

ORDINANCE NO. 17-06

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF COSTA MESA AMENDING SECTION 9-374
OF ARTICLE 23 (GROUP HOMES) OF CHAPTER II
(REGULATION OF CERTAIN BUSINESSES) OF
TITLE 9 (LICENSES AND BUSINESS
REGULATIONS) OF THE COSTA MESA
MUNICIPAL CODE**

**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 38 months, from January 2014 to March 2017, the City experienced an increase of 84% 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 715 beds, which is a 113% increase in beds since January of 2014. As of March 1, 2017 the City had a total of 115 residential care facilities in the multi-family residential zones, with an estimated 1347 beds to treat drug and alcohol addiction; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1,748 alcohol and drug recovery beds, divided as follows: 63 state licensed residential facilities/certified alcohol and drug programs in residential zones with six or fewer occupants, providing 352 beds; 19 state licensed facilities with seven or more occupants providing 269 beds; 97 unlicensed sober living homes in all residential zones, providing 1,127 beds; included in those 97 homes are 10 homes that have been issued Special Use Permits per the R1 Ordinance, providing 60 beds; and 1 approved CUP application per the MFR Ordinance, providing 11 beds;

WHEREAS, the City of Costa Mesa is currently home to almost 29% 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 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, 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, 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, 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, the residents of group and sober living homes come to the City from all parts of the country and often lack established ties to the community and lack a local support system independent of the group or sober living home and are especially vulnerable to becoming homeless upon eviction; and some such evicted resident have in fact become homeless within the City; and

WHEREAS, it an intent of this ordinance to require that operators of group and sober living homes provide the residents information regarding the available local housing resources prior to eviction from a home; 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: Section 9-374 of Article 23 (Group Homes) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulations) is hereby amended as follows:

Sec. 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) if the applicant and/or operator is a partnership, corporation, firm or association, then the applicant/operator shall provide the additional names and addresses as follows and such persons shall also sign the application:
 - i. every general partner of the partnership;
 - ii. every owner with a controlling interest in the corporation; and
 - iii. the person designated by the officers of a corporation as set forth in a resolution of the corporation that is to be designated as the permit holder.
 - (3) the license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit, has had such license and/or permit revoked or suspended, and the reason therefore;
 - (4) The name, address, phone number and driver's license number of the house manager;
 - (5) A copy of the group home rules and regulations;
 - (6) Written intake procedures;
 - (7) The relapse policy;
 - (8) 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;
 - (9) Blank copies of all forms that all residents and potential residents are required to complete; and
 - (10) 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) At least 48 hours prior to eviction from or involuntary termination of residency in a group home, the operator thereof shall:

i. notify the person designated as the occupant's emergency contact or contact of record that the occupant is no longer a resident at the home;

ii. contact the Orange County Health Care Agency OC Links Referral Line **or other entity designated by the City** to determine the services available to the occupant, including but not limited to, alcohol and drug inpatient and outpatient treatment;

iii. notify the city's Network for Homeless Solutions that an occupant is no longer a resident at the home, determine the services available therefrom; and

iv. provide the information obtained from ii. and iii. and any other treatment provider or service to the occupant prior to his or her release on a form provided by the city and obtain the occupant's signed acknowledgement thereon;

v. provided, however, that if the occupant's behavior results in immediate termination of residency pursuant to rules approved by the city as part of the special use permit for that facility, the operator shall comply with i. though iv. as soon as possible.

(7) Prior to an occupant's eviction from or involuntary termination of residency in a group home, the operator thereof shall also:

i. 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;

ii. provided, however that should the occupant decline transportation to his or her permanent address or otherwise has no permanent address, then the operator shall make available to the occupant transportation to another group home or residential care facility that has agreed to accept the occupant.

(8) The group home operator shall maintain records for a period of one year following eviction from or involuntary termination of residency of an occupant that document compliance with subsections (a)(6) and (a)(7), provided, however, that nothing herein shall require an operator of a group home to violate any provision of state or federal law regarding confidentiality of health care information. The group home operator may not satisfy the obligations set forth in subsection (a)(7) by providing remuneration to the occupant for the cost of transportation.

(9) All drivers of vehicles picking up or dropping off persons at a group home shall comply with all applicable provisions of this code and the Vehicle Code, including but not limited to those provisions regulating licensure and parking, standing and stopping.

(10) The property must be fully in compliance with all building codes, municipal code and zoning.

(11) 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 operator's permit shall also be denied, and if already issued shall be revoked upon a hearing 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.

Section 2: Retroactive effect. To the fullest extent allowed by law, the requirements of this Ordinance set forth in Section 2 herein, are intended to apply to each and every group home and/or sober living home located in the City, including those that have applied for and/or received an operator's permit prior to the effective date of this Ordinance.

Section 3: 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 4: 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 5: 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 2nd day of May, 2017

Katrina Foley, Mayor

ATTEST:

Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF COSTA MESA)
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 18th day of April, 2017, and thereafter at the regular meeting of said City Council duly held on the 2nd day of May, 2017, 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