CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 18, 2017 **ITEM NUMBER: PH-2**

SUBJECT: CODE AMENDMENT CO-17-02 TO AMEND SECTIONS OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (PLANNING, ZONING AND DEVELOPMENT), RELATING TO GROUP HOMES, RESIDENTIAL CARE FACILITIES, AND REASONABLE ACCOMMODATION; AND

CODE AMENDMENT CO-17-02 TO AMEND VARIOUS SECTION OF TITLE 9 OF THE COSTA MESA MUNICIPAL CODE REGARDING OPERATOR'S PERMITS FOR GROUP HOMES OF SEVEN OR MORE LOCATED IN THE CITY'S MULTI-FAMILY ZONES

DATE: APRIL 6, 2017

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: SHERI VANDER DUSSEN, AICP, INTERIM ASSISTANT DIRECTOR

FOR FURTHER INFORMATION CONTACT: Sheri Vander Dussen (714) 754-5617
Sheri.vanderdussen@costamesaca.gov

RECOMMENDATION:

1. Combine the public hearings for these two code amendments into a single hearing.

2. Introduce for first reading Ordinance No. 17-xx adopting Code Amendment CO-17-02 to amend various sections of Title 13 of the Costa Mesa Municipal Code regarding group homes and reasonable accommodation, as presented to the Planning Commission (Attachment 1); or

3. Introduce for first reading Ordinance No. 17-xx adopting Code Amendment CO-17-02 to amend various sections of Title 13 of the Costa Mesa Municipal Code regarding group homes and reasonable accommodation, as recommended by the Planning Commission (Attachment 3); and

4. Introduce for first reading Ordinance No. 17-xx adopting Code Amendment CO-17-02 to amend various sections of Title 9 of the Costa Mesa Municipal Code regarding operator's permits for group homes of seven or more located in the MFR Zones (Attachment 4).

ANALYSIS:

The first ordinance will modify Title 13 of the Costa Mesa Municipal Code (CMMC) with regard to group homes, state licensed facilities and boardinghouses in the Multiple-

Family and Single-Family Residential zones and Planned Development zones. The revisions are intended to better conform the City's review of these applications to applicable state and federal law, and provide additional protections for residents of these facilities.

The second ordinance will modify Title 9 of the CMMC to amend the requirements for operator's permits for group homes serving seven or more residents in the City's multi-family residential (MFR) zones.

Background

On October 21, 2014, the City Council adopted Ordinance 14-13 revising Title 13 of the CMMC to add Chapter XV, which established conditions for granting a special use permit to group homes, residential care facilities and alcohol and drug treatment facilities serving six or fewer residents in the City's single-family residential (R1) zones. On November 17, 2015, the City Council adopted Ordinance 15-11 to add Chapter XVI, which established conditions for granting a special use permit to group homes, residential care facilities and alcohol and drug treatment facilities serving six or fewer residents, and a conditional use permit to such facilities serving seven or more residents in the City's multiple family residential zones (R2-MD, R2-HD, R3 PDR-MD, PDR-HD, PDR-NCM, PDC, and PDI).

Pursuant to the Health & Safety Code, facilities licensed by the state of California Departments of Social Services or Health Care Services to provide services to six or fewer residents are deemed to be residential uses and are generally not subject to local regulation other than those that apply to similarly situated dwellings. However, unlicensed facilities serving six or fewer residents, and all licensed and unlicensed facilities serving seven or more residents, are subject to compliance with the City's zoning regulations. Persons who are recovering from addiction to drugs and/or alcohol are considered to be disabled under state and federal law. The City cannot treat these residents differently than it treats residents who are not disabled.

Pursuant to these ordinances, the City has received and decided the following applications:

	Apps received	Apps approved	Apps denied	Apps pending	Appeals to Council
Special Use Permits	19	11	4	4	4
Conditional Use Permits	26	1	3	22	4

The Planning Commission reviewed the proposed ordinance at its meeting of March 27, 2017. By a vote of 4-0, with Commissioner Navarro Woods absent, the Commission voted to recommend that the City Council adopt the proposed ordinance, with several modifications. The Commission specified that only certain revisions should be adopted,

and proposed additional provisions. An excerpt of the minutes of the Planning Commission meeting is included as Attachment 4 to this report. The staff report presented to the Commission is Attachment 5. The Commission's recommendations will be described following the description of each proposed amendment.

Proposed Code Amendment: Revisions to the Zoning Code (Title 13)

The proposed revisions will modify the review process for group homes subject to the requirements of Ordinances 14-13 and 15-11. The modifications will clarify findings required to approve requests for reasonable accommodations and will allow decisions on reasonable accommodation to be appealed to the City Council. The revisions will change the permit requirement for group homes serving seven or more residents to a minor conditional use permit instead of a conditional use permit. The revisions would also add requirements for operators to follow in cases where a resident is involuntarily discharged, and specify that vehicles serving the group home must comply with the operational requirements of the Vehicle Code.

Reasonable Accommodation

A reasonable accommodation may be requested when strict compliance with one or more of the City's standards is not feasible because it would deny the disabled equal opportunity to use and enjoy a dwelling. Under the federal Fair Housing Amendments Act, the City is required to make reasonable accommodations from the Zoning Code. While reasonable accommodation requests are often filed in connection with applications for group homes and residential care facilities, these procedures are available to all applicants. Requests for reasonable accommodation are reviewed and decided by the Director of Economic and Development Services. Decisions of the Director are posted online and may be appealed within seven days to the Planning Commission.

Revisions to Section 13-200.62 of the CMMC will make the following changes:

- The standard of review for an appeal is changed to a de novo hearing, meaning the Planning Commission may consider the project in its entirety. Further, the decision of the Planning Commission is made appealable to the City Council. These changes bring Section 13.200.62 into conformance with the procedures for virtually all other appeals. Currently, the Code specifies that appeal hearings shall not be de novo, and that there shall be no appeal of the Planning Commission's decision to the City Council.
- The grounds on which to evaluate requests for reasonable accommodation have been clarified. For example, the Director may consider the scale and intensity of residential uses in the surrounding neighborhood when evaluating an accommodation request, or potential adverse external impacts on properties in the vicinity. The standard for evaluation of economic impacts now indicates that this finding applies to relevant market participants generally, not just to a particular applicant.

Planning Commission Recommendation: The Planning Commission supported these revisions to the provisions addressing reasonable accommodation. They are reflected in both attached ordinances.

Review process for group homes in multi-family zones containing seven or more residents

Currently, group homes serving seven or more residents require approval of a conditional use permit (CUP). CUPs are reviewed and decided by the Planning Commission at a noticed public hearing. The proposed revisions will streamline the review process by requiring a ***Minor*** CUP instead. A Minor CUP is decided by the City's Zoning Administrator. The findings required to approve a minor CUP and a regular CUP are the same. Notice is given of the pending action in the same manner as notice is given for Planning Commission hearings; however, the Zoning Administrator does not hold a public hearing. Instead, the Zoning Administrator considers all written input provided by a specified date before rendering a decision. The Zoning Administrator may approve, deny or conditionally approve a minor CUP. Decisions of the Zoning Administrator are published on the City's website and may be appealed to the Planning Commission. Appeals will be considered by the Planning Commission at a fully noticed public hearing. Decisions of the Planning Commission on such appeals may be appealed to the City Council. Again, appeals will be considered by the City Council at a noticed public hearing.

The Zoning Code identifies more than two dozen land uses that are subject to review and approval of a minor CUP. This review process is generally employed when decisions are to be based on compliance with standards set forth in the Zoning Code. In the case of group homes, the City has adopted detailed regulations governing the location and operation of group homes. These standards lend themselves to the streamlined procedure available through the Minor CUP process. It is intended that this modification to permit requirements will be retroactive, meaning all CUP applications on file will be processed as Minor CUPs.

Planning Commission Recommendation**:** The Planning Commission did not support this proposal to require minor CUPs for group homes and drug and alcohol treatment facilities in residential zones. The Planning Commissioners indicated that public input was an important component of the review of group home applications and wished to maintain the requirement to decide these applications after a public hearing. The ordinance presented as Attachment 3 reflects this recommendation.

Review process for group homes in single-family and multi-family zones containing six or fewer residents

Facilities licensed by the state to care for up to six residents are exempt from local regulation per state law. However, unlicensed group homes serving up to six residents in any residential zone must obtain approval of a Special Use Permit (SUP). Presently, the Director of Economic and Development Services is authorized to approve or deny

these permits, based on the facility's compliance with the adopted standards for location and operation. If the facility is located in the R-1 zone and does not comply, the Director currently is obligated to hold a hearing prior to making a determination to deny the application. For properties in the MFR zones, the director is not required to hold a hearing to deny an application, but has been doing so as a matter of course. Given that the Director has very limited ability to approve an application that does not comply with the City's standards, the hearing has not proven to be relevant to the decision process. The proposed revisions would provide consistency between the requirements for R-1 and MRF zones, and allow the Director to make a determination to approve or deny a SUP without holding a hearing. Decisions would still be posted on the City's website and appealable to the Planning Commission and the City Council. This provision is also intended to be retroactive to applications already on file.

Planning Commission Recommendation: The Planning Commission supported this modification to make consistent the procedures for denying SUPs in the single-family and multi-family zones.

Staff would like to propose an amendment to the draft language. This language was not discussed with the Commission. Staff believes it is appropriate for the Director to hold a hearing prior to *revocation* of any SUP; this process would give the operator an opportunity to present evidence to the Director as to why an issued permit should not be revoked. This process is also consistent with the existing provisions of the Title 9 operator's permit procedures. If the Director can revoke the permit solely based on a determination, the operator would have to pay for an appeal of the Director's decision to the Planning Commission in order to present evidence. Staff recommends that Section 13-311 be revised as follows:

(b) The special use permit shall be issued by the director as a ministerial matter if the applicant is in compliance or has agreed to comply with subsections (a)(1) through (a)(12) above. The issuance of the special use permit shall be denied upon a determination, and if already issued~~,~~ ~~any transfer~~ shall be ~~denied or~~ revoked~~,~~ upon a hearing, by the director under any of the following circumstances…

This change has been incorporated into Attachments 1, 2 and 3.

Eviction/involuntary termination of residency

The Zoning Code already requires a facility operator to take certain steps when a resident is evicted or involuntarily discharged from the facility. These steps are intended to protect residents in recovery at the facility. For group homes of any size located in the MFR zones, the operator must make available transportation to the address listed on the resident's driver's license or permanent address. The group home operator may not satisfy this requirement simply by providing payment for such transportation. The proposed amendment would add the following provisions:

- The for group homes of 6 or fewer located in the R-1 zones, adds the requirement from the MFR zones that the operator must make available

transportation to the address listed on the resident's driver's license or permanent address.

- For all group homes, the operator must notify the resident's emergency contact or contact of record that the resident is no longer living at the facility.
- The operator must contact the Orange County Health Care Agency's OC Links Referral Line to determine what services, if any, might be available to the resident. Any information obtained must be shared with the resident prior to their release.
- The operator must contact the City's Network for Homeless Solutions and determine what services, if any, might be available to the resident. Again, this information must be provided to the resident prior to release.
- The operator must maintain records for a period of one year following eviction or involuntary termination of the resident to document compliance with these notice provisions.

Staff is making these recommendations in part because residents in group homes come from all parts of the country. As such, those from outside of the area often lack a local support system and are especially vulnerable to becoming homeless. These new requirements are intended to minimize the opportunity for the resident to become homeless immediately upon involuntary separation from the group home.

Planning Commission Recommendation**:** The Planning Commission supported these revisions. They appear in both attached ordinances amending Title 13.

Compliance with Vehicle Code

The new provisions will reinforce the obligations of drivers making deliveries of supplies or passengers to comply with all applicable provisions of the California Vehicle Code, such as those related to parking, stopping and licensure.

Planning Commission Recommendation**:** The Planning Commission did not include these revisions to the Vehicle Code in its recommendation. However, the Commission did not discuss any objections to these provisions. Nevertheless, these provisions are not included in Attachment 3.

Required Separation between Group Homes

The zoning code requires group homes serving those in recovery to be at least 650 feet from any other similar group home. The proposed amendment will maintain this standard, and it will add language that would allow the Director of Economic and Development Services to allow a smaller separation if it can be determined that such location will not result in an over-concentration of similar uses in the neighborhood.

The intent of the separation requirement was to prevent the over-concentration of group homes in a single block. Sometimes, a group home located two streets away from the subject facility will create a separation issue, or the separation between an existing and

proposed facility is almost 650 feet. Approval of the proposed language will provide the Director with more latitude to approve a location that is consistent with the City's intent to avoid over-concentration of group homes in a block.

Planning Commission Recommendation: The Planning Commission did not support this modification. The Commissioners indicated that the City should strive to maintain the specified separation between facilities. These provisions are not included in Attachment 3.

Additional Modifications proposed by the Planning Commission

The Planning Commission recommended the following additions to the ordinance.

- Minor Revisions to Section 13-311

The Planning Commission inserted the words "an occupant's" to certain sentences in sections 13-311(a)10 and 11 and 13-322(a)4 and 5 to clarify that the provisions apply to the involuntary termination of eviction of an occupant. Staff has no objections to the proposed changes, which have been incorporated into all ordinances attached to this report.

- Restrictions on Number of Occupants on Parole or Probation

The Planning Commission recommended that the number of persons on probation or parole be limited to one in each facility. The Commissioners noted that the City of Orange imposes such a prohibition. Staff does not support this recommendation, as state law restricts where persons falling into these categories may reside; such a provision would likely be preempted by state law. This type of restriction was considered and rejected during the initial drafting of Ordinance 14-13, notwithstanding a similar prohibition in the City of Orange's group home ordinance. This revision has not been incorporated into Attachment 3.

- Collection of Transient Occupancy Tax

The Planning Commission recommended that the City require operators to pay Transient Occupancy Tax (TOT) on stays shorter than 30 days in group homes or licensed alcohol and drug treatment facilities in a residential zone. If the City Council wishes to collect TOT, staff recommends that the Council initiate an effort to impose this tax on all short-term rentals throughout the City. This revision has not been incorporated into Attachment 3.

- Noticing Requirements for Group Homes

The motion adopted by the Planning Commission did not technically include modifications to noticing for group homes, but a review of the tape of the meeting led staff to conclude that the Commission did intend to include this change in its

recommendation. The Municipal Code specifies that notices for public hearings held by the Planning Commission shall be provided to all owners of property within 500 feet of the subject property, when mailed notice is required. The Planning Commission recommended that the City expand the distance to include all properties within 650 feet of a group home or licensed alcohol and drug treatment facility in a residential zone. Should the City Council wish to expand the noticing boundaries, staff recommends that the Council direct the staff to initiate an amendment to the zoning code that would apply the new notice requirements to all public hearings conducted by the Planning Commission. This revision has not been incorporated into Attachment 3.

Proposed Code Amendments to Title 13:
Revisions to Title 9 Operator's Permit Requirements

Ordinance 17-xx revises Section 9-374 of Article 23 (Group Homes) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulations) relating to the requirements for issuance of an operator's permit. The two proposed revisions mirror the additions to the Special Use Permit for involuntary termination of occupancy and compliance with the Vehicle Code discussed above. Because Ordinance 17-xx does not revise the Zoning Code, it was not presented to the Planning Commission.

ENVIRONMENTAL DETERMINATION:

The 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 CEQA because there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

LEGAL REVIEW:

The draft ordinance has been reviewed and approved as to form by the City Attorney's Office.

CONCLUSION:

Staff recommends that the City Council adopt revisions to the regulations for group homes and licensed drug and alcohol treatment facilities in residential zones. Attachment 1 is the draft ordinance presented to the Planning Commission and described in this report. Attachment 3 is the draft ordinance as recommended by the Planning Commission. Attachment 4 is the draft ordinance making changes to the requirements for operator's permits in Title 9. The revisions to Title 9 are consistent with the proposed changes to Title 13, as recommended by the Planning Commission and staff.

SHERI VANDER DUSSEN, AICP
Interim Assistant Director

JAY TREVINO, AICP
Development Services Department
Consultant

ATTACHMENTS:

1. Draft Ordinance amending Title 13 – Clean Version
2. Draft Ordinance amending Title 13 – Revisions Depicted
3. Draft Ordinance as recommended by the Planning Commission
4. Draft Ordinance amending Title 9
5. Excerpt of Minutes of the Planning Commission meeting of March 27, 2017
6. Staff Report and Attachments prepared for Planning Commission Meeting of March 27, 2017