

RESOLUTION NO. HO-2009-012

A RESOLUTION OF HEARING OFFICER THOMAS W. ALLEN, DESIGNATED BY THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH TO CONDUCT HEARINGS PURSUANT TO CHAPTER 20.91A OF THE NEWPORT BEACH MUNICIPAL CODE, APPROVING USE PERMIT NO. 2008-031 FOR A RESIDENTIAL CARE FACILITY LOCATED AT 1601 WEST BALBOA BOULEVARD (PA2008-102)

WHEREAS, an application was filed by Ocean Recovery, LLC with respect to property located at 1601 West Balboa Boulevard, and legally described as Lots 28 and 29, Block 16, Section B in the City of Newport Beach, County of Orange, State of California (APN 047-202-31), as per map recorded in Book 4, Page 27 of Miscellaneous Maps, in the Office of the County Recorder of Orange County, requesting approval of Use Permit No. 2008-031 to allow a residential care facility to operate an adult alcohol and/or drug abuse recovery treatment facility for females only; and

WHEREAS, on February 12, 2009, the Hearing Officer held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Hearing Officer at the hearing; and

WHEREAS, a use permit for the proposed residential care facility has been prepared in accordance with the provisions of Chapter 20.91A of the Municipal Code, which states that in addition to the required findings in Section 20.91.035 (A), the findings required for a use permit in Section 20.91A.060 must also be made; and

WHEREAS, the required findings of Section 20.91.035 (A) and facts in support of such findings are as follows:

- 1. Finding: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.**

Facts in Support of Finding:

The subject property is located within an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-030 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the

neighborhood of such use. The City has characterized an overconcentration as more than one residential care facility existing within one block length. Within the mid-Balboa Peninsula area, the City has determined that a block length is 617 feet, which is the calculable median block length within the Nonstandard Subdivision Areas, including Balboa Peninsula. It is appropriate for the Hearing Officer to consider the center of Balboa Boulevard as a dividing line for purposes of applying the standard of block length and that a block length does not constitute a 617 foot radius distance surrounding a proposed use on all sides because the City's ordinance considers a block as "an area that is bounded on all sides by streets." The areas on the opposite side of West Balboa Boulevard are considered as separate blocks; however, in applying the block length standard as being on one side of West Balboa Boulevard, smaller streets such as 16th and 17th Streets can be streets to be considered within a block in an effort to eliminate the differences in block lengths to achieve a 617-foot block length standard.

The Ocean Recovery facility is the only proposed residential care facility within a block length of 617 feet. For this reason, the use, as approved with conditions, is compatible with the residential character of the surrounding neighborhood and will not contribute to creating an institutional character for the area.

The Ocean Recovery facility is approximately 820 feet from a large state-licensed day care facility (Christ Church by the Sea Children's Center) and approximately 1000 feet from Newport Elementary School. These uses are a sufficient distance from the proposed Ocean Recovery facility so that these uses will not be affected by the use or operations of the proposed Ocean Recovery facility.

2. **Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

Facts in Support of Finding:

General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility includes conditions regulating the use and operational characteristics of the facility, including a reduction in the number of beds, limitations on parking, assembly uses, control of secondhand smoke, noise, and transportation of clients.

The intensity of the use, a ten bedroom facility, with a recommendation to allow a permitted bed count of 14 residents, is less than the maximum occupancy of 21 residents provided for in Section 20.91A.050 of the NBMC which establishes a maximum standard of two resident beds per bedroom for a residential care facility.

The subject property provides for four on-site parking spaces. While a 1:3 ratio of off-street parking spaces to beds is directed by the Code, an exception to this ratio to require 1:3 + 2 beds (equal to 14 beds total) is appropriate in this case with the following conditions of approval:

- The number of permitted beds be reduced from 16 to 14;
- All converted garages must be converted back and used for parking only;
- All assembly uses are prohibited, except those that solely involve client residents of the facility (and in some cases small meetings of a client's family members with facility staff);
- All interactions whereby a client resident's identity is released or known to non-clients must comply with ADP rules and regulations;
- The four cleared off-street parking spaces shall be used solely for:
 - Staff parking;
 - Visitor and family member parking; and/or
 - Client transport vans; and
- Clients are prohibited from having personal vehicles at the facility during their stay at 1601 West Balboa Boulevard.

The continued use of the subject property as a residential care facility will be subject to conditions of approval requiring that the facility be operated in a manner that will ensure that the operation of the facility will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

- 3. Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.**

Facts in Support of Finding:

The use, if approved subject to conditions through the use permit, will comply with the operational standards of 20.91A.050 of the NBMC, as outlined in the Facts in Support of Finding No. A of NBMC Section 20.91A.060, as described herein.

- 4. Finding: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community**

Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91.A and conforms to all requirements of that Chapter.

Facts in Support of Finding:

The proposed use is a nonconforming use as specified in Chapter 20.91A of the NBMC and an application for a use permit to continue the use has been filed by Ocean Recovery, the project applicant, consistent with the requirements of Chapter 20.91A. As approved, Use Permit No. 2008-031 includes conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that conforms to all requirements of Chapter 20.91A by restricting the potential for secondhand smoke impacts to neighboring properties, providing for adequate parking, ensuring that contact information for the facility is available at all times, that the facility operates pursuant to the terms of the license issued to the facility by ADP, that other certifications, as appropriate, be obtained by the facility, and by requiring the names of all owners of the facility to be available to the City.

WHEREAS, the required findings of Section 20.91A.060 and facts in support of such findings are as follows:

- A. Finding: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:**
- a. No secondhand smoke can be detectable outside the property.**
 - b. Facility must comply with state and local law, and the submitted management plan, including any modifications required by this use permit.**
 - c. A contact name and number must be provided to the City**
 - d. No services requiring a license can be provided if the facility does not have a license for those services.**
 - e. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**
 - f. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

- g. All individuals and entities involved in the facility's operation and ownership must be disclosed.**
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

Facts in Support of Finding:

- a. The facility's current operational regulations discourage smoking at the facility; however, the regulations also provide for a designated smoking area within an exterior unenclosed patio of the facility. The use permit includes a condition of approval requiring that smoking be restricted to a designated area of the facility. If the designated smoking area is provided on an external patio, the patio shall be partially enclosed in a manner that directs smoke toward the rear alley of the property or toward 16th Street adjacent to the facility, and away from adjacent residences. In addition, the Operator will prohibit clients, staff, or residents from littering cigarette butts on the ground, floor, deck, sidewalk, gutter, boardwalk or street.
- b. The operations of this facility shall be compliance with the state ADP license, and as conditioned, the facility will comply with the Operations and Management Plan for the facility.
- c. Appropriate names and contact information numbers are provided within the application and, as a condition of approval of this application, the appropriate "after hours" names and contact information numbers would be provided to the City.
- d. The Operation and Management Plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility. The ADP license does not permit treatment services to non-resident clients nor does it allow non-resident clients to interact with clients unless all clients have signed privacy rights waivers authorizing non-clients to know that the clients are in recovery.
- e. The facility is licensed for a maximum occupancy of 16 residents. The facility contains ten bedrooms with a bed capacity of two beds per bedroom in each of the two bedroom units and four beds distributed among three bedrooms in the four-bedroom unit for a total occupancy of 16 residents. Approval of the use permit includes a condition of approval requiring the maximum occupancy of the facility be limited to 14 residents, due to parking constraints, with no more than two residents per bedroom, consistent with the residential occupancy design of the building.

- f. Approval of the use permit includes a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification. In the event that the applicant deems such certification inapplicable to this treatment use, the applicant is required to prepare a letter so stating these facts and to submit the letter to the City within 60 days of the issuance of a use permit.
- g. All employees and management personnel have been disclosed in the application documentation.
- h. According to information provided in the application documentation the owners and managers of the facility own and operate a similar facility located at 1115 West Balboa Boulevard in the City of Newport Beach. The State of California ADP license for this facility is in good standing and expires in December 2010. Approval of the use permit includes a condition of approval specifically directing that all interactions, wherein a client resident's identity is released or known to non-clients, must comply with ADP's privacy rules and regulations.

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

Facts in Support of Finding:

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides four on-site parking spaces. Approval of the use permit for the facility includes a condition that limits the occupancy to 14 and restricts other uses such as assembly uses and clients' ability to have a personal vehicle on-site. This condition appropriately addresses the fact that the facility location is within a four-unit former apartment building providing only four parking spaces.

The use permit includes a condition of approval, requiring the applicant to make available and maintain all areas designated for parking, including the existing four garage spaces, for parking purposes.

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is conducted in front of the facility along West Balboa Boulevard and/or the 16th Street frontage. As part of the approval of the use permit a condition of approval is included that restricts loading and unloading of van passengers to be conducted within open parking spaces along West Balboa Boulevard and/or 16th

Street, and van drivers are prohibited from stopping or double-parking in a traffic lane. When not in use, the client transport van must be parked in a garage space.

- C. Finding: The property and existing structures are physically suited to accommodate the use.**

Facts in Support of Finding:

The building is similar to many other residential structures along West Balboa Boulevard constructed on a parcel that measures approximately 50 feet wide by 100 feet deep. The four-unit building was constructed on two lots in 1958 with approval of Use Permit No. 420, when the subject property was zoned R-3.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated December 19, 2002, for a maximum occupancy of 18 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

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

- a. **The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;**
- b. **The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach**

Planning Commission on September 20, 2007 and on file with the Director of Planning; and

- c. **Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.**

Facts in Support of Finding:

On the north side of West Balboa Boulevard between 15th Street and 18th Street and across the street from the proposed Ocean Recovery facility, are the Las Arenas Park, the Veterans Memorial Park, the Marina Park and the Balboa Community Center. An existing state licensed day care facility is located approximately 820 feet from the subject property, and Newport Elementary School is approximately 1000 feet from the subject property. These uses are a sufficient distance from the proposed Ocean Recovery facility so that these uses will not be affected by the use or operations of the proposed Ocean Recovery facility.

The proposed Ocean Recovery facility is approximately 500 feet from one alcoholic beverage outlet and approximately 740 feet from another outlet selling or serving alcohol, a sufficient distance from these facilities that the proximity of the proposed use to these facilities will not affect the ability of the use to fully operate as an alcohol rehabilitation facility.

The NBMC includes provisions to ensure, through the use permit process, that a proposed residential care facility is compatible with the surrounding residential neighborhood and specifically, that approval of a use permit for the continued operation of a residential care facility does not result in an institutionalization of the surrounding neighborhood through an overconcentration of facilities. The proposed Ocean Recovery facility is located in the mid-Balboa Peninsula area

that is a part of the Nonstandard Subdivision Area. Inasmuch as Section 20.91A 060 (D.3) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, a block length for the mid-Balboa Peninsula area where this use is located may be established. In order to establish a block length for the mid-Balboa Peninsula area, the City has determined that it is appropriate to apply a median block length pursuant to the standards of the American Planning Association. The City has determined that a calculable median block length of 617 feet is a reasonable block length for purposes of evaluating the mid-Balboa Peninsula area. The placement of more than one residential care facility per this median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood.

The proposed use is the only existing operational residential care facility within a block length of 617 feet. The nearest operating residential care facility to the subject property is the Newport Coast Recovery facility, located approximately 1,600 feet from the proposed Ocean Recovery facility, which has been denied a use permit for continued operation. The proposed Ocean Recovery facility will be compatible with the residential character of the surrounding neighborhood and will not contribute to the institutionalization of the area.

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

Facts in Support of Finding:

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is at the West Balboa Boulevard and/or 16th Street frontage that is less congested than the narrower alley access at the rear of the building. As part of the approval of this use permit, a condition of approval is included requiring the loading and unloading of the transportation van passengers to occur only in open parking spaces on West Balboa Boulevard and/or 16th Street, and prohibiting the van drivers from stopping or double-parking in a traffic lane.

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

Facts in Support of Finding:

Staff members deliver business products and other packages and goods to the facility in their private vehicles during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours, and as such, are compatible with and will not adversely affect the peace and quiet of neighboring properties.

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

Facts in Support of Finding:

The proposed Ocean Recovery facility does not contract with a commercial trash collection service, however, as part of the approval of this use permit, a condition of approval is included requiring the operator to hire and maintain a commercial bin service, and to limit pick-up to one weekday per week between 9:00 a.m. and 5:00 p.m. The bin, when not being dumped, must be stored in a manner acceptable to the City.

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.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer on behalf of the City of Newport Beach hereby approves Use Permit No. 2008-031, subject to Conditions of Approvals 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 12TH DAY OF MARCH 2009.

BY: 
Thomas W. Allen, Hearing Officer

ATTEST:

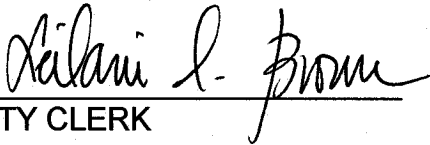

CITY CLERK



EXHIBIT "A"

CONDITIONS OF APPROVAL

USE PERMIT NO. 2008-031

OCEAN RECOVERY, LLC at 1601 WEST BALBOA BOULEVARD

1. **Occupancy Level.** The operator of Ocean Recovery, LLC, hereinafter referred to as "Operator," shall limit occupancy of this facility to 14 client beds. No more than 14 persons in recovery may reside at the facility.
2. **Staffing.** Operator shall have enough staff to appropriately and responsibly manage the facility; including at least one qualified manager on-site at all times (24 hours a day, seven days a week).
3. **Governmental Referrals.** Operator shall not provide any services to any client or house any client who has been referred or caused to be referred to Ocean Recovery's facility by any governmental agency, including but not limited to probationers or parolees, due to the limitations that Section 509.9 of the California Building Code places on Group I and R occupancies.
4. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff (and in some cases small meetings of a client's family members with facility staff).
5. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.
6. **Trash and Trash Enclosures.** Operator shall hire and maintain a commercial bin service, and limit pick-up to one weekday per week between 9:00 a.m. and 5:00 p.m. The bin, when not being dumped, must be stored in a manner acceptable to the City.
7. **Smoking and Tobacco Products.** Smoking on-site shall be restricted to a designated area. If the designated smoking area is provided on an external patio, the patio shall be partially enclosed in a manner that directs smoke toward the rear alley of the property, or 16th Street, and away from adjacent residences. In addition, Operator will not allow clients, staff, or residents to litter cigarette butts on the ground, floor, deck, sidewalk, gutter, boardwalk or street. Operator's administrators and managers shall actively enforce, on the City's behalf, the City's prohibition on clients' tobacco use on beaches, boardwalks, and piers (NBMC §11.08.080), including when Operator's clients are at "AA" meetings off-site.

8. **Parking.** Operator shall keep all four (4) parking spaces at the facility open and available for parking for staff, and visiting family members' vehicles, cleaning persons' vehicles, and client transport vans at all times. In the event that visitors to the facility require additional parking, they may use up to three off-site parking spaces at any one time. In order to use the on-street parking spaces, all four garage spaces must be occupied with staff or visitor's vehicles. The operator shall purchase three master parking permits from the City for use of on-street parking. Clients to the facility are not permitted to have personal vehicles at the facility.
9. **Client Transport.** Operator shall ensure that loading and unloading of passengers of the facility's transportation van shall occur only in open parking spaces on West Balboa Boulevard, 16th Street, or garage spaces. The van driver is prohibited from stopping or double-parking in a traffic lane to load and unload passengers. In addition, client drivers shall respect all City rules regarding parking and/or stopping and waiting to load residents. Client transport vehicles shall not block adjacent alleys or street ends. Client drivers shall not leave vehicles in reverse gear if reverse has an audible back-up warning sound. Client drivers shall speak to residents at a level protective of neighborhood peace, cognizant of the hour, to avoid waking neighbors.
10. **Curfew and Quiet Hours.** The facility must maintain Curfew and Quiet Hours (where persons on the street or on adjacent properties cannot hear any noise from 1601 West Balboa except in an emergency) of between 10:00 p.m. to 8:00 a.m. daily.
11. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity at a level audible to neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.
12. **Noise.** Operator shall strictly adhere to the City's noise standards (NBMC §10.26.025; 10.26.030). Operator shall be responsible for minimizing clapping, stomping, or other noises at meetings or gatherings at the subject property, consistent with NBMC §10.26.030.
13. **Route Plans.** Operator shall adhere to the Route Plans for transport of its staff, residents, clients, and customers. The Route Plans are included in the Operations and Management Plan. Short-term interruptions, such as medical emergencies or street maintenance beyond Operator's control, are allowable modifications to the Route Plans.

14. **Deliveries.** Staff members in their private vehicles deliver business products and other packages and goods to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m.
15. **Hotline.** Operator shall establish, provide public notice of, and operate a hotline for receiving inquiries and/or complaints in reference to its operation of its facility. The phone number need not be staffed 24 hours a day seven days a week, but callers should be responded to within the next 24-hour period.
16. **Stakeholder Group.** Upon invitation by the City, Operator shall participate in the activities of any stakeholder committee or group established by the City to address complaints and concerns of residents of the City regarding the operation of Residential Care Facilities in the City.
17. **Persons per Bedroom.** Operator shall not allow more than two clients in one bedroom. This is consistent with the provisions of the ADP license.
18. **State Licensing, Treatment, and Occupancy.** All occupancies at the subject property shall comply with the State ADP License Number 300144AP, which expires on December 31, 2010, and any successor license offering the same treatment services. Operator shall maintain ADP licensing throughout the duration of this use permit. The ADP license does not permit treatment services to non-resident clients nor does it allow non-clients to interact with clients unless all clients have signed privacy rights waivers authorizing non-clients to know that the clients are in recovery. Therefore, all interactions whereby a client resident's identity is released or known to non-clients must comply with ADP's privacy rules and regulations.
19. **Building and Zoning.** Operator recognizes that 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.
20. **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 within seven days or contact the City directly to negotiate a mutually agreeable timeline.
21. **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).

22. **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 required counseling). Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.
23. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this use permit shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code.
24. **Grant of Use Permit.** Use Permit No. 2008-031 is granted to Ocean Recovery, LLC to operate an adult alcohol and/or drug abuse recovery treatment facility for females only, and all clients of the facility shall be classified as disabled, as that term is defined by federal and state fair housing laws. The Operator shall execute an affidavit declaring that all clients receiving services from this facility are disabled persons.
25. **Additions or Modifications to Conditions of Approval, or Revocation of Use Permit.** The Hearing Officer or City Council may add or modify conditions of approval to this use permit, or revoke this use permit upon a finding of failure to comply with the conditions set forth. The City Council may also revoke, modify, or amend this use permit 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 use permit, the cumulative effect of violation of two or more conditions shall be considered.
26. **Compliance with Conditions of Approval.** Any changes in operational characteristics, including but not limited to the following, shall require an amendment to this use permit or issuance of a new use permit:
 - a. Modification, expiration without renewal, or loss of ADP license.
 - b. Increase in number of client residents.
 - c. Change in on-site staffing affecting the ability of the operator to adequately manage the facility and provide supervision of its residents.
 - d. Increase in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
 - e. Change in the Operations and Management Plan.

- f. Request for amendment to any condition or conditions of approval.
- g. 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 Use Permit or its application.
- 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.
- 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.