

ORDINANCE NO. 15-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE BY ADDING CHAPTER XVI (GROUP HOMES, SOBER LIVING HOMES, AND RESIDENTIAL CARE FACILITIES) IN THE R2-MD, R2-HD AND R3 RESIDENTIAL ZONES AND THE PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (PLANNED DEVELOPMENT ZONES) OF TITLE 13 AND AMENDING SECTION 13-6 (DEFINITIONS) OF ARTICLE 2 (DEFINITIONS) OF CHAPTER I (GENERAL) AND SECTION 13-30 TABLE 13-30 (LAND USE MATRIX) OF CHAPTER IV OF ARTICLE 1 OF CHAPTER V OF TITLE 13

THE CITY COUNCIL OF THE CITY OF COSTA MESA MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THIS ORDINANCE:

WHEREAS, under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the residential characteristics of its R2MD, R2HD, and R3 zones; and planned development residential zones, which powers have been recognized by both the California Supreme Court and United States Supreme Court, the latter of which has stated that, "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"; and

WHEREAS, the Federal Fair Housing Act Amendments ("FHAA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of zoning ordinances which would on their face or have the effect of discriminating against equal housing opportunities for the handicapped; and

WHEREAS, a core purpose of the FHAA, FEHA and California's Lanterman Act is to provide a broader range of housing opportunities to the handicapped; to free the handicapped, to the extent possible, from institutional style living; and to ensure that handicapped persons have the opportunity to live in normal residential surroundings and use and enjoy a dwelling in a manner similar to the way a dwelling is enjoyed by the non-handicapped; and

WHEREAS, to fulfill this purpose the FHAA and FEHA also require that the City provide reasonable accommodations to its zoning ordinances if such accommodation is necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling; and

WHEREAS, the Lanterman Act fulfills this purpose in part by requiring cities to treat state licensed residential care facilities serving six or fewer as a residential use; and

WHEREAS, in enacting this Ordinance the City Council of the City of Costa Mesa is attempting to strike a balance between the City's and residents' interests of preserving the characteristics of residential neighborhoods and to provide opportunities for the handicapped to reside in such neighborhoods that are enjoyed by the non-handicapped; and

WHEREAS, over the past several years the City, County and State have seen a significant increase in the number of single- and multi-family homes being utilized as alcohol and drug recovery facilities for large numbers of individuals (hereafter, "sober living homes"); and

WHEREAS, the increase appears to be driven in part by the Substance Abuse and Crime Prevention Act of 2000 (hereafter, "the Act") adopted by California voters which provides that specified first-time drug and alcohol offenders are to be afforded the opportunity to receive substance abuse treatment rather than incarceration; and

WHEREAS, the Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment; and

WHEREAS, the City of Costa Mesa has seen a sharp increase in the number of sober living homes, which has generated secondary impacts including, but not limited to neighborhood parking shortfalls, overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of sober living facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, over the past 20 months from January 2014 to September 2015 the City experienced an increase of 25.4% in the number of sober living facilities and residential care facilities in the multiple-family residential zones. Those new facilities resulted in an increase of 142-beds, which is a 20.6% increase in beds since January of 2014. As of September 2015 the City had a total of 84 residential facilities, with 831-beds to treat drug and alcohol addiction located in its multiple-family residential districts; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1586 alcohol and drug recovery beds, divided as follows: 44 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 411 beds; 107 unlicensed sober living homes in residential zones, providing 600 beds; Included in those 107 homes are 41 homes who have submitted applications per the R1 Ordinance providing 252 beds; and 1 State Licensed Facility on two separate parcels, providing 76 beds in a non-residential zone; and 40 nonresidential services facilities, providing support services such as administrative offices, therapy etc.

WHEREAS, the City of Costa Mesa is currently home to almost 28.9% of the state licensed residential drug and alcohol treatment facilities in Orange County, while the City holds 3.6% of the County's population, thus it is reasonable to infer that unlicensed sober living homes are locating in the City at a higher concentration than in nearby communities; and

WHEREAS, over the last decade the number of sober living homes in the City of Costa Mesa is rapidly increasing, leading to an overconcentration of sober living homes in certain of the City's residential neighborhoods, which is both deleterious to the residential character of these neighborhoods and may also lead to the institutionalization of such neighborhoods; and

WHEREAS, the number of sober living homes has not increased to the point of overconcentration in certain Planned Development zones; and

WHEREAS, the purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the residential neighborhood of their choice; and

WHEREAS, recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered handicapped under both the FHAA and FEHA; and

WHEREAS, in 2008, the U.S. Department of Health and Human Services projected spending on substance abuse recovery to be \$35 billion annually by 2014 (source: *Projections of National Expenditures for Mental Health Services and Substance Abuse Treatment 2004-2014*, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Katharine R. Levit et al., 2008); and

WHEREAS, based on the City's experience it has become clear that at least some operators of sober living homes are driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential of recovery, or to provide a living environment which remotely resembles the manner in which the non-disabled use and enjoy a dwelling; and

WHEREAS, establishing distance requirements for sober living homes is reasonable and non-discriminatory and not only helps preserve the residential character of the R2MD, R2HD, and R3 zones; as well as the planned development residential neighborhoods, but also furthers the interest of ensuring that the handicapped are not living in overcrowded environments that are counterproductive to their well-being and recover; and

WHEREAS, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2008 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs); (2) the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; (3) neighbors generally do not know who or who does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) when residents disobey house rules they are often just kicked out of the house; (8) the residents generally do not share the same acquaintances; and (9) residents often pay significantly above-market rate rents; and

WHEREAS, the size and makeup of the households in sober living homes, even those allowed as a matter of right under the Costa Mesa Municipal Code, is dissimilar and larger than the norm, creating impacts on water, sewer, roads, parking and other City services that are far greater than the average household, in that the average number of persons per California household is 2.90 (2.68 persons per household according to the City's General Plan), while a sober living facility allowed as a matter of right would house six, which is in the top 5% of households in Orange County according to the most recent U.S. federal census data; and

WHEREAS, all the individuals residing in a sober living facility are generally over the age of 18, while the average household has just 2.2 individuals over the age of 18 according to the most recent federal census data; and

WHEREAS, the City and public utility providers utilize federal census data and other information relating to the characteristics of residential neighborhoods to, among other things: (1) determine the design of residential homes, residential neighborhoods, park systems, library systems, transportation systems; (2) determine parking and garage requirements of various (bedroom) sizes and density of units; (3) develop its General Plan and zoning ordinances; (4) determine police and fire staffing; (5) determine impacts to water, sewer and other services; and (5) establish impacts fees that fairly and proportionally fund facilities for traffic, parks, libraries, police and fire; and

WHEREAS, because of their extremely transient populations, above-normal numbers of individuals/adults residing in a single dwelling and the lack of regulations, sober living facilities present problems not typically associated with more traditional residential uses, including but not limited to: the housing of large numbers of unrelated adult who may or may not be supervised; disproportionate numbers of cars associated with a single housing unit, which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' use of their property; neighbors who have little to no idea who does and does not reside in the home; little to no participation in community activities that form and strengthen neighborhood cohesion; a history of

opening facilities in complete disregard of the Costa Mesa Municipal Code and with little regard for impacts to the neighborhood; disproportional impacts from the average dwelling unit to nearly all public services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of congregating in the same general area; and the potential influx of individuals with a criminal record; and

WHEREAS, a variable separation requirement will still allow for a reasonable market for the purchase and operation of sober living homes within the City and still result in preferential treatment for sober living homes in that non-handicapped individuals in a similar living situation (i.e., in boardinghouse-style residences) have fewer housing opportunities than the handicapped; and

WHEREAS, housing inordinately large numbers of unrelated adults in a single dwelling or congregating sober living homes in close proximity to each other does not provide the handicapped with an opportunity to “live in normal residential surroundings,” but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the handicapped, and which no reasonable person could contend provides a life in a normal residential surrounding; and

WHEREAS, notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living provides a benefit to the City and its residents; and

WHEREAS, without some regulation there is no way of ensuring that the individuals entering into a group home are handicapped individuals and entitled to reasonable accommodation under local and state law; that a group home is operated professionally to minimize impacts to the surrounding neighborhood; and that the secondary impacts from over concentration of both group homes in a neighborhood and large numbers of unrelated adults residing in a single facility in an individual home are lessened; and

WHEREAS, in addition to group homes locating in residential neighborhoods other state-licensed residential care facilities for six or fewer persons who are mentally disordered or otherwise handicapped or supervised, are also taking up residence in these neighborhoods; and

WHEREAS, the purpose of group homes for the handicapped is to provide the handicapped an equal opportunity to comfortably reside in the residential neighborhood of their choice; and

WHEREAS, no residential developments of any kind are permitted in the I&R (Institutional and Recreation) zone, and no group homes exist in this zone at the time of the adoption of this ordinance; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1: The following definition in Section 13-6 (Definitions) of Article 2 (Definitions) of Chapter I (General) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

Boardinghouse. A residence or dwelling, other than a hotel, wherein rooms are rented under two (2) or more separate written or oral rental agreements, leases or subleases or combination thereof, whether or not the owner, agent or rental manager resides within the residence. Boardinghouse, small means two (2) or fewer rooms being rented. Boardinghouse, large means three (3) to six (6) rooms being rented. Boardinghouses renting more than 6 rooms are prohibited.

Section 2: Chapter XVI (Group homes and residential care facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

13-320. - Purpose.

This chapter is intended to preserve the residential character the City of Costa Mesa's residential neighborhoods and to further the purposes of the FEHA, the FHAA and the Lanterman Act by, among other things: (1) ensuring that group homes are actually entitled to the special accommodation and/or additional accommodation provided under the Costa Mesa Municipal Code and not simply skirting the City's boarding house regulations; (2) limiting the secondary impacts of group homes by reducing noise and traffic, preserving safety and providing adequate off-street parking; (3) providing an accommodation for the handicapped that is reasonable and actually bears some resemblance to the opportunities afforded non-handicapped individuals to use and enjoy a dwelling unit in a residential neighborhood; and (4) to provide

comfortable living environments that will enhance the opportunity for the handicapped, including recovering addicts to be successful in their programs.

13-321. - Definitions.

Property. For purposes of this chapter, property is defined as any single development lot that has been subdivided bearing its own assessor's parcel number or with an approved subdivision map or condominium map.

13-322. - Group Homes in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with Six or Fewer Occupants.

(a) A special use permit shall be required for and may be granted to permit the operation of a group home including a sober living home with six or fewer occupants in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones) zones subject to the following conditions:

(1) The application complies with subsections (a)(1), (a)(2) and (a)(4) through (a)(10) of Section 13-311.

(2) The application includes a live scan of the house manager and/or operator of the group home.

(3) The group home or sober living home is at least 650 feet from any other property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(4) Upon eviction from or involuntary termination of residency in a group home, the operator of the group home shall make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home. The group home operator may not satisfy this obligation by providing remuneration to the occupant for the cost of transportation.

(b) An applicant may seek relief from the strict application of this section by submitting an application to the director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to section 13-200.62.

(c) Notwithstanding any provision of section 13-3119(b) to the contrary, the Development Services Director may revoke or deny a special

use permit for a group home subject to this chapter following the director's determination that any of the circumstances set forth in Section 13-311(b)(1) through (b)(5), (b)(6)(ii), (b)(6)(iii) and (b)(7) exist.

13-323. - Conditional Use Permit Required for Group Homes, Residential Care Facilities and Drug and Alcohol Treatment Facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with 7 or More Occupants.

A conditional use permit shall be required for and may be granted to allow the operation of a group home, state licensed residential care facility or state licensed drug and alcohol treatment facility with seven (7) or more occupants in **the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones)** zones subject to the following conditions:

(a) The requirements of Chapter III PLANNING APPLICATIONS have been met.

(b) The group home, residential care facility or state licensed drug and alcohol treatment facility is at least six-hundred fifty feet from any property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(c) The applicant obtains an operator's permit as required by Article 23, Chapter 2 of Title 9 except that this requirement shall not apply to any state licensed residential care facility or state licensed drug and alcohol treatment facility.

(d) The findings for granting a conditional use permit in accordance with Section 13-29(g) are met.

13-324. - Compliance.

(a) Group homes in the in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with six (6) or fewer occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. A complete application for a special use permit is filed within 90 days of the effective date of this ordinance; and
2. The group home is in full compliance with all of the conditions of this ordinance within one (1) year of its effective date. Notwithstanding the foregoing, existing group homes obligated by a written lease exceeding one (1) year from the effective date of the ordinance, or whose activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are

eligible for up to one (1) additional years grace period pursuant to planning division approval.

(b) Group homes, state licensed residential care facilities and state licensed drug and alcohol treatment facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with seven (7) or more occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. The operator of a group home obtains an operator's permit pursuant to section 9-372 et seq. within 120 days from the effective date of this ordinance; and
2. The group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility is in full compliance with all conditions of this ordinance, including obtaining a conditional use permit, within one (1) year from the effective date of this ordinance. Notwithstanding the foregoing, an existing group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility obligated by a written lease exceeding one (1) year from the effective date of the ordinance, or whose activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are eligible for up to one (1) additional years grace period pursuant to planning division approval.

13-325. - Severability.

Should any section, subsection, clause, or provision of this chapter for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

Section 3: Subdivisions (4) through (10) of Section 13-30 Table 13-30 of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

See Attachment A.

Section 4: Footnote 5 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby amended to read as follows:

⁵ 650 foot separation required between sober living homes, or from state licensed alcohol or drug abuse recovery or treatment facilities. CMMC 13-311(a)(10)(i).

Section 5: Footnotes 6, 7 and 8 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

⁶ Subject to the separation requirements set forth in Section 13-322(a)(3).

⁷ Small boardinghouses shall locate at least 650 feet from any other small boardinghouse. Large boardinghouses shall be located at least 1,000 feet from any other boardinghouse.

⁸ Uses prohibited in the base zoning district of a Mixed-Use Overlay Zone shall also be prohibited in the Overlay Zone.

Section 6: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 7: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 8: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2015

Stephen Mensinger, Mayor

ATTEST:

Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2015, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2015, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Brenda Green
City Clerk of the City of Costa Mesa

Attachment A

TABLE 13-30 CITY OF COSTA MESA LAND USE MATRIX																						
LAND USES	Z O N E S																					
	R 1	R 2 M D	R 2 H D	R 3	A P	C L	C 1	C 2	C 1 S¹	T C¹	M G	M P	P D R L D 1	P D R M D 1	P D R H D 1	P D R N C M¹	P D C 1	P D I¹	I & R¹	I & R S¹	P	
RESIDENTIAL USES																						
1. Single-family dwellings (single housekeeping units)	P ⁴	P	P	P	•	•	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•	
2. Multi-family dwellings	•	P	P	P	•	•	•	•	•	P	•	•	P	P	P	P	P	P	•	•	•	
2.1 Common interest developments, residential	•	P	P	P	•	•	•	•	•	P	•	•	P	P	P	P	P	P	•	•	•	
2.2 Small lot subdivisions, residential	•	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	
3. Mobile home parks	•	C	C	C	•	•	•	•	•	•	•	•	C	C	C	C	C	C	•	•	•	
4. Boardinghouse, small ⁷	•	P	P	P	•	•	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•	
5. Boardinghouse, large ⁷	•	C	C	C	•	•	•	•	•	•	•	•	•	C	C	C	C	C	•	•	•	
6. Residential care facility, 6 or fewer persons (State licensed)	P	P	P	P	•	•	•	•	•	•	•	•	P	P	P	P	P	P	P	•	•	
7. Group homes, 6 or fewer	S	S ⁶	S ⁶	S ⁶	•	•	•	•	•	•	•	•	S ⁶	S ⁶	S ⁶	S ⁶	S ⁶	S ⁶	P	•	•	
7.1. Sober living homes, 6 or fewer	S ⁵	S ⁶	S ⁶	S ⁶	•	•	•	•	•	•	•	•	S ⁶	S ⁶	S ⁶	S ⁶	S ⁶	S ⁶	P	•	•	
8. Residential care facility, 7 or more	•	C ⁶	C ⁶	C ⁶	•	•	•	•	•	•	•	•	•	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	P	•	•
9. Group homes, 7 or more	•	C ⁶	C ⁶	C ⁶	•	•	•	•	•	•	•	•	•	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	P	•	•
9.1 Sober living homes, 7 or more	•	C ⁶	C ⁶	C ⁶	•	•	•	•	•	•	•	•	•	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	C ⁶	P	•	•
10. Referral facility (Subject to the requirements of Section 13-32.2 Referral facility).	•	C ²	C ²	C ²	•	•	•	C ²	•	•	•	•	•	C ²	C ²	•	•	•	•	•	•	

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; • - Prohibited; and S – Special Use Permit
5. 650 foot separation required between sober living homes, or from state licensed alcohol or drug abuse recovery or treatment facilities. CMMC 13-311(a)(10)(i).
6. Subject to the separation requirements set forth in Section 13-322(a)(3) and 13-323(b).
7. Small boardinghouses shall locate at least 650 feet from any other small boardinghouse. Large boardinghouses shall be located at least 1,000 feet from any other boardinghouse.
8. Uses prohibited in the base zoning district of a mixed-use overlay zone shall also be prohibited in the overlay zone.

ORDINANCE NO. 15-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 9 OF THE COSTA MESA MUNICIPAL CODE BY AMENDING SECTIONS 9-116 (ISSUING OFFICER) AND 9-125 (BUSINESSES ETC. REQUIRING PERMIT) OF ARTICLE I OF CHAPTER II OF TITLE 9 AND TO ADD SECTION 131 (BUSINESSES WHERE DEVELOPMENT SERVICES DIRECTOR MAY ISSUE PERMIT) OF ARTICLE I OF CHAPTER II OF TITLE 9 AND ARTICLE XXIII (GROUP HOMES) OF CHAPTER II OF TITLE 9

THE CITY COUNCIL OF THE CITY OF COSTA MESA MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THIS ORDINANCE:

WHEREAS, in enacting this Ordinance the City Council of the City of Costa Mesa is attempting to strike a balance between the City's and residents' interests of preserving the characteristics of residential neighborhoods and to provide opportunities for the handicapped to reside in such neighborhoods that are enjoyed by the non-handicapped; and

WHEREAS, over the past several years the City, County and State have seen a significant increase in the number of single- and multi-family homes being utilized as alcohol and drug recovery facilities for large numbers of individuals (hereafter, "sober living homes"); and

WHEREAS, the increase appears to be driven in part by the Substance Abuse and Crime Prevention Act of 2000 (hereafter, "the Act") adopted by California voters which provides that specified first-time drug and alcohol offenders are to be afforded the opportunity to receive substance abuse treatment rather than incarceration; and

WHEREAS, the Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment; and

WHEREAS, the City of Costa Mesa has seen a sharp increase in the number of sober living homes, which has generated secondary impacts including, but not limited to neighborhood parking shortfalls, overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of sober living facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, over the past 20 months from January 2014 to September 2015 the City experienced an increase of 25.4% in the number of sober living facilities and residential care facilities in the multiple-family residential zones. Those new facilities resulted in an increase of 142-beds, which is a 20.6% increase in beds since January of 2014. As of September 2015 the City had a total of 84 residential facilities, with 831-beds to treat drug and alcohol addiction located in its multiple-family residential districts; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1586 alcohol and drug recovery beds, divided as follows: 44 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 411 beds; 107 unlicensed sober living homes in residential zones, providing 600 beds; Included in those 107 homes are 41 homes who have submitted applications per the R1 Ordinance providing 252 beds; and 1 State Licensed Facility on two separate parcels, providing 76 beds in a non-residential zone; and 40 nonresidential services facilities, providing support services such as administrative offices, therapy etc.

WHEREAS, the City of Costa Mesa is currently home to almost 28.9% of the state licensed residential drug and alcohol treatment facilities in Orange County, while the City holds 3.6% of the County's population, thus it is reasonable to infer that unlicensed sober living homes are locating in the City at a higher concentration than in nearby communities; and

WHEREAS, over the last decade the number of sober living homes in the City of Costa Mesa is rapidly increasing, leading to an overconcentration of sober living homes in certain of the City's residential neighborhoods, which is both deleterious to the residential character of these neighborhoods and may also lead to the institutionalization of such neighborhoods; and

WHEREAS, the number of sober living homes has not increased to the point of overconcentration in certain Planned Development zones; and

WHEREAS, the purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the residential neighborhood of their choice; and

WHEREAS, recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered handicapped under both the FHAA and FEHA; and

WHEREAS, in 2008, the U.S. Department of Health and Human Services projected spending on substance abuse recovery to be \$35 billion annually by 2014 (source: *Projections of National Expenditures for Mental Health Services and*

Substance Abuse Treatment 2004-2014, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Katharine R. Levit et al., 2008); and

WHEREAS, based on the City's experience it has become clear that at least some operators of sober living homes are driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential of recovery, or to provide a living environment which remotely resembles the manner in which the non-disabled use and enjoy a dwelling; and

WHEREAS, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2008 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs); (2) the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; (3) neighbors generally do not know who or who does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) when residents disobey house rules they are often just kicked out of the house; (8) the residents generally do not share the same acquaintances; and (9) residents often pay significantly above-market rate rents; and

WHEREAS, the size and makeup of the households in sober living homes, even those allowed as a matter of right under the Costa Mesa Municipal Code, is dissimilar and larger than the norm, creating impacts on water, sewer, roads, parking and other City services that are far greater than the average household, in that the average number of persons per California household is 2.90 (2.68 persons per household according to the City's General Plan), while a sober living facility allowed as a matter of right would house six, which is in the top 5% of households in Orange County according to the most recent U.S. federal census data; and

WHEREAS, all the individuals residing in a sober living facility are generally over the age of 18, while the average household has just 2.2 individuals over the age of 18 according to the most recent federal census data; and

WHEREAS, notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living provides a benefit to the City and its residents; and

WHEREAS, without some regulation there is no way of ensuring that the individuals entering into a group home are handicapped individuals and entitled to reasonable accommodation under local and state law; that a group home is operated professionally to minimize both the impacts to the surrounding neighborhood as well as to the residents of the group homes; and that the secondary impacts from over concentration of both group homes in a neighborhood and large numbers of unrelated adults residing in a single facility in an individual home are lessened; and

WHEREAS, regulation of the operations of larger group homes in the multi-family zones pursuant to the business license provisions of Title 9 is necessary to protect the health, safety, and welfare of the residents of the City, including the residents or occupants of the group homes themselves; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1: Sections 9-116 and 9-125 of Article I of Chapter II of Title 9 are amended, and Section 131 of Article I of Chapter II of Title 9 and Article XXIII of Chapter II of Title 9 are hereby added, to read as follows:

Article I.

9-116. - Issuing officer.

"Issuing officer" shall mean the city council of Costa Mesa, the director of finance, the fire chief, the chief of police, or the development services director.

9-125. - Businesses, professions, trades and occupations requiring a permit under the provisions of this chapter.

(q) Group homes, as defined in section 13-6, that have seven (7) or more occupants.

9-131. - Businesses where the development services director may issue permit.

The development services director may issue permits for operation of a group home located in the in the **R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones)** Zones pursuant to the requirements of Article XXIII of this Chapter.

Article XXIII GROUP HOMES

9-370. - Definitions

The definitions set forth in Title 13 of this Code shall apply to the provisions of this article unless otherwise provided for herein.

9-371. - Zoning requirements.

In addition to the requirements of this article, all group homes subject to this article shall comply with the requirements set forth in Chapter XVI of Title 13 of this Code.

9-372. – Operator’s permit required.

It shall be unlawful for any person to operate, or to permit any person to operate, a group home on any property located within the R2MD, R2HD, R3, PDRLD, PDRMD and/or PDRHD zone, without a valid permit issued for that group home pursuant to the provisions of this article.

9-373. – Exceptions.

The requirements of this article shall not apply to:

- (a) A group home that has six (6) or fewer occupants, not counting a house manager, and that is in compliance with the applicable provisions of Chapters XV and XVI of Title 13 of this code;
- (b) A state licensed *alcoholism or drug abuse recovery or treatment facility*;
or
- (c) *A state licensed residential care facility.*

9-374. Requirements for issuance of operator’s permit.

(a) The owner/operator shall submit an application to the director that provides the following information:

- (1) the name, address, phone number and driver's license number of the owner/operator;

- (2) the name, address, phone number and driver's license number of the house manager;
- (3) a copy of the group home rules and regulations;
- (4) written intake procedures;
- (5) the relapse policy;
- (6) an affirmation by the owner/operator that only residents (other than the house manager) who are handicapped as defined by state and federal law shall reside at the group home;
- (7) blank copies of all forms that all residents and potential residents are required to complete; and
- (8) a fee for the cost of processing of the application as set by resolution of the city council.

(b) Requirements for operation of group homes.

- (1) The group home has a house manager who resides at the group home or any multiple of persons acting as a house manager who are present at the group home on a twenty-four-hour basis and who are responsible for the day-to-day operation of the group home.
- (2) All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Residents and the house manager may each only store or park a single vehicle at the dwelling unit or on any street within five hundred (500) feet of the dwelling unit. The vehicle must be operable and currently used as a primary form of transportation for a resident of the group home.
- (3) Occupants must not require and operators must not provide "care and supervision" as those terms are defined by Health and Safety Code Section 1503.5 and Section 80001(c)(3) of title 22, California Code of Regulations.
- (4) Integral group home facilities are not permitted. Applicants shall declare, under penalty of perjury, that the group home does not operate as an integral use/facility.
- (5) If the group home operator is not the property owner, written approval from the property owner to operate a group home at the property.
- (6) Upon eviction from or involuntary termination of residency in a group home, the operator of the group home shall make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home. The group home operator may not satisfy this obligation by providing remuneration to the occupant for the cost of transportation.

- (7) The property must be fully in compliance with all building codes, municipal code and zoning.
- (8) In addition to the regulations outlined above, the following shall also apply to sober living homes:
 - i. All occupants, other than the house manager, must be actively participating in legitimate recovery programs, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous and the sober living home must maintain current records of meeting attendance. Under the sober living home's rules and regulations, refusal to actively participate in such a program shall be cause for eviction.
 - ii. The sober living home's rules and regulations must prohibit the use of any alcohol or any non-prescription drugs at the sober living home or by any recovering addict either on or off site. The sober living home must also have a written policy regarding the possession, use and storage of prescription medications. The facility cannot dispense medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least ninety (90) days. Any second violation of this rule shall result in permanent eviction. Alternatively, the sober living home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.
 - iii. The number of occupants subject to the sex offender registration requirements of Penal Code Section 290 does not exceed the limit set forth in Penal Code Section 3003.5 and does not violate the distance provisions set forth in Penal Code Section 3003.
 - iv. The sober living home shall have a written visitation policy that shall preclude any visitors who are under the influence of any drug or alcohol.
 - v. The sober living home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. The good neighbor policy shall establish a written protocol for the house manager/operator to follow when a neighbor complaint is received.
 - vi. The sober living home shall not provide any of the following services as they are defined by Section 10501(a)(6) of Title 9,

California Code of Regulations: detoxification; educational counseling; individual or group counseling sessions; and treatment or recovery planning.

- (c) An applicant may seek relief from the strict application of this section by submitting an application to the director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to Article 15 of Chapter IX of Title 13 of this Code.
- (d) The operator's permit shall be issued by the director if the applicant is in compliance, or, where applicable, has agreed to comply, with the requirements of subsections (a) and (b) above.
- (e) In addition to denying an application for failing to comply, or failing to agree to comply, with subsections (a) and/or (b), an application shall be denied by the director under any of the following circumstances:
 - (1) Any owner/operator or staff person has provided materially false or misleading information on the application or omitted any pertinent information.
 - (2) Any owner/operator or staff person has an employment history in which he or she was terminated during the past two (2) years because of physical assault, sexual harassment, embezzlement or theft; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.
 - (3) Any owner/operator or staff person has been convicted of or pleaded nolo contendere, within the last seven (7) to ten (10) years, to any of the following offenses:
 - i. Any sex offense for which the person is required to register as a sex offender under California Penal Code Section 290 (last ten (10) years);
 - ii. Arson offenses—Violations of Penal Code Sections 451—455 (last seven (7) years); or
 - iii. Violent felonies, as defined in Penal Code Section 667.5, which involve doing bodily harm to another person (last ten (10) years).
 - iv. The unlawful sale or furnishing of any controlled substances (last seven (7) years).
 - (4) Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.
 - (5) The owner/operator accepts residents, other than a house manager, who are not disabled or handicapped as defined by the FHAA and FEHA.
 - (6) An operator's permit for a sober living home shall also be denied, and if already issued shall be revoked upon a hearing by the director, under any of the following additional circumstances:

- i. The owner/operator of a sober living home fails to immediately take measures to remove any resident who uses alcohol or illegally uses prescription or non-prescription drugs, or who is not actively participating in a legitimate recovery program from contact with all other sober residents.
- ii. For any other significant and/or repeated violations of this section and/or any other applicable laws and/or regulations.

9-375. – Transfer of operator’s permit.

- (a) An operator’s permit shall not be valid for a location other than the property for which it is issued, unless and until the transfer of the permit is approved by the director pursuant to the requirements of section 9-374.
- (b) An operator’s permit may not be transferred to any other person or entity. No operator’s permit issued pursuant to this article shall be transferred or assigned or authorize any person or entity other than the person or entity named in the permit to operate the group home named therein.

9-376. - Revocation of operator’s permit.

An operator’s permit may be revoked upon a hearing by the director pursuant to section 9-120 for failing to comply with the terms of the permit and/or for failing to comply with the applicable provisions of section 9-374.

9-377. – Reapplication after denial or revocation.

- (a) An applicant for an operator’s permit whose application for such an operator’s permit has been denied may not reapply for such an operator’s permit for a period of six (6) months from the date such notice of denial was issued.
- (b) A holder of an operator’s permit that has been cancelled, revoked or otherwise invalidated may not reapply for an operator’s or a user’s permit for a period of six (6) months from the date that such revocation, cancellation or invalidation became final.

9-378. – Compliance.

A group home that is subject to the provisions of this article that is in existence as of the effective date of this ordinance shall have 120 days to comply with the provisions of this article.

Section 2: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 3: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 4: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2015

Stephen Mensinger, Mayor

ATTEST:

Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2015, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2015, was duly passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Brenda Green
City Clerk of the City of Costa Mesa