only three female resident clients per duplex unit is the other female-only Balboa Recovery facility located at 204 21<sup>st</sup> Street.

**Summary:** Staff asserts that Finding No. 2 can be made with the reduced population of a maximum of six resident clients and two resident managers in both units of the duplex building. Staff recommends that if the requested reasonable accommodation is granted, a condition of approval be imposed limiting the maximum occupancy of the facility to six resident clients and two resident managers. In addition, if the Hearing Officer deems it appropriate to grant the applicant's request to include an interim period in which all eight resident clients currently residing in the facility may remain at the property between July 2, 2010 and September 30, 2010, staff recommends that the Hearing Officer condition the grant of accommodation. Staff has prepared a draft

condition of approval addressing this request to state that as of the date of approval of the accommodation, no additional residents shall be accepted at the facility until attrition of current clients causes the facility to house fewer than six resident clients.

**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.**

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as undermining "the basic purpose which the requirement seeks to achieve."

Facts in support of finding:

**Zoning District Consideration:** 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 "provides areas for single-family and two-family residential land uses."

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 Section 20.10.020 of the NBMC, unlicensed residential care facilities are not permitted in the R-2 District, and are only permitted in the MFR District subject to approval of a use permit.

If the amended reasonable accommodation were granted to allow the continued operations of the sober living facility with a requirement to limit the maximum occupancy to six resident clients and two resident managers in the two units of the duplex building, the intensity of the use would be consistent with typical residential development intensity in the R-2 District. The intensity of the use would also 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 Building Code, facilities providing residential care and housing for more than six resident clients 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 resident clients.

If the occupancy of the facility is reduced to provide housing for six resident clients and two resident managers within the two units of the duplex building, 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. 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.

**Use Permit Consideration:** Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or 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, if applied for within the time period specified in the ordinance, 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 a reasonable 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 a facility to the detriment of neighbors.

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 ceased to provide disabled housing at this location, the accommodation would no longer be necessary and would cease.

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 an amended reasonable accommodation to allow the continued operation of an existing sober living facility to provide housing for no more than six disabled individuals in a facility in both units of a duplex. The requested amended accommodation would permit a maximum of six disabled individuals in recovery and two resident managers in the two units of the duplex building, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units. As a condition of approval, staff recommends that the facility be required to limit the maximum occupancy to six resident clients and two resident managers in the two units of the duplex building.

With the reduction in resident population as required by conditions of approval, the intensity of the use would be 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. Staff believes approval of the amended reasonable accommodation with appropriate conditions of approval to allow the facility to remain in its current location in the R-2 District would 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 duplex building occupied by the facility has two enclosed garage parking spaces. The Zoning Code requires one on-site parking space per three residential care facility beds. With six residential care facility beds, the required parking for the facility would be two spaces. As such, the facility currently meets the required parking standards.

Some residents are permitted to have personal vehicles while residing at the facility. As a proposed condition of approval, the two designated garage parking spaces at the sober living facility shall remain open and available for parking for staff and the resident clients at all times. In addition, the operator shall limit the number of vehicles onsite at anytime to two, which 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 parking space. Client move-in and move-out shall be accomplished in a manner that does not block traffic, area driveway 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 a six-bed residential care facility with two resident manager beds occupying both units of a duplex would generate approximately 16.44 average daily trips. Staff believes that this number does not represent a substantial increase in traffic.

Due to the fact that the applicant limits and manages the use of personal vehicles by residents at the facility, if the reasonable accommodation were granted with a condition of approval limiting the maximum number of residents to six resident clients and two resident managers, the number of trips generated would not be significantly in excess of trips generated by that of a duplex. Approval of the amended request for reasonable accommodation would include conditions that restrict use of residents' personal vehicles while living at the facility, which would reduce impacts on parking to an insubstantial level.

- C. *Whether granting the 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 requested 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.*

With the upcoming abatement of the sober living facility at 127 29<sup>th</sup> Street, 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 two resident managers in the two units of the duplex building would not create an institutionalized environment.

**Summary:** Staff believes Finding No. 4 can be made with conditions imposed on the use that will allow the amended request for reasonable accommodation be granted consistent with the basic purposes of NBMC Sections 20.10.010, 20.10.020, and Chapter 20.91A. The recommended conditions of approval are described below.

1. That the operator of the sober living facility agree to a bed cap of no more than six resident clients plus two resident managers, who shall be qualified recovery specialists;
2. If the applicant obtains a license from ADP to operate a facility for six or fewer clients in one of the duplex units, the other unit may only be used to provide housing for a single housekeeping unit; and
3. Quiet hours between 10:00 p.m. and 8:00 a.m.;
4. Require 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 would require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. Staff believes that with these conditions, the findings required by NMBC Section 20.91A.060 for issuance of a use permit could be made with regard to this facility. With conditions of approval, the use could conform to all applicable provisions of Section 20.91A.050.

Staff believes that, as conditioned, the use would be compatible with the character of the surrounding neighborhood, and the continued maintenance of the use would 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, staff has considered that 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 will be no other

residential care uses on this block, or any of the immediately adjacent blocks. There has been no evidence presented to staff 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.

### **CONCLUSION**

In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for reasonable accommodation. As to the amended reasonable accommodation proposed by the applicant with a limit on the total bed count for resident clients to six beds, staff believes all five findings can be made. In addition, staff believes the sober living facility would need to retain on-site resident managers who are qualified recovery specialists to monitor and ensure the safety of the resident clients. Permitting a facility with no more than six resident client beds to remain in its current location in the R-2 District would not undermine the basic purpose of this portion of the City's zoning program

In addition, there would be conditions imposed with the granting of the reasonable accommodation that would result in the facility complying with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. Staff believes that with these conditions, the findings that NBMC Section 20.91A.060 requires for issuance of a use permit could be made with regard to this facility. With conditions of approval, the use would conform to all applicable provisions of Section 20.91A.050, the building provides sufficient on-site parking for the use, and traffic impacts are similar to those generated by surrounding single-family and two-family uses. The property and existing structure is physically suited to accommodate the use.

If the proposed conditions are approved and followed, staff believes that Finding No. 2 and Finding No. 4 can be made, and that granting the requested accommodation will not undermine the basic purpose which the zoning program seeks to achieve, and will not result in a fundamental alteration in the nature of the City's zoning program.

Staff recommends that the Hearing Officer:

1. Approve the request for Reasonable Accommodation No. 2009-002 based on the findings discussed in this report; and
2. Adopt a Resolution of Approval with proposed Conditions of Approval for Reasonable Accommodation No. 2009-002, which is attached to this report, or
3. Issue a written determination and findings within ten days from the date of the public hearing, and direct staff to prepare a resolution based on the Hearing Officer's written determination and findings, with appropriate conditions, for adoption by the Hearing Officer.

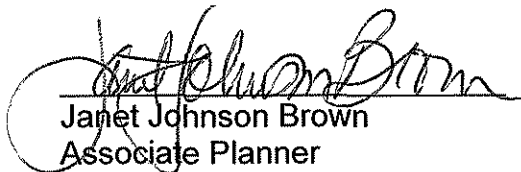
### Environmental Review

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act 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 therefore it is not subject to CEQA.

### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:



Janet Johnson Brown  
Associate Planner

### **ATTACHMENTS**

- Attachment No. 1: Draft Resolution of Approval
- Attachment No. 2: May 20, 2009 Staff Report
- Attachment No. 3: May 20, 2009 Hearing Transcript
- Attachment No. 4: Resolution No. HO-2009-015 Adopted July 2, 2009
- Attachment No. 5: Applicant request to amend original reasonable accommodation, February 1, 2010
- Attachment No. 6: Correspondence between City and applicant, May 28, 2010
- Attachment No. 7: Correspondence received from public regarding this application

# **Attachment No. 1**

Draft Resolution of Approval

RESOLUTION NO. HO-2010-\_\_

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH APPROVING A REASONABLE ACCOMMODATION FOR A RESIDENTIAL CARE FACILITY LOCATED AT 124 30<sup>TH</sup> STREET AND OPERATED BY BALBOA RECOVERY, INC. (PA 2009-012)**

**WHEREAS**, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings, and the ordinance 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., requesting a reasonable accommodation from the requirements of Newport Beach Municipal Code (NBMC) Section 20.10.020 (*Residential Districts: Land use Regulations*) with respect to property located at 124 30<sup>th</sup> Street, and legally described as Newport Beach City Block 29, Lot 18, Tract 512; and

**WHEREAS**, a public hearing was held on May 20, 2009, presided by Hearing Officer Thomas Allen, who determined that the findings required by Section 20.98.025(B) of the NBMC could not be made to grant a reasonable accommodated for 10 resident clients and two resident managers, and on July 2, 2009, the Hearing Officer adopted Resolution No. HO-2009-015 denying Reasonable Accommodation No. 2009-002 without prejudice, granting the applicant a one-year period in which to abate the use; and

**WHEREAS**, on February 1, 2010, Kevin Cullen submitted a request for an amendment to his request for Reasonable Accommodation No. 2009-002 to allow the continued operation of an existing sober living facility with a reduced population from 10 female adult resident clients and two resident managers to no more than six female adult resident clients and two resident managers in the two units of a duplex building. The facility is located in the R-2 District, where such uses are not permitted, and the applicant requests an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit; and

**WHEREAS**, a public hearing was held on June 11, 2010, 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 Judy Sherman, 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: The applicant has submitted an amended request for reasonable accommodation to allow six female resident clients and two resident managers in the two units of the duplex building. The applicant has stated that continued operation in this location provides a therapeutic benefit to its clients, and that it is necessary to provide a resident manager in each unit in order to monitor the residents' activities and ensure their safety.

In the interim, between now and the end of September 2010, the applicant has requested that the current population level of eight resident clients be allowed to remain in the two units of the duplex building. This would allow the current resident clients to complete their intended stay, and provide these residents an equal opportunity to use and enjoy their current dwelling.

The Hearing Officer finds that with a reduced facility population of six female resident clients in both units of the duplex building, the amended accommodation will continue to afford disabled individuals an equal opportunity to use and enjoy a dwelling in a small sober living environment.

The Hearing Officer deems it appropriate to condition the grant of accommodation to include an interim period in which all eight resident clients currently residing in the facility may remain at the property between July 2, 2010 and September 30, 2010. Further, the Hearing Officer determines it is appropriate to condition the grant of accommodation to state that, as of the date of approval of the accommodation, no additional residents shall be accepted at the facility until attrition of current clients causes the facility to house fewer than six resident clients.

The Hearing Officer finds there are limited opportunities within the City for females in recovery to live in a female-only building with six or fewer other recovering individuals, surrounded by other single housekeeping units. The Hearing Officer has determined the requested reasonable accommodation is necessary to provide an opportunity for

disabled female residents to live in a small self-paced recovery environment in a residential setting which allows the residents to reintegrate into the world and workforce.

NBMC Section 20.98.025(C) allows the Hearing Officer 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.*

With the granting of the requested accommodation, the applicant's current and potential clients will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from addiction. 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' reintegration into society. This facility appears to be the only residential care facility of any description on this block, or any of the adjacent blocks with the exception of an all-male sober living facility located at 127 29<sup>th</sup> Street which is currently subject to abatement. The operators of the 29<sup>th</sup> Street facility are in the process of entering an abatement agreement with the City which requires closure of the facility by August 31, 2010, at the latest.

- 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.*

The applicant requests 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 a use permit. The applicant seeks to continue the operations of the existing sober living facility with no more than six disabled individuals in the two units of a duplex building. The Hearing Officer finds that facts have been provided that support a finding that by allowing the facility to continue at its current location with no more than six female resident clients, females with a disability would be afforded an equal opportunity to enjoy the housing type of their choice in a small, gender-specific recovery environment.

- 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.*

The applicant contends that relocation of the current facility would be a significant financial burden, and reports that, with the requested accommodation, changed

circumstances now allow the facility to be financially viable under conditions similar to those at other facilities of a similar nature and operation.

- 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 the availability of other facilities that are of a "similar nature and operation." Based on an inventory conducted in April 2010, females in recovery from alcoholism or chemical dependency wishing to live in Newport Beach in a sober living environment have the following housing opportunities that they can choose from:

- Balboa Recovery operates a single comparable facility, with housing for six female resident clients in two units of a duplex at 204 21<sup>st</sup> Street under a reasonable accommodation granted in May 2009; and
- Pacific Shores Properties operates one female-only sober living home, in one unit of its 492 and 492 ½ Orange Street facility. This unit was granted a reasonable accommodation allowing it to continue to house up to 12 resident clients; and
- An unlimited number of beds are available 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 single housekeeping unit.

There are also sober living 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 with up to six individuals *per duplex unit*, 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 of the effective date of the agreement, 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 of the effective date of the agreement. The City is not aware of how many of these beds are available specifically to female clients.

Currently, the City is in the process of entering a similar zoning agreement with Morningside Recovery, which would allow Morningside Recovery to continue operation of sober living facilities housing up to 36 resident clients in five duplex units and one single-family condominium dwelling. The City is not currently aware of how many of these beds are available specifically to female clients.

A denial of the reasonable accommodation would not deprive prospective residents of Balboa Recovery of the opportunity of live in a residential setting with 11 other individuals in recovery in two units of a duplex building. These 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. However, at this time it appears that the only other sober living facility in the City that offers housing for only three female resident clients per duplex unit is the other female-only Balboa Recovery facility located at 204 21<sup>st</sup> Street.

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: The Hearing Officer finds that 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 analyzed below, the Hearing Officer finds that allowing the current residents to remain for an interim period between July 2, 2010 and September 30, 2010, and a maximum of no more than six female resident clients and two resident managers, as requested by the applicant, would not result in a fundamental alteration of a City zoning program.

**Zoning District Consideration:** 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 “provides areas for single-family and two-family residential land uses.”

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 Section 20.10.020 of the NBMC, unlicensed residential care facilities are not permitted in the R-2 District, and are only permitted in the MFR District subject to approval of a use permit.

The Hearing Officer finds that the intensity of the use would be consistent with typical residential development intensity in the R-2 District with the granting of the reasonable accommodation to allow the continued operations of the sober living facility with a maximum occupancy of six resident clients and two resident managers in the two units of the duplex building. The Hearing Officer finds that the intensity of the use would also 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 Building Code, facilities providing residential care and housing for more than six resident clients 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 resident clients.

If the occupancy of the facility is reduced to provide housing for six resident clients and two resident managers within the two units of the duplex building, 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. 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.

**Use Permit Consideration:** Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or 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, if applied for within the time period specified in the ordinance, 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 Hearing Officer 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 Hearing Officer can impose the same conditions through a reasonable 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, parking and traffic impacts, excessive second-hand smoke, and unruly behavior by residents of a facility to the detriment of neighbors.

The Hearing Officer finds that conditions of approval 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 Hearing Officer's conditions of approval are described below.

1. The operator of the sober living facility shall agree to a bed cap of no more than six female resident clients plus two resident managers, who shall be qualified recovery specialists;
2. If the applicant obtains a license from ADP to operate a facility for six or fewer clients in one of the duplex units, the other unit may only be used to provide housing for a single housekeeping unit; and
3. Quiet hours between 10:00 p.m. and 8:00 a.m.;
4. 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 is required.

Essentially, these conditions would require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. The Hearing Officer finds that with these conditions, the findings required by NMBC Section 20.91A.060 for issuance of a use

permit could be made with regard to this facility. With conditions of approval, the use could conform to all applicable provisions of Section 20.91A.050.

The Hearing Officer finds, that as conditioned, the use would be compatible with the character of the surrounding neighborhood, and the continued maintenance of the use would 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 Hearing Officer has considered that 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 will be no other residential care uses on this block, or any of the immediately adjacent blocks. In addition, there has been no evidence presented to the Hearing Officer 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 Hearing Officer 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 an amended reasonable accommodation to allow the continued operation of an existing sober living facility to provide housing for no more than six disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of six disabled individuals in recovery and two resident managers in the two units of the duplex building, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units. As a condition of approval, the Hearing Officer requires that the facility be limited to a maximum occupancy of six resident clients and two resident managers in the two units of the duplex building.

With the reduction in resident population as required by conditions of approval, the intensity of the use would be 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 Hearing Officer finds that approval of the reasonable accommodation with appropriate conditions of approval to allow the facility to remain in its current location in the R-2 District will 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 duplex building occupied by the facility has two enclosed garage parking spaces. The Zoning Code requires one on-site parking space per three residential care facility beds. With six residential care facility beds, the required parking for the facility would be two spaces. As such, the facility currently meets the required parking standards.

A condition of approval is included requiring that the two designated garage parking spaces at the sober living facility shall remain open and available for parking for staff and the resident clients at all times. In addition, the applicant shall limit the number of vehicles onsite at anytime to two, which 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 parking space. Client move-in and move-out shall be accomplished in a manner that does not block traffic, area driveway 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 a six-bed residential care facility with two resident manager beds occupying both units of a duplex would generate approximately 16.44 average daily trips. The Hearing Officer finds that this number does not represent a substantial increase in traffic.

Due to the fact that the applicant limits and manages the use of personal vehicles by residents at the facility, the number of trips generated would not be significantly in excess of trips generated by that of a duplex with the granting of the reasonable accommodation with a condition of approval limiting the maximum number of residents to six resident clients and two resident managers. Approval of the amended request for reasonable accommodation includes conditions that restrict use of residents' personal vehicles while living at the facility, which will reduce impacts on parking to an insubstantial level.

C. *Whether granting the 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. The Hearing Officer finds that granting the requested 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.*

With the upcoming abatement of the sober living facility at 127 29<sup>th</sup> Street, 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. The Hearing Officer finds that granting the reasonable accommodation with a condition of approval limiting the maximum occupancy of the facility to six residents and two resident managers in the two units of the duplex building would 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. The Hearing Officer finds that the requested accommodation will not result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

**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. 2009-002, subject to the Conditions set forth in Exhibit "A" attached hereto and made a 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 11<sup>th</sup> DAY OF JUNE, 2010.**

By: \_\_\_\_\_  
Judy Sherman, Hearing Officer

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL  
REASONABLE ACCOMMODATION NO. 2009-002  
BALBOA RECOVERY INC. at 124 30<sup>th</sup> Street, Units A and B**

1. **Grant of Reasonable Accommodation.** Reasonable Accommodation No. 2009-002 is granted solely to Balboa Recovery, Inc. (hereinafter "the Operator") to operate an adult sober living facility for disabled female clients in the two units of a duplex building located at 124 30<sup>th</sup> Street. Reasonable accommodation to occupy the building (inclusive of both units) is granted to six disabled female persons and two resident managers. The Operator shall execute an affidavit declaring that all clients receiving services from this facility are disabled persons.
2. **Interim Occupancy Level.** For an interim period, from the date of adoption of this resolution to September 30, 2010, the Operator shall limit occupancy of the building to eight resident female client beds and two on-site resident managers, who shall be qualified recovery specialists. If any of the eight resident clients currently residing at the facility as of the date of approval of Reasonable Accommodation No. 2009-002 cease residency at the facility after July 2, 2010, the Operator shall not accept any additional residents that would cause the facility's population to exceed six resident clients. Under no circumstance shall more than eight female clients in recovery reside in the building during this interim period.
3. **Occupancy Level.** Effective October 1, 2010 (or earlier, if attrition of current residents permits), the Operator shall limit occupancy of the building to six female resident client beds and two on-site resident managers, who shall be qualified recovery specialists. No more than six persons in recovery may reside in the building.
4. **Staffing.** Operator shall have two qualified resident managers on-site at all time (24 hours a day, seven days a week) to appropriately and responsibly manage the facility.
5. **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.
6. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.
7. **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.

8. **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.
9. **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.
10. **Vehicles, Parking & Garages.** This facility may have a maximum of three vehicles associated with its use. The Operator shall keep the two designated garage parking spaces at the facility open and available for parking for staff, and resident clients at all times. At most one other client in the facility may have a vehicle and park on the street in a legally-designated parking spot. Client move-in and move-out shall be accomplished in such a manner that traffic on 30<sup>th</sup> Street is not blocked, nor may area alleys be blocked.
11. **Transportation.** No transportation services shall be provided by the facility operator.
12. **Quiet Hours.** The on-site facility manager shall maintain "Quiet Hours" between 10:00 p.m. and 8:00 a.m., 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.
13. **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.
14. **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 a.m. to 5:00 p.m.
15. **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.

16. **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.
17. **Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regard to any of these issues, Operator shall correct the violation with seven days or contact the City directly to discuss an alternative timeline consistent with the Newport Beach Municipal Code.
18. **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)
19. **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 stay 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.
20. **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.
21. **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 a violation of two or more conditions shall be considered.
22. **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 can only take effect upon issuance of a new reasonable accommodation:

- a. Increase in number of resident clients.
- b. Change in gender-specific nature of housing.
- c. Change in on-site staffing affecting the ability of the operator to adequately manage the facility and provide supervision of its residents.
- d. A change in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
- e. Request for amendment to any condition or conditions or approval.
- f. 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.
- g. Change in client base such that persons living there are no longer classified as disabled or verified to be disabled.
- h. Alteration and/or loss of approved on-site parking.
- i. 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 a majority of Balboa Recovery, Inc.'s rights and obligations as to the facility at 124 30<sup>th</sup> Street to any successors in interest or assignees of Balboa Recovery, Inc.
- j. 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.

# # #

# **Attachment No. 2**

May 20, 2009 Staff Report

**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

May 20, 2009  
Agenda Item

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

**SUBJECT:** Balboa Recovery Inc. (PA2009-012)  
124 30<sup>th</sup> Street

- Reasonable Accommodation No. 2009-002

**APPLICANT:** Kevin Cullen

**PLANNER:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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**PROJECT SUMMARY**

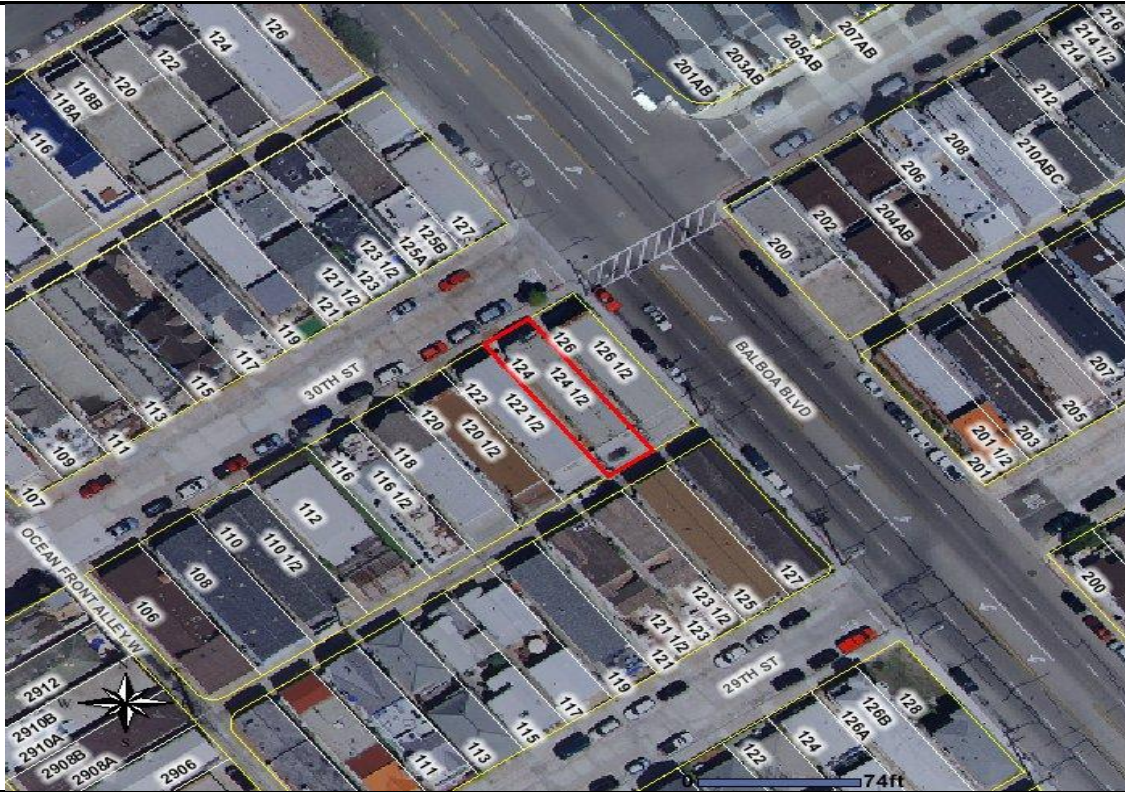
A Reasonable Accommodation application for relief from the requirements of Newport Beach Municipal Code (N BMC) Section 20.10.020, (Residential Districts: L and use Regulations) to allow the continued operation of an existing sober living home for up to ten (10) female adult resident clients and two (2) resident manager in two units of a duplex. The facility is located in the R-2 District, where such uses are not permitted. The applicant requests an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit.

**RECOMMENDATION**

Staff recommends the Hearing Officer:

1. Deny the request for Reasonable Accommodation No. 2009-002 based on the findings discussed in this report but subject to an up to 12-month abatement period, and
2. Direct staff to prepare a Resolution of Denial that allows this Facility to stay in operation for a maximum of 12 months, subject to operational conditions (see Exhibit A) during the 12-month period, and subject to abatement at the end of the 12-month period.

**VICINITY MAP**



**GENERAL PLAN**

**ZONING**



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	RT, Two-Unit Residential	R-2, Two-Family Residential	Duplex, w/ Sober Living Facility in both units
NORTH	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential Uses
SOUTH	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential Uses
EAST	RT, Two-Unit Residential	SP-6/R-2, Two-Family Residential	Residential Uses
WEST	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential Uses

## **INTRODUCTION**

The subject property is situated on the south side of 30<sup>th</sup> Street approximately 50 feet from the intersection of 30<sup>th</sup> Street and West Balboa Boulevard. The property is zoned R-2 (Two-Family Residential) and is developed with a two-story duplex with an attached two-car garage. Surrounding properties include single and two-unit residential uses that are primarily a mixture of rental and owner-occupied properties. A group residential use that began operations without complying with Ordinance 2008-05 located at 127 29<sup>th</sup> Street is in close proximity to 124 30<sup>th</sup> Street – the 127 29<sup>th</sup> Street location is subject to abatement.

The property at 124 30<sup>th</sup> Street is owned by Ocean #1, LLC. Balboa Recovery Inc. operates a sober living facility in this location for adults in recovery from alcohol and/or drug abuse in both of units of the building. The facility houses up to ten (10) resident clients and two (2) resident managers and is restricted to females only. There are five (5) residents and one (1) resident manager in each of the units. In addition, no one under the age of eighteen is permitted to reside in the facility. The applicant has stated that residents are referred to the facility through Ocean Recovery, although there is no official affiliation between Balboa Recovery and Ocean Recovery. Balboa Recovery Inc. also operates two similar facilities within the City:

- 3206 West Balboa Boulevard (reasonable accommodation under consideration for six (6) clients plus one (1) manager per building, or six (6) clients and one (1) resident manager in one unit, and a single housekeeping unit in the other unit of the duplex); and
- 204 21<sup>st</sup> Street (reasonable accommodation issued for six (6) clients plus one (1) manager in two units of the duplex building).

The applicant has indicated that both units have been utilized as a sober living facility since October of 2006. To date, City Code Enforcement has received no complaints about the facility. However, this staff report's exhibits include complaints from nearby property owners. Some of the complaints are general, others are specific to smoking, profanity, and parking problems at 124 30<sup>th</sup> Street. At a hearing for another Balboa Recovery facility (204 21<sup>st</sup> Street) held on April 30, 2009, resident Drew Weatherholt alleged that a fight involving residents at 124 30<sup>th</sup> Street had occurred on or about February 8, 2009. Staff asked for the police report associated with the fight. The report shows that the fight involved occupants of 125 30<sup>th</sup> Street – no clients at 124 30<sup>th</sup> Street are indicated in the report as being involved in the fight.

On January 21, 2009, the applicant submitted an Application for Reasonable Accommodation requesting an accommodation from the requirements of NBMC Section 20.62.090 Non-Conforming Structures and Uses: Abatement Periods and NBMC Section 20.91A.020 Use Permits in Residential Districts: Use Permits to Continue Non-Conforming Uses to enable the facility to remain in its current location (Exhibit 1).

After reviewing the application, staff informed the applicant that waivers from the application periods established by Ordinance No. 2008-05 could not be granted.

Granting this request would undermine the basic purpose of the use permit application deadline for existing uses, which was to identify existing nonconforming uses in residential zones and grant use permits to qualified applicants on a timely basis. Furthermore, the more narrowly tailored waiver requested by the applicant is eligible for a conditioned reasonable accommodation that could provide the same benefit the applicant is seeking.

On April 7, 2009, staff requested additional information as well as clarifications from the applicant. (Exhibit 2) Written responses from the applicant are included as Exhibit 3. Included as part of the responses, the applicant submitted an amended application requesting a reasonable accommodation from the provisions in NBMC Section 20.10.20 Residential Districts: Land Use Regulations, and withdrew the initial reasonable accommodation applicant requests.

### **Description of the Facility and Operations**

The facility houses up to ten (10) resident clients and two (2) resident managers. There are five (5) residents and one (1) manager in each of the units. Unit A in the upstairs unit contains three-bedrooms that accommodate two beds in each room. Unit B at the ground level contains three (3)bedrooms that accommodate six (6) beds (two beds in each room (Exhibit 4 - floor plan). The resident manager of each unit shares a bedroom with a resident client.

Individual clients reside at the facility under a separate written agreement with the operator, and are subject to a set of house rules which include abstinence from alcohol and drugs, drug testing as requested by the resident manager, and attendance at 12-Step meetings. Under the house rules, residents are also required to abide by curfews and quiet hours established by the facility, to refrain from smoking in the house, refrain from "racist, sexist or foul language," maintain and clean the dwelling unit, and complete assigned chores. Residents are required to be employed, actively seeking employment, or attending school full-time. All residents are required to be out of the dwelling between the hours of 8:30 a.m. and 5:00 p.m. Exceptions may be made for residents who are sick, work nights, or have permission from the House Manager (Exhibit 1)

### **Parking**

The building provides two on-site parking spaces within an enclosed two-car garage that is accessed to the rear via an alley.

### **Staffing**

Application documents indicate that the facility has one resident manager who resides in each unit to oversee facility operations and enforce house rules.

### Client stays

Client stays can range from 90 days to 545 days (18 months), with an average typical stay of 300 days (10 months). Client stays are dependent on individual progress.

### Curfew and quiet hours

Curfew hours for residents are 10:00 p.m. Sunday through Thursday, and 12:00 a.m. Friday and Saturday. The house rules establish quiet hours from 10:00 p.m. to 8:00 a.m. Sunday through Thursday, and 12:00 am to 8:00 am Friday and Saturday. TV and stereos can be only played at reasonable levels. After 9:00 pm headphones must be used.

### Treatment Services

No treatment services are provided on-site. However, for the first ninety (90) days following admission residents are required to attend at least one 12-Step meeting every day. After ninety (90) days residents are required to attend at least four 12-Step meetings a week. In addition to the 12-Step program, residents are also required to attend daily house meetings as well as attend required meetings by Balboa Recovery.

### Transportation

Residents are permitted to have personal vehicles while residing at the facility, or use public transportation. No transportation services are provided by the facility operator. The facility can only provide parking for two (2) vehicles, which is typically reserved for the resident managers. In the event that the resident managers do not use the parking space a resident may have access to the space. The use and parking arrangement of a resident's vehicle must also receive corporate approval. The operator is also requesting the ability to use one off-site parking space via the City's parking permit program.

### Deliveries

Residents are responsible for their own groceries and supplies. Bottled water is delivered every two weeks.

### Medical Waste

Medical waste is disposed in a manner compliant with NBMC Section 6.04.120. Any urinalysis cups generated at the facility are kept separate from household refuse, and transported to a treatment facility that receives and disposes of them.

## **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits housing discrimination based on a resident's disability. Under the FHAA, it is discriminatory for government entities to refuse to make reasonable accommodations from rules, policies,

and practices when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling (42 U.S.C. § 3604(f)(3)(B)).

The Ninth Circuit has repeatedly emphasized this requirement, stating that under the Fair Housing Act, “*unlawful discrimination includes refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. We have repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the needs of disabled individuals.*” *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9<sup>th</sup> Cir. 2004) (italics added).

Cases interpreting the FHAA have held that a government agency has an affirmative duty to grant a requested reasonable accommodation if: (1) the request is made by or on behalf of a disabled individual or individuals, (2) the accommodation is necessary to afford the disabled applicant an equal opportunity to use and enjoy a dwelling, and (3) the request is reasonable.

Cities may find an accommodation request unreasonable if granting the request would: (1) result in a fundamental alteration in the nature of a City program (often described as undermining “the basic purpose which the requirement seeks to achieve”), or (2) would impose undue financial or administrative burdens on the city (See *U.S. v. Village of Marshall*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991)). Whether a requested accommodation is reasonable and necessary must be determined on a case-by-case basis.

## **Analysis**

The applicant is requesting a Reasonable Accommodation exemption from the Newport Beach Municipal Code (NBMC) Section 20.10.020 Residential Districts: Land Use Regulation. This section of the NBMC establishes permitted land uses or conditionally permitted land uses in residential districts, and includes special requirements, if any, for specific uses.

The applicant’s facility provides a sober living environment for up to ten (10) individuals in recovery from alcohol and/or drug addiction, and includes an on-site resident manager in each of the units. This land use would be classified as “Residential Care Facilities, General.” Pursuant to NBMC Section 20.10.020 “Residential Care Facilities, General” that are licensed or unlicensed, and “Residential Care Facilities, Small Unlicensed” (6 and under residents) are not permitted in the R-2 District. Section 20.10.020 establishes that these uses are conditionally permitted only within the Multi-Family Residential (MFR) District subject to approval of a use permit issued by a Hearing Officer. The applicant’s facility is located in an R-2 District, where such uses are not conditionally permitted, or permitted by right. The applicant requests an exception from the requirements that facilities of this type be located only in MFR Districts with the approval of a use permit and that they be permitted in the R-2 District (current location) without a use permit.

Ordinance No. 2008-05 codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City of Newport Beach. The Hearing Officer is designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. The ordinance also establishes required findings and factors the Hearing Officer may consider when making those findings. Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the City, or (2) results in a fundamental alteration in the nature of a City program, often described as undermining “the basic purpose which the requirement seeks to achieve.”

Pursuant to Section 20.98.025(B) of the NBMC, the written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval.

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

This finding can be made. The applicant 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: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.***

It is the applicant’s burden to demonstrate that the requested accommodation is necessary. “The ‘necessary’ element requires the demonstration of a direct linkage between the proposed accommodation and the ‘equal opportunity’ to be provided to the handicapped person.” *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 460 (3<sup>rd</sup> Cir. 2002)

In the *Lapid-Laurel* case, the court found that the necessity element was established as to disabled elderly residents’ need to live in a single-family residential area. However, the need for the facility to house the number of residents requested by the facility operator was not demonstrated. The court said that for the operator to show necessity for the size of the facility, the operator would have to show either that: (1) the size of the facility was necessary for the facility’s financial viability (which the court appeared to equate with giving the disabled an equal opportunity to use and enjoy a dwelling); or (2) the size of the facility was necessary to provide a therapeutic benefit (and thus ameliorate an effect of the handicap.) The court found the facility operator had not demonstrated that the proposed size of the facility was necessary for either financial viability or therapeutic benefit. 284 F.3d at 460-461.

The Ninth Circuit followed the same requirement that a sober living facility operator show a certain number of residents was necessary for financial viability or therapeutic benefit to the residents in order to demonstrate the necessity of a reasonable accommodation in *City of Edmonds v. Washington State Building Council*, 18 F.3d 802 (9<sup>th</sup> Cir. 1994) In that case, the court noted that a sober living home had made a preliminary showing of necessity because it had shown that it required six or more residents to ensure financial self-sufficiency, and to provide a supportive atmosphere for successful recovery. 183 F.3d at 803.

Similarly, in *Advocacy and Resource Center v. Town of Chazy*, 62 F.Supp.2d 686 (N.D.N.Y. 1999), the court declined to find that the plaintiff facility operator had established necessity because, in part, the plaintiff offered “only conclusory allegations . . . without any substantiation in the form of financial records demonstrating that the residence would not be economically viable without a larger (population) . . .” 62 F.Supp.2d at 689-690.

Consistent with court decisions, the City requires that applicants for reasonable accommodation demonstrate the necessity of reasonable accommodation requests by showing therapeutic benefit to residents at the requested population levels and/or location (also referred to as “affirmatively enhancing the quality of life” of a disabled individual or individuals), and by showing that the requested number of residents is necessary for the financial viability of the facility.

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 an 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 10 residents at this location, and argued that it was necessary to continue to operate in both units due to concerns about mixing recovery and certain non-recovery uses in the same building. Staff recognizes that control of the entire building may be in the best interest of the resident clients, but 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.

Although 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 (6) residents.

Alternate finding - at a reduced number of permitted resident client beds for the duplex facility, this finding can be made. If the applicant reduces the population of the facility to six (6) residents housed within the six (6) bedrooms of the duplex building, or within three (3) bedrooms in one of the units (Unit B) of the duplex (with the other unit inhabited by a single housekeeping unit), staff can accept the argument that granting the accommodation is necessary to afford disabled individuals an equal opportunity to use and enjoy a dwelling. While there are a significant number of sober living beds in duplexes housing up to 12 resident clients in the City, there are substantially fewer opportunities within the City for individuals in recovery to live in a building with six (6) or fewer other recovering individuals surrounded by other single housekeeping units.

NBMC Section 20.98.025(C) 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 requested accommodation is granted, the applicant's current and potential clients will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from addiction. 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 (6) 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: The applicant 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. The applicant seeks to continue to house up to 10 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, staff recommends that if a reasonable accommodation were to be granted, a condition of approval be imposed limiting maximum occupancy of the facility to six (6) resident clients in the building, either living in one unit (with the other unit occupied by a single housekeeping unit), or living in both units of the duplex. As part of this condition of approval, the maximum occupancy of six (6) residents would be achieved through the attrition of existing residents as they complete their recovery program, with consolidation of the sober living facility into a single unit, or in both units with a maximum of occupancy of six (6) residents plus one (1) onsite resident manager.

- 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.*

The applicant 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. The applicant contends that closing or relocation of the facility would be a significant financial burden. The applicant 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. Staff has requested additional financial data in order to verify the reported expenses. If needed, the applicant has requested that the Hearing Officer review the financial information "in camera".

For this reason, staff is unable to conclude that granting the exemption to allow the continued use in the R-2 District at the population level requested by the applicant is necessary to make applicant's facility financially viable, and is unable to analyze whether a particular number of residents 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
- 6 beds at 204 21<sup>st</sup> Street and possibly six beds at 3206-3206 ½ West Balboa (operated by Balboa Recovery, with reasonable accommodation issued or pending 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 single housekeeping unit.

There are also sober living 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 twelve individuals in recovery in two units of a duplex building. These 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.

**Summary:** Staff has determined that Finding No. 2 can be made if the size of the facility were reduced to six (6) residents and one (1) full-time staff member housed within both units of the duplex, or in one unit of the duplex with the other unit occupied by a single housekeeping unit. Staff recommends that if a reasonable accommodation were to be granted, a condition of approval be imposed limiting the maximum occupancy of the facility to six (6) residents and one (1) full-time staff member.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as undermining "the basic purpose which the requirement seeks to achieve."

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.***

This finding can be made. 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. Prior to its application for reasonable accommodation, there were no complaints made to the City Code Enforcement 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.***

**Zoning District Consideration:** 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 “provides areas for single-family and two-family residential land uses.”

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 Section 20.10.020 of the NBMC, unlicensed residential care facilities are not permitted in the R-2 District are only permitted in the MFR District subject to approval of a use permit.

If the facility were permitted with a requirement to limit the maximum occupancy to six (6) residents with one (1) full-time staff member housed in both duplex units, or within one unit of the duplex building with the other unit occupied by a single housekeeping unit, 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. A complete assessment of the building has not been undertaken to determine what alterations to the building would be necessary to bring it into compliance with requirements for R-4 occupancies.

If the occupancy of the facility was reduced to provide housing for six (6) residents and one (1) 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 (6) residents and one (1) 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. As such, R-4 requirements would present a greater challenge for the applicant.

**Use Permit Consideration:** Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or 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, if applied for within the time period specified in the ordinance, 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 this applicant ceased to provide disabled housing at this location, the accommodation would no longer be necessary and would also cease.

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 ten (10) disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of ten (10) disabled individuals in recovery with one resident manager in each of the units, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units. As a condition of approval, staff recommends that the facility be required to limit the maximum occupancy to six residents and one full-time staff member in one unit of the duplex building, or in both units.

With the reduction in resident population as required by this condition of approval, the intensity of the use would be 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. Staff believes approval of the reasonable accommodation with

appropriate conditions of approval to allow the facility to remain in its current location in the R-2 District would 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 dwelling unit occupied by the facility has two enclosed garage parking spaces. The Zoning Code requires one on-site parking space per three residential care facility beds. With twelve beds, the required parking for the facility would be 4 spaces. As such, the facility currently does not meet the required parking.

Some residents are permitted to have personal vehicles while residing at the facility. The facility can only provide parking for two vehicles. Of the two parking spaces available, one is reserved for the resident manager. The remaining space would be assigned by the resident manager.

**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 a ten-bed residential care facility with two additional resident manager beds would generate approximately 32.88 average daily trips. If the population were limited to six residents and one on-site resident manager in one unit of the duplex, and the other unit was occupied by a single housekeeping unit, a total of 25.9 trips would be generated. Six (6) resident clients and one (1) onsite resident manager occupying both units of a duplex would generate 19.18 average daily trips.

Due to the fact that the applicant limits and manages the use of personal vehicles by residents at the facility, if the reasonable accommodation were granted with the condition of approval limiting the maximum number of residents to six (6) resident clients and one (1) resident house manager, the number of trips generated would not be significantly in excess of trips generated by that of a duplex. Approval of the request for reasonable accommodation would include conditions that restrict use of residents' personal vehicles while living at the facility, reducing impacts on parking to an insubstantial level.

*C. Whether granting the 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 would not create an institutionalized environment.

**Summary:** Staff believes conditions could be 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 recommended 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. Changing the quiet hours to between 10:00 p.m. and 8:00 a.m.;
4. Requiring compliance with the standards of NBMC Section 20.91A.050(A), relating to secondhand smoke detectable from off the parcel upon which the facility is located.

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

Staff has determined that, as conditioned, the use would be compatible with the character of the surrounding neighborhood, and the continued maintenance of the use would 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, staff has considered that 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 to staff 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.

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.***

This finding can be made. 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.

## **CONCLUSION**

In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation. As to current residents, all five findings can be made. As to prospective residents at the population level proposed by the applicant, all five findings cannot be made.

However, staff believes that there is an alternative that could meet the findings of Section 20.98.025(B) of the NBMC. This alternative would limit the facility to a total bed count for resident clients to six beds. In addition, staff believes the facility would need to maintain an on-site resident manager who is a qualified recovery specialist. This recommended bed count may be split between the two units or confined to one unit. This alternative density and intensity of use would be consistent with the density typically produced by other occupants of two-family residential districts. Permitting a facility with no more than six beds to remain in its current location in the R-2 District would not undermine the basic purpose of this portion of the City’s zoning program

In addition, there would be conditions placed on the accommodation that would result in the facility complying with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. Staff believes that with these conditions, the findings of which NBMC Section 20.91A.060 requires for issuance of a use permit could be made with regard to this facility. With conditions of approval, the use would conform to all applicable provisions of Section 20.91A.050, the building provides sufficient on-site parking for the use and traffic impacts are similar to those generated by surrounding single-family and two-family uses. The property and existing structure is physically suited to accommodate the use. If the proposed conditions are approved and followed, staff believes that Finding No. 4 can be made and that granting the requested accommodation will not undermine the basic purpose

which the zoning program seeks to achieve, and will not result in a fundamental alteration in the nature of the City's zoning program. Staff also believes that the alternative accommodation, with conditions, would result in a facility that is compatible with the character of the surrounding neighborhood, and that continued maintenance of the conditioned use would not contribute to changing the residential character of the neighborhood or create an overconcentration of residential care uses in the vicinity.

However, in discussing staff's initial recommendation with the operator, the operator asserted that he cannot generate enough income at 124 30<sup>th</sup> Street with six persons to meet his expenses. As such, staff proposed the following:

1. Allow Balboa Recovery to use the facility at 124 30<sup>th</sup> Street at its current population level for at most 12 more months, under specific conditions;
2. During the 12-month period, Balboa Recovery should seek out another building with a lower rent that could accommodate up to six (6) clients (plus one (1) resident manager) in the entire building;
3. Balboa Recovery, consistent with Ordinance 2008-05, may apply for reasonable accommodation to allow the new facility to begin operations under specific conditions; and
4. The City will perform an analysis of and set a hearing for Reasonable Accommodation at this new facility when Balboa Recovery identifies and requests it, and shall consider the location of the new facility, the building size, the proximity to other uses, and related information.

Mr. Cullen of Balboa Recovery has tentatively agreed to this proposal.

Staff recommends that the Hearing Officer:

1. Deny the request for Reasonable Accommodation No. 2009-002 based on the staff recommendation, which shall include an up to 12-month abatement period provided that the operation comply during this abatement period with the conditions proposed as an exhibit to this report, and
2. Direct staff to prepare a Resolution of Denial reflective of Recommendation #1 to be brought back to the Hearing Officer at a date certain.

### Environmental Review

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act 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 therefore it is not subject to CEQA.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

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Gerald S. Gilbert  
Contract Planner

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Dave Kiff  
Assistant City Manager

**EXHIBITS**

1. Proposed Conditions during Abatement Period
2. Reasonable Accommodation Application submitted January 21, 2009
3. Staff Request for Additional Information dated April 7, 2009
4. Supplemental Information Submitted by Applicant
5. Floor Plan
6. April 30, 2009 Staff Report with Correspondence from Residents

EXHIBIT A

(PROPOSED) CONDITIONS APPLICABLE DURING ABATEMENT PERIOD

REASONABLE ACCOMMODATION NO. 2009-003

BALBOA RECOVERY INC. at 3206- 3206 ½ West Balboa

1. **Abatement Period.** This use shall abate no later than 12 months following the adoption of a resolution denying reasonable accommodation.
2. **Occupancy Level.** The operator Balboa Recovery Inc. hereinafter referred to as "Operator," shall limit occupancy of the building to 10 client beds and two on-site resident managers, who shall be a qualified recovery specialist. No more than 10 persons in recovery may reside in the building.
3. **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.
4. **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.
5. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.
6. **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.
7. **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.
8. **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.
9. **Vehicles, Parking & Garages.** This facility may have a maximum of three vehicles associated with its use. The 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. At most one other client in the Facility may have a vehicle and park on the street in a legally-designated parking spot. Client move-in and move-out shall be accomplished in such a manner that traffic on area streets is not blocked, nor can area driveways or alleys be blocked.
10. **Transportation.** No transportation services shall be provided by the facility operator.
  11. **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.
  12. **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.
  13. **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.
  14. **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.
  15. **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.
  16. **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.
  17. **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)

18. **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 bet efforts to maintain, at a minimum, average client stay 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.
19. **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.
20. **Compliance with Conditions.** Operator shall comply with these conditions during the 12-month abatement period.
21. **Rights to Reasonable Accommodation.** Applicant remains entitled to request Reasonable Accommodation to the abatement schedule described herein if abatement will result in persons with disabilities being denied an opportunity to housing.

# # #

322 W. Fern Drive  
Fullerton, CA 92832

April 20, 2009

Mr. Dave Kiff, Assistant City manager  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA

Dear Mr. Kiff:

We have received the notice of a public hearing on Reasonable Accommodation Permit No. RA2009-002 for property at 124 24<sup>th</sup> Street.

As nearby property owners, we wish to express our opposition to the proposed use at this address. According to the notice, the use currently exists illegally and this request is to make an illegal use legal through a process that does not change the zoning designation but in effect does change the permitted uses in the existing R-2 zone.

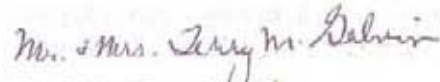
Normally, a change in zoning designation or in permitted uses in a zone requires a more extensive hearing process, including the Planning Commission and the City Council. We object to this abbreviated process as well as the precedent that such an action will establish. Once this so called accommodation is given to one party, how can the next application be denied? How can the City of Newport Beach allow the negation of its existing codes so easily, and how can there be a justification for rewarding the violation of the code?

If there are areas in the city where such uses are permitted, then that is where they should be located. In this case, the R-2 zone is not one of them and there should be no accommodations given to reward someone who is asking for permission to violate the city ordinance.

One of the findings for approving a Reasonable Accommodation is that the approval "is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling." The operative phrase here is "equal opportunity." No one, with or without a disability, is entitled to live at the beach or anywhere else, if the condition of using and enjoying a dwelling violates the city codes. Those with this particular disability are given equal opportunity to live in a sober living facility in MFR districts along with those with no disabilities. There is no justification to give the requested special treatment and privilege in violation of the R-2 zone permitted uses.

We respectfully request that this application be denied.

Sincerely,



Mr. & Mrs. Terry M. Galvin

***Exhibit No. 1***

*Reasonable Accommodation Application  
Submitted January 21, 2009*



**Supplemental Information  
for  
Reasonable Accommodation**

**COPY**

Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658-8915  
(949) 644-3200

Application Number \_\_\_\_\_

**To aid staff in determining that the necessary findings can be made in this particular case as set forth in Chapter 20.98 of the Municipal Code, please answer the following questions with regard to your request (Please attach on separate sheets, if necessary):**

**Kevin Cullen**

Name of Applicant

**Balboa Recovery**

If provider of housing, name of facility, including legal name of corporation

**3419 Via Lido #309, Newport Beach, CA 92663**

(Mailing Address of Applicant) (City/State) (Zip)

**(949) 400-7120 (949) 645-2059**

(Telephone) (Fax number)

**kcullen@oceanrecovery.com**

(E-Mail address)

**124 30<sup>th</sup> Street, Newport Beach, CA 92663 047-083-31**

(Subject Property Address) Assessor's Parcel Number (APN)

RECEIVED BY  
PLANNING DEPARTMENT

JAN 21 2009

**CITY OF NEWPORT BEACH**

## CITY OF NEWPORT BEACH

### Supplemental Information

1. Is this application being submitted by a person with a disability, that person's representative, or a developer or provider of housing for individuals with a disability?

**Yes. Provider.**

2. Does the applicant, or individual(s) on whose behalf the application is being made, have physical or mental impairments that substantially limit one or more of such person's major life activities?

**Provider - No.  
Housed Individuals - Yes, under ADA standards.**

3. From which specific Zoning Code provisions, policies or practices are you seeking an exception or modification?

**NBMC 20.62.090 & NBMC 2091 A.020.**

4. Please explain why the specific exception or modification requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. Please provide documentation, if any, to support your explanation.

**No treatment services are provided; Balboa Recovery provides sober living housing for Ocean Recovery alumni.**

5. Please explain why the requested accommodation will affirmatively enhance the quality of life of the individual with a disability. Please provide documentation, if any, to support your explanation.

**The individuals' lives are enhanced by proximity of Ocean Recovery, the Newport Alano Club, and all the amenities of living near the beach. Most of the people we house do not have transportation other than bicycle and by foot which enhances the need for closeness to both Ocean Recovery and the Alano Club. Since ALL the residents are alumni of Ocean Recovery, they feel more comfortable and safe close to the facility.**

6. Please explain how the individual with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation? Please provide documentation, if any, to support your explanation.

**They will no longer be able to reside in the same level of comfort and safety as they do now in Newport Beach.**

7. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary to make your facility economically viable in light of the relevant market and market participants. Please provide documentation, if any, to support your explanation.

**We have a lease for this property. The cost of setting up a home is high (lease, utilities, deposit, furniture). Closing or moving our homes would be a financial burden,**

which, in the current economic climate, would be very difficult to overcome. More important than the economic concerns of our business is the well-being of our residents. Please see 5, above.

8. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary for your facility to provide individuals with a disability an equal opportunity to live in a residential setting taking into consideration the existing supply of facilities of a similar nature and operation in the community. Please provide documentation, if any, to support your explanation.

To our knowledge, the few facilities which have applied for a permit on Balboa Peninsula are all licensed treatment facilities. Ocean Recovery will not refer to other homes, which will put a huge burden on those who have completed the program at Ocean Recovery. Of our three homes, one is exclusively for men while the other two are exclusively for women. There are no other "sober living" homes for women on the peninsula.

9. Please add any other information that may be helpful to applicant to enable the City to determine whether the findings set forth in Chapter 20.98 can be made. (Use additional pages if necessary.)

Only alumni of Ocean Recovery reside in our homes, Ocean Recovery does not refer to any other facilities. We have been in business since 2005, without any complaints from neighbors or the City of Newport Beach. None of our homes are located near churches or schools. All surrounding buildings are rental properties or commercial businesses (Albertsons, Spaghetti Factory, 7-11). There is no negative impact on parking; we do not exceed the number of parking spaces on site. All residents obey a curfew and a long list of rules and conditions (please see attached admissions agreement). All homes are clean, organized and quiet.

Balboa Recovery provides safe, structured, gender-specific housing for those in recovery from alcoholism. Without this service, Ocean Recovery alumni will be forced to find housing out of the area or on their own. It will not be as structured, safe or comfortable. This will put our residents at risk. The longer a person stays in a safe, sober, structured environment the greater his or her chance at recovery.

When treatment is completed, young adults often require more practice applying the new skills they have recently acquired. A large percentage of clients are students who take time off for treatment and return to school when treatment is completed. There is often a gap of several months between completion of treatment and the start of a new semester. Balboa Recovery helps to bridge that gap. If an individual plans on staying in the area for anything less than a year, problems arise. To rent an apartment requires a lease typically of a year commitment or perhaps the payment of astronomical weekly summer rates. There are all the additional costs of making an apartment a livable home. We have found the best locations possible for our residents. The homes are all set up with everything the client needs to move in. This makes the transition between treatment and "sober living" as smooth as possible.

PA2009-012 for RA2009-002  
124 30TH STREET  
Balboa Recovery

**COPY**

# **GROUP RESIDENTIAL USE *USE PERMIT APPLICATION***



## **CITY of NEWPORT BEACH**

Planning Department  
Newport Beach City Hall  
3300 Newport Boulevard  
Newport Beach, California 92663

949-644-3200 (phone)  
949-644-3226 (fax)  
[www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us)

CITY OF NEWPORT BEACH  
GROUP RESIDENTIAL  
USE PERMIT INFORMATION AND APPLICATION  
(February 2008)

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### I – Background

On January 22, 2008, the Newport Beach City Council approved Ordinance 2008-05. Among other findings, the Ordinance states that:

*17. The City desires to maintain zoning provisions benefiting disabled persons by allowing disabled persons to live in residential districts in residential care facilities, while forbidding all other group homes in residential districts, but desires to ensure that the uses are consistent with the residential character of neighborhoods and do not recreate an institutional environment that would defeat the purpose of community-based care. The City further desires to ensure that unlicensed residential care facilities purporting to serve the disabled are operating in compliance with City, state, and federal laws and regulations. To achieve these purposes and to provide disabled persons with an equal opportunity to use and enjoy a dwelling in the City's residential zoning districts, and in recognition of the services that may be required by the disabled, the ... ordinance allows residential care facilities, general and small unlicensed, to be located in the MFR zone with a use permit, while prohibiting all other group residential uses. Residential care facilities, small unlicensed, continue to be permitted in all residential districts, as required by State law.*

*18. To ensure that the City complies with federal and state law, the ... ordinance contains standards and procedures for granting a **reasonable accommodation** (emphasis added) to its zoning and land use regulations, policies, and procedures when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause an undue financial or administrative burden or does not result in a fundamental alteration in the nature of a City's zoning program, as those terms are defined in fair housing laws and interpretive case law.*

### II – Requirements for Use Permit

Effective February 20, 2008, Ordinance #2008-05 to the Newport Beach Municipal Code (NBMC) requires Use Permits for most group residential uses, except for licensed treatment homes (licensed by the California Department of Alcohol and Drug Programs or "ADP") that serve six (6) or fewer persons and that are not operated integrally with other facilities. Please see [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) then "Group Residential Uses" for more information about the Use Permit requirement. NBMC Title 20.91A is on the City's website as well, under "City Council" then "City Charter and Municipal Code."

According to Newport Beach Ordinance 2008-05, your facility:

- Requires a Use Permit if you are a group home or similar use that has legally been in operation up to and including the date of February 20, 2008 (a **Category 1 Facility**). *Operators of Category 1 facilities must apply for a Use Permit no later than May 20, 2008.* NOTE: If your use has been operating without required approvals and/or in a manner not meeting regulations (such as offering treatment without an ADP License, opening or expanding during the City's moratorium period [April 24, 2007 through February 20, 2008], or operating without the City's Federal Exception Permit [FEP] when one was required for your use), you may be ineligible to apply for a Use Permit under Ordinance 2008-05.
- Requires a Use Permit if you are an individual, firm, or other entity proposing to open and operate a new group home or similar use on or after February 20, 2008 (a **Category 2 Facility**). *Category 2 facility operators must apply for a Use Permit and receive a permit prior to opening your facility.*
- Is exempt from the Use Permit requirement if your facility is a stand-alone, State-licensed facility serving six (6) or fewer clients (a **Category 3 Facility**).

NOTE: ORDINANCE 2008-05 ALLOWS PERSONS OR FIRMS, ON BEHALF OF PERSONS WITH DISABILITIES, TO REQUEST REASONABLE ACCOMMODATION FROM THE USE PERMIT REQUIREMENT AND FROM OTHER ASPECTS OF ORDINANCE 2008-05. NBMC CHAPTER 20.98 CONTAINS MORE INFORMATION.

In addition to a Use Permit, you may need a Treatment License from ADP, a Community Care License, or a Congregate Living Health Facility license from the California Department of Social Services (DSS) or similar agencies. Please contact ADP or DSS via [www.ca.gov](http://www.ca.gov).

## II – Procedure for Obtaining a Use Permit

Here is the procedure for obtaining a Use Permit for a group residential use:

Application. Use Permit applicants are required to:

- Submit this written application in a complete form, including all attachments;
- Comply with current zoning as it relates to the facility proposed for this use;
- Obtain a valid and appropriate fire clearance from the Newport Beach Fire Marshal. This process may require a comprehensive code analysis by a qualified architect. Decisions by the Fire Marshal may be appealed to the Newport Beach Building and Fire Board of Appeals.
- If needed, have the facility pass an inspection by City staff in terms of the facility's safety and compliance with local zoning.

Hearing. When the City receives a completed application, the City will review it and prepare the Application for a public hearing before an impartial Hearing Officer. The Hearing Officer may conditionally approve or deny a use permit at this hearing. Prior to the hearing, the City will mail or deliver notice of the public hearing for the use permit to owners and occupants of property within 300' of the proposed use ten (10) business days prior to a public hearing on the use. Decisions of the Hearing Officer may be appealed to the City Council (NBMC §20.91A.040).

Standards. During the hearing, the applicant, the City and its legal counsel, and area residents may speak about the proposed Use Permit. To issue a Use Permit, the Hearing Officer must find that the use will adhere to the following standards applicable to the use:

- No secondhand smoke can be detectable outside of the property.
- Operations must comply with state law, local law, the submitted application, including any modifications to the application required by the Use Permit.
- An applicant may not provide services that require a State or other license if the applicant does not have a license for those same services.
- There shall not be more than two (2) persons per bedroom plus one (1) additional resident in a building. If an applicant wants to put more than 2 persons in one or more bedrooms, the applicant may request greater occupancy. The Hearing Officer may set different occupancy limits based on structure characteristics, traffic and parking impacts, and the health, safety, and welfare of the persons residing in the facility and neighborhood.
- Where certification is available from a responsible entity other than the California ADP's licensing program, applicants must get that certification. Certification by the Orange County Sheriff's program is required; certification offered by the Orange County Sober Living Coalition is recommended.
- Every individual or entity involved in the facility's operation or ownership shall be disclosed to the City.
- No owner or manager shall have any demonstrated pattern or practice of operating similar facilities in violation of law whether in or outside of Newport Beach.

Findings. In addition to the standards described above the Hearing Officer must make the following findings if he or she is to issue a Use Permit:

- The project has adequate parking on-site.
- Traffic and transportation impacts have been mitigated to a level of insignificance.

- Structures are suitable for the use.
- The use will be compatible with the character of the neighborhood and will not create an over-concentration of residential care uses nearby. To make or sustain these findings, the Hearing Officer shall consider (as appropriate) the following factors:
  - How close the proposed use is to schools, parks, other group homes, alcoholic beverage outlets and any other uses which could be affected by or affect the operation of the subject use; and
  - Whether the existence of non-standard lots and other property characteristics within a *Nonstandard Subdivision Area* (see Attachment \_\_\_ to Ordinance 2008-05) make such a use inappropriate; and
  - Whether the Hearing Officer should deem that the American Planning Association's (APA's) standard of permitting **one or two group uses per block** would be appropriate in this case OR whether a greater degree of separation is appropriate (NBMC §20.91A.060.D.1-3). Ordinance 2008-05 describes facts in Newport Beach relating to blocks, which include:
    - Blocks in the *Nonstandard Subdivision Area* can be as short as 300'.
    - Blocks in Newport Beach outside of the Area can be as long as 1,422'.
    - The calculable average block length in Newport Beach outside of the Area is 711'.
    - The calculable median block length in Newport Beach outside of the Area is 617'.

If the Hearing Officer applies the APA standard, he or she is directed to do so in a manner that eliminates the differences in block lengths and be guided by the median block lengths in standard subdivision areas of the city, even if the proposed facility is within the Nonstandard Subdivision Area. The Hearing Officer retains the discretion to apply ANY degree of separation of uses which he or she deems appropriate.

- That vans, shuttles, or buses for transportation of clients will not generate more traffic than normally generated by residential activities nearby.
- That the operations do not have goods delivery, service deliveries, or commercial trash collection during hours that would cause an adverse affect to the peace and quiet of neighboring properties.

### III – This Document

This document details the Use Permit Application in three sections:

- **Section A** summarizes briefly the application forms which must be completed and submitted to the City.
- **Section B** provides a checklist for the documents and forms that you must secure and submit as a part of the Use Permit application.
- **Section C** includes the forms themselves.

### IV – Where to Find More Information

To assist applicants in supplying the detailed information needed for the Use Permit process, a copy of City of Newport Beach Ordinance #2008-05 is available online at [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) then "Group Residential Uses."

### V – Where to Send a Completed Application

Please do not bind or place the application in a protective covering. Applicants should retain a copy of completed materials for their records. Please mail or deliver the completed application to:

City of Newport Beach – City Manager's Office  
 GROUP RESIDENTIAL USE PERMIT APPLICATION  
 Newport Beach City Hall  
 3300 Newport Boulevard  
 Newport Beach, California 92663

### VI – Public Information

Information provided by the applicant(s) for a Use Permit will be made available for public review unless otherwise exempted by law.

## **VII – Fees**

The City may charge a fee for the review of this application up to but not beyond the cost of processing the application. Please consult the City's Planning Department for the type of fee and the estimated amount of fee you can expect to pay associated with this Use Permit application.

## **VIII – Business Tax Certificate (aka Business License)**

All persons operating a group home or similar use in Newport Beach, except for those persons operating a stand-alone ADP-licensed facility housing 6 or fewer persons, must apply to the City's Revenue Division and receive a City Business Tax Certificate to begin and/or to continue operations. For more information, please see <http://www.city.newport-beach.ca.us/revenue/revenue.htm>.

## **IX – Use Permit Application Timelines**

Here are the timelines and requirements for application submittals:

1 – **Category 1** facilities must file a completed application by May 20, 2008. If you do not file a complete application by May 20, 2008, your use is subject to abatement by the EARLIEST to occur of the following criteria (NBMC §20.62.090.A.2):

- By February 20, 2009; or
- The date an operator's lease expires to use the property. This is only applicable if the lease was entered into prior to December 7, 2007 (NBMC §20.62.090.A.2.a.ii); or
- The date that an operator's State license expires.

Applicants may request reasonable accommodation from the abatement periods described here. See NBMC Chapter 20.98 for more information.

2 – **Category 2** facilities must file a completed application and must receive a Use Permit prior to operation.

Please note: Filing an incomplete application(s) will delay the Use Permit review process.

## SECTION A Application Forms

Section A – These are the forms to be submitted to the City to initiate the Use Permit review process.

1. Application Form (Form 100) – This form is the central document by which the City will base its decision on whether to grant a Use Permit to your proposed use. It must be filled out accurately and completely, including attachments and signature blocks.
2. Administrator and/or Director Information (Form 150) – This form identifies the administrator and/or director of the facility applying for a use permit.
3. Administrative Organization Information (Forms 200C or 200P, and, if 200C, Form 200D) – These forms identify the entity applying for a Use Permit, whether that be a Corporation, Partnership, Sole Proprietorship, or other association. When applicable, Form 200D is a delegation of authority form for a corporate entity.
4. Evidence of Capacity and Need. Per NBMC §20.91A.030 (E), applicants that have more than one facility must provide evidence of the need by residents of Newport Beach for this capacity based on published sources.
5. Location Map. The Location Map (required by NBMC §20.91A.030.D) is intended to show the location of the proposed use plus all known similar uses within a three-block radius.
6. Site Plan. This diagram (required in part by NBMC §20.91A.030.I) is intended to show the facility's building footprint and property lines. Include property lines and building footprints on immediately adjacent parcels.
7. Building Diagram and Floor Plan. This diagram (required in part by NBMC §20.91A.030.I) is intended to show all building(s) to be occupied, including a floor plan of all rooms intended for residents' use. It must identify the number of residents per bedroom and the location and the number of beds for all residents, including the location of beds for infants and other non-ambulatory persons. Any rooms identified as bedrooms must comply with the NBMC's definition of what constitutes a bedroom (NBMC §20.03.030), and that room must be consistent with permitted floor plans on file with the City of Newport Beach's Building Department.
8. Route Map (for Transit Purposes). The Route Map is intended to show transit and travel routes that will be used to transport clients off-site, showing destinations of travel and approximate times of departure and return.
9. Disposal Plan for Medical and/or Bio-Waste. Applicants who will be disposing medical waste or other bio-waste must provide a Disposal Plan showing how and where these wastes are disposed of (required by NBMC §20.91A.030.I).
10. Facility Staffing Data (Form 400) – This form identifies all facility personnel, including back-up persons and volunteers providing services.
11. Weekly Activities Schedule (Form 500) – This form indicates the weekly schedule for specific activities at the property.
12. Approved Fire Clearance from the Newport Beach Fire Marshal. State ADP Form 850 is appropriate for this purpose. Form 850 is attached to this document.
13. A true and correct copy of your State License Application (if applicable) – Please provide a current copy of your State (ADP, DSS, or other) License application, if your facility is a State-licensed facility or if a State license is pending. If your facility does not require a State license, this section is not applicable.

# SECTION B

## Applicant Checklist

This side for Internal Use Only

	YES	NO	INC	N/A
<input type="checkbox"/> 1. Form 100 (standard Group Residential Use Permit Application)				
<input type="checkbox"/> 2. Form 150 (administrator or director information)				
<input type="checkbox"/> 3. Either Form 200C or Form 200P (Corporation or Proprietorship)				
<input type="checkbox"/> a. If Form 200C, Delegation Form (Form 200D)				
<input type="checkbox"/> 4. Evidence of Capacity and Need				
<input type="checkbox"/> 5. Location Map				
<input type="checkbox"/> 6. Site Plan				
<input type="checkbox"/> 7. Building Diagram/Floor Plan(s)				
<input type="checkbox"/> 8. Route Map (Transit and More)				
<input type="checkbox"/> 9. Disposal Plan for Medical & Bio-Waste				
<input type="checkbox"/> 10. Facility Staffing Data (Form 400)				
<input type="checkbox"/> 11. Weekly Activities Schedule (Form 500)				
<input type="checkbox"/> 12. Approved Fire Clearance from the Newport Beach Fire Marshal				
<input type="checkbox"/> 13. Copy of ADP Licensure Application (if applicable)				
<input type="checkbox"/> 14. Use Permit Processing Fees				
<input type="checkbox"/> 15. Certification Documents (OCSD, OC Sober Living Coalition)				

SECTION C  
Forms

City of Newport Beach  
GROUP RESIDENTIAL USES – USE PERMIT APPLICATION  
STANDARD GROUP RESIDENTIAL USE PERMIT APPLICATION  
(Form 100 – Revised March 2008)

COPY

1. APPLICANT/FACILITY PROGRAM INFORMATION

STEP 1: Completely fill out Form 150 (attached).

STEP 2: Fill out the following:

TYPE OF ORGANIZATION:

For Profit       Nonprofit

Other, please explain: \_\_\_\_\_

PROPERTY OWNERSHIP:

Own       Rent       Lease       Other (specify): \_\_\_\_\_

IS THE OPERATOR/MANAGER ALSO THE LESSEE OF THIS PROPERTY?

Yes       No

If no, please explain: \_\_\_\_\_

IS THE APPLICANT OR PROGRAM OPERATOR PART OF A PARTNERSHIP, CORPORATION, FIRM, OR ASSOCIATION?

Yes       No

If yes, please fill out and attach either Form 200C (if 200C, applicants must fill out Form 200D) or Form 200P, whichever is applicable.

2. PROPERTY OWNER INFORMATION

OCEAN #1 LLC

\_\_\_\_\_  
Name of Property Owner where facility is proposed (if Corporation, legal name of Corporation)

650 CAMINO DEGIORIA      WALNUT, CA      92661  
(Mailing Address of Property Owner)      (City/State)      (Zip)

626 260 3293      \_\_\_\_\_  
(Telephone)      (Fax number)

\_\_\_\_\_  
(E-Mail address)

124 30<sup>TH</sup> ST, NEWPORT BEACH, CA 92663      047 083 31  
(Subject Property Address)      Assessor's Parcel Number (APN)



**B. Other Similar Uses.** What uses, not operated by or affiliated with you or your firm, are of a similar type as your proposed use here in Newport Beach? Please cite address(es) of facility(ies) (attach more pages if necessary):

**EXAMPLE:**

1234 Main Street, Newport Beach	Unlicensed "Sober Living"	7
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
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Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity
Site Address	Type of Use	Bed Capacity

**C. Evidence of Need for this Extent of Use.** Per NBMC §20.91A.030 (E), please attach **Evidence of Capacity and Need** by residents of Newport Beach for this capacity based on published sources.

**4. YOUR FIRM'S HISTORIC USES**

Per the requirements of NBMC §20.91A.030.G & H, in the past five (5) years, have you or your firm or any entity or person affiliated with you or your firm operated, managed, or owned other group residential uses in California?

Yes       No

If yes, show the site address(es) of each facility(ies) and show whether the facility(ies) have ever been in violation of Federal, State or local law (attach additional pages if necessary):

**EXAMPLE:**

1234 Main Street, Santa Barbara	ADP-Licensed Facility	8
---------------------------------	-----------------------	---



If Yes, please explain: \_\_\_\_\_

**5. LOCATION MAP AND SIMILAR USES**

Provide a **Location Map** showing the location of the proposed use plus all known conditional uses within a three-block radius. Include the property addresses of the proposed use and known conditional uses. Please consult the Newport Beach Planning Department (949-644-3225) for nearby conditional uses.

**6. SITE PLAN**

Provide a **Site Plan** that shows the facility's building footprint and property lines. Include property lines and building footprints on immediately adjacent parcels. Note the uses (i.e. *single family use, group residential use, or other*) on adjacent parcels.

**7. LICENSE AND PERMIT HISTORY OF APPLICANT**

A. Per NBMC §20.91A.030(H), please summarize the license and permit history of each facility applicant or operator has managed, owned, or operated in the State of California within the last five (5) years which require either a license or a permit by the State or by a locality (attach additional sheets if necessary):

**Balboa Recovery**

Name of Facility

<b>124 30<sup>th</sup> St</b> (Facility Address)	<b>Newport Beach</b> (City)	<b>92663</b> (Zip)
<b>204 21<sup>st</sup> St</b> (Facility Address)	<b>Newport Beach</b> (City)	<b>92663</b> (Zip)
<b>3206 W. Balboa</b> (Facility Address)	<b>Newport Beach</b> (City)	<b>92663</b> (Zip)

Please describe the nature of the license or use permit, the issuing agency, its reference number (if applicable), and any enforcement actions by any agency against the license or use permit:

See City of Newport Beach Business Tax Certificate attached

B. Has the applicant ever voluntarily surrendered, had a denial, suspension, or revocation of a residential license for an alcoholism or drug abuse recovery or treatment facility or a facility licensed by the California Department of Alcohol and Drug Programs (ADP) or the California Department of Social Services - Community Care Licensing?

Yes       No

If yes, the date license was surrendered, denied, suspended, or revoked: \_\_\_\_\_

Reason for revocation, surrender, denial, or suspension: \_\_\_\_\_

C. Has the applicant ever voluntarily surrendered, had a denial, suspension, or revocation of a Use Permit or similar permit for a group residential use in this community or another community?

Yes       No

If yes, the date Use Permit (or similar) was surrendered, denied, suspended, or revoked: \_\_\_\_\_

Reason for revocation, surrender, denial, or suspension: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D. Has the applicant ever voluntarily surrendered, had a denial, suspension or revocation of a certification by any public or private agency other than ADP or the California Department of Social Services-Community Care Licensing for a group residential use in this community or another community?

Yes       No

If yes, the date Use Permit (or similar) was surrendered, denied, suspended, or revoked: \_\_\_\_\_

Reason for revocation, surrender, denial, or suspension: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**8. NATURE AND CHARACTERISTICS OF PROPOSED USE**

Per NBMC §20.91A.030(A-D), please provide the following information about each proposed facility (attach additional sheets if necessary). The components of this Section 8 (and other sections) comprise the *Operations and Management Plan* and *Rules of Conduct* envisioned by NBMC §20.91A.050.B:

**A. TYPE OF ALCOHOL AND/OR OTHER DRUG RECOVERY OR TREATMENT SERVICES PROVIDED (for ADP-licensed facilities only -- check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Non-Medical Detoxification     | <input type="checkbox"/> Group Sessions                   |
| <input type="checkbox"/> One-on-One Sessions            | <input type="checkbox"/> Educational Sessions             |
| <input type="checkbox"/> Recovery or Treatment Planning | <input checked="" type="checkbox"/> Other: <u>Housing</u> |

**B. NUMBERS AND TYPES OF FACILITY USERS & STAFF:**

**TOTAL OCCUPANCY OF FACILITY** (This is the maximum number of individuals who live at the facility and are approved by the fire safety inspector.) These individuals include the residents receiving recovery, treatment or detoxification services, children of the residents, and staff. Staff includes individuals who work for the applicant in exchange for either monetary or in-kind compensation (e.g., room and board). Total occupancy cannot be exceeded for any reason. 12

**MAXIMUM REQUESTED ADULT RESIDENT CAPACITY OF THE FACILITY** (The number of adult residents that receive recovery, treatment or detoxification services at any one time, which cannot be greater than the total occupancy shown above): 12

**MAXIMUM NUMBER AND AGE RANGE OF DEPENDENT CHILDREN WHO ARE SUPERVISED BY THEIR PARENT(S) IN THE FACILITY.** This includes temporary residing (i.e., overnight, weekend visits) of

dependent children. (Since there must always be at least one adult being served, the maximum number of dependent children housed must be at least one less than the total occupancy, determined by the fire inspector, as shown above): 0

Are all clients who reside on-site disabled persons? Yes, under ADA Standards

Number of staff who will reside on-site: 0 (1 Volunteer)

Maximum number of staff who will provide services during any one week to clients at the facility: 0

Provide the Facility Staffing Form shown as Form 400 to this Application.

Total number of employees of provider: 0

Please characterize the nature of staff services to the facility (i.e., nutritionists, massage therapists, counselors, maids, cooks, etc):

Enforce Curfew, Check chores/ cleanliness of facility make sure all rules are enforced (see attachment)

Maximum number of clients who will use the facility on any one day but reside elsewhere: 0

Maximum number of client visitors who will visit the facility during any one week: 0

Maximum number of others who will visit the facility during any one week: 1. Please explain:

Operator checks facility daily

**C. BUILDING DIAGRAM/FLOOR PLAN**

Include a Building Diagram showing all building(s) to be occupied, including a floor plan of all rooms intended for residents' use. Include the grounds showing buildings, setbacks, driveways, fences, storage areas, pools, gardens, recreational area and other spaces. All sketches shall show dimensions but need not be to scale. Identify the number of residents per bedroom and the location and the number of beds for all residents, including the location of beds for infants and other non-ambulatory persons. The Building Diagram supplied with this application must be accurate as to existing conditions in the building and must be consistent with the building plans currently on file with the Newport Beach Building Department for permitted construction.

**D. DURATION OF TYPICAL CLIENT STAY IN FACILITY (in days): 180**

If you wish, please explain:

90 minimum to 365

**E. IS THE FACILITY ACCESSIBLE TO INDIVIDUALS IN WHEELCHAIRS OR OTHER NONAMBULATORY CONDITIONS?**

Yes  No

**NOTE:** The Americans with Disabilities Act of 1990 (ADA) is a comprehensive federal anti-discrimination law for people with disabilities. The City reminds all providers of residential recovery facilities that discrimination against persons with disabilities is prohibited. Please contact Newport Beach's Building Department (949-644-3275) for specific ADA requirements that may apply to your facility.

F. ACTIVITY INFORMATION

Hours which facility will be in use:

24/7  Other (please describe) \_\_\_\_\_

Will there be a curfew? If so, please note quiet hours:

10 p.m. -- 8 a.m.  Other (please describe) 10PM-7:30AM Weekdays/ 12AM- 8AM Weekends

Besides household activities, what types of care-related activities will occur on-site, and how many residents and non-residents (including staff and clients from other facilities) will attend?

"AA"-types meetings \_\_\_\_\_  Physical Fitness (gym, yoga, etc) \_\_\_\_\_  
 ADP-Treatment (see 5A) \_\_\_\_\_  Other wellness (massage, etc) \_\_\_\_\_  
 Meal preparation/delivery \_\_\_\_\_  Other: none

Provide the Weekly Schedule of Services shown as Form 500 to this Application.

G. DELIVERY INFORMATION:

What types of deliveries will occur at the facility and how often (per day or per week – circle whichever is applicable) will they occur?

Laundry Services: \_\_\_\_\_ /day or week  Trash disposal or recycling: Regular Municipal Service- Monday: Winter Saturday Summer  
 Meals: \_\_\_\_\_ /day or week  Business products: \_\_\_\_\_ /day or week  
 Correspondence, packages (other than USPS): \_\_\_\_\_ /day or week  
 Medical Products/Medical Waste Pickup: \_\_\_\_\_ /day or week  
 Other: Bottled Water, Household Supplies: 1X every 2 weeks  
Trash bags, Paper Products, etc

H. TRANSPORTATION AND PARKING:

Will clients residing on-site be allowed to use personal vehicles and/or keep them on-site or nearby?

Yes  No

If Yes, describe where clients will park personal vehicles (garage, carport, on-street location, other – if on-street, be specific about which streets)

Only in garages or spaces for allowed belonging to residents

If No, describe other modes of transportation that clients will use (bus, other transit, bicycle, other).

---

Please provide a **Route Map** showing transit and travel routes that will be used to transport clients off-site, showing destinations of travel and approximate times of departure and return. N/A

Will staff serving the facility be allowed to drive personal vehicles to the site?

Yes     No

If Yes, describe where staff will park personal vehicles (garage, carport, on-street location, other – if on-street, be specific about which streets)

On Site in Driveway

---

NOTE: The City may not authorize on-street parking for clients or staff depending upon how impacted the facility's streets are.

**I. MEDICAL AND BIO-WASTE**

NBMC §6.04.120 (Health and Sanitation: Prohibited Materials) prohibits the disposal of certain medical waste or bio-waste into the City's refuse disposal system. Syringes, needles, urinalysis cups, and other waste must be disposed of in accordance with the NBMC and other applicable laws. If you are uncertain as to what wastes can be disposed of in the City's disposal system, contact the City's General Services Department at 949-644-3066.

Applicants who will be disposing medical waste or other bio-waste must provide a Disposal Plan for Medical and Bio-Waste showing how and where these wastes are disposed of (required by NBMC §20.91A.030.1).

Please attach the **Disposal Plan** if applicable. N/A

**J. RULES OF CONDUCT – GOOD NEIGHBOR PRINCIPLES**

If you have them, please include any documents that describe rules of client conduct and/or *Good Neighbor Principles* that your facility's staff and clients will adhere to if the City issues a Use Permit for this facility.

The City of Newport Beach has developed *Good Neighbor Principles* for these uses (see the City's website under Group Residential Uses).

Please state whether you agree voluntarily to comply with the City's *Good Neighbor Principles*:

Yes     No

**K. OTHER AVAILABLE CERTIFICATIONS**

NBMC §20.91A.050.C.4 directs that applicants shall attain certification (or similar validation), where available, from a governmental agency or qualified non-profit organization. This includes:

- The Orange County Sheriff's Department's Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program (see [www.ocsd.org](http://www.ocsd.org) for more information or contact Certificate Coordinator Lt. Jeff Bardzik at 714-773-4523 or [jbardzik@ocsd.org](mailto:jbardzik@ocsd.org) or Margo Grise at 714-773-4521 at [mgrise@ocsd.org](mailto:mgrise@ocsd.org). This certification is required.
- The Orange County Sober Living Network (see [http://www.soberhousing.net/orange\\_county.html](http://www.soberhousing.net/orange_county.html)) or contact Grant McNiff at 714-875-2954. This certification is recommended.

You do not have to attain the OCSD certification to apply for a Use Permit, but we suggest that you attain the certification within a reasonable amount of time (twelve [12] months) following your application submittal. Should a Use Permit be issued, it may include a condition that certification be obtained within a stated time period. If you have attained this certification prior to applying for the Use Permit, verify here that you have attained this certification, and **attach the verifying document** from the certifying entity:

Orange County Adult Alcohol and Drug Sober Living Facilities Certification (required)

Orange County Sober Living Network (recommended)

Other (please describe) \_\_\_\_\_

**L. SECONDHAND SMOKE LIMITATIONS**

NBMC §20.91A.050.A directs that "no staff, clients, guests, or any other users of the facility may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which the facility is located. Check and sign here to acknowledge this requirement and your use's adherence to it:

I acknowledge that I will control secondhand smoke on my facility such that no secondhand smoke may be detected on any parcel other than the parcel upon which my facility is located.

Signature: \_\_\_\_\_ Date: 1/2/09

**9. APPLICANT OBLIGATIONS**

- A. The "owner of record" of the property or an authorized agent must sign this Application. Signing the application under Section 10 means that the applicant certifies, under penalty of perjury, that the information provided within the Application and its attachments is true and correct. Per NBMC §20.90.030.C, false statements are grounds for denial or revocation.
- B. The Applicant acknowledges that he or she must comply with all other Federal, State, and local laws and regulations relating to this use. The Applicant understands that a violation of Federal, State, and local laws and regulations is grounds for revocation of the Permit. The Applicant understands and acknowledges that it is against California law to provide treatment (as defined) in an unlicensed facility.
- C. If the City issues a Use Permit based on the information provided in this Application, the Applicant's signature below certifies his or her agreement to comply with the terms of the Use Permit. The Applicant understands and acknowledges that non-compliance with the terms of the Use Permit is grounds for revocation of the Permit.

**Revocation of the Use Permit.** NBMC §20.96.040.E provides that the City can revoke a Use Permit if:

- The permit was issued under erroneous information or misrepresentation; or
- The applicant made a false or misleading statement of material fact, or omitted a material fact; or
- The conditions of use or other regulations or laws have been violated; or
- There has been a discontinuance of use for 180 days or more.

**10. AUTHORIZED SIGNATURE(S) OF APPLICANT**

**THE UNDERSIGNED ASSURES THAT THE INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT AND THAT THE APPLICANT HAS READ AND UNDERSTOOD HIS OR HER OBLIGATIONS UNDER ANY USE PERMIT ISSUED BASED ON THIS APPLICATION.**

- A. If the applicant is a sole proprietor, the application shall be signed by the proprietor.

- B. If the applicant is a partnership, the application shall be signed by each partner.
- C. If the applicant is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the individual legally responsible for representing the agency.
- D. The applicant(s) affirms that the facts contained in this application and supporting documents are true and correct.

 \_\_\_\_\_   
(Signature) (Title) (Date)

\_\_\_\_\_  
(Signature) (Title) (Date)

\_\_\_\_\_  
(Signature) (Title) (Date)

City of Newport Beach  
 GROUP RESIDENTIAL USES - US PERMIT APPLICATION  
 ADMINISTRATOR/DIRECTOR INFORMATION  
 (Form 150 - February 2008)

**IDENTIFYING INFORMATION**

NAME KEVIN CULLEN	
TITLE CFO	TELEPHONE NUMBER AT WHICH OPERATOR MAY BE CONTACTED AT ALL TIMES (NBMC §20.91A.050.B) (949) 400 7120
ADDRESS 3419 VIA LIDO #309, NEWPORT BEACH, CA 92663	
OTHER NAME(S) USED BY ADMINISTRATOR/DIRECTOR	

**EDUCATION**

EDUCATION	CIRCLE THE HIGHEST GRADE YOU COMPLETED 1 2 3 4 5 6 7 8 9 <b>10</b> 11 12	HIGH SCHOOL GRADUATE PASSED HIGH SCHOOL EQUIVALENCY TESTS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
YES <input type="checkbox"/>	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>		
NAME AND LOCATION OF COLLEGE OR UNIVERSITY	COURSE OF STUDY	COMPLETED SEMESTER UNITS	COMPLETED QUARTER UNITS	DEGREE OBTAINED	DATE COMPLETED

**MANAGEMENT EXPERIENCE**


Type	Title	Date Started	Date Ended	Reason for Leaving
BALBOA RECOVERY	CFO	6/05		CURRENT
OCEAN RECOVERY	ADMISSIONS DIRECTOR	2/03		CURRENT

DO YOU HAVE A PROFESSIONAL LICENSE OR CERTIFICATE?  Yes  No IF YES, COMPLETE THE FOLLOWING

Type	Period Held	Issuing Agency

**WORK EXPERIENCE. BEGIN WITH YOUR MOST RECENT WORK EXPERIENCE. LIST ALL EXPERIENCE RELEVANT TO THIS TYPE OF USE PERMIT.**

Dates	Name and Address of Employer	Duties	Reason for Leaving
FROM		SEE ABOVE	
TO			
FROM			
TO			
FROM			
TO			

Signed  Date 1/2/09



Sorry! When printing directly from the browser your directions or map may not print correctly. For best results, try clicking the Printer-Friendly button.

You searched for: 204 21st Street Newport Beach Ca 92663 near 124 30th St, Newport Beach, CA 92663-3409

- |  |   |
|--|---|
| <p>1 Newport Island<br/>Newport Beach, CA<br/>(0.13 miles away)<br/><a href="#">Map</a></p> <p>3 Lido Peninsula<br/>Newport Beach, CA<br/>(0.4 miles away)<br/><a href="#">Map</a></p> <p>5 Balboa Coves<br/>Newport Beach, CA<br/>(0.46 miles away)<br/><a href="#">Map</a></p> <p>7 American Yacht Charters<br/>2901 W Coast Hwy #190, Newport Beach, CA<br/>  949-673-4453 (0.68 miles away)<br/><a href="#">Map</a></p> <p>9 Newport Beach<br/>Newport Beach, CA<br/>(1.75 miles away)<br/><a href="#">Map</a></p> | <p>2 Lido Peninsula<br/>Newport Beach, CA<br/>(0.4 miles away)<br/><a href="#">Map</a> <a href="#">Directions</a></p> <p>4 Holiday Inn Express Newport Beach<br/>2300 W. Coast Highway, Newport Beach, CA<br/><del>949-673-4453</del> (0.77 miles away)<br/><a href="#">Map</a> <a href="#">Directions</a></p> <p>6 West Lido Channel<br/>Newport Beach, CA<br/>(0.5 miles away)<br/><a href="#">Map</a> <a href="#">Directions</a></p> <p>8 The Arches<br/>Newport Beach, CA<br/>(0.72 miles away)<br/><a href="#">Map</a> <a href="#">Directions</a></p> <p>10 Newport Channel<br/>Newport Beach, CA<br/>(1.02 miles away)<br/><a href="#">Map</a> <a href="#">Directions</a></p> |
|--|---|

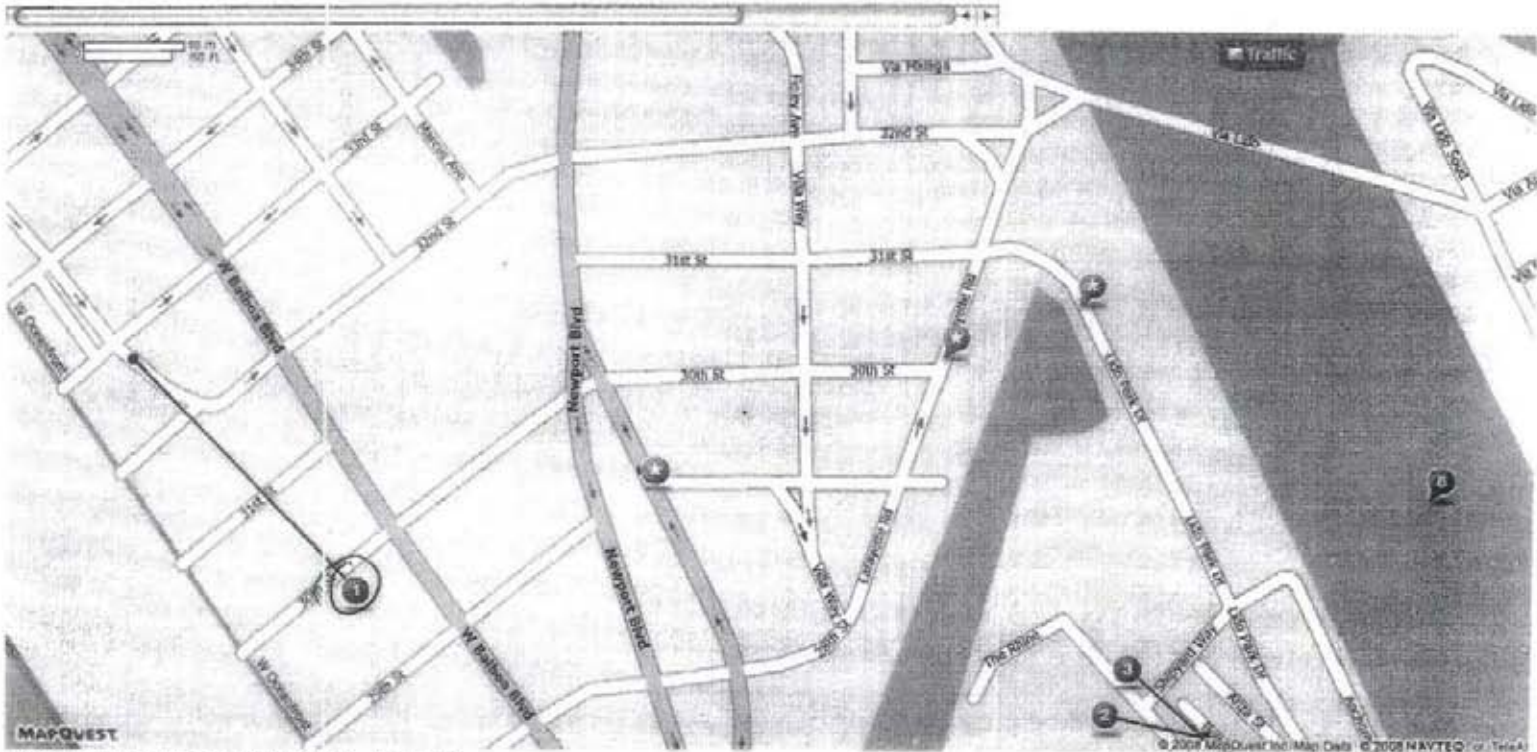
sponsored results

**Blue After Newport Beach Inc**  
630 Lido Park Dr, Newport Beach, CA  
| 949-675-3474 | (0.37 miles away)  
[Map](#)

**Cannery Seafood of the Pacific**  
3010 Lafayette Rd, Newport Beach, CA  
| 949-566-0060 | (0.31 miles away)  
[Map](#)

**Peninsula Animal Hospital**  
2915 Newport Blvd, Newport Beach, CA  
| 949-675-4800 | (0.17 miles away)  
[Map](#) [Directions](#)

[Directions](#)



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Directions and maps are informational only. We make no warranties on the accuracy of their content, road conditions or route usability or exactness. You assume all risk of use. MapQuest and its suppliers shall not be liable to you for any loss or delay resulting from your use of MapQuest. Your use of MapQuest means you agree to our [Terms of Use](#).





# CITY OF NEWPORT BEACH



700  
1/16  
5382

BALBOA RECOVERY  
3419 VIA LINDO 309  
NEWPORT BEACH, CA  
92663

ACCOUNT NUMBER: BT30011733  
EXPIRATION DATE: 09/30/2009

## INSTRUCTIONS AND CONDITIONS

Welcome to the City of Newport Beach, and thank you for your business tax payment. This business tax certificate is evidence that the named business has paid a tax to conduct the business activity designated, within the City of Newport Beach, until the expiration date shown. Please notify the Revenue Division immediately if any of the information on the certificate changes.

This certificate is valid only at the address indicated and must be displayed in a conspicuous location. If your business is not conducted at a permanent location Municipal Code requires that any representative, while transacting business within the city, carry this certificate.

This business tax certificate does not authorize the named business to conduct any activities regulated by the City of Newport Beach or other agencies. Authorization for such activities must be obtained from the appropriate departments prior to application for business tax. Certificates are not transferable to any other party or person and are not pro-rated. Refunds are not provided once the certificate has been issued.

Your business tax certificate is valid until the expiration date, and must be renewed annually prior to that date. Changes in type of ownership (i.e. from a sole proprietorship to a partnership or LLC), nature of business, or ownership void the current certificate and require filing of and payment for a new application. Additional certificates are required if additional types of business activity are initiated at the same address, or additional locations of the same business are established (Municipal Code sections 5.04 through 5.08).

For your convenience, the Revenue Division will mail a courtesy renewal notice, prior to the expiration date, to the billing address of record. Non-receipt of the notice does not alleviate the requirement to renew. Penalties are imposed for late renewal at a rate of 25% per month to a maximum of 100% of the base tax.

The Revenue Division is available to answer any questions regarding business tax certification and requirements. Call (949) 644-3141; e-mail us at: RevenueHelp@city.newport-beach.ca.us, or visit us on the internet at [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) and view the Municipal Code on-line.

**DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED**

<b>CITY OF NEWPORT BEACH</b>		
<b>BUSINESS TAX CERTIFICATE</b>		
THIS TAX PAYMENT EXPIRES:	09/30/2009	ACCOUNT NUMBER: BT30011733
SERVICE ADDRESS:	BALBOA RECOVERY 2329 PRIVATE RD NEWPORT BEACH CA 92663	OWNER/PRINCIPAL NAME: SHINDER, DARRYL
BUSINESS CATEGORY:	MANAGEMENT CONSULTING SVCS	OWNERSHIP TYPE: CORPORATION
SELLERS PERMIT:	NO SELLERS PERMIT	TAX INCLUDES PAYMENT FOR: 0.00 EMPLOYEES
		DATE OF ISSUE: 09/30/2005
		PRINT DATE: 10/09/2008





OCEAN RECOVERY  
Foundation for Hope

RECEIVED BY  
PLANNING DEPARTMENT

MAR 30 2009

CITY OF NEWPORT BEACH

January 2, 2009

To Whom It May Concern:

My name is Kathy Tunney, the Executive Director of Ocean Recovery in Newport Beach. I run an intensive, therapeutic treatment center for newly sober young adults recovering from addictive disorders.

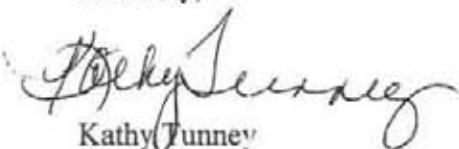
When the clients successfully complete 90 days of the residential program they are then considered to transition into sober living which is run by the Admissions Director and sober living manager, Kevin Cullen. Kevin has an extraordinary amount of experience and has been working with Ocean Recovery since it opened in February of 2003.

Balboa Recovery is a gender specific sober living that only accepts Ocean Recovery alumni. It is strictly for those individuals who have completed at least 90 days of our treatment program. All of the clients are aware of the rules that are enforced and understand that it is a privilege, not a punishment, to be given the opportunity at hand. Balboa Recovery is within walking distance to Ocean Recovery and we feel it is imperative in order to help maintain a sense of security and stability and to help with any future needs of the clients.

Collectively, our goal is to get each client in the best, most stable position possible in order to transition them once they are ready. Once this transition occurs, Balboa Recovery continues to provide structure and maintain control over what the clients are doing both on an individual level as well as a community level.

Ocean Recovery has an incredible success rate, especially in regards to those clients who transition into sober living and remain in the area. Hopefully our judgments are trusted when we say that without the sober living opportunity, we would find it near impossible to continue reintegrating these newly sober and recovering young adults into their communities, schools, workplaces and social settings.

Sincerely,



Kathy Tunney  
Executive Director  
OCEAN RECOVERY

DATE: December 12, 2009

TO: Whom It May Concern

FROM: Rafik Tardos

RE: Tenancy at 124 & 124 ½ 30<sup>th</sup> Street  
Newport Beach, CA 92663

Dear Sir/Madam:

To Whom It May Concern:

My name is Rafik Tardos and I am the representative of Ocean No. 1 LLC, owner of the Property located at 124 30<sup>th</sup> Street. This property is a duplex and both units have been leased to Balboa Recovery since October 2006.

I can personally state that it has been a pleasure to lease the property to Balboa Recovery for they have been ideal tenants. We have had zero (0) complaints from neighboring residents or city officials. Both units are kept in beautiful condition including the patio, walkways and trash area. There is no overcrowding with people or vehicles. Trash, noise and second hand smoke have not been an issue.

This is a distinct improvement over the previous tenants at the property for many years (noisy parties, parking violations, property damage, late rent, etc.) I wish we had more tenants as neat and dependable as Balboa Recovery.

Feel free to call me personally should you have any questions or need further information.



Rafik Tardos  
mailto:rm.tardos@verizon.net  
Ocean No. 1 LLC.  
650 Camino Degloria  
Walnut, CA 91789  
(626) 975-5886

January 14, 2009

To Whom It May Concern:

My name is Jarett Jamison, I am the owner/ property management company of the duplex located at 3206 W. Balboa Blvd., Newport Beach, CA 92663. I can personally state that it has been a pleasure to lease the property to Balboa Recovery. They have been ideal tenants. We have never had any complaints from neighbors. The properties are kept in beautiful condition; never overcrowded with people or cars, and noise and second hand smoke have not been an issue.

Sincerely,

A handwritten signature in cursive script that reads "Jarett Jamison". The signature is written in black ink and is positioned above the typed name and address.

Jarett Jamison  
109 14<sup>th</sup> St., #C  
Newport Beach, CA 92661

To Whom It May Concern:

1-20-09

My name is Doug MAZZISTA, and I have been a resident of Newport Beach for 4 (years) and my family and I live next door to one of Ocean Recovery's women's sober living house that holds 12 girls. I can personally state that it has been a pleasure to interact with the girls. They are respectable, well-mannered, responsible young adults that are helpful and always willing to lend a hand, such as walking our dog when we are out for a portion of the day.

Since knowing the girls, my family and I have been informed of the basic recovery process and it has been a pleasure watching them grow and go about their day attending activities such as school and work. We have also had the chance to meet their families who are lovely people and seem to fully support their children in their recovery.

We have no complaints in regards to the girls who are anything but disruptive and disrespectful. We feel they have positive attitudes and bring enjoyment to the street we live on.

\*THIS IS BASED ON GIRLS LIVING IN THE HOME.



Sincerely,

# DIVERSIFIED REAL PROPERTY MANAGEMENT AND BUSINESS SERVICES, INC.

180 East Main Street Suite 101, Tustin, CA 92780 PH: 714 544-7755 FAX: 714 544-7771

---

DATE: January 20, 2009

TO: Whom It May Concern

FROM: Bob Marshall

RE: Tenancy at 204-21st. Street  
Newport Beach, CA

Dear Sir/Madam:

To Whom It May Concern:

Diversified Real Property Management has a contract with the owner of the above referenced property to provide full management. This property is a duplex owned by Mrs. Marge Hodson.

I can personally state that it has been a pleasure to lease the property to Balboa Recovery since February 2006. They have been ideal tenants. We have had zero (0) complaints from neighboring residents, and the two units on the property are kept in beautiful condition. There is no overcrowding with people or vehicles, and noise and second hand smoke have not been an issue.

This is a distinct improvement over the previous tenants at the property for many years (noisy parties, parking violations, property damage, late rent, etc.) I wish we had more tenants as neat and dependable as Balboa Recovery.

Feel free to call me personally should you have any questions or need further information.

Bob Marshall – Vice President  
Diversified Real Property Management

FROM : COAST FITNESS

PHONE NO. : 714 639 2507

Mar. 05 2009 04:22PM P1



451 N. Tustin Ave., Orange, Ca. 92867  
Phone: (714) 639-1123 Fax: (714) 639-2507

3-5-09  
Robert Mendez  
126 30<sup>th</sup> ST  
Newport Beach, Ca 92663

To whom it may concern,

My name is Robert Mendez and I reside at 126 30<sup>th</sup> ST Newport Beach. Kevin, who is running a recovery sober living house next door, asked if I would write a note about my experience with the program operating next to me. I have not had any problems with the girls living there or interruptions of any kind due to the program. In fact I believe because of the strict rules they must have, I don't have any of the disturbances that we get from other neighbors who have large parties. For the past three years, it has been pretty quiet for the most part. I have gotten acquainted with some of the girls, and they have been very pleasant. I wish them all the best and see that the program must be a positive in their lives. As for me, I have no problem with them living next to me. I would be glad to talk with anyone who might want some feed back.

Sincerely,

A handwritten signature in black ink that reads "Rob Mendez". The signature is written in a cursive style and is positioned above the printed name.

Rob Mendez



# CITY OF NEWPORT BEACH



702  
7940  
5382

BALBOA RECOVERY  
3419 VIA LIDO 309  
NEWPORT BEACH, CA  
92663

ACCOUNT NUMBER: BT30011733  
EXPIRATION DATE: 09/30/2009

## INSTRUCTIONS AND CONDITIONS

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**DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED**

<b>CITY OF NEWPORT BEACH BUSINESS TAX CERTIFICATE</b>	
THIS TAX PAYMENT EXPIRES: 09/30/2009	ACCOUNT NUMBER: BT30011733
SERVICE ADDRESS: BALBOA RECOVERY 2329 PRIVATE RD NEWPORT BEACH CA 92663	OWNER/PRINCIPAL NAME: SHINDER, DARRYL
BUSINESS CATEGORY: MANAGEMENT CONSULTING SVCS	OWNERSHIP TYPE: CORPORATION
SELLERS PERMIT: NO SELLERS PERMIT	TAX INCLUDES PAYMENT FOR: 0.00 EMPLOYEES
	DATE OF ISSUE: 09/30/2005
	PRINT DATE: 10/09/2008



THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

AGENCY PHONE (A/C, No, Ext) (949)263-0606 Complete/Epic Insurance Services California DOI #0829370 19000 MacArthur Blvd., PH Flr Irvine, CA 92612-1447		COMPANY Philadelphia Indemnity Ins Co	
FAX (A/C, No) (949)263-0906 E-MAIL ADDRESS:		POLICY NUMBER PHPK324446	
CODE: SUB CODE:		LOAN NUMBER	
AGENCY CUSTOMER ID #: 00005567		EFFECTIVE DATE 06/25/2008 EXPIRATION DATE 06/25/2009	
INSURED Balboa Recovery, Inc. 3419 Via Lido Suite 309 Newport Beach, CA 92663		CONTINUED UNTIL TERMINATED IF CHECKED	
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION
1 Loc BLNKT
2 Loc 00001 Bldg 00001 3206 W. Balboa Newport Beach, CA 92663
3 Loc 00002 Bldg 00002 204 21st Street, A & B Newport Beach, CA 92663
4 Loc 00003 Bldg 00003 124 & 124 1/2 30th Street Newport Beach, CA 92663

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION


	COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
1	Business Personal Property, Special form	15,000	
1	BI w/ Extra Expense, Special form	60,000	
2	Business Personal Property, RC, Special form	5,000	500
2	BI w/ Extra Expense, ALS, Special form	20,000	72
3	Business Personal Property, RC, Special form	5,000	500
3	BI w/ Extra Expense, ALS, Special form	40,000	72
4	Business Personal Property, RC, Special form	6,000	500

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL \_\_\_\_\_ DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

NAME AND ADDRESS  Proof of Coverage	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	
LOAN #		
AUTHORIZED REPRESENTATIVE  Vincent Perricone - CII/PE 		

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/18/2009

PRODUCER (949)263-0606 FAX (949)263-0906

Complete/Epic Insurance Services  
California DOI #0B29370  
19000 MacArthur Blvd., PH Flr  
Irvine, CA 92612-1447

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Balboa Recovery, Inc.  
3419 Via Lido  
Suite 309  
Newport Beach, CA 92663

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Philadelphia Indemnity Ins Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS					
A	GENERAL LIABILITY	PHPK324446	06/25/2008	06/25/2009	EACH OCCURRENCE	\$ 1,000,000				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000				
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000				
					PERSONAL & ADV INJURY	\$ 1,000,000				
					GENERAL AGGREGATE	\$ 3,000,000				
					PRODUCTS - COMP/OP AGG	\$ 3,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:									
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC									
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident)	\$			
	<input type="checkbox"/> ANY AUTO							BODILY INJURY (Per person)	\$	
<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$					
<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$					
<input type="checkbox"/> HIRED AUTOS										
<input type="checkbox"/> NON-OWNED AUTOS										
GARAGE LIABILITY					AUTO ONLY - EA ACCIDENT	\$				
<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$					
				AUTO ONLY: AGG	\$					
EXCESS/UMBRELLA LIABILITY					EACH OCCURRENCE	\$				
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$					
					\$					
					\$					
					\$					
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS	OTHER				
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?					E.L. EACH ACCIDENT	\$				
If yes, describe under SPECIAL PROVISIONS below					E.L. DISEASE - EA EMPLOYEE	\$				
					E.L. DISEASE - POLICY LIMIT	\$				
OTHER		PJPK324446	06/25/2008	06/25/2009	\$1M each Prof. incident limit \$3M aggregate limit					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

sexual or Physical Abuse or Molestation Vicarious Liability \$1M each abusive conduct limit;  
2M aggregate

## CERTIFICATE HOLDER

Proof of Coverage

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL \_\_\_\_\_ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Vincent Perricone - CII/PEC 

**City of Newport Beach**  
**GROUP RESIDENTIAL USES – USE PERMIT APPLICATION**  
**ADMINISTRATIVE ORGANIZATION & DELEGATION INFORMATION - CORPORATIONS**  
 (Form 200 – February 2008)

**INSTRUCTIONS:** This form must be updated and submitted to the City each time there is a change in officers or change in the corporation.

**CORPORATION**

<b>Name (as listed with the Secretary of State)</b> BALBOA RECOVERY, INC		<b>Chief Executive Officer</b> DARRYL SHINDER	
<b>Incorporation Date</b> SEPTEMBER 16 2006		<b>Place of Incorporation</b> STATE OF CALIFORNIA	
<b>Principal office of business:</b>			
<b>Address</b> 3419 VIS LIDO #309	<b>City</b> NEWPORT BEACH	<b>Zip Code</b> 92663	<b>Telephone</b> 949 400 7120
<b>Contact Person</b> KEVIN CULLEN	<b>Title</b> CFO		<b>Telephone</b> 949 400 7120

Names and addresses of all persons who own ten per cent (10%) or more of stock in corporation.

**Governing Board of Directors**

- |                            |                        |
|----------------------------|------------------------|
| a. Number of Board Members | b. Term of Office      |
| c. Frequency of Meetings   | d. Method of Selection |

**Board Officers and Members** USE A SEPARATE SHEET FOR ADDITIONAL NAMES

Office	Name	Business Address & City & Zip Code	Telephone Number	Term Expiration
President	DARRYL SHINDER	3419 VIA LIDO #309 NEWPORT BEACH, CA 92663	949 645 2053	INDEFINITE
Vice-President	KEVIN CULLEN	3419 VIA LIDO #309 NEWPORT BEACH, CA 92663	949 400 7120	INDEFINITE
Secretary				
Treasurer				
Other				


**STATEMENT OF CORPORATE DELEGATION**

Applicants who are corporations shall attach board resolutions authorizing a delegation to the Program Director and/or Administrator or other appropriate staff.

1. Applicant Name: Balboa Recovery, Inc.
2. Program Name: \_\_\_\_\_
3. Program Address: 3419 Via Lido Ste 309
4. City: Newport Beach County: Orange Zip Code: 92663
5. Telephone: (949) 400-7120
6. Kevin Cullen  
(Name of person(s) authorized by applicant)

... is hereby designated as administrator, program manager, or agent of the above-named program and is authorized to receive at the above named program on my behalf, any documents including reports of inspections and consultations, accusations, and civil and administrative processes.

I WILL NOTIFY THE CITY WITHIN 10 WORKING DAYS OF ANY CHANGE OF THE ADMINISTRATOR OF THE FACILITY.

7.   
Signature of applicant(s)
8. Title: Vice President
9. Address: 3419 Via Lido Ste 309
10. City: Newport Beach County: Orange Zip Code: 92663

City of Newport Beach  
GROUP RESIDENTIAL USES – USE PERMIT APPLICATION  
ADMINISTRATIVE ORGANIZATION -  
PARTNERSHIPS, SOLE PROPRIETOR, AND OTHER ASSOCIATIONS  
(Form 200P – February 2008)

---

**PARTNERSHIPS**

---

1. Attach a copy of the partnership agreement

---

2. Partners

	Type of Partnership	Name	Business Address, City and Zip Code
1st Partner	<input type="checkbox"/> General <input type="checkbox"/> Limited		
2nd Partner	<input type="checkbox"/> General <input type="checkbox"/> Limited		
3rd Partner	<input type="checkbox"/> General <input type="checkbox"/> Limited		
4th Partner	<input type="checkbox"/> General <input type="checkbox"/> Limited		

Contact Person \_\_\_\_\_ Title \_\_\_\_\_ Telephone # \_\_\_\_\_

---

**SOLE PROPRIETOR/OTHER ASSOCIATIONS**

---

Sole Proprietors/other associations must also provide a list of all person(s) legally responsible for the organization, the contact person, and appropriate legal documents (fictitious name statement, business license) which set forth legal responsibility of the organization and accountability for opening the program. Use the following space or attach a separate sheet.

---



**WEEKLY SCHEDULE OF SERVICES**

Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
6-7 a.m.							
7-8 a.m.							
8-9 a.m.							
9-10 a.m.							
10-11 a.m.							
11 a.m.-12							
12-1 p.m.							
1-2 p.m.							
2-3 p.m.							
3-4 p.m.							
4-5 p.m.							
5-6 p.m.							
6-7 p.m.							
7-8 p.m.							

TOTAL HOURS PER WEEK OF INDIVIDUAL/GROUP/EDUCATION SESSIONS, RECOVERY OR TREATMENT PLANNING, AND DETOXIFICATION SERVICES (IF PROVIDED): \_\_\_\_\_

Comments:

**NEWPORT BEACH FIRE MARSHAL FIRE CLEARANCE FORM**  
 (Form 850 – February 2008)

STATE OF CALIFORNIA

**FIRE SAFETY INSPECTION REQUEST**

STD 850 (REV. 12-86)

*See instructions on reverse.*


AGENCY CONTACT'S NAME	TELEPHONE NUMBER ( )	REQUEST DATE	PROGRAM
EVALUATOR'S NAME	REQUESTING AGENCY/FACILITY NUMBER		REQUEST CODE

LICENSING AGENCY NAME AND ADDRESS	[ ]	[ ]	[ ]	[ ]	[ ]	<b>CODES</b>	
						1. ORIGINAL	A. FIRE CLEARANCE
						2. RENEWAL	B. LIFE SAFETY
						3. CAPACITY CHANGE	
						4. OWNERSHIP CHANGE	
						5. ADDRESS CHANGE	
						6. NAME CHANGE	
						7. OTHER	

AMBULATORY		NONAMBULATORY		BEDRIDDEN		TOTAL CAPACITY
CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	
FACILITY NAME						LICENSE CATEGORY
STREET ADDRESS (A/S/W/L/RR/MS)						NUMBER OF BUILDINGS
CITY						RESTAURANT
FACILITY CONTACT PERSON'S NAME						HOURS
SPECIAL CONDITIONS						

**TO BE COMPLETED BY INSPECTING AUTHORITY**

FIRE AUTHORITY NAME AND ADDRESS	[ ]	[ ]	[ ]	[ ]	[ ]	CLEARANCE/DENIAL CODE	
						<b>CODES</b>	
						1. FIRE CLEARANCE GRANTED	
						2. FIRE CLEARANCE DENIED	
						A. EXITS	
						B. CONSTRUCTION	
						C. FIRE ALARM	
						D. SPRINKLERS	
						E. HOUSEKEEPING	
						F. SPECIAL HAZARD	
						G. OTHER	

INSPECTOR'S NAME (Typed or Printed)	TELEPHONE NUMBER ( )	OPRS NUMBER	OCCUPANCY CLASS
INSPECTION DATE	INSPECTOR'S SIGNATURE 		
EXPLAN DENIAL OR LIST SPECIAL CONDITIONS			
_____			
_____			
_____			
_____			

**City of Newport Beach**  
**GROUP RESIDENTIAL USES – USE PERMIT APPLICATION**  
**REQUIREMENTS OF NBMC §20.90 et seq.**

NBMC §20.91A.030 speaks to applicants complying with NBMC Chapter 20.90, portions of which are summarized here:

**20.90.030 Application Filing.**

A. **Required Forms.** Applications for discretionary approvals, including but not limited to, amendments, development plans, modifications permits, site plan review, use permits, variances, and coastal permits shall be filed in the office of the Planning Department in writing on forms prescribed by the Planning Director.

B. **Required Materials.** Applications for discretionary approvals shall be accompanied by all plans, maps, and other materials required by the prescribed forms, unless specifically waived by the Planning Director. The Planning Director may request additional materials deemed necessary to support the application.

C. **Required Signatures.** Application for discretionary approvals may be made by the owner, lessee, or agent of the owner of the property affected. The application shall be signed by the owner of record or may be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application.

D. **Fees.** Applications for discretionary approvals shall be accompanied by a fee as established by resolution of the City Council.

**20.90.040 Planning Department Review**

A. **Time Limits and Notification.** Within thirty (30) days of the filing of an application, the Planning Department shall determine whether the application is complete and notify the applicant in writing if the application is determined to be incomplete.

B. **Incomplete Applications.** If the application is determined not to be complete, the Planning Department shall notify the applicant in writing and shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information or materials needed to complete the application. Upon the receipt of the information or materials needed to complete the application, or any re-submittal of the application, a new thirty (30) day review period shall begin to determine the completeness of the application.

C. **Extension of Time Limits.** Extensions of the time limits of the review period are permitted when mutually agreed upon by the Planning Department and the applicant.

D. **Waivers.** The Planning Director may waive the submission of items deemed unnecessary.

E. **Exemption for Environmental Review.** This section shall not be construed as limiting the ability of the Planning Department to request and obtain information needed to conduct environmental review under the terms of the California Environmental Quality Act.

See other aspects of Chapter 20.09 at <http://municipalcodes.lexisnexis.com/codes/newportb/index.htm>.

# # #

# Balboa Recovery

The undersigned "Client" hereby agrees with Balboa Recovery, operator of the facility located at 3206 West Balboa, 204 21<sup>st</sup> Street, 124 30<sup>th</sup> Street, Newport Beach, California, as follows:

1) **Payment Policy:** Client will pay Operator the total amount of \$\_\_\_\_\_ per month in consideration for being admitted to the facility in accordance with the terms and conditions of this agreement, including the rules attached hereto. Client will pay Operator the total amount of \$\_\_\_\_\_ in consideration for Services. Once payment is made, no refunds will be given. Client Initials \_\_\_\_\_

2) **Actions which shall result in the termination of the agreement** include the use of drugs or alcohol, holding or trafficking any drugs or paraphernalia, holding or trafficking any weapons, and any violence or threat of violence to another client or employee of operator. The client understands and agrees that a violation of any of the rules that are attached signed and dated by both client and operator may result in termination of the agreement. Client acknowledges that the Balboa Recovery rules are necessary to provide a safe recovery living environment.

3) **Consequences of relapse:** Any client who uses drugs or alcohol agrees she/he can be referred to an appropriate detox or other recovery service for a minimum of 72 hours before being allowed back into the Balboa Recovery facility. No client will be permitted to detox at Balboa Recovery. If the client is permitted to return to Balboa Recovery after detox a new admissions agreement shall be signed and dated by both the client and operator.

4) **Conditions under which agreement may be terminated:** In the event of client's death this admission agreement shall terminate.

5) **Assumption and release of liability:** Client agrees to be fully responsible for, and to assume all risks associated with residence at Balboa Recovery. Furthermore, as additional consideration for admission to Balboa Recovery, client hereby releases and discharges operator and its partners, employees, agents, successors and assigns, from all demands, liabilities, claims, costs and expenses which client may now or hereafter have arising out of his residence at Balboa Recovery including, without limitation, those relating to personal injuries and damages to or loss of personal property. Notwithstanding Section 1542 of the California Civil Code, the foregoing release extends to all damages, losses and injuries whether known or unknown.

6) **Miscellaneous:** This agreement constitutes the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or any contemporaneous oral agreement. This agreement can only be modified or amended in writing signed by both of the parties hereto. In any action arising out of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

The client hereby agrees she has carefully read and understands this agreement, including the Assumption of risks and Release of liability of Balboa Recovery by the client. This Agreement was executed in Newport Beach, California.

"Client"

"Operator"

\_\_\_\_\_  
Signature                      / /  
Date

\_\_\_\_\_  
Signature                      / /  
Date

\_\_\_\_\_  
\_\_\_\_\_  
/ /

# Balboa Recovery

## RULES

- Total abstinence from all mind altering chemicals and drugs, including alcohol. Anyone caught violating this rule by the house manager or another resident will be required to leave the house immediately.
- Residents must immediately submit to a urine analysis when requested by house manager. The analysis will be at the resident's expense.
- The house manager must approve the keeping of any medication on the property.
- For the first ninety (90) days following admission, residents are required to attend at least one Twelve Step meeting every day including required house meetings and must document attendance on a Balboa Recovery attendance card, which must be turned in at the end of the week. After the first ninety (90) days, at least four Twelve Step meetings per week are required.
- Residents are required to get a sponsor within the first two weeks of admission and work the Twelve Steps of recovery with this sponsor. Be prepared to identify your sponsor and to discuss your progress with the house manager upon request of Balboa Recovery.
- Curfew hours are 10:00 p.m. Sunday through Thursday, and 12:00 a.m. Friday and Saturday. Special arrangements can be made with the house manager in advance for special circumstances.
- TV and lights are turned off at 11:00 p.m. Monday through Thursday.
- No personal TV's are allowed without permission of the house manager.
- No loud music. Stereos can only be played at a reasonable level so as not to disturb other residents or neighbors. After 9:00 p.m. headphones must be used.
- Quiet time is observed from 10:00 p.m. to 8:00 a.m. Sunday through Thursday and 12:00 a.m. to 8:00 a.m. Friday and Saturday. People who work deserve consideration.
- Overnight passes must be requested at least 24 hours in advance. Bad attitude or failure to do chores can result in the withholding of overnight passes.
- Absolutely no stealing will be tolerated.
- **NO DAY SLEEPING!** Beds must be made by 8:30 am. Once beds are made, residents may not get back in it! Residents may lie on top of made bed fully clothed. Exceptions may be made for residents who are sick, work nights, or have permission from the House Manager.

-----  
Initial

# Balboa Recovery

## RULES

- Borrowing money from or loaning money to other clients is not allowed.
- Respect and be consideration of other residents.
- Residents have agreed not to frequent bars or nightclubs.
- No smoking in the house. Smoking is only permitted in designated areas.
- No sexual contact will be allowed on the premises.
- All residents must be fully and properly clothed (i.e., dresses, slacks, shirts, pants or shorts) in the living room, kitchen, and yard.
- Residents are to help keep the house neat and clean. Chores must be done daily. Chores will be posted and will be changed weekly. There will also be a complete house cleaning by residents every Saturday.
- You must do your assigned chores, make your bed and clean your room daily before 8:30 a.m.! Dirty laundry must be properly put away out of sight at all times.
- Clean up after yourself in the kitchen area. Wash, dry and return house utensils to their proper place.
- The telephone is for residents use only. Please be considerate of the other residents and limit your calls to ten minutes if others are waiting to use the telephone. Visitors are not permitted to use the telephone. Telephone will be turned off during house meetings.
- The telephone must be answered "Hello" or "Balboa Recovery". Do not volunteer any information about other residents. A message board is provided. If you take a message for another resident, please be courteous and record the message in the appropriate place.
- No holding or trafficking of any drug or paraphernalia is permitted.
- Racist, sexist and foul language and propaganda are not permitted.
- No weapons or violence or threats of violence will be permitted.
- Balboa Recovery is not responsible for your personal property. Resident must remove all of their personal property when their stay has been terminated. Resident agrees that any personal property, which is not removed can be disposed of by Balboa Recovery.
- Residents must respect, take direction from and be supportive of the house manager.

-----  
Initial

# Balboa Recovery

## RULES

- ANY PERSON BRINGING DRUGS OR ALCOHOL ON THE PREMISES WILL BE REQUIRED TO LEAVE IMMEDIATELY.
- THESE RULES MUST BE COMPLIED WITH TO ENSURE THE SAFETY AND SECURITY OF THE BALBOA RECOVERY CLIENTS.
- CLIENT AGREES SHE HAS CAREFULLY READ AND UNDERSTANDS THE RULES AS STATED IN THIS CONTRACT.

"Client"

\_\_\_\_\_  
Signature                        /  /    
Date

\_\_\_\_\_  
Print

# Balboa Recovery

## **DRINKING AND DRUG USE POLICY**

No drinking of alcohol or ingesting of over the counter medications (including mouthwash, cold remedies, etc.) containing alcohol is allowed.

Any violation of this policy may result in the immediate discharge of the resident with a referral to an appropriate detox or other recovery service for a minimum of 72 hours.

This same policy applies to any illicit or prescription medication with euphoric or mind altering effects. Any use of such a drug may result in immediate discharge.

Certain non-euphoric medication, prescribed by a medical doctor, who has full knowledge of the clients alcohol and/or drug problem for life sustaining purposes, will be allowed with prior approval by the House Manager.

## **MEDICATIONS**

The house manager must be advised of any prescription or over-the-counter drug or medication client wants to keep on the property.

-----  
Initial

# Balboa Recovery

## RELAPSE

### CONSEQUENCES OF RELAPSE

Any resident who uses drugs or alcohol will be referred to an appropriate detox or other recovery service for a minimum of 72 hours before being allowed back into the facility. No client will be allowed to detox at Balboa Recovery.

### READMISSION

If a resident returns to Balboa Recovery after detox, the returning resident must:

- Request readmission.
- Give a clean drug test.
- Meet all admission criteria.

An individual readmission interview is scheduled with the House Manager or Director and the client to discuss readmission to the program. An attempt is made to determine the appropriateness of readmission to this facility. The client is provided an opportunity to discuss any problems that may have occurred during their last residency.

If the decision is for readmission, a new admissions agreement shall be signed and dated by both the resident and operator.

-----  
Initial

# Balboa Recovery

## MEALS

Balboa Recovery provides the facilities for residents to prepare their own meals, as well as nutritional information in accordance with the food guide pyramid so that residents may maintain a well balanced diet. There are also markets, restaurants, and fast food stores within walking distance of the facility.

## RECREATIONAL ACTIVITIES

Activities available at or near the facility are:

- o Swimming
- o Surfing
- o Sailing
- o Fishing
- o Softball
- o Tennis
- o Basketball
- o Skating
- o Weight Training
- o Running Kayaking
- o Biking
- o Golf

## CRITERIA FOR ROOM REVIEW

**No towels, linens, or personal clothing on the floors.**

**Bed made and personal space in order**

**No food in bed or bedroom.**

**No electrical equipment left plugged-in in bathroom**

**No paint or "spill able" materials in the apartments**

**Chore(s) Completed**

**Room review(s) will be held every day**

**Q. Are alcoholics covered by the ADA?**

**A.** Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

**II-2.3000 Drug addiction as an impairment.** Drug addiction is an impairment under the ADA. A public entity, however, may base a decision to withhold services or benefits in most cases on the fact that an addict is engaged in the current and illegal use of drugs.

*What is "illegal use of drugs"?* Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other Federal law. Alcohol is not a "controlled substance," but alcoholism is a disability.

*What is "current use"?* "Current use" is the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem. A public entity should review carefully all the facts surrounding its belief that an individual is currently taking illegal drugs to ensure that its belief is a reasonable one.

*Does title II protect drug addicts who no longer take controlled substances?* Yes. Title II prohibits discrimination against drug addicts based solely on the fact that they previously illegally used controlled substances. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in current illegal use of drugs. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs. Finally, a person who is erroneously regarded as engaging in current illegal use of drugs is protected.

*Is drug testing permitted under the ADA?* Yes. Public entities may utilize reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

**II-2.4000 Substantial limitation of a major life activity.** To constitute a "disability," a condition must substantially limit a major life activity. Major life activities include such activities as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*When does an impairment "substantially limit" a major life activity?* There is no absolute standard for determining when an impairment is a substantial limitation. Some impairments obviously or by their nature substantially limit the ability of an individual to engage in a major life activity.

**ILLUSTRATION 1:** A person who is deaf is substantially limited in the major life activity of hearing. A person with a minor hearing impairment, on the other hand, may not be substantially limited.

**ILLUSTRATION 2:** A person with traumatic brain injury may be substantially limited in the major life activities of caring for one's self, learning, and working because of memory deficit, confusion, contextual difficulties, and inability to reason appropriately.

An impairment substantially interferes with the accomplishment of a major life activity when the

individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.

**ILLUSTRATION 1:** A person with a minor vision impairment, such as 20/40 vision, does not have a substantial impairment of the major life activity of seeing.

**ILLUSTRATION 2:** A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

*Are "temporary" mental or physical impairments covered by title II? Yes, if the impairment substantially limits a major life activity. The issue of whether a temporary impairment is significant enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.*

**ILLUSTRATION:** During a house fire, M received burns affecting his hands and arms. While it is expected that, with treatment, M will eventually recover full use of his hands, in the meantime he requires assistance in performing basic tasks required to care for himself such as eating and dressing. Because M's burns are expected to substantially limit a major life activity (caring for one's self) for a significant period of time, M would be considered to have a disability covered by title II.

*If a person's impairment is greatly lessened or eliminated through the use of aids or devices, would the person still be considered an individual with a disability? Whether a person has a disability is assessed without regard to the availability of mitigating measures, such as reasonable modifications, auxiliary aids and services, services and devices of a personal nature, or medication. For example, a person with severe hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that, if untreated, would substantially limit a major life activity, are still individuals with disabilities under the ADA, even if the debilitating consequences of the impairment are controlled by medication.*

**II-2.5000 Record of a physical or mental impairment that substantially limited a major life activity.** The ADA protects not only those individuals with disabilities who actually have a physical or mental impairment that substantially limits a major life activity, but also those with a record of such an impairment. This protected group includes --

1) A person who has a history of an impairment that substantially limited a major life activity but who has recovered from the impairment. Examples of individuals who have a history of an impairment are persons who have histories of mental or emotional illness, drug addiction, alcoholism, heart disease, or cancer.

2) Persons who have been misclassified as having an impairment. Examples include persons

who have been erroneously diagnosed as mentally retarded or mentally ill.

**II-2.6000 "Regarded as."** The ADA also protects certain persons who are regarded by a public entity as having a physical or mental impairment that substantially limits a major life activity, whether or not that person actually has an impairment. Three typical situations are covered by this category:

1) An individual who has a physical or mental impairment that does not substantially limit major life activities, but who is treated as if the impairment does substantially limit a major life activity;

**ILLUSTRATION:** A, an individual with mild diabetes controlled by medication, is barred by the staff of a county-sponsored summer camp from participation in certain sports because of her diabetes. Even though A does not actually have an impairment that substantially limits a major life activity, she is protected under the ADA because she is treated as though she does.

2) An individual who has a physical or mental impairment that substantially limits major life activities *only* as a result of the attitudes of others towards the impairment;

**ILLUSTRATION:** B, a three-year old child born with a prominent facial disfigurement, has been refused admittance to a county-run day care program on the grounds that her presence in the program might upset the other children. B is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.

3) An individual who has no impairments but who is treated by a public entity as having an impairment that substantially limits a major life activity.

**ILLUSTRATION:** C is excluded from a county-sponsored soccer team because the coach believes rumors that C is infected with the HIV virus. Even though these rumors are untrue, C is protected under the ADA, because he is being subjected to discrimination by the county based on the belief that he has an impairment that substantially limits major life activities (i.e., the belief that he is infected with HIV).

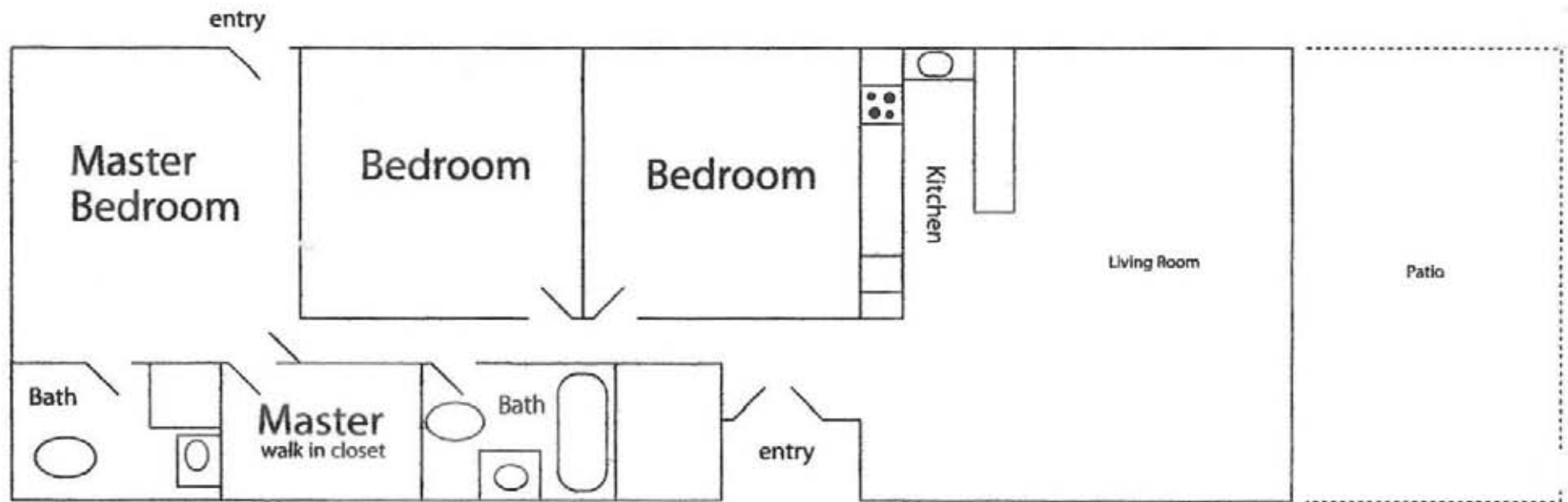
**II-2.7000 Exclusions.** The following conditions are specifically excluded from the definition of "disability": transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

**II-2.8000 Qualified individual with a disability.** In order to be an individual protected by title II, the individual must be a "qualified" individual with a disability. To be qualified, the individual with a disability must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services with or without --

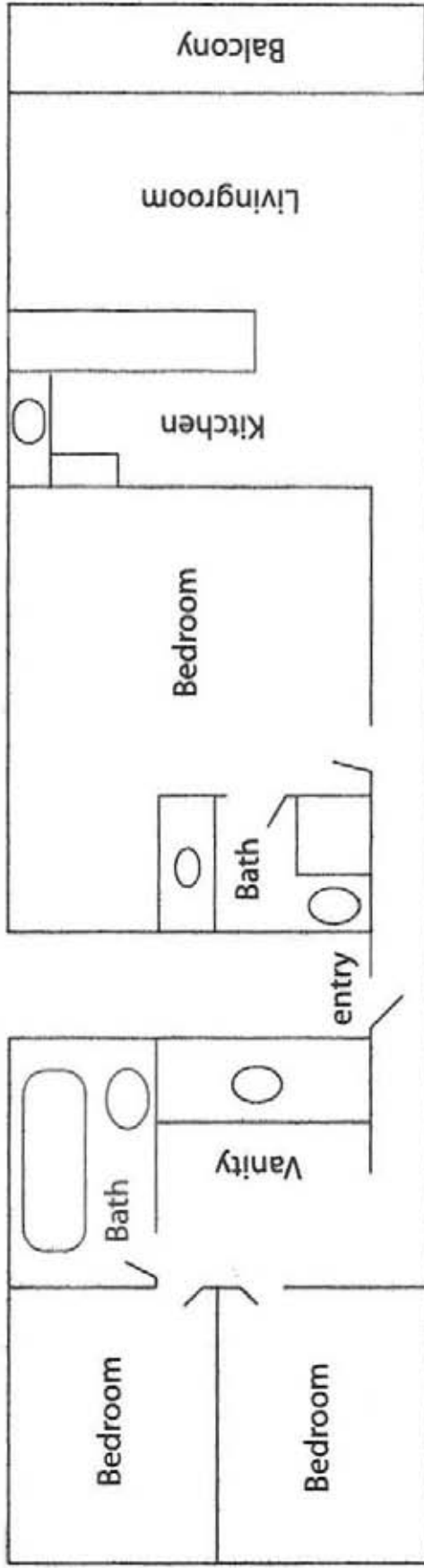
- 1) Reasonable modifications to a public entity's rules, policies, or practices;
- 2) Removal of architectural, communication, or transportation barriers; or
- 3) Provision of auxiliary aids and services.

The "essential eligibility requirements" for participation in many activities of public entities may be minimal. For example, most public entities provide information about their programs, activities, and services upon request. In such situations, the only "eligibility requirement" for receipt of such information would be the request for it. However, under other circumstances, the "essential eligibility requirements" imposed by a public entity may be quite stringent.

# 30th Street Lower Unit



# 30th Street Upper Unit





**OCEAN RECOVERY**  
Foundation for Hope

January 2, 2009

To Whom It May Concern:

My name is Kathy Tunney, the Executive Director of Ocean Recovery in Newport Beach. I run an intensive, therapeutic treatment center for newly sober young adults recovering from addictive disorders.

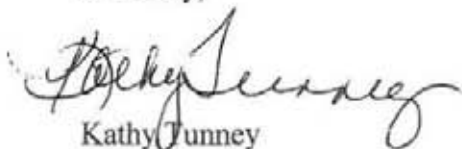
When the clients successfully complete 90 days of the residential program they are then considered to transition into sober living which is run by the Admissions Director and sober living manager, Kevin Cullen. Kevin has an extraordinary amount of experience and has been working with Ocean Recovery since it opened in February of 2003.

Balboa Recovery is a gender specific sober living that only accepts Ocean Recovery alumni. It is strictly for those individuals who have completed at least 90 days of our treatment program. All of the clients are aware of the rules that are enforced and understand that it is a privilege, not a punishment, to be given the opportunity at hand. Balboa Recovery is within walking distance to Ocean Recovery and we feel it is imperative in order to help maintain a sense of security and stability and to help with any future needs of the clients.

Collectively, our goal is to get each client in the best, most stable position possible in order to transition them once they are ready. Once this transition occurs, Balboa Recovery continues to provide structure and maintain control over what the clients are doing both on an individual level as well as a community level.

Ocean Recovery has an incredible success rate, especially in regards to those clients who transition into sober living and remain in the area. Hopefully our judgments are trusted when we say that without the sober living opportunity, we would find it near impossible to continue reintegrating these newly sober and recovering young adults into their communities, schools, workplaces and social settings.

Sincerely,



Kathy Tunney  
Executive Director  
OCEAN RECOVERY

***Exhibit No. 2***

*Staff Request for Additional Information*

*Dated April 7, 2009*



CITY OF NEWPORT BEACH  
PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CA 92658  
(949) 644-3200; FAX (949) 644-3229

April 7, 2009

Kevin Cullen  
Balboa Recovery  
3419 Via Lido #309,  
Newport Beach, CA 92663

Dear Mr. Cullen:

Subject: **REQUEST FOR ADDITIONAL INFORMATION**

Reasonable Accommodation No. 2009-001 (PA 2009-011) – 204 21<sup>st</sup> Street  
Reasonable Accommodation No. 2009-002 (PA 2009-012) – 124 30<sup>th</sup> Street  
Reasonable Accommodation No. 2009-003 (PA 2009-013) – 3206 W Balboa

This letter is regarding your Reasonable Accommodation application submittals for properties located at the above referenced addresses. Upon further review of the submitted applications and subsequent correspondence, we have determined that additional information is necessary in order to complete the analysis of this request per the provisions of Chapter 20.98 of the Newport Beach Municipal Code. Please provide the following clarifications and/or additional information:

1. Property Owner Affidavit: Please provide written authorization from the legal owner of record authorizing filing of this application.
2. Affirmation of Resident(s) Disability: Please provide a written statement, signed by the facility administrator or other credible individual, certifying under penalty of perjury that all residents of this facility meet the definition of disabled, as that term is defined by the federal and state housing laws. The facility administrator is not required to meet this certification requirement.
3. Description of Use: In order to assist staff in understanding the accommodation request, please provide a brief written description of the facility operation in each building, including:
  - a. The number of bedrooms and beds within each unit or building;
  - b. The population in each building (male or female);
  - c. Is on-site staffing provided or does a resident manager reside in each building? If so, how many staff members are on-site at any one time?

- d. The month and year the use was established in each building.
  - e. How many parking spaces are provided on-site for each unit or building?
  - f. Are resident clients allowed to use their personal vehicles at any time while living at the facility, and if so, where the vehicles are parked?
  - g. Does the facility provide transportation services for the clients? If so, where is the transportation van parked? To what location is transportation provided and how frequently is the transportation provided?
  - h. You have submitted a list of house rules - how are they enforced?
  - i. You have identified curfew and quiet hours - how are they enforced?
  - j. Who determines the population of each building?
  - k. What is the typical duration of stay of the clients residing in the facilities?
  - l. Are minors permitted to reside in the facilities?
4. In order to approve or conditionally approve a reasonable accommodation request, there are five findings which must be made. These findings are contained in Section 20.98.025(B) of the NBMC.

Section 20.98.025(B)(2) reads as: *"That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling."* Please submit information that would assist us with making this finding. The finding of "necessity" can be based on the economic viability of a facility, or the therapeutic benefit of the size and number of residents of a facility.

Please describe why the requested accommodation is necessary to make your facility economically viable. Supporting data for economic viability would typically take the form of leases, utility bills, general expenses, general income etc.

If the request is made in order to provide housing to more than six disabled individuals in a building, please describe the therapeutic benefit provided to residents living with that number of other disabled individuals.

5. Facility Administrator: Please provide the name and contact information for the facility administrator or manager. If the facility provides 24/7 on-site staffing, please provide contact information for that staff person(s).
6. Site Plan/Floor Plans: Please provide a dimensioned site plan showing the location of the buildings on the lots, the location and number of on-site parking spaces. On the floor plans you have already provided, please indicate the number of bedrooms in each unit, and the number of beds in each bedroom.

We have tentatively scheduled your reasonable accommodation request hearing for April 30<sup>th</sup>, 2009. As such, we would like to meet with you as soon as possible to discuss the requested clarifications and additional information request. To schedule this meeting, please contact Janet Johnson Brown at (949) 644-3236.

Sincerely,

  
Gerald S. Gilbert  
Contract Planner

cc: J. Brown

***Exhibit No. 3***  
*Supplemental Information*  
*Submitted By Applicant*



**CITY OF NEWPORT BEACH**

RECEIVED BY  
PLANNING DEPARTMENT

APR 14 2009

**Supplemental Information  
for  
Reasonable Accommodation**

**CITY OF NEWPORT BEACH**

Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658-8915  
(949) 644-3200

Application Number RA2009-002

To aid staff in determining that the necessary findings can be made in this particular case as set forth in Chapter 20.98 of the Municipal Code, please answer the following questions with regard to your request (Please attach on separate sheets, if necessary):

**Kevin Cullen**

Name of Applicant

**Balboa Recovery**

If provider of housing, name of facility, including legal name of corporation

**3419 Via Lido #309, Newport Beach, CA 92663**

(Mailing Address of Applicant)

(City/State)

(Zip)

**(949) 400-7120**

**(949) 645-2059**

(Telephone)

(Fax number)

**kcullen@oceanrecovery.com**

(E-Mail address)

**124 30<sup>th</sup> Street, Newport Beach, CA 92663**

**047-083-31**

(Subject Property Address)

Assessor's Parcel Number (APN)

1. Is this application being submitted by a person with a disability, that person's representative, or a developer or provider of housing for individuals with a disability?  
YES

2. Does the applicant, or individual(s) on whose behalf the application is being made, have physical or mental impairments that substantially limit one or more of such person's major life activities? If so, please state the impairment(s) and provide documentation of such impairment(s). Yes- disabled under ADA standards

3. From which specific Zoning Code provisions, policies or practices are you seeking an exception or modification? Zoning code 20.10.020

4. Please explain why the specific exception or modification requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. Please provide documentation, if any, to support your explanation.

I am seeking a "Reasonable Accommodation" from the provision of Section 20.10.020 that my facility may only be located in an MFR District with a use permit. I am also seeking the accommodation from the R2 requirement that my facility be licensed. The California Department of Alcohol and Drug Programs does not require licensing of this type of facility. We provide residents a safe, supportive drug and alcohol free environment for those recovering from the disease of alcoholism.

5. Please explain why the requested accommodation will affirmatively enhance the quality of life of the individual with a disability. Please provide documentation, if any, to support your explanation.

The individuals' lives are enhanced by proximity of OCEAN RECOVERY, the Newport Alano Club, and all the amenities of living near the beach. Most of the people we house do not have transportation other than bicycle and by foot which enhances the need for closeness to both OCEAN RECOVERY and the Alano Club. Since all the residents are alumni of OCEAN RECOVERY they feel more comfortable and safe close the facility.

6. Please explain how the individual with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation? Please provide documentation, if any, to support your explanation.

They will no longer be able to reside in the same level of comfort and safety as they do now in Newport Beach.

7. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary to make your facility economically viable in light of the relevant market and market participants. Please provide documentation, if any, to support your explanation.

We are locked into leases which would in turn cause major financial problems. We are still paying of this loan for setting up this business. The cost of setting up a home is very expensive (lease, utilities, deposit, furniture). Closing of moving our homes would be a financial burden and would cause a huge deficit within or company causing more debt. Due to the current economic climate this would be very difficult to overcome. More important than the economic concerns of our business is the well being of our residents

8. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary for your facility to provide individuals with a disability an equal opportunity to live in a residential setting taking into consideration the existing supply of facilities of a similar nature and operation in the community. Please provide documentation, if any, to support your explanation.

Of the few facilities that have applied for the permit that are located on Balboa Peninsula, to our knowledge all are licensed treatment facilities. It stands to reason that after February 2009 sober living homes will become virtually non existent. Furthermore, OCEAN RECOVERY will not refer to other homes, which will put a huge burden on those who have completed the program at Ocean recovery. Of our three homes, one is exclusively for men while the other two are exclusively house women. There are no other "sober living" homes for women on the peninsula.

9. Please add any other information that may be helpful to the applicant to enable the City to determine whether the findings set forth in Chapter 20.98 can be made (Use additional pages if necessary.) Only alumni of OCEAN RECOVERY reside in our homes, OCEAN RECOVERY does not refer to any other facilities. We have been in business since 2005 without any complaints from neighbors or the city of Newport Beach. None of our homes are located near churches, schools. All surrounding buildings are rental properties or commercial businesses (Albertsons, Spaghetti Factory, 7-11). There is no negative impact on parking; we do not exceed the number of parking spaces on site. All residents obey a curfew and a long list of rules and conditions (please see attached admissions agreement). All homes are clean organized and quiet.

Balboa Recovery provides safe, structured, gender specific housing for those in recovery from alcoholism. We have stated the benefits of being on the Balboa peninsula, with out this service OCEAN RECOVERY alumni will be forced to find housing out of the area or on their own. It will not be as structured, safe or comfortable. This will put our residents at risk. Its common knowledge the longer a person stays in a safe sober structured environment the great their chance at recovery.

When treatment is completed, young adults often require more practice applying the new skills they have recently acquired. A large percentage of clients are students, they take time off for treatment and return to school when treatment is completed. However there is often a gap of several months between completion of treatment and the start of a new semester. Balboa Recovery helps to bridge that gap. If an individual plans on staying in the area for anything less than a year, a big problem arises. To rent an apartment requires a lease typically of a year commitment or perhaps pay the astronomical weekly summer rates. Then there are all the costs of making an apartment a livable home. We have found the best locations possible for our residents. The homes are all set up with everything the client needs to move in. This makes the transition between treatment and "sober living" as smooth as possible.

—

1. Property Owner Affidavit: I submitted signed letters from owners of all three Buildings. Each letter states they are rented to Balboa Recovery and know what we do. The only difference I can find between the letters I have submitted and one that has been accepted (900 W. Balboa) is the word affidavit in the letter. If you still find this to be insufficient I will make the necessary changes, however this may take up to a week.

2. Affirmation of Residents Disability: Please see attached letter.

3. Description of Use:

a. The number of bedrooms:

3206 W. Balboa, Unit A- 2 Bedroom, 4 Beds, 2 full Bath  
Unit B- 3 Bedroom, 6 Beds, 2 full Bath  
204 21<sup>st</sup> Street, Unit A- 2 Bedroom, 3 Beds, 2 full Bath  
Unit B- 3 Bedroom, 6 Beds, 2 full Bath  
124 30<sup>th</sup> Street, Unit A-3 Bedroom, 6 Beds, 2 full Bath  
Unit B- 3 Bedroom, 6 Beds, 2 full Bath

b. The population in each building (male of female)

3206 West Balboa (all Male population)  
204 21<sup>st</sup> Street (all Female population)  
124 30<sup>th</sup> Street (all Female population)

c. Is on site staffing provided or does a resident manager reside in each building?

Both the 3206 & 30<sup>th</sup> Street location have a live in resident manager in each unit (2 per building).  
204 21<sup>st</sup> Street has one live in resident manager.

d. The month and year each the use was established in each building.

3206 W. Balboa established in October, 2005  
204 21<sup>st</sup> Street established in February, 2006  
124 30<sup>th</sup> Street established in October, 2006

e. How many parking spaces are provided for each unit or building?

3206 W. Balboa, 3 Parking spaces  
204 21<sup>st</sup> St., 4 Parking spaces  
124 30<sup>th</sup> St., 2 Parking spaces

f. Are resident clients allowed to use their personal vehicles at any time while living at the facility, and if so, where are they parked?

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The majority of residents do not have their own cars, mostly because it's typically not safe to give someone new in recovery that kind of responsibility. However after a period of time (varies per individual) some residents are allowed to use their own vehicles while at Balboa Recovery with some very important conditions. The biggest being no one is allowed to have a car without my (Kevin Cullen) permission. This can be easily enforced. I have a strong relationship with every client's family. They trust me as a professional to do what's best for their child. If I tell them no car, they don't get a car. It's that simple.

Residents park in provide parking spaces. Nine months out of the year parking is not an issue. During summer months when parking is at a premium, we do not exceed the spaces that are provide at each location.

g. Does the facility provide transportation services?

No transportation is provided by Balboa Recovery.

h. How are rules enforced?

Rules are enforced by me (Kevin Cullen) and by the resident house managers. Consequences of rule violations are determined by the incident in question. To date there have been no complaints brought to my attention.

i. Curfew and quiet hours, how are they enforced?

All rules are enforced by the resident managers. Every resident checks in with the resident manager before curfew. To date there have been no complaints brought to my attention.

j. Who determines the population of each building?

The population in each facility is determined by the operator.

k. What is the typical duration of stay of the clients?

The typical stay is 10 months. Some residents stay for a minimum of 3 months and some have stayed for 18 months.

l. Are minors permitted to reside in the facilities?

No minors are allowed to reside at Balboa Recovery.

4. Why the requested use is necessary.

Only alumni of OCEAN RECOVERY reside in our homes, OCEAN RECOVERY does not refer to any other facilities. We have been in business since 2005 without any complaints from neighbors or the city of Newport Beach. None of our homes are located near churches or schools. All surrounding buildings are rental properties or commercial businesses (Albertsons, Spaghetti Factory, 7-11). There is no negative impact on parking; we do not exceed the number of parking spaces on site. All residents obey a curfew and a long list of rules and conditions (please see attached admissions agreement). All homes are clean, organized, and quiet.

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When treatment is completed, young adults often require more practice applying the new skills they have recently acquired. A large percentage of clients are students, they take time off for treatment and return to school when treatment is completed. However, there is often a gap of several months between completion of treatment and the start of a new semester. Balboa Recovery helps to bridge that gap. If an individual plans on staying in the area for anything less than a year, a big problem arises. To rent an apartment requires a lease typically of a year commitment or perhaps pay the astronomical weekly summer rates. Then there are all the costs of making an apartment a livable home. We have found the best locations possible for our residents. The homes are all set up with everything the client needs to move in. This makes the transition between treatment and "sober living" as smooth as possible.

All of our homes are duplexes. It is necessary that we continue to operate in both units. It is in the residents' best interest and safety, for Balboa Recovery to have total control over as much of their living space as possible. We have rules in place that ensure the safety and well being of our residents, as well as, keeping noise, trash, and parking to a minimum.

All of our facilities are gender specific; we believe coed facilities can be disastrous. It is completely unsafe to have half a building filled with young women new in recovery, and then have the other half rented out by some fraternity guys or perhaps a revolving door of weekly summer renters.

5. Facility Administrator: Kevin Cullen Office 949-723-2388  
Cell 949-400-7120

Managers: 30<sup>th</sup> unit A- Laura Cruise 303-956-9910  
30<sup>th</sup> unit B- Ashley Self 435-640-9636  
21<sup>st</sup> A & B- Devon McCalla 949-632-6759  
32<sup>nd</sup> unit A- Ben Harman 406-690-2001  
32<sup>nd</sup> unit B- Andrew Middleman 714-308-7950

6. Site Plan/Floor Plans: Please see attached documents.



BALBOA RECOVERY  
3419 Via Lido Ste. 309  
Newport Beach, CA 92663  
[www.balboarecovery.com](http://www.balboarecovery.com)

To Whom It May Concern:

I certify that the following information is true; my signature acknowledges my understanding that any false statement I would make would be grounds for perjury.

All residents living at Balboa Recovery sober living homes are legally disabled under the provisions of the Americans with Disabilities Act of 1990, Section 12102, United States law in addition to the State of California Fair Employment and Housing Act of 1974, amended in 2001. Each individual has received inpatient care from a treatment center licensed by the state of California Bureau of Alcohol and Drug Programs.

Thank you,

A handwritten signature in black ink, appearing to be 'KC' with a long horizontal flourish extending to the right.

Kevin Cullen  
Balboa Recovery



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Newport Beach, CA 92663  
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Thank you,

Kevin Cullen

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April 16, 2009

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APR 17 2009

CITY OF NEWPORT BEACH

Re: Rule Enforcement

To Whom It May Concern:

I hope the following will give a better understanding of how Balboa Recovery enforces our rules and some of the consequences of breaking the rules.

In our Reasonable Accommodation Request we submitted a very extensive list of rules that residents adhere to. The rules are enforced by the live in resident managers. Resident managers are expected to make sure residents obey the rules at all times. All consequences are determined by the operator.

Although residents are subject to discharge at any time for any reason, this is how we handle minor rule infractions:

First offense: verbal and written warning.

Second offense: written warning and loss of privileges (such as early curfew) and or extra chores.

Third offense: three days out of the house at a higher level of care such as Yellowstone Recovery.

Major rule infractions, as outlined in our submitted paperwork, are not tolerated under any circumstances and are grounds for immediate discharged.

We are not interested in trying to help people that don't want our help. If someone does not want what we have to offer there are other places for that individual to go.

Sincerely,

Kevin Cullen  
Balboa Recovery



BALBOA RECOVERY  
3419 Via Lido Ste. 309  
Newport Beach, CA 92663  
[www.balboarecovery.com](http://www.balboarecovery.com)

April 16, 2009

Re: Parking Concerns

To Whom It May Concern:

I hope the following explanation will give a clearer understanding of how Balboa Recovery deals with residents and resident managers and their personal vehicles.

Resident Managers are allowed to park their cars in the allotted parking spaces for each building. If a manager does not own a car or an extra spot is available, then a resident may fill that spot with their vehicle. The resident given the space will be determined by the operator. Having a car that has not been approved by the operator is grounds for immediate dismissal. Residents of Balboa Recovery will not exceed the number of provided parking spaces. To date, we have had no complaints from neighbors about our parking practices.

Many residents are students and owning a car does benefit them. We request that during the fall, winter, and spring when parking is not at such a premium, that one resident may park on the street provided they purchase a parking pass from the city of Newport Beach. I believe this request to be reasonable. We would like the option of parking just one car on the street during the off season. I understand if this is not in the best interest of the neighborhood but I do thank you for your consideration on this matter.

Sincerely,

Kevin Cullen  
Balboa Recovery

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Newport Beach, CA 92663  
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April 16, 2009

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APR 17 2009

Re: Therapeutic Value and Need

CITY OF NEWPORT BEACH

To Whom It May Concern:

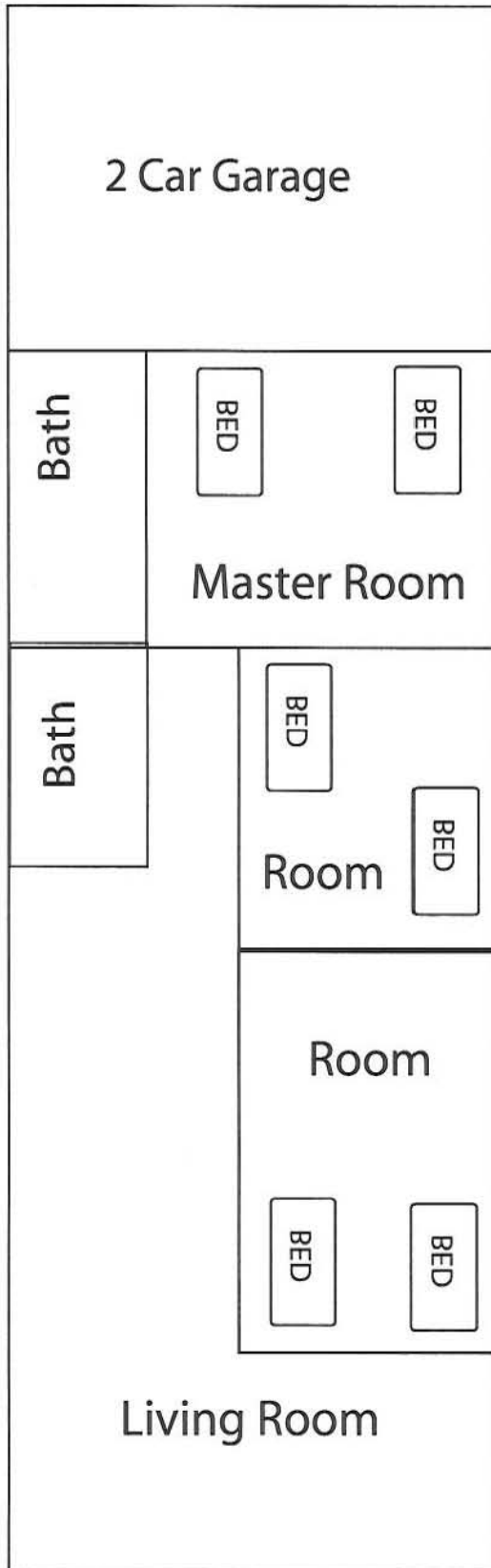
It is common practice with all major treatment providers (Hazelden, Sierra Tucson, and Betty Ford Center) to provide or support continuity of care. Continuity of care is when one therapeutic environment transitions seamlessly to the next. The way this is accomplished is to allow individuals who complete one phase of their treatment, as a group move onto the next phase of their recovery, in the same or similar group. . We are huge believers in continuity of care. Since only alumni of OCEAN RECOVERY reside in our homes, all our residents have the same set of recovery tools. They have had the same therapeutic experience and overcome many of the same obstacles. They can support each other in many of the challenges that will face them on their journey in recovery. They have also learned the same set of life skills that are expected of them in the real world. Simple things, like cooking, cleaning, laundry and the ability to communicate and get along with others are all too often neglected before treatment. When the drugs and alcohol are removed, the life skills that are so desperately need to survive don't automatically come back. It takes work. We provide the opportunity for them to practice this work. It is the residents themselves, which support each other and teach each other how to become members of society again.

All residents of Balboa Recovery are used to living in a large recovery community. The therapeutic environment where our residents are from has a population of 18 men at one location and 14 women at the other. Obviously people can not live in such a safe, structured, and supportive environment as OCEAN RECOVERY, but the size and model we have provided has proven to be successful.

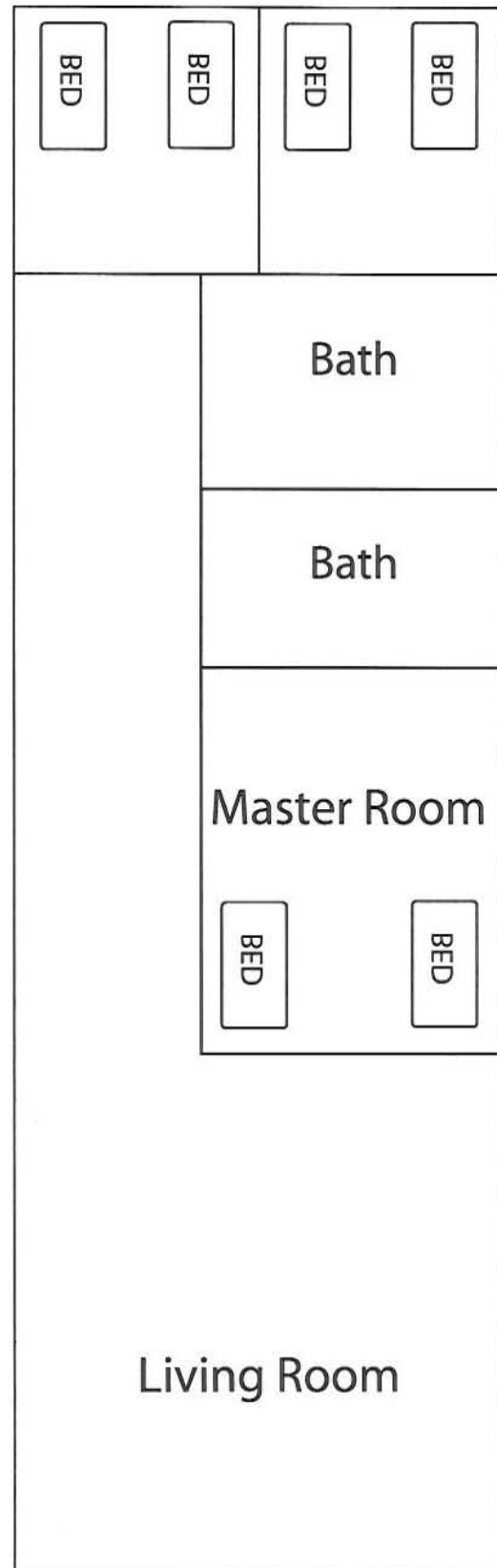
Thank you for your consideration,

Kevin Cullen  
Balboa Recovery

### 30th Downstairs



### 30th Upstairs





BALBOA RECOVERY  
3419 Via Lido Ste. 309  
Newport Beach, CA 92663  
[www.balboarecovery.com](http://www.balboarecovery.com)

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APR 17 2009

CITY OF NEWPORT BEACH

April 16, 2009

Re: Client List

To Whom It May Concern:

Attached is a list of all clients that have stayed at Balboa Recovery since January 1, 2008.  
If you need anything else please don't hesitate to ask.

Sincerely,

Kevin Cullen  
Balboa Recovery

## 30th upstairs

1/1/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Allie	8/21/07	30	1/21/07	
2	Lynnie	9/26/06	15	1/10/07	
3	Jenny I.	7/28/07	30	1/28/08	
4					
5	Halley M	6/13/07	30	1/13/07	
6					

Deposits

Notes:

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## 30th upstairs

2/12/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jenny I.	7/27/08	30	2/28/08	
2					
3	Abi	8/10/08	30	3/11/08	
4					
5					
6					

Deposits

Notes:

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## 30th upstairs

3/4/2008

Apt/Bed	Name	Admit	Days Paid	Discharge	Note
1	Jenny I.	7/27/08	30	3/28/08	
2					
3	Adrienne	2/27/08	30	3/27/08	
4	Jen A.	3/4/08	30	4/4/08	
5	Laura C	2/22/08	30	3/22/08	
6	Abi	8/10/08	30	3/11/08	

Deposits

Notes:

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**30th upstairs**

**4/3/2008**

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jenny I.	7/27/08	30	4/5/08	
2	Shannon	3/24/08	30	4/24/08	
3	Adrienne	2/27/08	30	4/27/08	
4	Jen A.	3/4/08	30	5/1/08	
5	Laura C	2/22/08	30	4/22/08	
6	Lauren L	3/20/08	30	4/20/08	

Deposits

Notes:

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## 30th upstairs

6/5/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1					
2	Shannon	3/24/08	30	6/24/08	
3	Adrienne	2/27/08	30	6/27/08	
4					
5	Laura C	2/22/08	30	6/22/08	House mom
6	Lauren L	3/20/08	30	6/20/08	

Deposits

Notes:

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## 30th upstairs

7/11/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1					
2	Shannon	3/24/08	30	7/24/08	
3	Adrienne	2/27/08	30	7/27/08	
4					
5	Laura C	2/22/08	30	7/22/08	House mom
6	Lauren L	3/20/08	30	7/20/08	

Deposits

Notes:

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## 30th upstairs

8/6/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Lilly	8/5/08	30	9/5/08	
2	Shannon	3/24/08	30	8/24/08	
3	Adrienne	2/27/08	30	8/27/08	
4	Sarah B	7/13/08	30	8/13/08	
5	Laura C	2/22/08	30	8/22/08	House mom
6	Lauren L	3/20/08	30	8/20/08	

Deposits

Notes:

## 30th upstairs

9/1/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Lilly	8/5/08	30	9/5/08	
2	Shannon	3/24/08	30	9/24/08	
3	Adrienne	2/27/08	30	9/27/08	
4	Sarah B	7/13/08	30	9/13/08	
5	Laura C	2/22/08	30	9/22/08	House mom
6					

Deposits

Notes:

## 30th upstairs

11/3/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jennie B.	10/7/08	30	11/7/08	
2	Shannon	3/24/08	30	11/24/08	
3	Adrienne	2/27/08	30	11/27/08	
4					
5	Laura C	2/22/08	30	11/22/08	House mom
6	Kayla	10/21/08	30	11/21/08	

Deposits

Notes:

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### 30th upstairs

12/8/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jennie B.	10/7/08	30	1/7/08	
2	Shannon	3/24/08	30	12/24/08	
3	Adrienne	2/27/08	30	12/27/08	
4	Jen A.	11/4/08	30	1/4/08	
5	Laura C	2/22/08	30	12/22/08	<b>House mom</b>
6	Kayla	10/21/08	30	12/21/08	

Deposits

Notes:

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## 30th upstairs

2/3/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jennie B.	10/7/08	30	3/7/09	
2	Shannon	3/24/08	30	2/24/09	
3	Adrienne	2/27/08	30	2/27/09	
4					
5	Laura C	2/22/08	30	2/22/09	House mom
6	Kayla	10/21/08	30	2/21/09	

Deposits

Notes:

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## 30th upstairs

3/31/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
1	Jennie B.	10/7/08	30	5/7/09	
2	Shannon	3/24/08	30	4/24/09	
3	Adrienne	2/27/08	30	4/27/09	
4	Lauren	2/28/09	30	4/28/09	
5	Laura C	2/22/08	30	4/22/09	
6	Kayla	10/21/08	30	4/21/09	

Deposits

Notes:

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## Balboa Recovery Women 30th

1/1/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31					
32	Ashley	12/28/08	30	1/28/08	House
33	Sarah K	10/9/07	30	1/9/07	cash
34	Jesse May	12/12/08	30	1/12/08	
35	Jordan	1/14/08	30	1/14/08	
36	Christen	1/14/07	30	1/14/07	

# Balboa Recovery Women 30th

2/11/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31					
32	Ashley	12/28/08	30	2/28/08	House
33	Sarah K	10/9/07	30	3/9/08	
34	Jesse May	12/12/08	30	3/12/08	
35	Jordan	1/14/08	30	3/14/08	
36	Christen	1/14/07	30	3/14/08	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

3/5/2008

Apt/Bed	Name	Admit	LOS	Discharge	Total	Paid	Due	Note
31								
32	Ashley	12/28/08	30	3/28/08	\$1,000	\$1,000	\$0	
33	Sarah K	10/9/07	30	3/9/08	\$1,000	\$1,000	\$0	cash
34	Jesse May	12/12/08	30	3/12/08	\$1,000	\$1,000	\$0	
35	Jordan	1/14/08	30	3/14/08	\$1,000	\$1,000	\$0	
36	Christen	1/14/07	30	3/14/08	\$400	\$400	\$0	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

4/7/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	4/25/08	
32	Ashley	12/28/08	30	3/28/08	
33	Sarah K	10/9/07	30	5/9/08	House
34	Jesse May	12/12/08	30	4/12/08	
35	Jordan	1/14/08	30	4/14/08	
36	Christen	1/14/07	30	4/14/08	

Deposits

TOTAL COLLECTED:

Notes:

## Balboa Recovery Women 30th

5/10/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	4/25/08	
32	Ashley	12/28/08	30	4/25/08	
33	Sarah K	10/9/07	30	6/9/08	House
34	Jesse May	12/12/08	30	6/12/08	
35					
36					

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

6/12/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	6/25/08	
32	Ashley	12/28/08	30	6/25/08	House
33	Sarah K	10/9/07	30	7/9/08	
34	Jesse May	12/12/08	30	7/12/08	
35					
36					

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

7/3/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	7/25/08	
32	Ashley	12/28/08	30	6/25/08	House
33	Sarah K	10/9/07	30	7/9/08	
34	Jesse May	12/12/08	30	7/12/08	
35					
36					

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

8/4/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	8/25/08	
32	Ashley	12/28/08	30	8/25/08	
33	Sarah K	10/9/07	30	8/9/08	House
34	Jesse May	12/12/08	30	8/12/08	
35	Megan	7/22/08	30	8/22/08	
36					

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

9/1/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	9/25/08	
32	Ashley	12/28/08	30	9/25/08	
33	Sarah K	10/9/07	30	9/9/08	House mom
34	Jesse May	12/12/08	30	9/12/08	
35	Megan	7/22/08	30	9/22/08	
36	Gretchen Z	9/1/08	30	10/1/08	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

10/10/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	10/25/08	
32	Ashley	12/28/08	30	9/25/08	
33	Sarah K	10/9/07	30	10/9/08	House mom
34	Jesse May	12/12/08	30	11/12/08	
35	Megan	7/22/08	30	10/22/08	
36	Gretchen Z	9/1/08	30	11/1/08	

Deposits

TOTAL COLLECTED:

Notes:

## Balboa Recovery Women 30th

11/10/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	11/25/08	
32	Ashley	12/28/08	30	11/25/08	
33	Sarah K	10/9/07	30	12/9/08	House mom
34	Jesse May	12/12/08	30	12/12/08	
35	Megan	7/22/08	30	11/22/08	
36	Gretchen Z	9/1/08	30	12/1/08	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

12/1/2008

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	12/25/08	
32	Ashley	12/28/08	30	12/25/08	
33	Sarah K	10/9/07	30	12/9/08	House mom
34	Jesse May	12/12/08	30	12/12/08	
35	Megan	7/22/08	30	12/22/08	
36	Gretchen Z	9/1/08	30	1/1/08	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

1/1/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	1/25/09	
32	Ashley	12/28/08	30	12/25/08	
33	Sarah K	10/9/07	30	1/9/09	House mom
34	Jesse May	12/12/08	30	1/12/09	
35	Megan	7/22/08	30	1/22/09	
36	Gretchen Z	9/1/08	30	2/1/09	

Deposits

TOTAL COLLECTED:

Notes:

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## Balboa Recovery Women 30th

2/3/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	2/25/09	
32	Ashley	12/28/08	30	2/25/09	House Mom
33					
34					
35	Megan	7/22/08	30	2/22/09	
36	Gretchen Z	9/1/08	30	3/1/09	

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

3/9/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31	Kelsey	3/25/08	30	2/25/09	
32	Ashley	12/28/08	30	3/25/09	House Mom
33	Izzy	2/19/09	30	3/19/09	
34					
35	Megan	7/22/08	30	3/22/09	
36	Gretchen Z	9/1/08	30	4/1/09	

Deposits

TOTAL COLLECTED:

Notes:

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# Balboa Recovery Women 30th

4/1/2009

Apt/Bed	Name	Admit	Days Paid	Due Date	Note
31					
32	Ashley	12/28/08	30	3/25/09	House Mom
33	Izzy	2/19/09	30	4/19/09	
34	Kate K.	3/11/09	30	5/1/09	
35	Megan	7/22/08	30	4/22/09	
36	Gretchen Z	9/1/08	30	4/1/09	

Deposits

TOTAL COLLECTED:

Notes:

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## Brown, Janet

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**From:** kcullen [kcullen@oceanrecovery.com]  
**Sent:** Monday, April 27, 2009 2:09 PM  
**To:** Brown, Janet  
**Subject:** RE: Balboa Recovery-addtional question

Hello Janet,

This email is to confirm that I am rescinding the original RA and replacing it with the current one you have. Thank you for your time and have a great day.

Kevin Cullen  
Balboa Recovery

---

**From:** "Brown, Janet" <JBrown@city.newport-beach.ca.us>  
**Sent:** Tuesday, April 14, 2009 5:11 PM  
**To:** kcullen@oceanrecovery.com  
**Subject:** RE: Balboa Recovery-addtional question

Kevin,

Question for you - with the new Reasonable Accommodation applications, are you rescinding your requests that you previously submitted?

We can talk about this tomorrow. Thanks.

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
*[jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)*

---

**From:** kcullen [mailto:kcullen@oceanrecovery.com]  
**Sent:** Tuesday, April 14, 2009 2:55 PM  
**To:** Brown, Janet  
**Subject:** RE: Balboa Recovery-addtional question

Hi Janet,

Attached is the information you requested. I look forward to our meeting tomorrow and will answer any additional questions you may have.

Thanks,

Kevin

---

**From:** "Brown, Janet" <JBrown@city.newport-beach.ca.us>  
**Sent:** Wednesday, April 08, 2009 11:46 AM  
**To:** kcullen@oceanrecovery.com  
**Subject:** RE: Balboa Recovery-addtional question

Yes, we did receive the use permit form. There is some information we'd like to clarify, some we may have missed, and some we might still need. I'll call you tomorrow.

Janet

---

From: kcullen [<mailto:kcullen@oceanrecovery.com>]  
Sent: Wed 4/8/2009 8:43 AM  
To: Brown, Janet  
Subject: Balboa Recovery-addtional question

I'm sorry for the additional email but I did have another question. Along with our RA, we did submit the CUP form and answered most if not all of the questions in the attached document. Do you have that?

---

From: "Brown, Janet"  
Sent: Tuesday, April 07, 2009 6:00 PM  
To: [kcullen@oceanrecovery.com](mailto:kcullen@oceanrecovery.com)  
Subject: Balboa Recovery Reasonable Accommodation Requests

Good evening, Kevin.

Attached please find a letter regarding the submitted applications for reasonable accommodation requests for the Balboa Recovery facilities located at 204 21st Street, 124 30th Street and 3206 West Balboa Boulevard.

We have tentatively scheduled the applications for public hearing on April 30, 2009. As such, we would like to schedule a meeting with you to discuss the applications at your earliest convenience. Please let me know when you are available to meet.

Thank you.

Janet Johnson Brown

Associate Planner

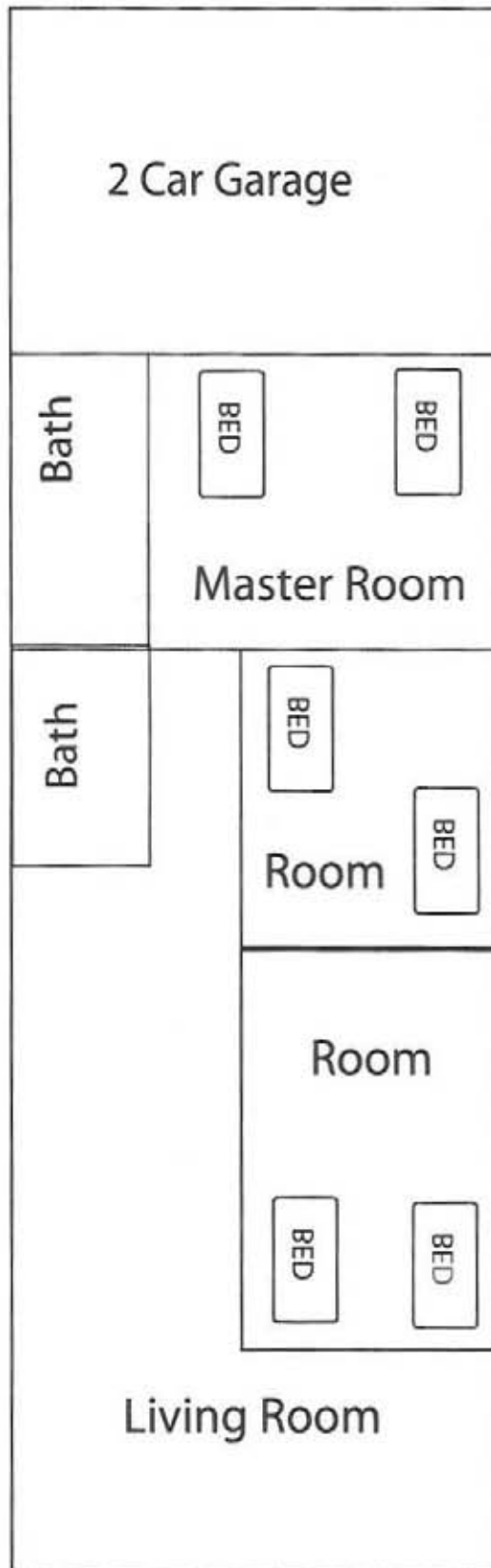
City of Newport Beach

(949) 644-3236

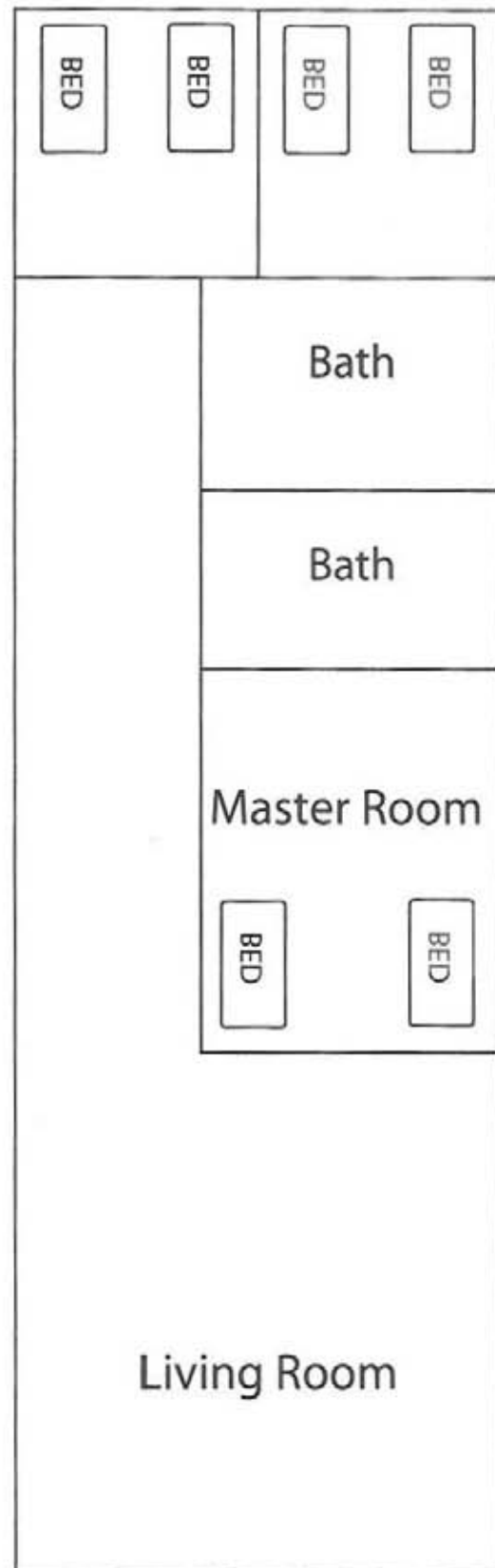
[jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

***Exhibit No. 4***  
*Floor Plan*

### 30th Downstairs



### 30th Upstairs



***Exhibit No. 5***

*April 30, 2009 Staff Report with Correspondence  
from Residents*

SCANNED

**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

April 30, 2009  
Agenda Item 2

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

**SUBJECT:** Balboa Recovery Inc. (PA2009-012)  
124 30<sup>th</sup> Street  
• Reasonable Accommodation No. 2009-002

**APPLICANT:** Kevin Cullen

**PLANNER:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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**PROJECT SUMMARY**

A Reasonable Accommodation application for relief from the requirements of Newport Beach Municipal Code (NBMC) Section 20.10.020, (Residential Districts: Land use Regulations) to allow the continued operation of an existing sober living home for up to 10 female adult resident clients and two resident managers in two units of a duplex. The facility is located in an R-2 District, where such uses are not permitted. The applicant requests an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit.

**RECOMMENDATION**

Staff recommends the Hearing Officer:

1. Continue the public hearing to a date and time certain in order to allow staff additional time to prepare a staff report and recommendation.

**PUBLIC INPUT**

Staff has received correspondence from residents regarding this application, copies of which are attached.

Prepared by:

Submitted by:

  
Janet Johnson Brown  
Associate Planner

  
Dave Kiff  
Assistant City Manager

Attachment

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Wednesday, April 22, 2009 3:13 PM  
**To:** Brown, Janet; Wolcott, Cathy  
**Subject:** Balboa Recovery - 124 30th St.

For the record.

---

**From:** SHARON FISCHER [mailto:beewife@msn.com]  
**Sent:** Wednesday, April 22, 2009 3:11 PM  
**To:** Kiff, Dave  
**Subject:** sober living home at 124 30th St.

Re: Project File No. PA2009-012

Dear Mr. Kiff:

I would like to respond to the Notice of Public Hearing that I received regarding a sober living home at 124 30th St.

I am the owner of property at 111 30th St. The property has been in my family since 1940 so I have a very personal interest in 30th Street. Since the property became mine 16 years ago, I have noticed a vast change in the types of occupants of the houses on the street. What used to be owner occupied houses has become summer and winter rentals. The winter rentals typically are college students who like to party constantly. There is a lot of alcohol consumed at these houses. My daughter and her husband live in our duplex and she said that if you had walked down 30th Street last Sunday you would have seen at least 3 houses playing "beer pong" on the patios. The Newport Beach Police have 30th Street on their radar they are called so much. In the past, there were also drug deals going down on a fairly regular basis. The college students are replaced in the summer by summer renters. Once again, there is a lot of partying and drinking.

As you can see from the above scenario, 30th Street is not conducive to sober living. It is right in the heart of the "party zone" as anyone from the City of Newport Beach who is familiar with the area should know. I would think that these adult resident clients would be better suited in a house somewhere else in Newport Beach.

You had indicated to me in an earlier email that to your knowledge this sober living facility would not be a court appointed one. You said that one of the conditions that the City applies, if this house is approved, is that they not take probationers or parolees, or "any government referral". If this were to be the case, it would raise another set of problems as these residents would not be living at the sober house voluntarily.

In addition, I am concerned about my property value if I decide to sell the property. I would have to disclose that there is a sober living home to the buyers.

Thank you for allowing me to voice my opinion.

If you have have any questions, you can call me at (805) 484-1091.

Sharon Fischer

**P. MOGAN RODGERS**  
**207 ½ Thirtieth Street**  
**Newport Beach, California 92663**  
**(714) 7751-0594, FAX (714) 751-0596**

April 27, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 27 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

Dave Kiff, Assistant City Manager, City of Newport Beach:

I own property and I reside at 207-207 ½ Thirtieth Street in Newport Beach. I strongly oppose the issuance of a Reasonable Accommodation Permit, Permit Number RA 2009-002, for property located at 124 30<sup>th</sup> Street.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,

P. Mogan Rodgers



**TRACI L. RODGERS**  
207 ½ Thirtieth Street  
Newport Beach, California 92663  
(714) 7751-0594, FAX (714) 751-0596

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

RECEIVED BY  
PLANNING DEPARTMENT

APR 27 2009

CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

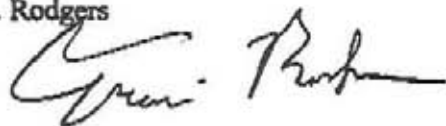
Dave Kiff, Assistant City Manager, City of Newport Beach:

I own property and I reside at 207-207 ½ Thirtieth Street in Newport Beach. I strongly oppose the issuance of a Reasonable Accommodation Permit, Permit Number RA 2009-002, for property located at 124 30<sup>th</sup> Street.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,

Traci L. Rodgers



**PETER S. RODGERS**  
**42550 Granado Place**  
**Temecula, California 92590**  
**(949) 310-5476, FAX (951) 699-3926**

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915

RECEIVED BY  
PLANNING DEPARTMENT  
APR 27 2009  
CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

Dave Kiff, Assistant City Manager, City of Newport Beach:

I own property at 207-207 ½ Thirtieth Street in Newport Beach. I strongly oppose the issuance of a Reasonable Accommodation Permit, Permit Number RA 2009-002, for property located at 124 30<sup>th</sup> Street.

In past years, I rented to people from Sober Living groups and also employed several of the men. Neither scenario worked out. Alcoholism is an illness and the men always returned to their drinking habits.

The beach area is often associated with parties and drinking. I don't think this is a good environment for a person trying to recover from alcoholism...the temptation to return to old habits would be too great.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,



Peter S. Rodgers

**ROSEMARY RODGERS**  
42550 Granado Place  
Temecula, California 92590  
(949) 310-5476, FAX (951) 699-3926

CITY OF NEWPORT BEACH

APR 27 2009

RECEIVED BY  
PLANNING DEPARTMENT

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

Dave Kiff, Assistant City Manager, City of Newport Beach:

I own property at 207-207 1/2 Thirtieth Street in Newport Beach. I strongly oppose the issuance of a Reasonable Accommodation Permit, Permit Number RA 2009-002, for property located at 124 30<sup>th</sup> Street.

In past years, I rented to people from Sober Living groups and also employed several of the men. Neither scenario worked out. Alcoholism is an illness and the men always returned to their drinking habits.

The beach area is often associated with parties and drinking. I don't think this is a good environment for a person trying to recover from alcoholism...the temptation to return to old habits would be too great.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,

  
Rosemary Rodgers

April 27, 2009

Mr. Thomas Allen, Hearing Officer  
City of Newport Beach  
City Hall  
3300 Newport Blvd.  
Newport Beach, CA 92663

RECEIVED BY  
PLANNING DEPARTMENT  
APR 23 2009  
CITY OF NEWPORT BEACH

RE: Reasonable Accommodation Hearing for Public Record  
Applicant: Balboa Recovery, Inc.  
Project File No.: PA2009-012 Activity No.: RA2009-002  
Location: 124 30<sup>th</sup> Street, Newport Beach, CA

Dear Mr. Allen:

I am a sixteen-year resident of Newport Beach. I currently reside and own two properties on 30<sup>th</sup> Street. I request that you deny the applicant's RA application based on the below information. I have personally observed the following regarding the above referenced operation/property.

In my opinion this operator should be denied any reasonable accommodation and/or conditional use permits for the following reasons:

1. This operator has been operating illegally for an extended period of time and expanded their operation without the proper permits to the upstairs unit during the city moratorium against such expansion. I know at one point the city was abating Balboa Recovery for various violations. This can easily be confirmed with the City of Newport Beach.
2. Balboa Recovery, Inc. is based out of a PO Box with a cell phone- not the most professional way to operate a recovery program dealing with serious addictions. (Please see attachments Exhibits A, B and C). I also question the legitimacy and qualifications (if any) of Balboa Recovery as their website mentions nothing. I also believe that Balboa Recovery is unlicensed. Is Balboa Recovery really even capable of handling or dealing with the needs of people with serious addictions in recovery? Is it safe for the community and/or their clients to have an unqualified recovery facility and/or staff located in a residential neighborhood?
3. Apparent lack of on-site supervision: According to the neighbors the resident managers are "senior addicts." What qualifications do these resident managers have especially if they are "senior addicts?" It is not uncommon that many of these clients are on various medicines. Are these "senior addicts" capable of addressing medical emergencies for their "clients?" This is not a very safe situation for either their clients or the community. Also I have personally observed on two separate occasions clients of this operation yelling and cussing at people out the street nearly provoking a fight. On both occasions I did not see any "resident managers" get control of their clients. Also on one occasion a resident was removed from the property for purchasing and selling drugs

according to other clients at the property. This is not acceptable in a residential neighborhood.

4. Constant smoking on both the front porch and balcony which blows into the adjacent properties and public sidewalks. The excessive secondhand smoke is more than one would expect if the property was a normal duplex. Young children and the public should not have to be exposed this excessive smoke going to-and-from the beach. My family and I should not have to be exposed to this smoke every time we walk pass this property is go to the beach. This is not acceptable.
5. Balboa Recovery is literally within sight of Albertson's grocery store which sells alcohol and is within a very short distance to numerous bars and other restaurants that sell alcohol. Also many of the summer rental properties have guests and tenants enjoying various alcohol beverages during their summer vacations and parties. This location wouldn't appear to be the most appropriate place to have a drug rehab/group home given the nearby temptations.
6. Constant foul language of which can be clearly heard by the surrounding properties and the general public which has to pass this property going to-and-from the beach from the public parking lots.
7. Over concentration: Presently there are several woman-only rehabs/group homes on the peninsula and in Newport Beach that have been operating legally with legitimate, licensed programs. It would appear to me that the local demand is already very well served by these other licensed operators.
8. High traffic to-and-from the property by both the clients and their visitors. Often transportation vans or cars are double- parked in the street. This location only has two garage spaces that may or may not be used for parking. This area has extremely limited parking and the parking requirements for this property may be as great as 12-14 vehicles (12 clients and managers plus transport vans)

The over-concentration and poorly operated rehabs/groups are having a severe impact on our residential character of our neighborhoods here on the peninsula. Yes, the residential neighborhoods of the Newport Beach peninsula are a bit different than a traditional neighborhood. Our neighborhood is very diverse. However, it is this diversity and the love for the beach and ocean that makes these neighborhoods very special and unique; this makes for a strong community.

Thank you!

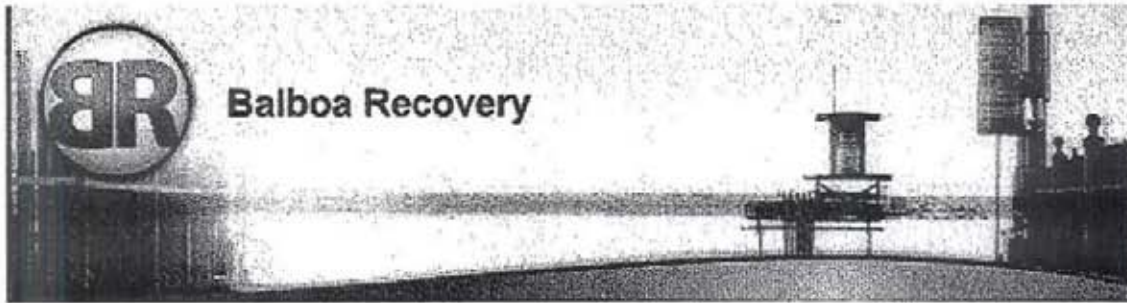


Drew M. Wetherholt  
949-466-6088

cc: Dave Kiff, Assistant City Manager

Attachments: Exhibits A, B, C

EXHIBIT A



The Balboa Recovery website is currently under construction.

Balboa Recovery, Inc.  
 3419 Via Lido Suite 309  
 Newport Beach, CA 92663

→ MAIL BOXES LIDO

Main Contact  
 (949) 400-7120

→ CELL PHONE

Name:

Address:

City:

State:  Zip Code:

Email:

Phone:

Comments:

- Newport Alano Club Meeting Schedule
- Alcoholics Anonymous 12 Step Program
- Orange County Alcoholics Anonymous
- Narcotics Anonymous 12 Step Program
- Orange Coast College
- City of Newport Beach

EXHIBIT B

America's Original Industrial Directory Since 1893

[Contact MacRAE'S BLUE BOOK | Customer Login]



Home Advertise With Us Link To Us Careers @ MBB

Companies  Products

Check out the call quality in your area. \*

Sprint has been awarded "Highest Call Quality Performance Among Wireless Cell Phone Users in the West Region in a Tie" by J.D. Power and Associates.

Source



Sprint

Ads by Google Blue Book KBB Car Value UPS Online UPS Ruskin

### Mail Boxes Lido

Contact this Company

Address: 3419 Via Lido  
Newport Beach, CA,  
92663-3908  
Phone: 949-675-0941

Get Free Quote / Samples / Send RFQ:

Click here and Select a Product...

Is This Your Company?

Products Description:  
Business Services

Ads by Google

Newport Beach Homes

Complete Newport Beach home search: Maps & Photos. Updated daily.  
Newport-Beach-Homes.net

Postal Annex

24-Hour Access To Mailboxes Traveling Notary & Passport photos  
www.postalannex4014.com

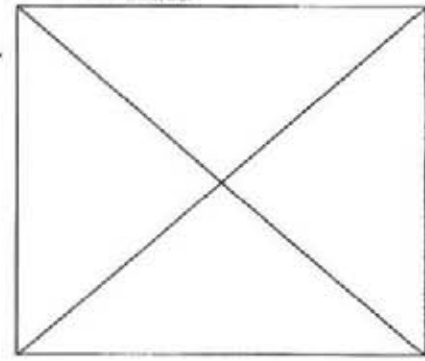
Mail Boxes

Greatest range of mail boxes. Get mail boxes here!  
www.QuantumStorage.com

Mail Boxes Tustin

Mailboxes, Packing Supplies and Shipping Services  
www.LocalAdLink.com

*GALDOA RECOVERED  
MAIN ADDRESS  
IS A P.O. BOX*



### Directions

Loading Map...



Ads by Google

Mail Boxes

Dont Miss Chance. Great Deals on Mail Boxes  
www.shopknuckleheads.com

Rent a mailbox in NYC

mailbox rent Receive packages UPS Copying Internet  
Access shipping  
www.rentmailbox.com

Mail Connection

Mail Boxes with 24 Hour Access Ship UPS, FedEx &  
U.S. Mail  
www.mailconnexion.com

Get Free Quote / Samples / Send RFQ: Click here and Select a Product...

### Additional Info for Mail Boxes Lido

Products - National Products - Local Similar Sounding Companies

MAILING & MESSENGER SERVICES

EXHIBIT C



Identity Protect

IdentityProtect



Get Your Credit Report Now!

The following benefits are now active for you as a member of Identity Protect

- A Monthly Credit Report
- Bank Account monitoring
- A customizable "Watch List"
- And much more!
- SSN monitoring
- Email fraud alerts
- A real-time ID theft risk score
- Credit & Debit Card monitoring
- Public Records Monitoring
- \$25,000 in ID theft insurance

View your Identity Protect Service

Your Transaction Was Successful.

Your Credit Card Will Reflect A \$0.99 Charge From Intelius.

Your Order # is 19085571.

Thank you for placing your order with Intelius

CELLULAR  
PHONE NUMBER  
MAIN CONTACT

Reverse Phone Lookup

1 Results found for (949) 400-7120.

Name	Address	Other Info
1 [Redacted] Background Report	CA	Phone Type: Cellular Carrier: Sprint Spectrum Lp Time Zone: 10:55 AM PST County: Orange Average Income: \$68,311 Average Home Value: \$277,700

What is a Phone Report?

This section lists current and historical records that share the same phone number as your search subject. The Reverse Phone Lookup Summary can be helpful in providing a consolidated view of matching current and historical records for your subjects phone number across multiple public sources. Income & Home Value are compiled from property, demographic, census, & other public record sources. Income & Home Value may contain specific household and area statistics associated with an individual or address.

Cancel

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Tuesday, April 28, 2009 1:56 PM  
**To:** 'Tom Allen'  
**Cc:** Wolcott, Cathy; Brown, Janet  
**Subject:** FW: Balboa Recovery, 124 30th Street, Newport Beach  
**Attachments:** City of Newport Beach - Balboa Recovery.pdf

For the record.

---

**From:** Wetherholt, Drew [mailto:Drew.Wetherholt@marcusmillichap.com]  
**Sent:** Tuesday, April 28, 2009 1:54 PM  
**To:** Brown, Leilani; Kiff, Dave  
**Subject:** Balboa Recovery, 124 30th Street, Newport Beach

Dave & Leilani:

Please enter this letter into the public record and forward to the Hearing Officer, Thomas Allen for the Reasonable Accommodation Hearing for Balboa Recovery, 124 30<sup>th</sup> Street, Newport Beach on Thursday, April 30, 2009, 4PM, as I may not be able to attend this hearing.

Many thanks!

**Drew M. Wetherholt**  
*Director, National Retail Group*

Marcus & Millichap	(909) 456-3400 ext. 7019
3281 East Guasti Road	(909) 456-7019 direct
Suite 800	(909) 456-7063 fax
Ontario, CA 91761	(949) 466-6088 mobile
License: CA: 01065168	<a href="mailto:drew.wetherholt@marcusmillichap.com">drew.wetherholt@marcusmillichap.com</a>

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322 W. Fern Drive  
Fullerton, CA 92832

April 20, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 23 2009

CITY OF NEWPORT BEACH

Mr. Dave Kiff, Assistant City manager  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA

Dear Mr. Kiff:

We have received the notice of a public hearing on Reasonable Accommodation Permit No. RA2009-002 for property at 124 24<sup>th</sup> Street.

As nearby property owners, we wish to express our opposition to the proposed use at this address. According to the notice, the use currently exists illegally and this request is to make an illegal use legal through a process that does not change the zoning designation but in effect does change the permitted uses in the existing R-2 zone.

Normally, a change in zoning designation or in permitted uses in a zone requires a more extensive hearing process, including the Planning Commission and the City Council. We object to this abbreviated process as well as the precedent that such an action will establish. Once this so called accommodation is given to one party, how can the next application be denied? How can the City of Newport Beach allow the negation of its existing codes so easily, and how can there be a justification for rewarding the violation of the code?

If there are areas in the city where such uses are permitted, then that is where they should be located. In this case, the R-2 zone is not one of them and there should be no accommodations given to reward someone who is asking for permission to violate the city ordinance.

One of the findings for approving a Reasonable Accommodation is that the approval "is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling." The operative phrase here is "equal opportunity." No one, with or without a disability, is entitled to live at the beach or anywhere else, if the condition of using and enjoying a dwelling violates the city codes. Those with this particular disability are given equal opportunity to live in a sober living facility in MFR districts along with those with no disabilities. There is no justification to give the requested special treatment and privilege in violation of the R-2 zone permitted uses.

We respectfully request that this application be denied.

Sincerely,

*Mr. & Mrs. Terry M. Galvin*  
Mr. & Mrs. Terry M. Galvin

**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

April 30, 2009  
Agenda Item 2

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

**SUBJECT:** Balboa Recovery Inc. (PA2009-012)  
124 30<sup>th</sup> Street  
• Reasonable Accommodation No. 2009-002

**APPLICANT:** Kevin Cullen

**PLANNER:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

---

**PROJECT SUMMARY**

A Reasonable Accommodation application for relief from the requirements of Newport Beach Municipal Code (NBMC) Section 20.10.020, (Residential Districts: Land use Regulations) to allow the continued operation of an existing sober living home for up to 10 female adult resident clients and two resident managers in two units of a duplex. The facility is located in an R-2 District, where such uses are not permitted. The applicant requests an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit.

**RECOMMENDATION**

Staff recommends the Hearing Officer:

1. Continue the public hearing to a date and time certain in order to allow staff additional time to prepare a staff report and recommendation.

**PUBLIC INPUT**

Staff has received correspondence from residents regarding this application, copies of which are attached.

Prepared by:

  
Janet Johnson Brown  
Associate Planner

Submitted by:

  
Dave Kiff  
Assistant City Manager

Attachment

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Wednesday, April 22, 2009 3:13 PM  
**To:** Brown, Janet; Wolcott, Cathy  
**Subject:** Balboa Recovery - 124 30th St.

For the record.

**From:** SHARON FISCHER [mailto:beewife@msn.com]  
**Sent:** Wednesday, April 22, 2009 3:11 PM  
**To:** Kiff, Dave  
**Subject:** sober living home at 124 30th St.

Re: Project File No. PA2009-012

Dear Mr. Kiff:

I would like to respond to the Notice of Public Hearing that I received regarding a sober living home at 124 30th St.

I am the owner of property at 111 30th St. The property has been in my family since 1940 so I have a very personal interest in 30th Street. Since the property became mine 16 years ago, I have noticed a vast change in the types of occupants of the houses on the street. What used to be owner occupied houses has become summer and winter rentals. The winter rentals typically are college students who like to party constantly. There is a lot of alcohol consumed at these houses. My daughter and her husband live in our duplex and she said that if you had walked down 30th Street last Sunday you would have seen at least 3 houses playing "beer pong" on the patios. The Newport Beach Police have 30th Street on their radar they are called so much. In the past, there were also drug deals going down on a fairly regular basis. The college students are replaced in the summer by summer renters. Once again, there is a lot of partying and drinking.

As you can see from the above scenario, 30th Street is not conducive to sober living. It is right in the heart of the "party zone" as anyone from the City of Newport Beach who is familiar with the area should know. I would think that these adult resident clients would be better suited in a house somewhere else in Newport Beach.

You had indicated to me in an earlier email that to your knowledge this sober living facility would not be a court appointed one. You said that one of the conditions that the City applies, if this house is approved, is that they not take probationers or parolees, or "any government referral". If this were to be the case, it would raise another set of problems as these residents would not be living at the sober house voluntarily.

In addition, I am concerned about my property value if I decide to sell the property. I would have to disclose that there is a sober living home to the buyers.

Thank you for allowing me to voice my opinion.

If you have have any questions, you can call me at (805) 484-1091.

Sharon Fischer

**P. MOGAN RODGERS**  
207 1/2 Thirtieth Street  
Newport Beach, California 92663  
(714) 7751-0594, FAX (714) 751-0596

April 27, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 27 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

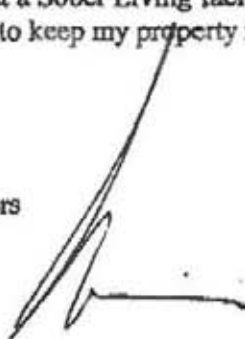
Dave Kiff, Assistant City Manager, City of Newport Beach:

I own property and I reside at 207-207 1/2 Thirtieth Street in Newport Beach. I strongly oppose the issuance of a Reasonable Accommodation Permit, Permit Number RA 2009-002, for property located at 124 30<sup>th</sup> Street.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,

P. Mogan Rodgers



**TRACI L. RODGERS**  
207 ½ Thirtieth Street  
Newport Beach, California 92663  
(714) 7751-0594, FAX (714) 751-0596

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

RECEIVED BY  
PLANNING DEPARTMENT

APR 27 2009

CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

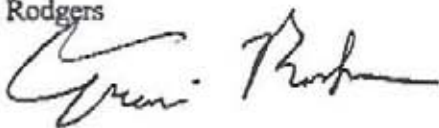
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Sincerely,

Traci L. Rodgers



**PETER S. RODGERS**  
42550 Granado Place  
Temecula, California 92590  
(949) 310-5476, FAX (951) 699-3926

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915

RECEIVED  
APR 27 2009  
CITY OF NEWPORT BEACH

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

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In past years, I rented to people from Sober Living groups and also employed several of the men. Neither scenario worked out. Alcoholism is an illness and the men always returned to their drinking habits.

The beach area is often associated with parties and drinking. I don't think this is a good environment for a person trying to recover from alcoholism...the temptation to return to old habits would be too great.

I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,



Peter S. Rodgers

ROSEMARY RODGERS  
42550 Granada Place  
Temecula, California 92590  
(949) 310-5476, FAX (951) 699-3926

CITY OF NEWPORT BEACH

APR 27 2009

RECEIVED BY  
PLANNING DEPARTMENT

April 27, 2009

Newport Beach Planning Department  
City Hall  
3300 Newport Blvd.  
Newport Beach, California 92658-8915  
FAX (949) 644-3229

Project File NO: PA2009-012  
Activity No: RA2009-002  
Location: 124 30<sup>th</sup> Street  
Applicant: Balboa Recovery, Inc

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I also believe that a Sober Living facility would greatly decrease my property value as well as make it difficult to keep my property rented.

Sincerely,

  
Rosemary Rodgers

April 27, 2009

Mr. Thomas Allen, Hearing Officer  
City of Newport Beach  
City Hall  
3300 Newport Blvd.  
Newport Beach, CA 92663

RECEIVED BY  
APR 23 2009  
CITY OF NEWPORT BEACH

RE: Reasonable Accommodation Hearing for Public Record  
Applicant: Balboa Recovery, Inc.  
Project File No.: PA2009-012 Activity No.: RA2009-002  
Location: 124 30<sup>th</sup> Street, Newport Beach, CA

Dear Mr. Allen:

I am a sixteen-year resident of Newport Beach. I currently reside and own two properties on 30<sup>th</sup> Street. I request that you deny the applicant's RA application based on the below information. I have personally observed the following regarding the above referenced operation/property.

In my opinion this operator should be denied any reasonable accommodation and/or conditional use permits for the following reasons:

1. This operator has been operating illegally for an extended period of time and expanded their operation without the proper permits to the upstairs unit during the city moratorium against such expansion. I know at one point the city was abating Balboa Recovery for various violations. This can easily be confirmed with the City of Newport Beach.
2. Balboa Recovery, Inc. is based out of a PO Box with a cell phone- not the most professional way to operate a recovery program dealing with serious addictions. (Please see attachments Exhibits A, B and C). I also question the legitimacy and qualifications (if any) of Balboa Recovery as their website mentions nothing. I also believe that Balboa Recovery is unlicensed. Is Balboa Recovery really even capable of handling or dealing with the needs of people with serious addictions in recovery? Is it safe for the community and/or their clients to have an unqualified recovery facility and/or staff located in a residential neighborhood?
3. Apparent lack of on-site supervision: According to the neighbors the resident managers are "senior addicts." What qualifications do these resident managers have especially if they are "senior addicts?" It is not uncommon that many of these clients are on various medicines. Are these "senior addicts" capable of addressing medical emergencies for their "clients?" This is not a very safe situation for either their clients or the community. Also I have personally observed on two separate occasions clients of this operation yelling and cussing at people out the street nearly provoking a fight. On both occasions I did not see any "resident managers" get control of their clients. Also on one occasion a resident was removed from the property for purchasing and selling drugs

according to other clients at the property. This is not acceptable in a residential neighborhood.

4. Constant smoking on both the front porch and balcony which blows into the adjacent properties and public sidewalks. The excessive secondhand smoke is more than one would expect if the property was a normal duplex. Young children and the public should not have to be exposed this excessive smoke going to-and-from the beach. My family and I should not have to be exposed to this smoke every time we walk pass this property is go to the beach. This is not acceptable.
5. Balboa Recovery is literally within sight of Albertson's grocery store which sells alcohol and is within a very short distance to numerous bars and other restaurants that sell alcohol. Also many of the summer rental properties have guests and tenants enjoying various alcohol beverages during their summer vacations and parties. This location wouldn't appear to be the most appropriate place to have a drug rehab/group home given the nearby temptations.
6. Constant foul language of which can be clearly heard by the surrounding properties and the general public which has to pass this property going to-and-from the beach from the public parking lots.
7. Over concentration: Presently there are several woman-only rehabs/group homes on the peninsula and in Newport Beach that have been operating legally with legitimate, licensed programs. It would appear to me that the local demand is already very well served by these other licensed operators.
8. High traffic to-and-from the property by both the clients and their visitors. Often transportation vans or cars are double- parked in the street. This location only has two garage spaces that may or may not be used for parking. This area has extremely limited parking and the parking requirements for this property may be as great as 12-14 vehicles (12 clients and managers plus transport vans)

The over-concentration and poorly operated rehabs/groups are having a severe impact on our residential character of our neighborhoods here on the peninsula. Yes, the residential neighborhoods of the Newport Beach peninsula are a bit different than a traditional neighborhood. Our neighborhood is very diverse. However, it is this diversity and the love for the beach and ocean that makes these neighborhoods very special and unique; this makes for a strong community.

Thank you!

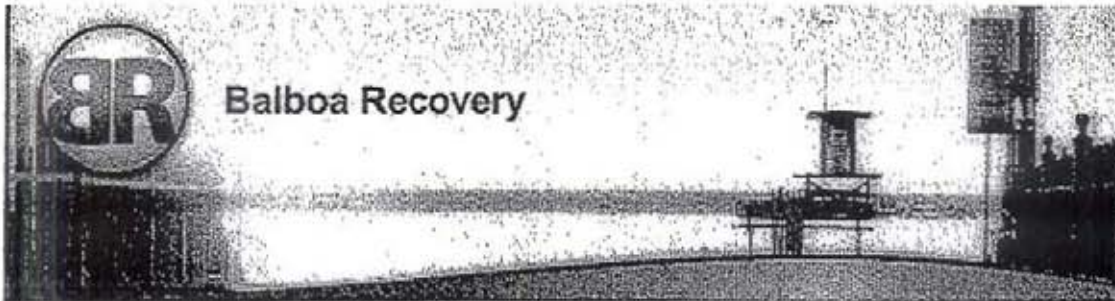


Drew M. Wetherholt  
949-466-6088

cc: Dave Kiff, Assistant City Manager

Attachments: Exhibits A, B, C

EXHIBIT A



The Balboa Recovery website is currently under construction.

Balboa Recovery, Inc.  
 3419 Via Lido Suite 309  
 Newport Beach, CA 92663

→ MAIL BOXES LIDO

Main Contact  
 (949) 400-7120

→ CELL PHONE

Name:

Address:

City:

State:  Zip Code:

Email:

Phone:

Comments:

- Newport Alano Club Meeting Schedule
- Alcoholics Anonymous 12 Step Program
- Orange County Alcoholics Anonymous
- Narcotics Anonymous 12 Step Program
- Orange Coast College
- City of Newport Beach

EXHIBIT B

America's Original Industrial Directory Since 1893

[Contact MacRAE'S BLUE BOOK | Customer Login |

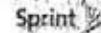


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Newport Beach, CA,  
92663-3908  
Phone: 949-675-0941

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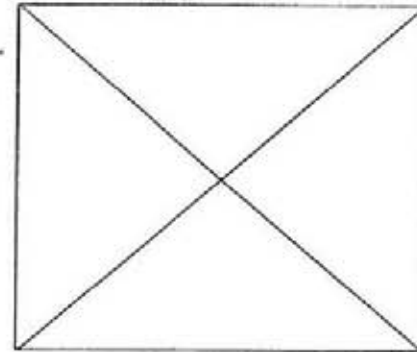
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EXHIBIT C



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- Public Records Monitoring
- \$25,000 in ID theft insurance

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Thank you for placing your order with Intelius

CELLULAR  
PHONE NUMBER  
MAIN CONTACT

Reverse Phone Lookup

1 Results found for (949) 400-7120.

Name	Address	Other Info
1 [REDACTED] Background Report	CA	Phone Type: Cellular Carrier: Sprint Spectrum Lp Time Zone: 10:55 AM PST County: Orange Average Income: \$68,311 Average Home Value: \$277,700

What is a Phone Report?

This section lists current and historical records that share the same phone number as your search subject. The Reverse Phone Lookup Summary can be helpful in providing a consolidated view of matching current and historical records for your subjects phone number across multiple public sources. Income & Home Value are compiled from property, demographic, census, & other public record sources. Income & Home Value may contain specific household and area statistics associated with an individual or address.

Cancel

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Tuesday, April 28, 2009 1:56 PM  
**To:** 'Tom Allen'  
**Cc:** Wolcott, Cathy; Brown, Janet  
**Subject:** FW: Balboa Recovery, 124 30th Street, Newport Beach  
**Attachments:** City of Newport Beach - Balboa Recovery.pdf

For the record.

**From:** Wetherholt, Drew [mailto:Drew.Wetherholt@marcusmillichap.com]  
**Sent:** Tuesday, April 28, 2009 1:54 PM  
**To:** Brown, Leilani; Kiff, Dave  
**Subject:** Balboa Recovery, 124 30th Street, Newport Beach

Dave & Leilani:

Please enter this letter into the public record and forward to the Hearing Officer, Thomas Allen for the Reasonable Accommodation Hearing for Balboa Recovery, 124 30<sup>th</sup> Street, Newport Beach on Thursday, April 30, 2009, 4PM, as I may not be able to attend this hearing.

Many thanks!

**Drew M. Wetherholt**  
*Director, National Retail Group*

Marcus & Millichap	(909) 456-3400 ext. 7019
3281 East Guasti Road	(909) 456-7019 direct
Suite 800	(909) 456-7063 fax
Ontario, CA 91761	(949) 466-6088 mobile
License: CA: 01065168	<a href="mailto:drew.wetherholt@marcusmillichap.com">drew.wetherholt@marcusmillichap.com</a>

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322 W. Fern Drive  
Fullerton, CA 92832

April 20, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 23 2009

CITY OF NEWPORT BEACH

Mr. Dave Kiff, Assistant City manager  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA

Dear Mr. Kiff:

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As nearby property owners, we wish to express our opposition to the proposed use at this address. According to the notice, the use currently exists illegally and this request is to make an illegal use legal through a process that does not change the zoning designation but in effect does change the permitted uses in the existing R-2 zone.

Normally, a change in zoning designation or in permitted uses in a zone requires a more extensive hearing process, including the Planning Commission and the City Council. We object to this abbreviated process as well as the precedent that such an action will establish. Once this so called accommodation is given to one party, how can the next application be denied? How can the City of Newport Beach allow the negation of its existing codes so easily, and how can there be a justification for rewarding the violation of the code?

If there are areas in the city where such uses are permitted, then that is where they should be located. In this case, the R-2 zone is not one of them and there should be no accommodations given to reward someone who is asking for permission to violate the city ordinance.

One of the findings for approving a Reasonable Accommodation is that the approval "is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling." The operative phrase here is "equal opportunity." No one, with or without a disability, is entitled to live at the beach or anywhere else, if the condition of using and enjoying a dwelling violates the city codes. Those with this particular disability are given equal opportunity to live in a sober living facility in MFR districts along with those with no disabilities. There is no justification to give the requested special treatment and privilege in violation of the R-2 zone permitted uses.

We respectfully request that this application be denied.

Sincerely,

*Mr. & Mrs. Terry M. Galvin*  
Mr. & Mrs. Terry M. Galvin

**Attachment No. 3**  
May 20, 2009 Hearing Transcript

CERTIFIED COPY

PUBLIC HEARING ON  
BALBOA RECOVERY, INC.  
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER  
NEWPORT BEACH, CALIFORNIA  
WEDNESDAY, MAY 20, 2009

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Public hearing was taken on behalf of  
the City of Newport Beach at 3300 Newport Boulevard,  
Newport Beach, California, beginning at 4:00 p.m., and  
ending at 5:47 p.m., on Wednesday, May 20, 2009, before  
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.  
9266.

1 APPEARANCES:

2  
3 For The City of Newport Beach:

4 RICHARDS, WATSON, GERSHON  
5 BY: PATRICK K. BOBKO, ESQ.  
6 355 S. Grand Avenue, 40th Floor  
7 Los Angeles, CA 90071-3101  
8 (213) 626-8484

9 CITY OF NEWPORT BEACH  
10 BY: CATHERINE WOLCOTT, DEPUTY CITY ATTORNEY  
11 DAVE KIFF, Assistant City Manager  
12 GERALD GILBERT, Associate Planner  
13 SHIRLEY OBORNY, Assistant City Clerk  
14 3300 Newport Boulevard  
15 Newport Beach, CA 92658-8915  
16 (949) 644-3002  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, MAY 20, 2009

2 4:00 P.M. - 5:47 P.M.

3  
4 MR. ALLEN: Then let's commence the proceedings  
5 for today, Wednesday, May 20, 2009, 4 p.m. Are we fairly  
6 bound by the 6 p.m. time limit to --

7 MR. KIFF: That's a hope-for goal. I don't  
8 know that I have any conflict afterwards, but we hope to  
9 meet that.

10 MR. ALLEN: We should be able to move through  
11 rapidly. First item is signing of Resolutions of  
12 Approval for 1115 West Balboa and then 204 21st Street.

13 Do you want to do -- do we want to do these now  
14 or --

15 MR. KIFF: I think it's fair to do them now.  
16 I'll present the Resolutions to you, at least  
17 electronically, with the -- and then if you had any type  
18 of suggestion as to changes, and I'll summarize some of  
19 the changes that you had directed after you saw the draft  
20 version that you saw on the Web site. So let's see if it  
21 will start up here. So I'm going to jump right down to  
22 the conditions.

23 MR. ALLEN: That's fine.

24 MR. KIFF: One thing we did at your urging was  
25 to move one of the more operative sections of the

1 conditions up to the top, where it speaks to the number  
2 one condition would be to grant the Use Permit for a  
3 limited occupancy of 18 resident client beds, and that no  
4 more than 18 folks can live there at any one time.

5 Continuing down through -- I'm just going to  
6 focus on things that may have been changed.

7 The quiet hours are unchanged, 9 p.m. to 8 a.m.

8 At the last hearing, we talked about changing  
9 the nuisance language to say that the violations had to  
10 be corrected within seven days, or that the City would be  
11 contacted to implement a plan in accordance with the  
12 Code, instead of a mutually agreed-upon time line.

13 We added a Section 26, "Confirmation of  
14 Resident Disability," that all clients of the facility  
15 shall be classified as disabled.

16 We did modify upon your recommendation,  
17 Mr. Allen, a little bit of 27, and say that "an increase  
18 or decrease in on-site staffing and an increase in  
19 physical capacity of the facility could charge -- could  
20 cause a review of the amendment or issuance of a new Use  
21 Permit."

22 And then we have proposed language in Section  
23 H, which speaks to how ownership may change, and  
24 basically that "the Planning Director could determine  
25 that a change in facility management or facility

1 ownership or a change in the population served would  
2 require a new Use Permit or an amendment."

3 Again, reflecting the concept that this Use  
4 Permit does run with the land, and that they can change  
5 ownership as long as the new owner is an entity  
6 competent -- with a demonstrated competence in operating  
7 such a facility. And again, this is a licensed facility,  
8 so that requires a review by the State.

9 In the side property wall, a pony wall,  
10 we -- staff agreed -- I agreed with Ocean Recovery's  
11 concern that they'd make a good faith effort to complete  
12 that within 60 days. They are concerned that they may  
13 not get a Building Permit out of our Building Department  
14 within that time line.

15 And then that summarizes the proposed changes  
16 to that Resolution.

17 MR. ALLEN: I think you also added a "Whereas"  
18 that addressed the City Council's determination on appeal  
19 that misrepresentations or misleading testimony be  
20 considered.

21 MR. KIFF: Yes. I have that close to being up  
22 on the board now. It discusses -- involves a little bit  
23 of the section "Whereas," and then the operative section  
24 that we're referring to, Mr. Allen, is the third  
25 "Whereas," where they state that,

1 "the Hearing Officer has evaluated and  
2 weighed the testimony from the February/May  
3 hearings. While differences of opinion were  
4 expressed, and on occasion the Applicant  
5 responded to specific allegations by saying the  
6 Applicant was not aware of the circumstances,  
7 those differences did not constitute grounds to  
8 change the decision to grant the permit,  
9 particularly in view of the fact that the  
10 conditions of approval addressed the issues."

11 MR. ALLEN: It's my determination it's very  
12 difficult to make determinations on the veracity of  
13 statements made by people that come up to the microphone,  
14 when they are not under oath, and when there's no ability  
15 to cross-examine.

16 And so, I felt that the best position the  
17 Hearing Officer can take is to weigh the credibility of  
18 the individual as he or she sees them there, and if  
19 there's direct controverted testimony, then somehow that  
20 has to be weighed, and that's essentially what I did  
21 here.

22 And I think there was as much miscommunication  
23 as there was actual misleading or falsehoods stated in  
24 the testimony at that -- particularly at that February  
25 hearing. So that's why I drafted that "Whereas" the way

1 I did. And I appreciate you inserting it, so that way,  
2 that Resolution is fine with me, and I'll sign it at the  
3 conclusion of the hearing.

4 MR. KIFF: Okay. Let's move to the next one,  
5 then.

6 MS. CURRAN: Is there any public comments?

7 MR. ALLEN: Is there --

8 MR. KIFF: This is not a public hearing item.

9 MS. CURRAN: When will public comment be, then?

10 MR. KIFF: At the end.

11 Let's move to the 204 21st Street Ordinance.  
12 This is now on the screen before you. So just as a  
13 reminder to the folks in the room, the Hearing Officer  
14 directed that an application for reasonable accommodation  
15 be approved, and a Resolution in accordance with that  
16 application with conditions be prepared and presented  
17 back.

18 So I'm going to jump down to the conditions.  
19 Again, in this case, remember, reasonable accommodation  
20 tests are different from the Use Permit tests. The one  
21 that we just looked at was a Use Permit hearing. This is  
22 a reasonable accommodation.

23 Highlighted in yellow, Mr. Allen, are the  
24 variations from the one posted on the Web site. So you  
25 corrected a typo there in Section 1.

1           We're getting in the conditions of approval.  
2           The first item is a "Grant of Reasonable Accommodation to  
3           occupy the building inclusive of both units for six  
4           disabled persons and one on-site resident manager. The  
5           Operator shall execute an affidavit declaring that the  
6           clients are disabled persons."

7           Continuing down, you and the Applicant at the  
8           last hearing discussed vehicles and parking. There are  
9           no changes to this draft, but just for the audience's  
10          benefit, "the facility can have a maximum of three  
11          vehicles associated with the use, keeping two of the  
12          spaces clear and available for parking for staff and  
13          resident clients. And then one space shall be designated  
14          for use by the manager. At most, one other client in the  
15          facility may have a vehicle and park on the street."

16          We did add a section that is in the draft.  
17          "The client move-in and move-out should be accomplished  
18          in such a manner that traffic on 21st Street is not  
19          blocked, nor can area driveways or alleys be blocked."

20          Continuing down, in 16, I corrected the problem  
21          we had with our nuisance language. This is similar to  
22          the language now in the Ocean Recovery one that says that  
23          if they can't correct it within seven days, they can  
24          contact the City to discuss an alternative time line  
25          consistent with our Codes.

1 We reflected in condition 21 that the physical  
2 capacity of the building, if it went up or down, would  
3 require an amendment or a new Use Permit. That was a  
4 suggestion of the Hearing Officer.

5 And then again, if it changed in the client  
6 base such that persons living there are no longer  
7 classified as disabled or verified to be disabled,  
8 because that's the essence of reasonable accommodation.

9 So with that, Mr. Allen, these the proposed  
10 Resolutions presented to you by staff.

11 MR. ALLEN: All right. And that one, as  
12 modified, is now ready for my signature as well, so we'll  
13 do that at the end --

14 MR. KIFF: Okay.

15 MR. ALLEN: -- of the hearing.

16 All right. So that takes care of agenda item  
17 number one.

18 Item number two, Reasonable Accommodation for  
19 Balboa Recovery at 124 30th Street. Staff report on that  
20 one, please.

21 MR. KIFF: Mr. Allen, agenda item two is a  
22 Reasonable Accommodation Hearing for Balboa Recovery's  
23 facility at 124 30th Street. As we have in the past  
24 hearings, I'll provide a brief background on the  
25 Ordinance, and then we'll discuss briefly the

1 applications. Actually, we'll focus on the 124 30th  
2 Street application.

3 The Applicant is invited to make remarks.  
4 Public hearing is opened. Comments there are limited to  
5 three minutes. Hearing Officer closes the hearing. The  
6 Applicant can return. Question-and-answer time. The  
7 Hearing Officer can approve reasonable accommodation, can  
8 deny it, or can continue the reasonable accommodation to  
9 a date certain.

10 And then immediately after that, we'll move to  
11 the -- with time available, we'll move to the Balboa  
12 Recovery facility at 3206 West Balboa.

13 So again, this is a Reasonable Accommodation  
14 Hearing under our Municipal Code, which is Chapter 20.91.  
15 And I should say this is more specific to Chapter 20.98,  
16 but it's related to Use Permits in residential districts,  
17 so -- because the Applicant had asked for a reasonable  
18 accommodation from the Use Permit requirement.

19 And again, most residential care facilities in  
20 the community had to apply by May 22nd of 2008 for a Use  
21 Permit. A reasonable accommodation may be requested to  
22 that, and that's what Mr. Cullen has done. And those  
23 requests go before a Hearing Officer at a public hearing  
24 and can be appealed to the City Council. This is the  
25 public hearing.

1           Let us speak briefly and maybe Gilbert and I  
2 will tag team a little bit about the application.  
3 Gilbert, if you'd like to briefly summarize what is  
4 proposed for 124 30th Street?

5           MR. GILBERT: Absolutely, Mr. Kiff.

6           Your Honor, the item before you now is a  
7 Reasonable Accommodation Application specifically for  
8 relief from the requirements of the Newport Beach  
9 Municipal Code section 20.10.020, which is to allow the  
10 continued operation of existing sober living homes for up  
11 to 10 female resident adults and two resident managers,  
12 both units of the duplex.

13           The facility is located in the R2 zone where  
14 such uses are not permitted, and the Applicant is  
15 requesting an accommodation from the requirements that  
16 sober living facilities are only permitted in the MFR  
17 districts with the approval of the Use Permit.

18           A little description of the facility is that  
19 the subject site is situated on the south side of 30th  
20 Street, approximately 50 feet from the intersection of  
21 30th Street and West Balboa Boulevard. As I mentioned,  
22 the property is zoned R2, which is two-family  
23 residential, and is developed with a two-story duplex  
24 with an attached two-car garage. Surrounding properties  
25 including single -- single-family and two-residential

1 uses and that are primarily rental and owner-occupied  
2 properties.

3           There is a group residential use that began  
4 operations without complying with Ordinance 2008-05, and  
5 that's located at 127 29th Street, which is in close  
6 proximity to this particular operation, and that  
7 particular operation is subject to abatement.

8           The property at 124 30th Street is owned by  
9 Ocean Number One, LLC, Balboa Recovery, Incorporated.  
10 And its ownership operates a sober living facility for  
11 adults in recovery from alcohol and/or drug abuse and,  
12 again, in both of the units.

13           The facility houses up to 10 resident clients  
14 and two resident managers. And again, it's restricted to  
15 females only. There are five residents and one resident  
16 manager in each of the units. In addition, there's no  
17 one under the age of 18 permitted to reside in the  
18 facility.

19           The Applicant has stated that the residents are  
20 referred to the facility through Ocean Recovery, although  
21 there is no official affiliation between Balboa Recovery  
22 and Ocean Recovery. Balboa Recovery also operates two  
23 similar facilities. One will be of the subject matter  
24 today -- actually both of them were done today. One is  
25 at 3206 West Balboa and then 204 21st Street.

1           The Applicant has stated that both units have  
2 been utilized as a sober living facility since October of  
3 2006. To date, City Code Enforcement has received no  
4 complaints about the facility; however, included in the  
5 staff report are exhibits -- are exhibits that include  
6 complaints from nearby property owners. The complaints  
7 are general. Others are very specific to smoking,  
8 profanity and parking problems.

9           At the previous hearing for 204 21st Street, an  
10 adjacent resident or nearby resident alleged -- brought  
11 to the staff's attention that a fight occurred involving  
12 residents at 124 30th Street. Staff had asked for the  
13 police report, and discovered that the fight that  
14 occurred had actually involved occupants of 125 30th  
15 Street, and that no clients of this facility were  
16 involved in the fight, and that was indicated in the  
17 report.

18           One more to the description of the operation  
19 itself. I think these matters are, at times, redundant  
20 but very important to framework the project itself or to  
21 the facility itself.

22           There's two units. Unit A is an upstairs unit  
23 and contains three bedrooms and accommodates two beds in  
24 each room. Unit B is a ground level unit, which has  
25 three bedrooms and accommodates six beds, two beds in

1 each room. And that's illustrated in Exhibit 4 of the  
2 staff report. There's a resident manager, and each one  
3 shares a bedroom with a resident client.

4 Individual clients themselves reside at the  
5 facility under the written agreement with the Operator,  
6 and are subject to a set of house rules, which include  
7 abstinence from alcohol and drugs, drug testing as  
8 requested by the resident manager, and attendance at  
9 12-Step meetings.

10 Under the house rules, residents are also  
11 required to abide by curfews and quiet hours established  
12 by the facility, to refrain from smoking in the house,  
13 refrain from racist, sexist or foul language, maintain  
14 and clean the dwelling unit, and complete assigned  
15 chores.

16 Residents are required to be employed, actively  
17 seeking employment, or attending school full time. All  
18 residents are required to be out of the dwelling between  
19 the hours of 8:30 in the morning until 5 p.m. in the  
20 afternoon. Exceptions can be made for residents who are  
21 sick, work nights, or have permission from the house  
22 manager of any circumstances.

23 Parking itself is provided in the building in a  
24 two-car enclosed garage. That's two spaces.

25 Staffing. There's one resident manager in each

1 of the units.

2 Clients' stays range from 90 days to 545 days,  
3 with an average typical stay of about 300 days, or 10  
4 months. And again, clients' stays are truly dependent on  
5 the individual's progress.

6 Curfew and quiet hours for residents are 10  
7 p.m., Sunday through Thursday, and 12 a.m. to 8 a.m. on  
8 Friday and Saturday. These are hours that are typical to  
9 these uses that have been heard before you.

10 TV's and stereos can only be played at  
11 reasonable levels. And after 9 p.m., headphones must be  
12 used. So it's built in to the operations of the facility  
13 of these quiet hours for adjacent uses.

14 Treatment services. There are no treatment  
15 services provided on-site. However, in the application,  
16 the Applicant has stated that for the first 90 days after  
17 admission, residents are required to -- at least to  
18 attend at least one 12-Step meeting every day.

19 And after 90 days, residents are required to  
20 attend at least four 12-Step meetings a week. In  
21 addition to the 12-Step program, residents are also  
22 required to attend daily house meetings, as well as  
23 attend required meetings that organization sets up with  
24 Balboa Recovery.

25 Transportation. Residents are permitted to

1 have personal vehicles while residing at the facilities  
2 or use public transportation; however, the facility  
3 having only two spaces, those spaces would need to be  
4 shared by resident clients.

5 There's no overall transportation provided by  
6 the facility Operator. The use and parking arrangement  
7 of vehicles must receive approval by the corporation as  
8 well as the resident manager. And again, that will be  
9 one of the items for discussion during this public  
10 hearing as well.

11 Deliveries, the only delivery that comes to the  
12 facility is bottled water. Residents are required to be  
13 responsible for their own groceries and supplies.

14 Medical waste is disposed and complies with  
15 Newport Beach Municipal Code requirements.

16 Now, I'd like to turn over this part of the  
17 presentation to Catherine Wolcott, who will go more into  
18 the technical analysis of the application.

19 MS. WOLCOTT: Thank you. Catherine Wolcott,  
20 Deputy City Attorney.

21 If it's all right with Mr. Kiff and with the  
22 Hearing Officer, I've combined the PowerPoint  
23 presentation of the reasonable accommodation portion of  
24 it to address both 124 30th Street and 3206 West Balboa  
25 Street.

1           So don't want to confuse any of the issues, but  
2 for the members of the public who have already -- and  
3 staff who have already heard this, it is going to be long  
4 as it is. The only thing more painful than having to sit  
5 through a 30-page PowerPoint presentation is having to  
6 give it twice. Thank you.

7           For those of you who have attended these  
8 hearings before, you already know the definition of  
9 reasonable accommodation and the requirement under the  
10 Federal Fair Housing Act.

11           The requirement under the Federal Fair Housing  
12 Act that cities and housing providers make reasonable  
13 accommodations from their standard rules, policies and  
14 practices when the accommodations are necessary to afford  
15 a handicapped person equal opportunity to use and enjoy a  
16 dwelling.

17           And in the case of McGary V. Portland, the  
18 Court emphasized that "the Court had repeatedly  
19 interpreted this language as imposing an affirmative duty  
20 on landlords and public agencies." Therefore, this is  
21 not something that the City has the option of  
22 considering. If a request is reasonable and necessary,  
23 the City has an affirmative duty to grant it.

24           The FHA requires cities to make exceptions from  
25 the usual rules, policies and practices when a request

1 meets three requirements:

2 One, the request is made on behalf of the  
3 disabled individual;

4 Two, the request is reasonable;

5 And three, the request -- the exception that is  
6 requested or the accommodation is necessary to afford a  
7 disabled individual an equal opportunity to use and enjoy  
8 the dwelling. And that's codified in 42 U.S. Code  
9 Section 3604(f)(3)(B).

10 So we look at whether or not a request is made  
11 by disabled individual, whether the request is  
12 reasonable, and whether the request is necessary.

13 The cases that have interpreted the  
14 reasonableness prong of the analysis have stated that  
15 requests are to be considered unreasonable if granting  
16 the request would either impose an undue administrative  
17 or financial burden on the City or if it would result in  
18 a fundamental alteration in the nature of a City's  
19 program.

20 A fundamental alteration has been described in  
21 court cases as undermining the basic purpose which the  
22 requirement seeks to achieve.

23 Therefore, when we are looking at whether or  
24 not an accommodation request is reasonable, we look at  
25 what specifically are they asking for an exception from.

1 And if that exception is granted, does it undermine the  
2 purpose that that program was put in place to achieve in  
3 the first place? And as established in case law, all  
4 reasonable accommodation requests are analyzed on a  
5 case-by-case basis.

6 When the request is not reasonable, our  
7 analysis is not permitted to stop there. The Department  
8 of Justice/Department of Housing and Urban Development  
9 has issued a joint statement and has reiterated with the  
10 City directly that when a government entity refuses to  
11 grant a requested accommodation because it is, under  
12 their determination, that request is not reasonable, that  
13 request would undermine some fundamental purpose of the  
14 Code, then they have to get engaged in an interactive  
15 process with the Applicant and discuss whether there are  
16 alternate accommodations that could meet the requester's  
17 disability-related needs.

18 We focus on the needs of the disabled  
19 individuals residing in the house. If the alternative  
20 accommodation should meet the needs and it is reasonable,  
21 then the government entity is required to grant it.

22 On the necessity prong of the analysis, we look  
23 at whether the accommodation is necessary. And the very  
24 simplest part of the analysis begins with, would the  
25 accommodation allow a disabled individual to live in the

1 dwelling? Does it have anything to do with the disabled  
2 individual's ability to live in the dwelling? Would a  
3 disabled individual be unable to live in the dwelling if  
4 the accommodation is not granted?

5 And then you get into a more complex analysis.  
6 Is there a direct link between the accommodation and the  
7 requirement equal opportunity, which the Federal law  
8 specified is required?

9 The cases that have interpreted the direct link  
10 between the accommodation and equal opportunity have  
11 focused on two specific areas where, if an Applicant  
12 proves them, he can demonstrate necessity.

13 First is whether or not the required  
14 accommodation is necessary to make the facility  
15 financially viable, or the financial viability prong of  
16 the analysis;

17 And two, does the required accommodation  
18 provide a therapeutic benefit for the disabled residents?

19 In this case, the Applicant has requested  
20 exemption from the restrictions of the Municipal Code  
21 which requires that residential care general unlicensed  
22 and residential care small unlicensed facilities be  
23 located in MFR zones with the Use Permit only.

24 At 124 30th Street, the Applicant requested to  
25 continue operating their facility in its current R2

1 location where the Applicant reports they have been  
2 established since 2006 with current 10 residents and two  
3 staff members.

4 At 3206 West Balboa, they request to continue  
5 operating the facility at their current R2 location with  
6 eight residents and two staff. Currently, the Applicant  
7 is operating -- is occupying both units of both of the  
8 duplex.

9 For both of these facilities, the Use Permit  
10 application deadlines have passed. They would have been  
11 qualified to apply for a Use Permit had they done so  
12 within the period of time specified by the Ordinance, but  
13 they did not do so.

14 Staff recommendations were -- for 124 30th  
15 Street, our initial recommendation, which we discussed  
16 with the Applicant, is in the second half of that first  
17 paragraph in the PowerPoint, which is to grant the  
18 accommodation with conditions.

19 And those conditions included no more than six  
20 female clients, plus one manager, either operating both  
21 units of the duplex or occupying one unit of the duplex  
22 with a single housekeeping unit in the other duplex -- in  
23 the other unit, excuse me.

24 The Applicant indicated that this was not going  
25 to be financially feasible; however, the Applicant was

1 willing to consider an alternate accommodation, which was  
2 to enter an abatement agreement with the City, close that  
3 particular location within a certain period of time, and  
4 then the Applicant would be likely to apply for a  
5 reasonable accommodation for six residents in an  
6 alternate location.

7           The City staff report -- because of the  
8 Applicant's position, the City report was drafted for  
9 denial of the accommodation, with the one-year abatement  
10 period, which the staff discussed with the Applicant.  
11 However, for purposes of the analysis, just to make it  
12 clear on the record, that the staff's initial  
13 recommendation was not denial.

14           We will also do the analysis -- since the  
15 analysis for 124 30th Street and the analysis for 3206  
16 West Balboa would be the same if we -- with the  
17 recommendation of six in -- a limitation of six clients  
18 at those locations. I went ahead and did the analysis  
19 for that in this presentation as well.

20           For 3206 West Balboa, the staff recommendation  
21 is to grant the accommodation with conditions. And those  
22 conditions include no more than six male clients, with  
23 one resident on-site manager, either occupying two units  
24 of the building, or occupying one unit of the building  
25 with a single housekeeping unit in the other.

1           The first portion of the analysis is, is the  
2 Applicant's request necessary? Is it necessary to afford  
3 a disabled individual an equal opportunity to use and  
4 enjoy a dwelling?

5           One of the Ninth Circuit cases that reviewed  
6 this issue framed the question as, does the facility  
7 require the requested accommodation at the requested  
8 population level to achieve financial viability and a  
9 supportive recovery environment?

10           The Applicant has not -- because of the staff's  
11 recommendation was a limitation of six, we would consider  
12 the Applicant's request for anything more than six to be  
13 requesting a larger population. And in that instance, we  
14 would require evidence of, you know, financial need or  
15 therapeutic benefit in order to consider granting at the  
16 higher population level.

17           The Newport Beach Municipal Code in the  
18 reasonable accommodation section sets forth four factors  
19 which the City must consider to determine necessity.

20           One is whether an accommodation will  
21 affirmatively enhance the quality of life of individuals  
22 with a disability. This goes directly to whether or not  
23 granting the accommodation would confer a therapeutic  
24 benefit on the individuals.

25           Two, whether the disabled individual would be

1 denied an equal opportunity to enjoy the housing type of  
2 their choice without the accommodation;

3 Whether the accommodation is necessary for  
4 financial viability;

5 And whether the existing supply of facilities  
6 of a similar nature and operation is sufficient to  
7 provide individuals with an equal opportunity to live in  
8 a residential setting in the community.

9 The staff analyzed the reasonableness and the  
10 necessity of this request with regard to the following  
11 categories:

12 Current residents of the City -- excuse me,  
13 facility;

14 Prospective residents of the facility. And the  
15 prospective residents we analyzed at the requested  
16 population, which is 10 residents, two staff at 124 30th  
17 Street, and six residents -- oh, and eight residents and  
18 two staff at 3206 West Balboa, and at the staff's  
19 recommended population level, which is six residents in  
20 one dwelling unit or three residents in each dwelling  
21 unit.

22 The determination of staff as to the current  
23 residents, the request was necessary and it was  
24 reasonable. There are people, individuals, in recovery  
25 currently living in both units of both of these

1 facilities. And they -- because the facility is  
2 currently subject to abatement, they would -- if the  
3 facility were abated, they would lose their current  
4 housing, and that answered the necessity prong.

5 As far as reasonableness was concerned, the  
6 City does not want to unreasonable -- does not want to  
7 undermine some fundamental purpose of the Ordinance to  
8 allow the individuals who are there in recovery currently  
9 to finish their current stay, their planned stay, and to  
10 allow the facility to become smaller with attrition of  
11 residents as they graduated.

12 The Applicant has not submitted evidence that  
13 it required more than six residents to be financially  
14 viable at 3206.

15 The Applicant did not submitted evidence as to  
16 124 30th Street, but he had stated that they need more  
17 than six for financial viability and has stated his  
18 willingness to close that facility as a result, rather  
19 than try for a larger size.

20 The Applicant has not submitted evidence that  
21 it requires more than six residents for therapeutic  
22 benefit.

23 On the portion of the Municipal Code that  
24 allows us to consider alternate housing opportunities,  
25 I've provided an update on the availability of alternate

1 facilities of a similar nature.

2 As of yesterday, that list on the PowerPoint  
3 slide before you is the currently approved sober living  
4 beds that are currently available within the City. And  
5 this does not mean that they are subject to abatement,  
6 and this does not mean that they are licensed facilities.  
7 These are beds in sober living that have either been  
8 grouped under a development agreement or approved through  
9 reasonable accommodation.

10 When we are considering facility size, we also  
11 look at the case of Bryant Woods Inn, which we've  
12 discussed in hearings before. Bryant Woods Inn was a  
13 facility operator, I believe, in an Alzheimer's home. It  
14 was established in the county that permitted eight by  
15 right -- eight residents by right and wished to expand  
16 its facility to 15 residents.

17 The County denied the request. And the primary  
18 reason they denied that was that there no evidence  
19 presented that increasing from eight to 15 was necessary  
20 to allow disabled individuals an opportunity to reside in  
21 the community in similar facilities, and they did carry  
22 their burden of showing that the accommodation was  
23 necessary to provide a therapeutic benefit either.

24 Some of the significant factors the court  
25 considered were that there were 30 similar facilities

1 operating in the jurisdiction with vacancies, and the  
2 plaintiff failed to present evidence that expansion was  
3 necessary for its financial viability or for the  
4 therapeutic benefit discussed.

5 And the final quote from Bryant Woods Inn  
6 before you is that "If the position were taken to its  
7 limit, it would be entitled to construct a 10-story  
8 building housing 75 residents, on the rationale that the  
9 residents had handicaps."

10 Obviously, that's not what the Applicant is  
11 requesting today, but that is the reasoning that we  
12 consider when we look at the size of the facility  
13 requested versus the size recommended.

14 Other considerations. As we've said as to  
15 current residents, current residents would lose housing  
16 upon abatement.

17 As to prospective residents -- these are  
18 considerations with relation to size as well -- future  
19 residents would lose their ability to live in this duplex  
20 but not in other existing duplex facilities that offer  
21 sober living.

22 As to prospective residents as the level  
23 proposed by staff of six, that is -- there are limited  
24 but possibly available alternate opportunities to live in  
25 a small sober living environment.

1           We discussed the California Building Code  
2 considerations when an Applicant exceeds the size of six  
3 in a building. As we've discussed before, when we're  
4 looking at the Building Code, there are designations that  
5 sound similar to the Zoning Code designations, but they  
6 mean very different things.

7           An RF3 in the Zoning Code might mean  
8 multi-family.

9           An R3 in the California Building Code means  
10 single- and two-family occupancies. So single family  
11 only or a duplex.

12           An R4 is a recovery facility occupancy that has  
13 seven or more in a building.

14           And R3.1 is a licensed recovery facility  
15 occupancy that has six or less in a building.

16           But I would emphasize that State law  
17 establishes the construction standards on life safety  
18 requirements for these different occupancy types based on  
19 their operating characteristics and the needs of their  
20 residents.

21           And the State has looked at the particular use  
22 patterns of the particular occupancies and the needs of  
23 the residents who would be likely -- being one of those  
24 occupancies, and they have adopted life  
25 safety -- construction life safety requirements for the

1 protection of those particular types of occupancies which  
2 the State believes is appropriate.

3 Moving to the analysis of the reasonableness  
4 prong. When we look at whether a request is reasonable,  
5 there are a number of factors which Newport Beach  
6 Municipal Code allows us to consider.

7 Whether the accommodation would fundamental  
8 alter the character of the neighborhood;

9 Whether the accommodation would result in a  
10 substantial increase in traffic or insufficient parking;

11 Whether granting the accommodation would  
12 substantially undermine any expressed purpose for the  
13 General Plan or Specific Plan,

14 And whether the accommodation would create an  
15 institutionalized environment.

16 The required findings in the Municipal Code.  
17 If you look at whether or not the granting the request  
18 would impose an undue financial or administrative burden  
19 on the City.

20 And in this case, in the case of both  
21 facilities, the answer was no, it would not, because we  
22 have not received -- prior to noticing this facility, we  
23 had not received any complaints regarding the facility  
24 from members of the public. So we had no indication that  
25 there has ever been any administrative burden in the

1 past.

2 In our dealings with the Applicant in the Use  
3 Permit or, excuse me, the reasonable accommodation  
4 application process, the Applicant has been forthcoming  
5 and cooperative, and has not -- we have no reason to  
6 believe that that pattern will change; therefore, we do  
7 not believe that continuing to deal with the Applicant  
8 will create an undue administrative burden or financial  
9 burden.

10 Would granting the request result in a  
11 fundamental alteration in the nature of the City's  
12 program? This is a little more complex analysis.

13 First, we look at two aspects of what the  
14 Applicant was asking for. They have requested to be  
15 allowed to continue a use in an R2 zone, and they have  
16 requested the ability to continue to use in that zone  
17 without the Use Permit which would be required.

18 So would allowing the use to continue in the R2  
19 zone undermine the basic purpose the R2 zoning seeks to  
20 achieve?

21 And two, would allowing the use to continue  
22 without a Use Permit undermine the basic purpose which  
23 the Use Permit requirement seeks to achieve?

24 To look at the purpose of the R2 zoning first  
25 and see whether or not that is undermined, we look at

1 purposes stated in the Municipal Code.

2 Municipal Code said that for R2 uses, the  
3 purpose is to provide areas for single- and two-family  
4 residential use. And the Planning Department reports  
5 that these are medium to high density uses, depending on  
6 the location. I believe that in the Newport Peninsula  
7 area, it's medium.

8 MFR, to provide for single-, two- and  
9 multi-family residential uses, medium to high density.

10 At the staff's proposed level of density, which  
11 would be six residents in one or two duplex units, a  
12 medium level of density would be achieved; therefore, it  
13 was staff's determination that conditioned -- under the  
14 condition of having six residents in recovery at the  
15 facility, there would not be an undermining of the R2  
16 Zoning Code.

17 Purpose of the Use Permit. We look at Use  
18 Permit factors, not because the Applicant is applying for  
19 the Use Permit, but because we have to look for the  
20 purposes of the Use Permit and whether or not allowing an  
21 Applicant to continue, even with conditions, would  
22 undermine the purposes of that Use Permit requirement.

23 Use Permits are required for uses with  
24 operating characteristics that require certain special  
25 consideration because of operational characteristics

1 which would enable them to operate compatibly with other  
2 uses in the area and control secondary impacts on  
3 surrounding uses.

4 Ordinance 2008-05 requires a Use Permit for  
5 non-conforming uses in residential areas. The purpose of  
6 that is to ensure that the purposes of the Zoning Code  
7 are achieved, and that adverse secondary impacts from the  
8 non-conforming uses are mitigated.

9 Section 20.91A.010 states that the purpose of  
10 the Use Permit is to promote public health, safety and  
11 welfare, and implement goals of the General Plan by  
12 ensuring that the conditional uses do not change the  
13 character of the residential neighborhoods.

14 And then it gives the second purpose, which is  
15 equally important, which is to protect and implement the  
16 recovery and reintegration of disabled individuals, in  
17 part by avoiding the overconcentration that could lead to  
18 an institutionalization of the area.

19 Both the joint statement of the HUD Department  
20 of Justice and the American Planning Association has also  
21 stated that they feel it is not in the best interest of  
22 the recovery of individuals to be placed in an area where  
23 it's institutionalized.

24 So we look at whether or not the Use Permit  
25 purposes would be undermined and consider several

1 factors.

2 One is that any reasonable control a Hearing  
3 Officer can impose on a Use Permit can also be imposed  
4 through a reasonable accommodation. Therefore, under  
5 staff's opinion, conditions appropriate for a Use Permit  
6 which could control secondary impacts can also control  
7 secondary impacts from a facilities seeking a reasonable  
8 accommodation.

9 Chapter 20.98 of our Municipal Code states that  
10 all required findings must be made for a reasonable  
11 accommodation to be granted.

12 What -- although, looking at the facilities and  
13 the population levels requested by the Applicant, staff  
14 was not able to make the finding -- all the required  
15 findings. At the population levels suggested by staff,  
16 the alternate conditions would meet the needs of the  
17 disability, and we could still make the findings.

18 We discussed the current residents, and the  
19 staff's belief that no basic purpose of the Zoning Code  
20 is undermined by allowing current residents to complete  
21 their stay, and that the facility grows smaller through  
22 attrition.

23 For the prospective residents, at the  
24 Applicant's requested population level, the required  
25 findings could not be made. But they could be made at

1 the staff's requested population level.

2 We proposed bed caps at 124 30th Street and  
3 3206 West Balboa.

4 Our alternate accommodation, which we discussed  
5 with the Applicant, was to enter an abatement agreement  
6 with the City at 124 30th Street. It is staff's opinion  
7 that granting a reasonable accommodation to remain in the  
8 current location for an additional year did not undermine  
9 the fundamental purpose which the Use Permit requirement  
10 was put in place to achieve.

11 There will still be conditions during the  
12 abatement period. The Applicant will still be required  
13 to abide by those conditions and control the secondary  
14 impacts, and, therefore, the neighbors surrounding the  
15 facilities should have the same protection that a Use  
16 Permit would grant during that period, and then the  
17 facility would be abated.

18 We discussed the other post-conditions.

19 Quiet hours.

20 Quiet hours for television.

21 Control secondhand smoke so it's not detectable  
22 off the property.

23 24-hour contact for addressing neighbor  
24 concerns.

25 Garages clear for parking.

1           And a parking plan for residents with personal  
2 vehicles. Although, the Applicant originally stated that  
3 personal residents were allowed to have cars, he also  
4 stated that it is a limited number who have personal  
5 vehicles.

6           And proposed conditions -- conditions proposed  
7 by staff would be that those vehicles be further limited  
8 probably to something similar to what was proposed at 204  
9 21st Street, because these are areas where parking is at a  
10 premium. And with only -- if there were only two on-site  
11 parking permits -- only two on-site places available, if  
12 they had more than six, the facility would not comply  
13 with the parking standards.

14           We also put conditions that the Applicant  
15 obtain the six-or-under license from ADP; that that  
16 licensed facility would substitute for the sober living  
17 use, and the reasonable accommodation for the sober  
18 living use would end. The Applicant has stated that he  
19 does not intend to apply for ADP licenses at these  
20 locations, but we'd include that condition anyway.

21           So with those conditions, we look at whether or  
22 not the facility would be able to conform with the  
23 operational requirements, the operational standards which  
24 are set forth for a Use Permit. And again, we emphasize  
25 that we're not -- the Applicant is not applying for a Use

1 Permit. We are just ensuring that none of the  
2 protections the Use Permit requirement sets forth are  
3 undermined by granting a reasonable accommodation.

4 The conditions address secondhand smoke.

5 We have no evidence that the Applicant has not  
6 operated the facility in compliance with state and local  
7 laws. I'm aware that there's some factual disagreement  
8 on when one of the Applicant's facilities at 124 30th  
9 Street opened, but Mr. Gilbert, you correct me if I'm  
10 wrong, I believe the Applicant gave you leases indicating  
11 that both units were leased by the facility in December  
12 of 2006.

13 MR. GILBERT: Yes.

14 MS. WOLCOTT: And that is prior to the  
15 moratorium. So that would indicate that those facilities  
16 were lawfully established under the laws in place at the  
17 time of the establishment.

18 It complies with the occupancy standards for  
19 bedrooms.

20 Names of managers and owners provided. And  
21 we've not seen any pattern or practice of operating  
22 similar facilities in violation of the state and local  
23 law.

24 And we had discussed on-site parking needs of  
25 the facility and the reasoning for limiting the numbers

1 there.

2 A bed count of six, with one on-site parking  
3 space. So that considers the option that we discussed of  
4 a facility with six residents in one unit and a single  
5 housekeeping unit in the other. That would not be in  
6 compliance with the parking requirements stated in  
7 Municipal Code. It does comply if six residents occupy  
8 both units.

9 As with other facilities, we look at the  
10 average daily trips generated for a duplex unit with two  
11 single housekeeping units, it would be 13.44 average  
12 daily trips estimated.

13 For a residential care facility, average daily  
14 trips with six clients, plus one on-site manager, would  
15 be 19.19, if there were six residents, plus one manager  
16 in the entire building.

17 And if you have six clients and one manager in  
18 one unit and a single housekeeping unit in the other, it  
19 rises to nearly 30, which is significant higher.

20 The reasonable accommodation standard for  
21 parking. Because reasonable accommodation has its own  
22 parking and traffic standards, which is different from  
23 that in the Use Permit requirement. Use Permit says  
24 mitigated to an insignificant level.

25 The reasonable accommodation standard is

1 whether they create a substantial increase in traffic or  
2 parking impacts. We believe with conditions, we could  
3 prevent substantial parking impacts, and we have received  
4 no complaints about traffic impacts from the facility.

5 And other required findings in a permit which  
6 we believe can be made is the property is physically  
7 suited to accommodate the use;

8 That it will not change the character of  
9 surrounding residential neighborhood;

10 And it does not create an overconcentration  
11 under the APA standard of one or two such uses per block.  
12 And I should add that the facility mentioned earlier  
13 at -- I believe it was 127 29th Street, we are informed  
14 has been abated. There is no longer a group residential  
15 use or sober living use.

16 We have not had traffic impacts reported.

17 No deliveries. As far as I can tell, the  
18 Sparkletts deliveries for the residents have been  
19 received.

20 And we have had no complaints on regular trash  
21 collection since the facility has been in operation. I  
22 did check with Code Enforcement as to whether there has  
23 been complaints to this facility prior to this hearing,  
24 and the only trash complaint was prior to this Applicant  
25 taking control of the building.

1           That concludes my presentation, unless you have  
2 questions.

3           MR. ALLEN: I just wanted to ask you one  
4 questions, and you probably answered this before or  
5 pointed it.

6           It's certainly very important to the City that  
7 in these reasonable accommodation approvals that the  
8 conditions that are imposed on them be abided by and,  
9 more importantly, be enforceable.

10           Where is the authority, the underlying  
11 authority, for the City to impose conditions on a  
12 reasonable accommodation application? We know clearly  
13 that in the Use Permit context, State law authorizes  
14 conditions to be imposed as a condition of a grant of a  
15 discretionary permit. We have a different situation  
16 here.

17           I take it you feel confident that there's  
18 authority to enforce those conditions, and you'd win if  
19 somebody challenged?

20           MS. WOLCOTT: Are you asking whether we have  
21 authority to enforce conditions that we place on the  
22 Operator, or are you asking whether the Hearing Officer  
23 has the authority to impose the conditions?

24           MR. ALLEN: No, whether we can enforce -- the  
25 City can enforce the conditions that are imposed on the

1 Operator? They're not consenting to them, you know.  
2 They are being imposed.

3 MS. WOLCOTT: Well, one, it is a discretionary  
4 permit, and discretionary permits -- cities are  
5 permitted -- government agencies are permitted to impose  
6 conditions. We're trying to impose conditions that we  
7 believe are reasonable.

8 And when the Applicant -- if the Applicant has  
9 objections, we do listen to those objections and discuss  
10 them, you know. As you've seen in past hearings, if an  
11 Applicant feels that a particular condition is not going  
12 to work with their facility, they bring it to our  
13 attention. We discuss that with them. And frequently,  
14 propose on alternate condition that can meet the same  
15 need but allow the Operator to continue their operation.

16 As far as your authority to impose, the  
17 Municipal Code expressly allows you authority to grant or  
18 conditionally grant reasonable accommodations, and I can  
19 cite chapter and verse if you want me to grab my Code.

20 THE COURT: Does it actually authority the  
21 authority with the grant -- with the imposition of  
22 conditions as well?

23 MS. WOLCOTT: I'll grab that, yes.

24 MR. ALLEN: As long as you tell me that, that's  
25 sufficient. I was just interested, because I couldn't

1 remember having read it before. And it came to my mind  
2 that it's very important to be able to do it. And as  
3 long as we can do it, that's fine.

4 MS. WOLCOTT: It says -- Chapter 28 states that  
5 "The Hearing Officer may grant, conditional grant, or  
6 deny a request for reasonable accommodation."

7 MR. ALLEN: That's right. "Conditionally  
8 grant" is the key. Okay. Thanks.

9 MS. WOLCOTT: Thank you.

10 MR. ALLEN: I don't have any other questions.  
11 Let's see. Where do we go next? Applicant is going to  
12 make a presentation at this point?

13 Do you have anything else, Mr. Kiff.

14 MR. KIFF: I might jump in since Cathy combined  
15 the two, and I'll briefly summarize.

16 And respecting Gilbert's comments earlier about  
17 124 30th Street, as Cathy noted, we're making a  
18 recommendation of approval on the other one, 3206 West  
19 Balboa, and those conditions in part, as Cathy  
20 summarized, of the six bed cap, no assembly uses,  
21 complies with the secondhand smoke requirements,  
22 qualified supervision, cars and limited on cars, and et  
23 cetera.

24 But just to put up on the board behind us, the  
25 proximity issue that we've been showing on each one, and

1 maybe you're amenable to it, Mr. Allen, open the public  
2 hearing for -- and allow people, including the Applicant,  
3 to speak about both facilities.

4 MR. ALLEN: In other words, conducting the two  
5 hearings simultaneously?

6 MR. KIFF: I think that makes more sense in  
7 light of what Ms. Wolcott has presented, and they're  
8 fairly similar uses.

9 MS. WOLCOTT: Sorry.

10 Mr. KIFF: It's fine.

11 MR. ALLEN: Then if we conduct it in that  
12 fashion, the audience may want six units instead of  
13 three, and so forth. I don't know whether it's more  
14 expedient. Are we likely to get confusion if we do it  
15 that way? I would be concerned about that, frankly.

16 MR. KIFF: You could also ask that the audience  
17 members speak, and the Applicant speak first on 124 30th  
18 and then on 3206 West Balboa. Again, I'm cognizant of  
19 not wanting the Applicant nor the audience to have to go  
20 through the same --

21 MR. ALLEN: That's a legitimate point.  
22 Ms. Wolcott's presentation is lengthy and equally  
23 applicable to both of them, and it's important,  
24 whereas -- okay. We'll give it a try.

25 MS. WOLCOTT: You could also, if you'd like to,

1 take notice of the presentation for the reasonable  
2 accommodation. You could do 124 30th Street hearing  
3 first, close that, and take notice of the reasonable  
4 accommodation presentation which was given for 124 30th  
5 Street, so we don't have to repeat it.

6 MR. ALLEN: That's certainly -- look, I think  
7 that was what was essentially articulated. I certainly  
8 agree to that. We will just take note of it as the  
9 second. Why don't we do the two together and see if it  
10 works smoothly.

11 As you say, there's similar uses. There are  
12 similar issues. And the only difference is the different  
13 locations with different unique circumstances to each  
14 one. But we only have an hour, and so let's get moving  
15 with that. Let's see. The next would be the  
16 presentation by the Applicant.

17 MR. CULLEN: Kevin Cullen, C-u-l-l-e-n, and I'm  
18 the Applicant for 124 30th Street and for 3206 West  
19 Balboa.

20 I guess start with 30th Street location,  
21 actually for both of them, I'd read both of the staff  
22 reports. They are accurate. I have no complaints with  
23 either one of -- you know, there's nothing I disagree  
24 with, quite honestly.

25 The one on 30th Street is an all women's

1 facility. We went over the bed count already. They  
2 point out that there have been no complaints with the  
3 Code Enforcement.

4 There are no complaints with the -- you know, I  
5 read there was a fight of residents that were drug  
6 dealing with people getting arrested. These are untrue  
7 statements, by the way. And I'm happy to address that  
8 later if we need to, but I don't have much to say.

9 The girls we have there, they are fantastic.  
10 I'd like to point out that I did put letters of support  
11 from the neighbors that live on either side of the  
12 building stating that these girls have been wonderful and  
13 fine and no complaints.

14 I don't know either of the owners of the  
15 properties. It's actually pretty good, quite honestly,  
16 because I'm not getting any complaints from them. And  
17 it's my understanding that I'm doing a good job for them.  
18 I haven't had any complaints. So that's pretty much all  
19 I have to say about that. I don't really want to take up  
20 too much of your time.

21 MR. ALLEN: Well, feel free to take time to  
22 make sure that --

23 MR. CULLEN: No, that's fine.

24 MR. ALLEN: -- you understand what's being  
25 asked of you here, and that you're receptive to it or you

1 aren't, and then we can handle it accordingly.

2 MR. CULLEN: I've agree with everything I've  
3 heard so far on the 3206 and 30th Street location. I  
4 will let the -- thanks for coming out everybody, by the  
5 way. Any complaints or -- that the residents have, I'm  
6 happy to address at the end of the time.

7 For the -- moving on --

8 MR. ALLEN: With respect to 30th Street?

9 MR. CULLEN: Yeah.

10 MR. ALLEN: The staff recommendation in the  
11 staff report is to deny that, and then -- but allow it to  
12 operate for a period of 12 months --

13 MR. CULLEN: Correct.

14 THE COURT: -- and then to terminate at that  
15 time?

16 MR. CULLEN: Correct. Actually, I believe the  
17 staff report was to approve it at a lesser bed count. I  
18 think that was actually what the staff report said  
19 originally, because -- but at any rate, I'm more than  
20 happy to close the place down.

21 That's six people. We can't get continue to  
22 operate in the same way. I could probably move everyone  
23 to one unit, you know, upstairs or down. We kind of look  
24 at different ways of making it work, and it's not really  
25 financially viable to do.

1           Quite honestly, that was the only place we did  
2 get some complaints. I'm not -- from some residents.  
3 And quite honestly, I don't agree with a lot of the  
4 complaints, but I'm not really interested in fighting  
5 anybody.

6           I think there's other opportunities to be  
7 somewhere else. And I'm willing to work with the City.  
8 I am willing to work with the residents. I have not been  
9 contacted personally by any of the residents. I'll make  
10 myself available. I'm really not that difficult to find,  
11 but I'm willing to work with them to move the location  
12 just, quite honestly, for ease, you know. It's just  
13 easier to do that than to --

14           And, quite honestly, a year is very generous  
15 and I appreciate that. I don't foresee it taking that  
16 long, but I kind of appreciate the ability to take  
17 something that wouldn't be appropriate and make sure I do  
18 my due diligence and check with the City and check with  
19 the residents to make sure it's an appropriate place to  
20 reopen at a smaller location somewhere.

21           I don't want to -- I don't want to be in the  
22 same -- I don't want to make anyone more uncomfortable or  
23 make life any more difficult for anybody. I just want to  
24 make sure I have the proper amount of time to make it  
25 work out. That's pretty much all I have really got

1 there.

2 Any other questions?

3 MR. ALLEN: Mr. Kiff, it seems like there was  
4 some misunderstanding here between what the Applicant  
5 felt the staff recommendation is and what the staff  
6 report says.

7 MR. KIFF: Actually, I think, Mr. Allen,  
8 Mr. Cullen characterized it correctly; that we would have  
9 approved -- we would have recommended approval of a  
10 having at most six people in recovery in this facility,  
11 and in the building, both the A and the B unit.

12 We don't feel that we can make the same  
13 recommendation in the bed count is 10 in the whole  
14 building, and that relates in part to the Fire Code  
15 issues that we discussed.

16 So Mr. Cullen has said that, because of  
17 financial considerations, he can't have six there. And  
18 again, in the interest of making this a pure reasonable  
19 accommodation process where it is a discussion, and we,  
20 the City, errs on the side of caution when accommodating  
21 people who are disabled, we'd recommended allowing him up  
22 to 12 months to find a facility where he could house six  
23 people in an economic environment that is more favorable  
24 to his operation.

25 I would make one note, too. Mr. Wetherholt has

1 submitted evidence to the record saying that my  
2 characterization of his statement about a fight at 30th  
3 Street was incorrect, and that he didn't bring that to my  
4 attention, and I apologize to Mr. Wetherholt, for the  
5 record, that that confusion exists. It seems like maybe  
6 I had forgotten the context of that fight. But clearly  
7 from the police reports, it didn't effect Mr. Cullen's  
8 clients, and Mr. Wetherholt says it's not something he  
9 brought to us either.

10 MR. ALLEN: All right. So then the staff  
11 recommendation in the conditions is that the use abates  
12 no later than 12 months from the date of the execution of  
13 the Resolution, and that the occupants would remain at 10  
14 occupants through that one-year period of time; correct?

15 MR. CULLEN: Yeah -- yes. I mean, I'd like  
16 that option.

17 MR. KIFF: That's correct on the staff's  
18 understanding, too, yes.

19 MR. ALLEN: With respect to number two, how  
20 many -- you have two resident managers there; is that  
21 correct?

22 MR. CULLEN: One for the upstairs and one for  
23 the downstairs, yes.

24 MR. ALLEN: And I just saw a minor ambiguity  
25 here. Are they both qualified recovery specialists?

1 MR. CULLEN: Absolutely, the finest recovery  
2 specialists.

3 MR. ALLEN: Okay. I just thought only one had  
4 to be, and so I was wanting to see clarity there. Thank  
5 you.

6 MR. CULLEN: Something I would like to add just  
7 about the 30th Street location. I love the property. I  
8 love the building. I love the location. I got a couple  
9 of letters saying it's not a great area, that there's  
10 excessive partying and whatnot.

11 And -- but there's also -- there are a lot of  
12 rental units. There are a lot of families that come down  
13 for the summer, and it's a pretty high traffic area. But  
14 my experience down there, and the same for the girls, and  
15 the residents that live there have been pretty awesome to  
16 us, quite honestly. And there hasn't been a lot of  
17 excessive anything.

18 You know, I like it a lot. I'm sorry to see it  
19 go, but if we can't work it out, I understand. I'm not  
20 getting exactly what I want here, by any means. But I  
21 think it's fair and just. And I'm willing to work with  
22 it. So that's all I really have to say on 30th Street.

23 MR. ALLEN: Okay.

24 MR. CULLEN: Moving on?

25 THE COURT: 3206?

1 MR. CULLEN; 3206, same type of use, except  
2 this is an all male facility. It's a duplex as well.  
3 You know, the only thing -- there was actually two  
4 resident managers in that one, too. I think it was  
5 stated as one, but we have one in each unit, just because  
6 it's for -- it's just easier that way, quite honestly.

7 It's a little bit smaller location. It's right  
8 on Balboa Boulevard. It's an awesome location as well.  
9 It's a block -- well, it's a block from here. It's a  
10 block from the Newport Harbor Club, a block from the  
11 beach. It's right across the street from Albertsons.  
12 There's a laundry -- it has a laundry facility on-site,  
13 but there's also a laundromat a block away. Guys can  
14 walk anywhere. Right downstairs, right below us, is the  
15 bus stop. Takes guys right up to Orange Coast College.

16 And only smoking area on that thing is the  
17 patio -- there's no patio -- the upstairs balcony for  
18 both units that they smoke on that's facing Newport  
19 Boulevard or, excuse me, Balboa Boulevard, which is a  
20 really high traffic area. The only thing below is a bus  
21 stop. And, you know, secondhand smoke I don't believe is  
22 an issue, you know, unless you're going to have traffic  
23 as an issue, cars as an issue, the bus out front as an  
24 issue.

25 MR. ALLEN: We'll find out if it's an issue

1 during the public hearing, I'm sure.

2 MR. CULLEN: Fantastic. I believe you're  
3 right, actually.

4 But anyway, it's -- we haven't had any  
5 complaints about it, let me put it that way. We haven't  
6 had any complaints from the City that I'm aware of. The  
7 police hasn't been there because anybody's upset or  
8 there's any turmoil in the community that I'm aware of.

9 It's been a great location for us. I've been  
10 there since 2005, I think, and without any complaints.  
11 Quite honestly, I don't think anyone even realized we  
12 were there in any of these locations until they got  
13 something in the mail. We're -- because we're a quiet  
14 type little ship, you know.

15 And anyway, that's what I've got there. I'm  
16 happy to answer any questions.

17 MR. ALLEN: Okay, thanks.

18 MR. CULLEN: That's it.

19 THE COURT: Does staff have any questions of  
20 the Applicant while he's here?

21 MR. KIFF: No, sir.

22 MR. ALLEN: All right. Thanks.

23 MR. CULLEN: All right. Thank you.

24 MR. ALLEN: All right. Let's open the public  
25 hearing and get that started. You heard the comments

1 earlier. I would want everybody to have the opportunity  
2 to say what they need to say. And so, let's not stick  
3 tight with the three-minute rule, but, on the other hand,  
4 let's have some degree of control over conversation.

5 Please state your name and spell it.

6 MR. REISS: My name is Joe Reiss, R-e-i-s-s. I  
7 live on 30th Street.

8 And I agree with staff report. I'm speaking  
9 specifically on 124 30th Street. That's the one I have  
10 the main certain with. I agree with the staff report. I  
11 support the staff report. I hope you do also. I'm glad  
12 to hear that this gentleman is also in agreement and is  
13 willing to abate the property and to close the facility.

14 One thing I did note when I read the staff  
15 report, I sent an e-mail to Mr. Kiff, and it wasn't  
16 included within the staff report. I'd like to provide a  
17 copy of that so it can be included in there. It's my  
18 observations that I have had on the property.

19 There have been some good clients that have  
20 been in the property. I've talked to some of those  
21 clients. But there's also been some bad clients in the  
22 property that we haven't really been happy with.

23 And I do want to address one issue, and that  
24 issue is this with regard to the complaints. Not maybe  
25 specifically at this location, but for three years, this

1 community has been complaining about the  
2 overconcentration of these sober facilities and has been  
3 complaining about a variety of different issues that go  
4 with them.

5 And I don't think it's really proper for  
6 anyone, really, to come in and say that the community  
7 hasn't been complaining. Maybe not specifically where we  
8 called Code Enforcement on this location, but it's quite  
9 evident from the showing that you've had at all of these  
10 that the community is upset. And this is just an  
11 example, and some of the e-mails and responses and  
12 letters that you got indicate some of those concerns and  
13 those are shared by many throughout the community.

14 Thank you.

15 MR. ALLEN: Thank you.

16 MR. GARRETT: Good afternoon. My name is Bill  
17 Garrett, G-a-r-r-e-t-t. I've been a resident of Balboa  
18 Peninsula for 35 years.

19 I also support staff's recommendation on this.  
20 I think six months would have been a better timeframe to  
21 abate the use there. But again, I appreciate staff's  
22 recommendations, and I do support it.

23 Also, I'd like to say this is -- I think we all  
24 know this is a perfect example of government completely  
25 run amuck in allowing these uses in residential

1 neighbors. So anything you can do in the future to help  
2 us in that regard, we'd appreciate it.

3 Thank you.

4 MS. MARTIN: My name is Brenda Martin,  
5 M-a-r-t-i-n. I've been a resident of Newport Beach or  
6 the Peninsula for about 15 years.

7 I do support the staff recommendation. I  
8 appreciate the fact that we are going to do something about  
9 this finally, but I would like to reiterate that there  
10 have been a lot of complaints. A lot of us have made,  
11 complaints and had problems from the overconcentration of  
12 the facilities.

13 MR. ALLEN: Where do you live in proximity to  
14 this, I'm sorry?

15 MS. MARTIN: I am about -- I'm in the 200 block  
16 across the street, basically, from Mr. Wetherholt. In  
17 that area, that block in there.

18 MR. KIFF: I'm sorry. 200 block of --

19 MS. MARTIN: 30th. Oh, I'm sorry, yes.

20 And we have seen quite a bit. The girls have  
21 been pretty reasonable with their behavior, I will say.  
22 But we do see a lot of wondering around with cigarettes  
23 and all that from the others.

24 I have a question as to the authority to  
25 enforce the conditions. What does that mean to us? Are

1 we going to just call the police when we see violations  
2 that have been outlined, or how is that going to be  
3 effected? Do we have any idea?

4 MR. KIFF: Your discretion, Mr. Allen. I can  
5 answer questions at the end or individually.

6 MS. MARTIN: Sorry.

7 MR. ALLEN: That's a good question, though, and  
8 Mr. Kiff has an answer for it that we all need to hear  
9 from time to time, because it's going to be important as  
10 time go on. He'll do that after everyone gets done.

11 MS. MARTIN: All right. Thank you.

12 MR. MATHENA: Larry Mathena. Good to see you.

13 Couple of different points. Good to see you.

14 On 124 30th Street, I guess my only observation  
15 is I observe that, for instance, the PowerPoint  
16 demonstration refers to this as an abatement agreement,  
17 which I think is fine and a good thing. I would believe  
18 that in the absence of such an agreement, that, unlike  
19 the base law which provides for one year, that basically  
20 this should have been abated the end of February.

21 I think in many respects, you're being overly  
22 generous with the year, but -- excepting that you do have  
23 a responsible Operator, I can accept potentially that  
24 entire year.

25 I would observe, though, because this is an

1 abatement agreement as opposed to merely an abatement  
2 enforcement action, that from my perspective, in this  
3 hazy interim land use agreement context, that it would be  
4 very appropriate to have your Applicant, who appears to  
5 be accepting all this in a forthright and direct manner,  
6 to agree to the terms proposed, to agree that if they are  
7 not complied with, that there will be an acceleration of  
8 abatement, and basically to agree, in terms of providing  
9 certainty and comfort to the folks that have struggled  
10 with this overconcentration, that he will not be pursuing  
11 a change in what's otherwise been agreed to at this  
12 moment, despite the fact that -- and I do understand why  
13 it's there and what it means -- that basically the City's  
14 position is tomorrow afternoon, the Applicant could say,  
15 "Oh, I came up with a better reasonable accommodation  
16 argument."

17 I would argue if you're going to give him the  
18 year, that it's an appropriate right for him to waive.  
19 Otherwise, I would suggest that the City simply take the  
20 position that it has an abatement that should have  
21 started in February and just start it now. So that's my  
22 observations on 124 30th. I think you are being  
23 generous. I can accept the context. But if you're  
24 getting that generosity, I think for certainty --

25 And also the other point I want to make, if I

1 were the City, administratively, God knows, you don't  
2 want somebody coming up tomorrow and saying, "I changed  
3 my mind." I don't think it's inappropriate for you  
4 folks, just for your own sanity and to save costs, which  
5 is one of the conditions to be considered in all this,  
6 that if you are being so accommodating, that you do  
7 condition that accommodation during this abatement  
8 period. Those are my thoughts on 124.

9           On the other facility -- I appreciate this  
10 drawing of lines. Just want to remind you, and the thing  
11 that everybody seems to be ignoring, just because for a  
12 Use Permit you came up with this very rigid, mechanical,  
13 in many respects unrealistic APA standard, that for 3206,  
14 and reasonable accommodation generally, it's a supply  
15 test.

16           It's not directly an overconcentration test  
17 that you can turn to, and that you have a huge supply,  
18 and that based on that huge supply -- and, for instance,  
19 we had 900 West Balboa that, "Oh, it was a  
20 four-and-under, and we don't have any four-and-unders, so  
21 that's a unique supply we're providing." There are  
22 six-and-unders. There are a whole bunch of different  
23 ones.

24           And just to quote the standards you could apply  
25 to 3206, "In the case of a residential care facility,

1 whether the existing supply of facilities of a similar  
2 nature and operation in the community is sufficient to  
3 provide individuals with a disability and equal  
4 opportunity to live in a residential setting," and the  
5 answer is there is a ton of other choices. So no, you  
6 don't have to give them reasonable accommodation at 3206  
7 either.

8 And to go back, to the extent you have the law  
9 to enforce, it would be nice to see it enforced.

10 Thank you.

11 MR. ALLEN: Thank you.

12 MS. HYATT: Hello. My name is Mary Hyatt,  
13 H-y-a-t-t. I have lived on 30th Street since 1977.

14 And I don't have a specific complaint to 124  
15 30th Street. I would say that if you want to put the  
16 lion in the lion's den, that's it. Because there's a lot  
17 of alcohol and drug abuse going on on that street on a  
18 daily basis. So if you want to test them and see if they  
19 are strong against that, that's a good place to put them.

20 But my concern would be also the amount of  
21 people in there, because that's kind of a summer  
22 concentration to have -- have that many people in one  
23 duplex at a time. It happens during the summer for a  
24 week here and there, but not on a, you know, yearly  
25 basis.

1           And also, I might have missed it, but the  
2 questions I would have would be, why wasn't a -- for all  
3 these locations, a Use Permit applied for? Because it  
4 was, I mean, everybody knew that that was the standard  
5 put in place. And is there a reason that that wasn't  
6 applied for?

7           And when we make an accommodation, it's  
8 not -- is it one exception, or is it going to be 10  
9 exceptions? I mean, I guess I don't understand the  
10 rationale in making exceptions when you've already been  
11 really clear on the rules, and -- that you have to apply,  
12 and that's my question.

13           Thank you.

14           MR. ALLEN: Next?

15           MS. MARTIN: I think I'll take another minute,  
16 if you don't mind? Brenda Martin, M-a-r-t-i-n.

17           On reflection a little bit, I think some of the  
18 concerns that I noted was that there were no complaints  
19 from the nearby neighbors, and I know that that's not  
20 really true. Because some of the female neighbors around  
21 there have been in fear of retaliation if they made their  
22 complaints obvious or had some of the people know who  
23 they were. And I know several of the neighbors directly  
24 around that 30th Street property, as a matter of fact.

25           The other concerns has neighbors we have had is

1 the property value situation, and that's pretty  
2 substantial, I think, with the rate of concentration that  
3 we have around there.

4 The other thing I'm wondering, because this  
5 building -- the 30th Street building is owned by a  
6 recovery company?

7 No, it isn't? Did I misunderstand? It's not  
8 owned by the one that's occupying it, but it's owned by  
9 another Ocean or something?

10 MR. ALLEN: They will explain that.

11 MS. MARTIN: Oh, all right. I just was  
12 wondering if we were going to be put back in the same  
13 position.

14 All right. Thank you.

15 MR. ALLEN: All right. Anyone else want to  
16 talk about either one of these applications?

17 All right. Let's close the public hearing  
18 then. And first of all, we can give Mr. Kiff an  
19 opportunity to respond to those questions that were  
20 raised.

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

22 I didn't note a lot of questions, but  
23 Ms. Martin raised a few. We've talked about it in the  
24 past, but I'll say it again. The authority to enforce  
25 the conditions is with our Code Enforcement Unit.

1           And if folks have a concern, the number is  
2   644-3215. You can also call or log on to Web site and  
3   file a complaint electronically using our -- it's called  
4   the Quest System. And that allows you to put in the  
5   address and your specific concern. We do follow up. We  
6   have three to five Code Enforcement Officers at any one  
7   time who work on this issue and others.

8           I'm going to ask Mr. Cullen in a bit to address  
9   the ownership of the building.

10          I'm going to jump, then, to -- Mr. Mathena  
11   stated some thoughts and hopes for this rather than  
12   asking questions, so I won't address those. I will  
13   address one issue that I think is worthy of at least  
14   going in the record when you talk about maybe the City  
15   has a huge supply of uses such as this.

16          And over time, the more I've worked on this  
17   issue, we need to realize, I think as I have and  
18   hopefully correctly, that the majority of our recovery  
19   facilities in Newport Beach are affiliated with a  
20   treatment program directly. And in order to be in a  
21   so-called sober living house, for instance with Sober  
22   Living By The Sea or Morningside, you have to be in their  
23   program.

24          So arguably, a facility like Balboa Recovery,  
25   which doesn't require affiliation with Ocean Recovery and

1 is intended to be after that type of service, that we  
2 don't have a lot of these in the community, rightly or  
3 wrongly.

4 But I think it's difficult for the City to make  
5 a finding beyond what we made in the staff report, that  
6 there is -- there are a number of opportunities for  
7 people in recovery to reside in a longer-term or  
8 medium-term sober environment where they are not  
9 affiliated with a treatment program, and those  
10 opportunities are listed.

11 Now, Mr. Mathena's point is well taken when he  
12 says, "Well, anybody could," as we note in the staff  
13 report, "get together and form a single family" -- I'm  
14 sorry -- "a single housekeeping unit and choose to live  
15 in recovery unaffiliated with anyone. They just enter  
16 onto one lease, they operate as a single housekeeping  
17 unit," et cetera.

18 And then finally, to try to address some of  
19 Ms. Hyatt's concerns. There are a variety of reasons why  
20 folks didn't apply for a Use Permit. I'll allow  
21 Mr. Cullen to answer that directly. A number of folks  
22 either didn't apply because they believed our Ordinance  
23 is illegal, and, indeed, they have sued on that basis,  
24 and we have extensive litigation going on involving the  
25 legality of the Ordinance.

1           And some applied even while stating that they  
2 believe that their application -- that the City's  
3 Ordinance was illegal, but they chose to apply at the  
4 same time. So we had a variety of reactions from our  
5 known facilities in the adoption of this Ordinance back  
6 in February of 2008.

7           And then Ms. Hyatt also asked about  
8 accommodations. Do you issue one? Do you issue 10? The  
9 bottom line is, is the City's interpreting this is any  
10 person who is disabled or who is representing a disabled  
11 person can apply for a reasonable accommodation at any  
12 time from any aspect of the City's codes, not just our  
13 group residential codes but any codes.

14           And that is what this hearing is about, to see  
15 whether or not that reasonable accommodation application  
16 is appropriate, whether they represent people who are  
17 disabled, and whether or not it does not make a  
18 fundamental alteration in our Zoning Code, and that's the  
19 analysis that Ms. Wolcott went through.

20           So the answer to that question is yes, you  
21 could have literally thousands of requests for reasonable  
22 application -- or reasonable accommodation, and each one  
23 we'd have to analyze separately based on those prongs  
24 that Ms. Wolcott mentioned.

25           And with that, I think that's my list of

1 questions. And maybe Mr. Cullen could answer two  
2 questions, ownership, and why didn't Balboa Recovery  
3 apply for a Use Permit? And, of course, Mr. Cullen is  
4 welcomed, as you know, Mr. Allen, to comment on any other  
5 aspects of testimony you heard.

6 MR. CULLEN: Again, Kevin Cullen, C-u-l-l-e-n.

7 I'll start with the ownership of the building.  
8 Balboa Recovery leases the property at 30th Street. The  
9 company that owns the building is called Ocean -- I don't  
10 know what they call it. I happen to work for a company  
11 called Ocean Recovery. But it's a total coincidence.  
12 There is no affiliation between them. It's just that  
13 that particular company's name is Ocean.

14 It's not owned by the same owners. No  
15 affiliation whatsoever. Whoever owns the building, they  
16 are a corporation. It just happens to be called Ocean.  
17 We lease the building. We've leased it since two and a  
18 half, three years, whatever it is. So that's who owns  
19 the building. We have got letter from them, too, by the  
20 way, that I submitted into the record.

21 As far as why we didn't originally apply for  
22 the permits, quite honestly, I'm not sure it even applied  
23 to us. First, we were pretty sure it was, like Mr. Kiff  
24 said, that it was kind of the standard -- industry  
25 standard of what was kind of going on. However, it is

1 what it is, and it's in place, so we decide to play along  
2 and to do what we need to do make our facilities legal  
3 and do the right thing.

4 Quite honestly, we were pretty sure it didn't  
5 apply us, because we're not a treatment center. There's  
6 no treatment center offered there. And it was kind  
7 of -- we talked with the owner of the building, too, and  
8 they were pretty adamant about -- they were surprised  
9 that someone could tell them who they could and couldn't  
10 lease to.

11 You could lease to college guys who are, you  
12 know, summer rentals, or whatever, but I can't lease to  
13 people that are in recovery, that don't use drugs and  
14 alcohol? And it kind of seemed a little ridiculous,  
15 quite honestly.

16 And basically, since we're not a treatment  
17 center, we're not state licensed, I didn't think it  
18 really applied to us originally. And when it came down  
19 to it, we would make other arrangements.

20 Upon further investigation, you know, the  
21 people that live in these places, it's really important  
22 that they live there. It's real important to them. They  
23 love where they live. They love this community. They  
24 love being in -- they love the convenience of being at  
25 Newport Harbor Club, being at the grocery store, being at

1 the beach. This is where they got sober. This is where  
2 their lives begun. They are passionate about this place,  
3 you know. And to make them leave doesn't seem right.

4 So I'm kind of willing to do -- and it's been a  
5 lot of work, man, trying to go through this whole process  
6 so these people have the opportunity stay here and enjoy  
7 it. I have the same opportunity, and I wouldn't want  
8 anyone else to miss out on that.

9 I see people's lives change daily, and it's  
10 pretty awesome. And I hope you guys get to check out  
11 some of these same experiences, maybe. But anyway,  
12 that's why we didn't originally apply. And we ended up  
13 doing -- my understanding is we've been up front and  
14 legal about it, and do everything we're supposed to do,  
15 and we plan on continuing to do it.

16 Hoping that answers those questions. Anything  
17 else?

18 MR. KIFF: To me, yes.

19 MR. CULLEN: Okay. I'll go down the list.

20 I heard a lot about overconcentration and,  
21 yeah, man, you're right. I don't argue that. I think  
22 there's been a ton of places. But the citizens don't  
23 give themselves enough credit or the City doesn't take  
24 enough credit either. It's not as bad or as much as it  
25 was a couple years ago or even last year or in the

1 future.

2 I mean, there's a lot less where there were.  
3 And quite honestly, there were a lot of places that were  
4 called sober living homes that are not sober living  
5 homes. They have no rules. They have no regulations.  
6 They have nothing, you know. They were fraternity  
7 houses. At worse, crack houses, you know. It was a bad  
8 scene and gave the industry a real bad name.

9 Quite honestly, there are still a few, and I  
10 think, you know, sober living is going to get closed down  
11 in the future. And as far as an overabundance now, if  
12 you like a took at, you know, unlicensed sober living  
13 homes that have even applied for this, you know, I don't  
14 know of any, quite honestly.

15 And you mentioned about the bed availability.  
16 With all due respect, there's 21st Street, and there's  
17 900 Street, and that's it. Sober Living By The Sea, I  
18 think they had 65 beds, actually -- and I talked to their  
19 head of business development, and I talked to the  
20 admissions director. They do no sober living. There is  
21 no sober living. They are a treatment facility  
22 exclusively.

23 So it's kind of like as I mentioned, sober  
24 living beds, there are not a whole lot of them. I defy  
25 you to name one all female facility on the Peninsula.

1 I've owned or administered, you know, for nine years, and  
2 I don't know of any. I get calls all the time for  
3 referrals, and I can't make them, because I don't know  
4 where else to send people. There's a couple off the  
5 Peninsula, and in Costa Mesa, but that's it. But I do  
6 hear the residents. I think there has about a  
7 lot -- there's been a lot of bad providers. I agree.  
8 However, I'm not one of them.

9 A lot of the other complaints I got from Joe  
10 Reiss and Bill Garrett and Brenda Martin. They weren't  
11 specific to my places. There was something about  
12 property value, you know. Property values are down, I  
13 believe, because of a lot of reasons. Yet, I haven't  
14 heard any specific evidence because of being located near  
15 sober living homes, but -- that's for sure.

16 And as far as Larry Mathena, I read his thing.  
17 I didn't completely understand it, but my understanding  
18 was if I enter into this agreement with the City, I am  
19 entering an agreement with the City. I can't change my  
20 mind. That was my understanding.

21 If I missed something, I apologize. But I'm  
22 happy to, you know -- unless there's something that I  
23 didn't understand in there. But the way that the City  
24 was been presented to me, I'm in agreement with it, and I  
25 have no intention to change my mind, and I'm happy to

1 sign whatever it is I'm supposed to sign to make that  
2 happen.

3 Quite honestly, I think that's it. I have  
4 addressed everything.

5 MR. ALLEN: Okay. Thank you.

6 Just the record, I happen to look at the  
7 application. The property owner is Ocean One, LLC, on  
8 Covina De Gloria in Walnut?

9 MR. CULLEN: Yes.

10 MR. ALLEN: You don't have any relationship  
11 with them other than --

12 MR. CULLEN: No.

13 MR. ALLEN: -- other than landlord/tenant; is  
14 that correct.

15 MR. CULLEN: Correct.

16 MR. ALLEN: All right. Anything else that we  
17 should cover here?

18 MR. KIFF: Not that I know of, sir.

19 MR. ALLEN: All right. Let's proceed here  
20 then. Just a question of the City attorney, if she  
21 would.

22 On the 30th Street condition, it says "This use  
23 shall abate in 12 months." Mr. Cullen has indicated a  
24 willingness to sign something, if that's asked of him.  
25 And it seems appropriate for him to acknowledge in

1 writing his understanding, that he's to terminate the use  
2 in 12 months, with the hope that something doesn't occur  
3 that necessitates him trying to engage in a battle with  
4 the City to remain there.

5 And I don't think there's any -- it's probably  
6 not appropriate to ask anyone to waive rights to  
7 reasonable accommodation, and I wouldn't be suggesting  
8 that at all. But an acknowledgement that, as a condition  
9 of operating this place for 12 months, that he -- so  
10 unless you have a concern, I'd like to put that in just  
11 in general terms as a condition.

12 MS. WOLCOTT: I want to make sure that I  
13 understand the wording that you're requesting for. You  
14 would like conditions in the abatement agreement  
15 stating --

16 MR. ALLEN: There's not an abatement agreement  
17 now as I understand it.

18 MS. WOLCOTT: No. The reasonable accommodation  
19 would involve entering into an abatement agreement with  
20 the City. It's a separate contractual arrangement.

21 MR. ALLEN: Oh, I didn't see that as a  
22 condition. Oh, I didn't know that that was the  
23 intention, to actually create an abatement agreement.

24 MS. WOLCOTT: That is generally how we handle  
25 the abatement situations. Mr. Kiff --

1 MR. ALLEN: Oh, all right. Then that's fine.

2 MS. WOLCOTT: -- can correct me, if he'd like  
3 it handled differently, though.

4 MR. ALLEN: I did not realize that you did  
5 abatement agreements as such. So if you have a formal  
6 abatement agreement that there's an expectation he'll  
7 sign, then I think we should -- should we add this in  
8 this condition? That would be my thinking.

9 MS. WOLCOTT: Yes.

10 MR. ALLEN: Otherwise, I don't see there's an  
11 obligation for him to do that.

12 MS. WOLCOTT: If you'd like to add it into the  
13 conditions of approval, which would be --

14 MR. ALLEN: Number one in the abatement  
15 period.

16 MS. WOLCOTT: Okay.

17 MR. ALLEN: Thanks.

18 MS. WOLCOTT: And the remedy for breaching one  
19 of the conditions in the abatement agreement would be  
20 breach of contract.

21 MR. ALLEN: Uh-huh.

22 MS. WOLCOTT: I don't think there's any intent  
23 to ask anyone to waive Federal rights to reasonable --

24 MR. ALLEN: Certainly not.

25 MS. WOLCOTT: -- accommodation.

1           MR. ALLEN: Certainly not. That's not a part  
2 of it here. But it is -- in other words, there is  
3 reasonable accommodation being granted here by allowing  
4 the use to continue for a year. And so this is simply a  
5 condition of that grant. Whatever happens in the future  
6 happens.

7           MS. WOLCOTT: Thank you.

8           MR. ALLEN: All right. So then with respect to  
9 30th Street, I agree with the staff report with respect  
10 to recommendation for the action that's being proposed.

11           The alternative of allowing the operation to  
12 continue for one year with the condition that it  
13 terminate at that time, grants the accommodation that's  
14 being sought. The conditions that are set forth in  
15 Exhibit A will be incorporated into an appropriate  
16 Resolution to limit the operation, and the Applicant has  
17 already indicated his willingness to abide by those.

18           And so with that, I would approve this use with  
19 those conditions, and observe that the findings that are  
20 required by the Zoning Code have been met by the  
21 limitations that are imposed. So that's the decision  
22 with respect to 30th Street.

23           With respect to 3206 and 3206 1/2, staff  
24 recommendation is to approve this one as well and to  
25 bring back a Resolution of Approval. I agree with that,

1 and do grant the approval.

2 Excuse me just a moment.

3 MS. WOLCOTT: I don't know that we've addressed  
4 the issue at 3206 the Applicant or the Hearing Officer is  
5 looking at six in the entire building, plus a resident  
6 manager, or six in one unit with the single housekeeping  
7 unit.

8 MR. ALLEN: You're right, we didn't. And  
9 that's a very significant issue, it seems to me. Let's  
10 reopen for purposes of Mr. Cullen's position on that and  
11 staff's position.

12 MR. CULLEN: Kevin Cullen.

13 I'm looking at the whole place, so four and  
14 two, you know, would be better. One side is bigger than  
15 the other. I'd like to have control of the whole  
16 building for obvious reasons. It's just safer for the  
17 residents if I can impose whatever rules I want on the  
18 whole facility.

19 So also, we won't get blamed for someone else's  
20 noise or anything like that, someone staying up all night  
21 next door. It kind of defeats the purpose of having them  
22 in by 10 o'clock or 11 o'clock or whatever. I want to  
23 keep the whole place four and two. It would be great.  
24 That's fine. We have two parking spots -- and well, one  
25 car garage really, so whatever we've got to do to make

1 that work out.

2 MR. ALLEN: Can we articulate -- Mr. Kiff,  
3 you're probably better at that. Can we articulate a  
4 provision whereby the entire facility, both units, will  
5 be occupied by Mr. Cullen's operation, but that it sounds  
6 as if it will be appropriate to grant him flexibility  
7 with respect to how many recoverees are in each unit?

8 MR. KIFF: Yes.

9 THE COURT: Okay. Then let's draft language  
10 for the Resolution that accomplishes that result, so that  
11 there will be a maximum of six people in the entire 3206  
12 and 3206 1/2, or units A and B as is sometimes referred  
13 to, and that there will be flexibility with respect to  
14 how many you wish to put in each side, and managers, and  
15 so forth, okay?

16 MR. CULLEN: Is that all?

17 MR. ALLEN: Yeah. And so the findings that are  
18 required by 20.98.025 of the Code are made in this  
19 instance with the set of conditions that are imposed and  
20 particularly in light of the reduction to six occupants  
21 for the entire building.

22 I think that's especially significant, because  
23 it constitutes a significant reduction in an otherwise  
24 dense situation in that location, which, in itself, is in  
25 a very dense and heavily populated area, just like all

1 the rest of the ones that we've talked about on the  
2 Peninsula with 3 feet side yard set backs, and so forth.

3 The conditions are set forth in Exhibit A, and  
4 they will be incorporated into a Resolution that I'll  
5 sign. I don't believe I have any changes to those. So  
6 they are acceptable as is, and that concludes that. The  
7 findings have been made. The Resolution also will be  
8 prepared with the conditions set forth in Exhibit A, so  
9 that concludes that matter.

10 Is there -- let's see. Is there something else  
11 we need to do with the prior resolutions?

12 MR. KIFF: Mr. Allen, I know Ms. Curran is here  
13 and wanted to speak about, I believe, the Resolution on  
14 1115 West Balboa. This is really up to you. We  
15 don't -- we're not required to have a public comment time  
16 on non-agenda items on administrative hearings, because  
17 you don't have any direct authority over non-agenda  
18 items.

19 You shouldn't reopen the public hearing on 1115  
20 West Balboa, but, arguably, you could hear what  
21 Ms. Curran wants to say, but the public hearing was  
22 opened and closed. And I guess maybe looked to legal  
23 Counsel as to what the proper procedure is, because we  
24 did not set up agenda item one specifically, the signing  
25 of that document, as a public hearing item, because it

1 was opened and closed, and it wasn't noticed as such.

2 In the past times wherein you've executed the  
3 Resolutions, you've done so in front of the public so the  
4 public can see it rather than at your home or in my  
5 office. So that's why we do this the way we've done it.

6 So I don't really have a good answer for you,  
7 unless Mr. Bobko or Ms. Wolcott has an answer.

8 MR. BOBKO: We're conferring.

9 Mr. Allen, we will -- normally in City Council  
10 meetings and sessions, of course, you have a period at  
11 the beginning for things not on the agenda. This is on  
12 the agenda. We have not, in our short confer, come up  
13 with a solid answer. So we will defer to the Hearing  
14 Officer's discretion on this. Of course, we think  
15 there's probably no harm in letting a member of the  
16 public speak.

17 MR. ALLEN: Good, because that's what I think,  
18 too. And so with that, please come forward if you wish  
19 to discuss or make comments with respect to the  
20 Resolution, and let's give it three minutes, if you wish.

21 MS. CURRAN: My name is Laura Curran. I live  
22 at 437 Dalia, Corona del Mar. I appreciate the  
23 opportunity to speak.

24 I would like to comment on the  
25 hearing -- comments during the hearing separate from the

1 parking, the smoking item, or 1115 --

2 MR. ALLEN: You are addressing 1115; correct?

3 MS. CURRAN: Yes, I am.

4 And during that, you also commented at the  
5 beginning about the testimony that had been given, and  
6 the need to weigh the credibility of individuals who had  
7 spoken. And not having their credentials, it was hard to  
8 weigh their credibility to make an assessment based on  
9 what you saw. And I think we need to be very careful  
10 about using visual representations as an assessment of  
11 credibility.

12 First of all, many of the people who speak feel  
13 that they are speaking under great personal threat, as  
14 another person alluded to. And secondly, people appear  
15 in many shapes and colors, and they all have something to  
16 say. So I'm kind of -- it made me pause, just as a note.  
17 Perhaps it wasn't intended that way, but it's the way it  
18 could come across.

19 Okay. I would like to address the parking  
20 garage concession for 1115 West Balboa, which was  
21 presented at the May 7th hearing. I want to express my  
22 concerns, which I've also copied to Counsel and will  
23 forward to the Planning Commission and to Council.

24 First of all, the concession was not in the  
25 staff report, so only a person who came to the hearing

1 would have been aware of this proposed change.

2 When the homeowner's request to use the garage  
3 for another use and not provided the required number of  
4 spaces, generally, as a homeowner, you have to get a  
5 variance. So providing for this change without prior  
6 notice and without review by the Planning Commission is  
7 contrary to the Code requirements and the spirit of the  
8 Parking Code which apply to other residents.

9 I'm very concerned that the approval  
10 recommendations for the facility to have 18 people is  
11 based -- and is based, in part, on the fact that they  
12 will have six spaces for employees, but one of these  
13 spaces would be part of the garage unit being used for  
14 smoking.

15 Use of the garage as a smoking area reduces the  
16 primary parking spaces to five. This isn't noted in the  
17 staff report, nor is the potential impact of the amount  
18 of staff parking. Of course, the residents often use  
19 their garages for other uses on an intermittent basis.

20 However, residents are not allowed to use the  
21 garage in such a way that it's not accessible on a  
22 regular basis for parking. And it's unrealistic that the  
23 garage will not become a quasi-permanent smoking and  
24 assembly room, as has happened at other facilities.

25 And I'll provide you a photo. This is the

1 garage at Miramar Recovery at 435 Dalia. And their  
2 garage is permanently blocked by 10 trash cans and used  
3 for smoking. I don't think this use is any different.

4 Secondly, in this case, it's -- one of the  
5 conditions for approval of the garage is used for smoking  
6 sets a precedents for its ongoing use and becomes a right  
7 vested with the property owner.

8 If I'm a resident after this happens -- I mean,  
9 not only will group home operators be calling each other  
10 and Facebooking each other the day after this is passed  
11 and say, "Hey, your garage is now part of your smoking  
12 facility," residents will take note and say, "You know  
13 what? That grandfathered" -- or, you know,  
14 whatever -- "back unit, or that apartment in my garage  
15 that I want to rent out to my neighbors, or in the  
16 summer, you know what? They are letting people use their  
17 garage for smoking. Now I have a grandfathered unit in  
18 my garage that I can rent out." I think you're opening  
19 the can of worms across the board.

20 We need to enforce the regulations that we  
21 have, and let the garages be used for garages and require  
22 the smoking to be inside the facility. That's what it  
23 says. It doesn't say inside the garage, it says inside  
24 the facility.

25 Okay. Staff report does not provide for any

1 conditions to be met if the garage is used for parking,  
2 such as smoke alarms, fire extinguishers, avoidance of  
3 secondhand smoke, removal of hazardous or combustible  
4 materials.

5 MR. KIFF: I'm going to say that that's three  
6 minutes.

7 MS. CURRAN: Okay. I would ask for an  
8 additional minute.

9 The secondhand smoke, the entering and exit is  
10 called out. How do you prevent that when the doors open  
11 and close?

12 Finally, this is very contrary to Council's  
13 indication that they want garages to be used for parking.  
14 I think we need to honor Council's direction on that in  
15 the past, and that they put restriction on homeowners  
16 about the use of their garages.

17 The last item is the staff report does not  
18 clearly lay out that this is a concession that's being  
19 required. In 2-E, 5-BE, 6-C, we allude to conditions for  
20 smoking, but we do not note -- it is not noted that the  
21 garage being used for smoking is a condition of a permit.  
22 So I don't think it's clear, and it really needs to be  
23 addressed.

24 Thank you.

25 MR. ALLEN: Just one point, and I can't debate

1 this, and I don't intend to.

2 The off-street parking and loading and  
3 unloading provisions of the Resolution require that six  
4 off-street parking spaces for the use of the facility be  
5 available at all times. So I don't know how this is  
6 going to work out.

7 And with respect to the smoking provisions of  
8 five, there is not a designation that the smoking occur  
9 at any certain point in the facility. So it would appear  
10 to me that there's quite a bit to be worked out on this  
11 issue before a garage space becomes no longer available  
12 for parking and a large smoking facility. My  
13 observations.

14 MS. CULLAN: But that's what was said in the  
15 hearing.

16 MR. ALLEN: All right. Is there anything else  
17 to add?

18 MR. KIFF: No, sir.

19 MR. ALLEN: That's it for today, then. Thank  
20 you all.

21 (Ending time: 5:47 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: JUN 01 2007

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

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# **Attachment No. 4**

Resolution No. HO-2009-015  
Adopted July 2, 2009

**RESOLUTION NO. HO-2009-015**

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING A REQUEST FOR REASONABLE ACCOMMODATION FOR A RESIDENTIAL CARE FACILITY LOCATED AT 124 30<sup>TH</sup> STREET AND OPERATED BY BALBOA RECOVERY, INC (PA 2009-012)**

**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 accommodation 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 124 30<sup>th</sup> Street, and legally described as Newport Beach City BLK 29 Lot 18 TR 512; 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: 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 an equal opportunity to use and enjoy their current dwelling.

Facts do not support finding as to prospective residents, at the population level requested by the applicant. Balboa Recovery Inc. has requested accommodation for 10 residents at this location and argued that it was necessary to continue to operate in both units due to concerns about mixing recovery and certain non-recovery uses in the same building. Staff recognizes that control of the entire building may be in the best interest of the resident clients, but 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.

Balboa Recovery 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.

Balboa Recovery states that because of the costs associated with this particular facility, operating the facility with fewer than the requested 10 residents is not financially feasible. Instead of requesting that the Hearing Officer review evidence of financial necessity and grant the requested accommodation with a resident population in excess of the six residents recommended by staff, the applicant has requested an extended abatement period. The Hearing Officer finds that a 12-month abatement period is a reasonable period of time to allow current clients to complete their stays and for Balboa Recovery to identify alternate facility locations. The Hearing Officer finds that the City should enter an abatement agreement with the applicant, and that during the abatement period the applicant must operate the facility in accordance with the conditions attached hereto as Exhibit A.

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 accommodation is granted, current and potential clients of Balboa Recovery Inc. clients will be able to live in a dwelling 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 a use permit. As a prohibited use, the facility is subject to abatement. Balboa Recovery seeks to continue to house up to 10 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: Staff recommended a condition of approval limiting the maximum occupancy of the facility to six resident clients in the building based on a staff finding that while there was a significant supply of alternate available residential recovery housing options serving seven to 12 residents in two units of a duplex. As discussed above, the applicant preferred to abate this facility rather than operate it at the population level recommended by staff.

*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. 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 ten (10) residents by Balboa Recovery Inc. is necessary to make the facility financially viable, and is unable to analyze whether a particular number of residents in excess of six (6) is required to make the facility financially viable. However, as discussed above, Balboa Recovery has proposed an abatement solution which the Hearing Officer determined was an acceptable solution to Balboa Recovery's financial viability concerns.

*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 the existence of other facilities that are of a "similar nature and operation" within the City. 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, subject to appeal and abatement); and
- 6 beds at 204 21<sup>st</sup> 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 asundue 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 findings, as to current residents: Allowing current residents to remain at the facility for the duration of their intended stay does not result in a fundamental alteration of the City's zoning program. The applicant reports an average client stay of 300 days. As current residents complete their intended stays and leave the facility, the facility will reach the population limit approved by the Hearing Officer through attrition. A limited stay of more than six resident clients during this period will not fundamentally undermine the purposes of any portion of the Zoning Code.

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

Zoning District Consideration: 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 Section 20.10.020 of the NBMC, unlicensed residential care facilities are not permitted in the R-2 District, and are only permitted in the MFR District subject to approval of a use permit.

The Hearing Officer accordingly finds that by limiting the maximum occupancy to six residents with one full-time staff member housed among three bedrooms (Unit A) within a duplex unit, or within one unit of the duplex building with the other unit occupied by a single housekeeping unit, 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. However, staff was unable to make similar findings of compatibility with surrounding two-family residential properties at the population level which Balboa Recovery stated it required for financial viability of the facility.

Balboa Recovery Inc. has indicated that limiting the occupancy to six residents with one full-time staff member is financially infeasible, and has agreed to abate the use within twelve months of the adoption of this resolution.

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. 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. R-4 requirements would present a greater challenge for the Balboa Recovery Inc. The Hearing Officer determines that allowing the applicant to continue to operate with more than six resident clients during the abatement period will not fundamentally alter the nature of a Building Code program.

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. Therefore, the City must grant the requested accommodation only if allowing the applicant's facility to continue operation

in its current location without a use permit 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 the 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.

The Hearing Officer determines that if appropriate conditions are placed on the operations of the facility during its 12-month abatement period, permitting it to operate at the requested population level will not undermine the basic purpose of the use permit requirement. Conditions should be applied to the use that require operation 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 10 resident clients plus two on-site resident managers, 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 NBMC Section 20.91A.050(A), relating to secondhand smoke detectable from off the parcel upon which the facility is located.

Essentially, these conditions would require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A for the remainder of its operation at the current location.

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 10 disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of 10 disabled individuals in recovery with one resident manager in each unit of a duplex, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units.

With the reduction in resident population recommended by staff, the intensity of the use would be 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. However, the Hearing Officer is unable to make the same finding at the population level requested by the applicant.

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

Parking: The dwelling units occupied by the facility provide 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 10 beds, the required parking for the facility would be four spaces. Therefore, the facility currently does not meet the required parking.

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.

*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.

*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. Staff recommended and the Hearing Officer agrees that granting the reasonable accommodation with a condition of approval limiting the maximum occupancy of the facility to six residents and one full-time staff member would 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:**

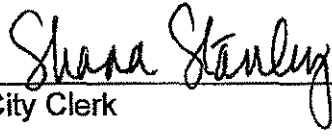
**Section 1.** The Hearing Officer of the City of Newport Beach hereby denies Reasonable Accommodation No. 2009-012, subject to the Conditions set forth in Exhibit "A" attached hereto and made part hereof.

**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 2<sup>ND</sup> DAY OF JULY, 2009.

By:   
Thomas W. Allen, Hearing Officer

ATTEST:

  
Deputy City Clerk



**EXHIBIT "A"**

**ABATEMENT CONDITIONS ASSOCIATED WITH DENIAL OF  
REASONABLE ACCOMMODATION NO. 2009-012  
BALBOA RECOVERY INC. at 124 30<sup>th</sup> Street**

1. **Abatement Agreement Required.** Balboa Recovery Inc., shall enter into an abatement agreement with the City that will stipulate that the facility at 124 30<sup>th</sup> Street shall abate no later than 12 months following the adoption of the resolution denying the reasonable accommodation request ("Abatement Period"). As a Reasonable Accommodation, during the Abatement Period, Balboa Recovery Inc. may continue to operate the facility at 124 30<sup>th</sup> Street at its current population level of 10 resident clients and one resident manager in each unit. During the Abatement period, Balboa Recovery Inc shall comply with the following Conditions:
2. **Occupancy Level.** The operator Balboa Recovery Inc. hereinafter referred to as "Operator," shall limit occupancy of the facility to 10 client beds and two on-site resident manager (one in each unit), both of whom shall be qualified recovery specialists. No more than 10 persons in recovery may reside at the facility.
3. **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.
4. **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.
5. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.
6. **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.
7. **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.
8. **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.

9. **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.
10. **Transportation.** No transportation services are provided by the facility operator
11. **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.
12. **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.
13. **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.
14. **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.
15. **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.
16. **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.
17. **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)

18. **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 bet efforts to maintain, at a minimum, average client stay 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.
  
19. **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.

# # #

# **Attachment No. 5**

Applicant's Written Request  
Dated February 2, 2010



BALBOA RECOVERY  
3419 Via Lido Ste. 309  
Newport Beach, CA 92663  
[www.balboarecovery.com](http://www.balboarecovery.com)

February 1, 2010

To: Janet Brown

From: Kevin Cullen  
BALBOA RECOVERY

Re: 124 30<sup>th</sup> Street  
Newport Beach, CA 92663

Balboa Recovery would like to request to amend our original reasonable accommodation application based on a change of circumstance that would allow us to remain in operation at the 124 30<sup>th</sup> Street location. Balboa Recovery has had no complaints made against us at any of our locations. During the permitting process the City of Newport Beach recommended that we receive our permit to remain in operation at that location with a reduced bed count. We feel it is important for us to remain in business at that location because there is still an obvious need. In our original application we stated all the reasons why that location is ideal and nothing has changed.

We ask to reduce the beds to 3 upstairs with a house manager and 3 downstairs with a house manager. Since the safety of our clients is of the upmost concern we feel it necessary to have person in charge of each house. It is important for the house manager to be able to monitor the comings and goings of our residents.

Sincerely,  
Kevin Cullen  
Balboa Recovery  
949-400-7120

## **Attachment No. 6**

Correspondence between City and  
Applicant, dated May 28, 2010

**Brown, Janet**

---

**From:** kcullen [kcullen@oceanrecovery.com]  
**Sent:** Friday, May 28, 2010 3:15 PM  
**To:** Brown, Janet  
**Subject:** re: 124 39th Street - Balboa Recovery Reasonable Accommodation Hearing

Looks good Janet.  
Have a great weekend!

**Kevin Cullen**  
**Director of Admissions**  
**OCEAN RECOVERY**  
[www.oceanrecovery.com](http://www.oceanrecovery.com)

800.641.2388  
949.723.2388 Office  
949.723.1288 Fax

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. This communication may contain material protected by HIPAA legislation (45 CFR, Parts 160 & 164). If you are not the intended recipient or the person responsible for delivering this email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender by replying to this email and then delete the email from your computer.

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**From:** "Brown, Janet" <JBrown@newportbeachca.gov>  
**Sent:** Friday, May 28, 2010 2:31 PM  
**To:** kcullen@oceanrecovery.com  
**Subject:** 124 39th Street - Balboa Recovery Reasonable Accommodation Hearing

Good afternoon, Kevin.

Attached please find a copy of a letter which is being mailed to you today. The purpose of the letter is to confirm that the City has scheduled a hearing before a hearing officer on June 11, 2010, at 3:00 p.m., and to confirm there have been no changes in the information submitted in your original reasonable accommodation application for this facility (located at 124 39<sup>th</sup> Street) other than the reduction in the number of resident clients.

If you have any questions or comments after you read the letter, please don't hesitate to contact me.

Thank you, and have a wonderful holiday weekend.

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
[jbrown@newportbeachca.gov](mailto:jbrown@newportbeachca.gov)



# CITY OF NEWPORT BEACH

May 28, 2010

**VIA EMAIL AND  
U.S. CERTIFIED MAIL**

Mr. Kevin Cullen  
Balboa Recovery  
3419 Via Lido, Suite 309  
Newport Beach, CA 92663

**RE: REASONABLE ACCOMMODATION HEARING – 124 39<sup>TH</sup> Street**

Dear Mr. Cullen:

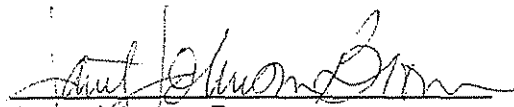
In February 2010, you requested that the City reconsider your application for reasonable accommodation to continue the residential care facility use which was denied on July 2, 2009. You stated that the request was due to changed factual circumstances, which would allow you to comply with conditions which City staff had proposed in your original 2009 reasonable accommodation hearing. In your February 2010 letter, you state you are amending your request to allow the continued operation of the existing facility with no more than three female adult resident clients and a resident manager in each of the two units in the duplex building.

We apologize for the delay in scheduling a hearing for this matter. Unfortunately, the delay was occasioned by the untimely death of Hearing Officer Tom Allen, which was a loss for the City, the public, and reasonable accommodation applicants.

This letter shall confirm that the City has scheduled a hearing before an independent hearing officer, Ms. Judy Sherman, in the City Council Chambers at 3:00 PM on Friday, June 11, 2010. At that time, Ms. Sherman will reconsider your application for reasonable accommodation, under the amended conditions you requested to reduce the resident population from 10 resident clients and two resident managers in the two units of the duplex at 124 30<sup>th</sup> Street, to no more than three female adult resident clients and a resident manager in each of the two units in the duplex building.

Unless I hear otherwise from you, the City will assume that there have been no changes in the information submitted in your original reasonable accommodation application, other than the reduction in the requested population. Please feel free to contact me by phone or email at (949) 644-3236 or [jbrown@newportbeachca.gov](mailto:jbrown@newportbeachca.gov).

Sincerely,



Janet Johnson Brown  
Associate Planner

cc: Dave Kiff, City Manager  
Catherine Wolcott, Deputy City Attorney

## **Attachment No. 7**

Correspondence received from public  
regarding this application

**Brown, Janet**

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**From:** Douglas M. Wood [balboawood@yahoo.com]  
**Sent:** Thursday, June 03, 2010 10:30 AM  
**To:** Brown, Janet  
**Subject:** BalboA Recovery Hearing

Dear Ms. Brown:

I will be out of town and unable to attend this hearing. However, I would like to express my view for the record. The appellant has had sufficient consideration and the key point is overconcentration of rehab facilities on the Peninsula.

Douglas M. Wood  
Property owner at 1119 W. Bay and 1214 E. Balboa Blvd.

## Brown, Janet

---

**From:** Brown, Janet  
**Sent:** Thursday, June 03, 2010 11:37 AM  
**To:** 'Denys Oberman'  
**Subject:** RE: Group Residential Uses Update - Balboa Recovery

Good morning, Ms. Oberman.

This is essentially a new application for reasonable accommodation, and the NBMC does not limit how many times a disabled individual or disabled housing provider may apply for reasonable accommodation. Therefore, staff has complied with all requirements for a new application, including public notice requirements. However, because the new application was based on facts identical to those the Hearing Officer reviewed in 2009, with the exception of the lower number of resident clients requested, the most efficient way to process the application is as an amended reasonable accommodation request. This is to preserve City resources, and to address concerns raised in the federal litigation that the application process presents an excessively burdensome barrier to disabled housing. However, the distinction in this case between a new and an amended request is non-substantive, because all the noticing and processing formalities for a new application have been observed.

Hearing Officer Judy Sherman will conduct the hearing.

If you have any other questions or comments, please let me know.

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
[\*jbrown@newportbeachca.gov\*](mailto:jbrown@newportbeachca.gov)

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**From:** Denys Oberman [mailto:d.oberman@obermanassociates.com]  
**Sent:** Wednesday, June 02, 2010 11:00 AM  
**To:** Brown, Janet  
**Subject:** RE: Group Residential Uses Update - Balboa Recovery  
**Importance:** High

Thank you for this Notice. Do not understand---this operator already exhausted the Administrative process provided by the City ordinance.  
Did already receive approval to continue operations of related other facilities close by.

Who will be conducting the hearing?  
Thank you for your response and clarification concerning these items.

Regards,  
Denys H. Oberman, CEO  
**OBERMAN**  
Strategic Consulting & Transactions  
**OBERMAN Strategic Consulting & Transactions**  
2600 Michelson Drive, Suite 1700  
Irvine, CA 92612  
Tel (949) 476-0790

Cell (949) 230-5868  
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**From:** Brown, Janet [<mailto:JBrown@newportbeachca.gov>]  
**Sent:** Tuesday, June 01, 2010 5:48 PM  
**Subject:** Group Residential Uses Update - Balboa Recovery

To all interested parties –

Good afternoon. Please be advised that a public hearing will be conducted on Friday, June 11, 2010 at 3:00 p.m. in the City Council Chambers. The purpose of the hearing is to consider an amended request submitted by Balboa Recovery due to changed circumstances for property located at 124 30<sup>th</sup> Street.

You may recall that in July 2009, the applicant's request for relief from the requirements of the Newport Beach Municipal Code to allow the continued operation of an existing sober living facility for up to 10 female adult resident clients and two resident managers was denied without prejudice. The Hearing Officer found that the required findings to grant the reasonable accommodation could not be made with 10 resident clients, and gave the applicant a one year period in which to abate the use. Due to changed circumstances, the applicant amends the request for reasonable accommodation to allow the continued operation of the existing facility with no more than six female adult resident clients and two resident managers in two units of a duplex building.

The staff report and related documents will be available for review at the Planning Department, and posted on the City's website on the Monday prior to the hearing.

If you have any questions or comments, please do not hesitate to contact me. Thank you.

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
[jbrown@newportbeachca.gov](mailto:jbrown@newportbeachca.gov)

## **Brown, Janet**

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**From:** Brown, Janet  
**Sent:** Tuesday, June 01, 2010 5:52 PM  
**To:** 'joe reiss'  
**Subject:** RE: Balboa Recovery

Good afternoon, Mr. Reiss.

Please see the description below from an email that I just sent out to the "interested parties" list regarding the Balboa Recovery facility located at 124 30<sup>th</sup> Street.

If you have any questions, please don't hesitate to contact me.

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
[jbrown@newportbeachca.gov](mailto:jbrown@newportbeachca.gov)

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*The staff report and related documents will be available for review at the Planning Department, and posted on the City's website on the Monday prior to the hearing.*

*If you have any questions or comments, please do not hesitate to contact me. Thank you.*

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**From:** joe reiss [mailto:jreiss0@gmail.com]  
**Sent:** Tuesday, June 01, 2010 11:37 AM  
**To:** Brown, Janet  
**Subject:** Balboa Recovery

Hi Janet..... my name is Joe Reiss and I live on 30th Street ..... I am curious what is occurring with Balboa Recovery at 124 30th St. The last we heard they were going to close down in July of this year. One of my

neighbors said he saw a public hearing notice that was up for a short time, but is now gone. Are they trying to extend their operation ? Is there a public hearing coming up on this location ? Thanks for your help..... Joe