

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

Agenda Item # _____
November 20, 2008

TO: HONORABLE COMMISSIONERS

FROM: Dave Kiff, Assistant City Manager
949-644-3002 or dkiff@city.newport-beach.ca.us

SUBJECT: **Zoning Implementation and Public Benefit Agreement – City of Newport Beach and Sober Living by the Sea**

ISSUE:

Should the City enter into a Zoning Agreement with Sober Living by the Sea, Inc. relating to SLBTS' sober living and treatment facilities?

RECOMMENDED ACTION:

1. Hold a Public Hearing on the proposed Zoning Implementation and Public Benefit Agreement (“Zoning Agreement”) between the City of Newport Beach and Sober Living by the Sea (“SLBTS”); and
2. Forward the Zoning Agreement to the City Council, either recommending the Commission’s support of or opposition to the City entering into the Zoning Agreement.

BACKGROUND:

NOTE #1: *For detailed background about the City’s Group Residential Uses Ordinance (Ordinance 2008-05), please see the City’s website under “Council Agendas” and read the staff report dated January 22, 2008 relating to the adoption of the Ordinance. For additional information about the proposed agreements between Sober Living by the Sea (SLBTS) and the City, please see the City’s website under “Group Homes.”*

NOTE #2: *There are two documents that the City Council will consider relating to SLBTS – a Settlement Agreement and the Zoning Agreement. Only the Zoning Agreement is subject to Planning Commission review and comment.*

To protect the integrity of residentially zoned areas of the city, residential uses like boarding houses and fraternities/sororities have been prohibited in all residential districts. Following the adoption of Ordinance 2008-05 on January 22, 2008, the City has changed the way it regulates residential uses that do not consist of a single housekeeping unit, but provide group home living arrangements for the disabled, such as sober homes and alcohol and drug recovery treatment homes licensed by the State of California’s Department of Alcohol and Drug Programs (“ADP”). Key aspects of Ordinance 2008-05 are as follows:

A. Reasonable Accommodation. The concept of *reasonable accommodation* is a process by which a disabled person or a facility operator in need of housing can request a modification of an existing local law to allow that disabled person to retain housing – this process is fully described, allowed, and included as a new Chapter 20.98 within the Newport Beach Municipal Code (NBMC).

B. Integral Facilities & Integral Uses. Ordinance 2008-05 defines “Integral Facilities” and “Integral Uses.” In addition to defining the terms, the Ordinance states that the City can consider small (housing six or fewer clients) ADP-licensed treatment and recovery facilities that operate integrally to be uses subject to a Use Permit and regulated similarly to small unlicensed facilities or general (“7 and over”) facilities. We defined “Integral Facility” and “Integral Uses” as follows:

Integral Facility. Any combination of two or more Residential Care (Small Licensed, Small Unlicensed, or General) facilities which may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company, or licensee or any affiliate of any of them, and are integrated components of one operation shall be referred to as Integral Facilities and shall be considered one facility for purposes of applying federal, state, and local laws to its operation. Examples of such Integral Facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

Integral Uses. Any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company, or licensee, or any affiliate of any of them, in a manner in which participants of two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such Integral Use shall be considered one use for purposes of applying federal, state, and local laws to its operation.

In early May, 2008, Judge James Selna of the US District Court blocked the City’s enforcement of the “integral facilities” definition within Ordinance 2008-05 as it applies to ADP-licensed “6 and Unders”. Special Counsel Jim Markman of Richards, Watson, Gershon (“RWG”) believes that the Judge’s stay applies to the City’s “integral uses” concept, too.

C. Siting of New Facilities. Ordinance 2008-05 allows various group residential uses in the following zones as shown in Table 1:

Table 1

Zoning for New Group Residential Uses				
Facility Type	R-1	R-1.5	R-2	MFR
ADP Licensed 6 and Under	Allowed	Allowed	Allowed	Allowed
ADP Licensed 6 and Under (operating integrally)	Prohibited*	Prohibited*	Prohibited*	Allowed with a Use Permit*
Unlicensed 6 and Under (integral or not)	Prohibited	Prohibited	Prohibited	Allowed with a Use Permit
7 and Over (Licensed or Unlicensed)	Prohibited	Prohibited	Prohibited	Allowed with a Use Permit
All Other Group Residential Uses	Prohibited	Prohibited	Prohibited	Prohibited

* This provision of the Ordinance was blocked via Judge Selna’s actions of May 2008.

The prohibitions of certain group residential uses in the R-1, R-1.5, and R-2 zones apply to **new facilities**. Many **existing** group residential facilities – indeed most if not all of the unlicensed facilities – became “non-conforming” after February 20, 2008. All non-conforming group residential uses then became subject to the Ordinance’s Use Permit process and had to apply for a Use Permit by May 22, 2008 to continue to operate. *Table 2* compares estimated recovery beds in mid-2007 with the amount of beds addressed by Use Permit applications:

D. Abatement. The Ordinance directs that any operator within one of the zones shown in Table 1 where their operation is either *prohibited* or *allowed with a Use Permit* but who did not apply for or obtain a Use Permit or secure Reasonable Accommodation in a timely manner must cease this use no later than:

- 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; or
- The date that an operator’s State license expires (ADP licenses are good for up to 24 months if not revoked or if uses are unchanged).

... whichever of the above three criteria is sooner. An operator can ask a Hearing Officer for an extension of the abatement period, subject to certain findings. The Hearing Officer’s extension decision can be appealed to the City Council. All facilities shown in Table 2 that were required to apply for a use permit, but did not, were issued abatement letters by the City on May 23, 2008, beginning the abatement process.

Table 2

Beds by Operator		
Operator Name	Recovery Beds	
	Beds in Mid-2007	Submitted via UP Applications or Not Subject to UP Requirement
Sober Living by the Sea		
-- Balboa Peninsula/West Newport	220	186
-- Lido Isle	18	18
<i>Total Sober Living by the Sea</i>	238	204
Morningside Recovery	72	Applied to ADP
Narconon Southern California	49	Closing 2-2010
Ocean Recovery (& affiliates)	66	40
Yellowstone Recovery	56	56
Newport Coast Recovery	35	29
The Shores Treatment/Recovery	12	Closed
Lynn House	16	0
Other -- Dana Road	6	0
Other - Balboa Boulevard	15	0
115 39th Street ("The Beach House")	17	Closed
Seaview Sober Living	8	Closed
Balboa Horizons Recovery	11	11
Adelante Recovery	6	6
Miramar Recovery (affected by stay)	0	12
Kramer Center	12	12
Pacific Shores Recovery	60	In Litigation
<i>Estimated Totals</i>	679	370

E. The Use Permit Process. As noted in Table 1, existing non-conforming uses and new uses in the Multi-Family Residential (“MFR”) Zone had to apply for a Use Permit to remain in operation or to start operation. The key provisions of this process follow:

1 – Timing. Any existing operator had to apply for a Use Permit by May 22, 2008.

2 – Application. Applicants have been asked provide information to ensure that any use is operated in compliance with applicable laws, that the operator has a history of operating facilities consistent with any applicable laws, and that the applicant operating under a Use Permit will operate in a manner that minimizes adverse impact on facility residents, neighbors, the community, or the character of the neighborhood and that the use conforms with established industry standards for the well-being of the facility residents.

3 – Notice and Hearing. Following Council Policy F-26, the City has designated three hearing officers (Thomas Allen, Charles Vose and Judy Sherman) to approve, conditionally approve, or disapprove group residential Use Permits at noticed public hearings. Decisions of the hearing officers may be appealed to the City Council. Hearings on two larger ADP-licensed facilities (11-bed *Balboa Horizons* and 29-bed *Newport Coast Recovery*) are planned for the week of December 1-5, 2008. The City will mail or deliver notice of the public hearing for each Use Permit for a group residential use in a residential district to owners and occupants of property within 300’ of the proposed use ten (10) business days prior to a public hearing on the use.

4 – Standards. Any Use Permit issued must adhere to these specific standards if applicable to the use:

- No secondhand smoke can be detectable outside of the property.
- Operations must comply with state law, local law, the submitted management plan, including any modifications to the plan required in the Use Permit.
- A contact name and number must be provided.
- No one can provide services that require a license if they don’t have a license for those services.
- There shall not be more than two persons per bedroom plus one additional resident. If an applicant wants to put more than 2 persons in one or more bedrooms, the applicant must 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 from a responsible entity other than ADP’s licensing program is available to an operator (like the Orange County Sheriff’s sober living facilities certification program or certification offered by the Orange County Sober Living Network), applicants must get that certification.
- 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.

5 – Findings. In addition to the findings set forth in the provisions governing Use Permits generally, Ordinance 2008-05 provides that the Hearing Officer can approve a Use Permit only if certain findings can be made:

- 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 will consider as appropriate the following factors:
 - How close the proposed use is to schools, parks, other group homes, and alcoholic beverage outlets (and more); and
 - Whether the existence of non-standard lots and other property characteristics made 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. The Ordinance describes facts in Newport Beach relating to blocks, which include:
 - Blocks in some neighborhoods can be as short as 300'.
 - Other blocks in town can be as long as 1,422'.
 - The calculable average block length in an area characterized by standard subdivisions is 711'.
 - The calculable median block length in an area characterized by standard subdivisions 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 guided by the median block lengths in standard subdivision areas of the city. 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.

6 – Revocation of the Use Permit. The Ordinance provides that that the Hearing Officer can revoke a UP (similar to other uses subject to a UP) if these findings are made:

- 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.

LEGAL ISSUES

Since adoption in February 2008, Ordinance 2008-05 and the City's actions have been subject to multiple legal actions, including:

- A lawsuit from a residents' group (the "Concerned Citizens of Newport Beach" or "CCNB") arguing that the City did not go far enough in enacting Ordinance 2008-05. CCNB also sued multiple operators and asked for \$250 million in damages from the City.
- Complaints filed with the US Department of Housing and Urban Development (HUD) alleging that the City's ordinance and its practices have discriminated against disabled persons entitled to fair housing – filed separately by Pacific Shores Recovery and SLBTS.

- Lawsuits from the City against Morningside Recovery and Pacific Shores Recovery, alleging that some of their operations began illegally during a short-term temporary moratorium against the establishment of new group residential uses. Pacific Shores Recovery has in turn alleged that the City's group residential uses ordinance was facially discriminatory against persons in recovery.
- Lawsuits from SLBTS against the City alleging that the City's group residential uses ordinance was facially discriminatory against persons in recovery (both the SLBTS and Pacific Shores lawsuits have been assigned to US District Court).
- A "cross-complaint" by the City against SLBTS and other operators that consolidated certain lawsuits in US District Court.

To resolve the SLBTS and CCNB cases, the City asked each party to participate in a supervised mediation before a retired judge in June 2008. All three parties agreed to do so, and all three parties participated in all or part of the mediation. The mediation led to a term sheet between SLBTS and the City's representatives. The term sheet has been written into two formal agreements between SLBTS and the City:

- A **Settlement Agreement** settling all legal issues between SLBTS and the City; and
- A **Zoning Implementation and Public Benefit Agreement** ("Zoning Agreement"), approved under California's statutes relating to development agreements (*California Government Code §§65864-65869.5*), that explains the duties of both SLBTS and the City in regards to SLBTS' sober homes and treatment facilities.

The Settlement Agreement was approved by the parties in November 2008, and is not summarized here but is attached (Attachment A). The Settlement Agreement is not under consideration by the Planning Commission. The Settlement Agreement includes the Zoning Agreement as an attachment. The Settlement Agreement would not become effective unless the Zoning Agreement is approved and operable.

THE ZONING AGREEMENT

Here are the key provisions of the Zoning Agreement:

I – BED CAPS – CITYWIDE & PENINSULA ZONE

- The Zoning Agreement sets an overall citywide bed limitation on SLBTS's operations, whether treatment homes or sober homes. The bed cap also sets a sub-limit on beds within the "Peninsula Zone," defined in the Zoning Agreement as West Newport Beach, the Balboa Peninsula, and Lido Isle. There is an interim cap and a final cap. These limitations are shown as Table 3 as follows:

Table 3

Location	Mid-2007	Interim Cap	Final Cap
Peninsula Zone	238	156	156
-- Lido Isle		12	12
-- Rest of PZ		144	144
Rest of Newport Beach		0	48
Citywide	238	156	204

- The Zoning Agreement describes how the bed count would *initially* go to 156 beds (the "interim cap"), down from up to 238 beds in mid-2007 (the City's estimate) and down from 204 beds by May 22, 2008 (facilities with 204 beds were submitted by SLBTS within the Use Permit process).

- The Zoning Agreement describes how SLBTS can go back up to a *final* cap of 204 beds, but the additional 48 beds must go in MFR and entirely off of the Peninsula Zone.
- SLBTS can only exceed the Interim Cap when SLBTS has completed a “one building per block” dispersion plan as described below.
- The Zoning Agreement sets forth a Final Cap for the Peninsula Zone – 156 beds.
- The Zoning Agreement sets forth a Final Cap for Lido Isle within the Peninsula Zone and within the 156 bed limit – 12 beds.

II – BED CAPS INCLUDE STATE LICENSED “6 & UNDERS”

The Zoning Agreement describes how the caps apply to all beds, whether the beds are in licensed facilities (Large facilities or ADP-licensed “6 and Unders”) or unlicensed SLBTS facilities. NOTE: State law (California Health and Safety Code §11834.23) does not allow any city to cap or regulate ADP-licensed “6 and Unders” unless an operator voluntarily agrees to be regulated, as SLBTS has done via the Zoning Agreement.

III – ONE BUILDING PER BLOCK

Under the Zoning Agreement, a duplex is considered to be one building – the Zoning Agreement also describes how:

- SLBTS will move certain of its operations upon expiration of leases so that, generally, SLBTS’ facilities will be dispersed to “one building per block.” The Zoning Agreement defines a block as an area bounded by four streets, not alleys. There is one exception to this “One Building per Block” standard in the Zoning Agreement:
 - SLBTS may keep its ADP-licensed treatment facilities at 112 40th Street and 3960-3980 Seashore – these are on the same block per the definition.
- All facilities where SLBTS currently has more than one building per block shall be relocated to an address where there would be One Building per Block and none across a bordering street after the move. There are three exceptions to this “None Across a Bordering Street” standard in the Zoning Agreement:
 - 122 45th Street and 4500-04 Seashore;
 - 6110 Oceanfront and 6111 Ocean Front; and
 - 4711 Seashore and 4816 Seashore. Note: in previous discussions, SLBTS proposed keeping its facility at 4800 Seashore. In the meantime, it entered into a lease with the property owner at 4816 Seashore. In order to increase the distance between SLBTS’ facilities, the City agreed with SLBTS to have SLBTS close 4800 Seashore and maintain 4816 Seashore.

IV – DISTANCING FROM CERTAIN OTHER USES

Under the Zoning Agreement, SLBTS’ facilities:

- Must be located more than 1,000’ away from public elementary schools and large State-licensed day care facilities in the Peninsula Zone and which are open as of the date of the Zoning Agreement.
- May not be on streets immediately adjacent to the tot lots at 36th Street and at Marina Park.

V – NO PAROLEES

Under the Zoning Agreement, SLBTS may not accept, house, or treat any person who is a parolee from the California Department of Corrections or its equivalent in any other State or the Federal Bureau of Prisons in any of its facilities located in the City.

VI – CONTROLS ON SECOND HAND SMOKE

Under the Zoning Agreement, SLBTS must make good faith efforts to prevent second hand smoke from leaving any of its facilities in a manner that significantly affects occupants of neighboring residents. These efforts may include:

- The designation of a smoking area at each site, with a device to mitigate or disperse secondhand smoke;
- An active smoking cessation program made available to all clients; and
- Addressing the complaints of directly-adjacent neighbors when secondhand smoke comes from an SLBTS facility.

SLBTS must also direct clients or residents to avoid littering cigarette butts on the ground, floor, deck, sidewalk, gutter, or street and direct clients not to use tobacco on beaches, boardwalks, and piers consistent with City prohibitions against smoking in those areas.

VII – OPERATIONAL IMPROVEMENTS

Under the Zoning Agreement, SLBTS shall:

- Continue operating policies which ensure compliance with City codes on trash receptacles and enclosures;
- Have off-street parking consistent with City's existing residential standards;
- Implement a series of Route Plans as shown in an exhibit (Exhibit F of the Zoning Agreement) for transport of clients and staff to and from SLBTS' facilities.
- Limit business deliveries to its residential facilities to weekday common business hours.
- Maintain Quiet Hours consisting of the following:
 - Quiet on Sundays through Thursdays between 10:00 p.m. and 7:00 a.m.; and
 - Quiet on Fridays through Saturdays between 11:00 p.m. and 7:00 a.m.
- Dispose of medical waste, if any, in the proper manner in accordance with the Municipal Code (NBMC §6.04.120).
- Establish and maintain a 24-hour hotline for residents' inquiries, concerns.
- Participate in a larger Stakeholders Group led by the City to address neighborhood complaints and concerns.

VIII – VILLA WAY PROPERTY

Within the Zoning Agreement (see Section 6), the City and SLBTS discuss SLBTS' operations in Cannery Village). The City issued a letter to SLBTS dated August 25, 2006 regarding SLBTS' leased office and meeting facility at 2811 Villa Way. SLBTS has done almost all it needed to do within that letter, except complete improvements to a parking lot. The City believes that SLBTS has been attempting in good faith to complete these improvements, but site constraints and a Regional Board permit have delayed paving the lot. The Zoning Agreement incorporates the August 26, 2006 letter and says that, in the event the parking lot is not completed by July 1, 2009, SLBTS agrees to purchase thirteen master parking passes to better accommodate the 2811 Villa Way parking needs in one of the City's parking lots.

IX – OTHER

Under the Zoning Agreement (see Exhibit B, Section C 1-3), SLBTS is entitled to work with the City to change aspects of the Zoning Agreement IF the City enters into another Zoning Agreement that is materially more favorable than this Zoning Agreement in only three areas:

1. An allowance of a percentage increase greater in bed counts greater than 30% above the number operated by SLBTS at the time of the Agreement;
2. Dispersion (i.e. one building per block and no facilities on streets facing each other) less concentrated than for SLBTS under the terms of this Agreement; and

3. Distancing from public elementary schools and large licensed day care facilities that is less than for SLBTS under the terms of this Agreement.

The Zoning Agreement also describes the City's intent that the City will adhere to and recognize how California Health and Safety Code (HSC) §11834.23 directs that the City must apply the same building, fire, and other related codes to facilities with six or fewer clients as it does for any single-family residential property provided that:

1. HSC §11834.23 is not repealed or otherwise invalidated by an appellate court decision;
2. HSC §11834.23 is being applied to a single family dwelling unit (including condominiums) or a duplex;
3. SLBTS does not place non-ambulatory residents in their facilities; and
4. SLBTS does not accept referrals or placements within a SLBTS home for protective social care and supervision services by any governmental agency.

Finally, the Zoning Agreement describes how SLBTS, if the Agreement is executed, is not required to go through the Use Permit process for its facilities subject to the Use Permit requirements.

PUBLIC BENEFITS OF THE ZONING AGREEMENT

The Zoning Agreement itself speaks to the public benefits that will result if it is enacted. Before summarizing these, it is important to clarify why the City's legal counsel chose to use a Zoning Agreement to achieve the public benefits. Legal Counsel Jim Markman of RWG describes the reasoning this way:

While a Zoning Agreement is most often used in situations where substantial construction or development is involved, it is legally appropriate to use it here. This type of agreement is an often used mechanism to "vest" land use rights for a period of time, establish a customized solution for specific land use issues with unique characteristics, and provide public benefits to the City. It is a negotiated understanding between the City and an applicant that is supported by a detailed, formal agreement.

An important advantage of this type of agreement is that it provides a means for the City to achieve greater regulation and benefits than would otherwise be available through existing regulations. In this case, for example, the City will be able to:

- *Limit the number of state-licensed licensed six and under facilities operated by SLBTS now and into the future – this is a major benefit not achievable under the use permit process or the City's group residential uses ordinance (due to State law's prohibition on regulating these specific uses).*
- *Voluntarily achieve dispersion on a per block basis and from designated land uses – more benefits not achievable within the City's group residential uses ordinance (including the dispersion within the ordinance would have made it subject to claims of facial discrimination).*
- *Voluntarily achieve bed caps – again, a benefit not achievable within the City's group residential uses ordinance (including bed caps within the ordinance also would have made it subject to claims of facial discrimination).*

The Zoning Agreement, in Section 2, speaks to the following specific public benefits:

1. A reduction of and limitation on the size of the city's largest residential care operation, including a limitation on ADP-licensed "6 and Under" facilities;
2. Dispersal of treatment facilities and sober homes to reduce an over concentration in the Peninsula Zone;
3. The placement of operational controls on treatment facilities and sober homes to reduce what residents perceive as negative impacts in certain neighborhoods.
4. Settlement of a pending lawsuit, including attorneys fees;
5. Preservation of the City's Group Residential Uses ordinance, allowing its implementation to go forward into the Use Permit Process; and
6. Likely termination of a related federal administrative proceeding with US HUD and the US Department of Justice.

PUBLIC NOTICE

City staff mailed notice (see Attachment C) of the Planning Commission's hearing to all persons within 300' of any property subject to the Zoning Agreement (list of properties shown as Attachment D). Staff also posted notice of this hearing at each property location and printed notice of the hearing in the *Daily Pilot*. This staff report and the two agreements were placed on the City's website on or before Friday, November 14, 2008.

CEQA

Consideration and adoption of the Zoning Agreement has been determined to be categorically exempt under the requirements 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.

THE PROCESS FROM HERE

This Zoning Agreement must be approved via a public process through adoption of a formal Council ordinance. Prior to Council action, your Commission must hold a public hearing and make a recommendation. Your Commission may recommend approval or disapproval.

Following that recommendation, the City Council must hold a public hearing for public review and comment on the "First Reading" of the ordinance adopting the Zoning Agreement. If passed to Second Reading, the public will have another chance to comment on the ordinance at this third of three meetings.

Prepared and Submitted by:

Dave Kiff, Assistant City Manager

Attachments: A – Settlement Agreement
B – Zoning Implementation and Public Benefit Agreement
C – Public Notice
D – List of SLBTS Properties

Attachment A
Settlement Agreement

See City's website under www.city.newport-beach.ca.us then "Group Homes"

Attachment B

Zoning Implementation and Public Benefit Agreement (aka "Zoning Agreement")

See City's website under www.city.newport-beach.ca.us then "Group Homes"

Attachment C

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **November 20, 2008**, at 6:30 p.m., a public hearing will be conducted in the City Council Chambers (Building A) at 3300 Newport Boulevard, Newport Beach, California. The Planning Commission of the City of Newport Beach will consider the following application:

An application for approval of a Development Agreement between Sober Living By The Sea and the City of Newport Beach that provides an entitlement for the operation of residential care facilities in the City while also containing limitations on the number of beds that may be operated City-wide and within West Newport, the Balboa Peninsula, and Lido Isle, including beds in facilities otherwise not subject to City regulation under state law and containing operational standards applicable to the operation.

This activity has been determined to be categorically exempt under the requirements 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.

All interested parties may appear and present testimony in regard to this application. If you challenge this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing (described in this notice) or in written correspondence delivered to the City, at, or prior to, the public hearing. The agenda, staff report, and environmental documents may be reviewed at the Planning Department, City of Newport Beach, 3300 Newport Boulevard, Newport Beach, California, 92663 or at the City of Newport Beach website at www.city.newport-beach.ca.us on the Monday prior to the hearing. For more information, call (949) 644-3232.

Activity No.: DA2008-005

Barry Eaton, Secretary, Planning Commission, City of Newport Beach

Attachment D

SLBTS Properties Staying Open or Closed/Closing (November 12, 2008)

Street No.	Units	Street	Licensed?	*
208		Via Lido Soud	ADP Licensed	
100		Via Antibes	ADP Licensed	
102		Via Antibes	ADP Licensed	
505		29th Street	ADP Licensed	
116	A & B	34th Street	Sober Living	
307	1/2	34th Street	Sober Living	X
309	1/2	34th Street	Sober Living	X
125	+ 1/2	39th Street	ADP Licensed	X
112	A & B	40th Street	Sober Living	
118	A & B	45th Street	Sober Living	X
122	A & B	45th Street	ADP Licensed	
5004	A & B	Neptune	Sober Living	
5101	A & B	River	ADP Licensed	
3960-80		Seashore	ADP Licensed	
4500-04		Seashore	ADP Licensed	
4711		Seashore	ADP Licensed	
4800		Seashore	ADP Licensed	X
4816		Seashore	Sober Living	
6111		Seashore	ADP Licensed	
6110		W Oceanfront	ADP Licensed	
* "X" = Closed or closing				