

PANEL #3

Minimize Adverse Impacts - WHO

A California Public Agency Conference to Protect the Character of Residential Neighborhoods

Friday, March 2nd, 2007

8:30 a.m. to 2:30 p.m.

Newport Beach Radisson Hotel

4545 MacArthur Boulevard, Newport Beach, CA

Third Panel

1:15 to 2:30 – Third Panel

Best Practices – Who's Doing What to Minimize Adverse Impacts

- Where communities have established good relationships with facility and home operators, what have they done?
- What tools do the best group home/recovery facility operators use to best integrate into neighborhoods?
- What resources are there for owner-operators and for residents to address issues collaboratively?
- Where bad operators exist, what are the best tools that cities can legally use to close down poorly-run homes or to help improve those that want to improve?
- Proposition 36 – its goals, impacts – is it working?
- Q & A

MODERATOR AND SPEAKERS:

- **Dave Kiff**, Assistant City Manager, City of Newport Beach (moderator)
- **Gregory P. Priamos**, City Attorney, City of Riverside
- **Dean J. Pucci**, Law offices of Jones & Mayer, Assistant City Attorney for Westminster, La Habra, Fullerton, Costa Mesa, Whittier
- **Margaret Dooley**, Southern California Coordinator for Prop 36
- **Geoff Henderson**, Phoenix House (Santa Ana, CA)
- **Jim Brierly**, Orange County Sober Living Network
- **Lt. Jeff Bardzik**, Orange County Sheriff's Department, in charge of voluntary certification of Group Homes

2:30 – Adjourn

Transitional Housing/Group Home Complaint Investigation



Our Goals

- ✓ Elimination of dangerous and/or unsafe or substandard buildings.
- ✓ Achieve compliance with Conditional Use Permits requirements where applicable.
- ✓ Ensure properties are brought into compliance with the Riverside Municipal Code by correcting all code violations; to the extent such enforcement is not otherwise pre-empted by state or federal law.



The Spin





Overview:
The "typical" complaint

WAY TOO many people
in that house - Gotta be
ILLEGAL Dopers
Molesters

The Initial Complaint

- Frequently triggered by a perception that there are too many residents so the residency must be illegal.
- Often salted with emotional buzz words like "six-pack," "halfway house," "drug house," "parolee home," and phrases such as "they're having meetings," and "they come and go at all hours."
- Usually long on conclusions and short on facts.
- Police calls-for-service may be minimal.



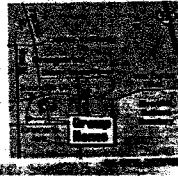
Sober-living home evicts tenants, closes

Labels are misleading, often self-serving, and usually wrong.

Municipal actions and investigations must be conducted and documented carefully and thoroughly.

ORANGECREST: After a toddler was hurt last fall, inspectors said too many people lived there.

**BY NANCY PARSONS
IN PHOTOSHOP**
SPRINGFIELD — An Orangecrest sober-living home where a 23-month-old girl was badly injured last September has shut down after the city ordered the owner to erect some of its residents.



Investigation Focus

- Actual ownership of the property
- Actual possession/control of the property
- WHO lives there and WHY
- Licenses? CUP?
- Maximum legal occupancy count/range
- Whether a state license is required
- Nature & scope of criminal activity
- Nature & scope of code violations

Why?



- You "can't tell the

PLAYERS

without a program."

The investigation focus cuts through the chaos of the complaint and frames the particular "group home" problem into organized "elements" for investigation that will lead to a definitive analysis and accurate identification of the property's use which, in turn, will lead to an effective enforcement solution.

The "group home" players typically fall within one of three distinct categories:

- ✓1. Homes subject to state licensing
- ✓2. Legitimate sober living homes
- ✓3. Homes **not** subject to state licensing **and** whose occupants are **not** within a protected class (i.e., disabled). These are the problem homes and **they are subject to local regulation.**



Example 1

- Examples of homes subject to state licensing:

- Drug treatment facility (HS 11834.20–11834.25)
- Residential care facilities (HS 1566.3)

- These homes are not subject to local regulations relating to zoning (i.e., CUPs), business taxation, or licensing if serving six or fewer residents.
- These homes are subject to local regulation that applies to residential use of property in the same zone.

AB 2184

- Amends HS 1566.3(d)— This section shall not be construed to prohibit the application to a residential care facility of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone. *Nothing in this section shall be construed to limit the ability of a local public entity to fully enforce a local ordinance, including, but not limited to, the imposition of fines and other penalties associated with violations of local ordinances covered by this section.*

AB 2184

- Effective January 1, 2007
- Clarifies existing law—as long as the local ordinance does not treat the residents of a state-licensed group home or the use of that property any differently from the Joneses next door or the Smiths across the street, the ordinance is fully enforceable.
- A common perception held by the public, some local governments, and some courts is that the mere residency of six or fewer, unrelated persons or the operation of a licensed home for six or fewer persons somehow confers a “King’s X” status and makes the property off-limits to local regulation. That perception is wrong.

Example 2

- Legitimate "sober living home"
 - Not subject to local zoning, business taxation or licensing regulations.
 - GC 12955I (FEHA) — "It shall be unlawful... (l) to discriminate through public or private land use practices, decisions, and authorizations because of ... **disability** Discrimination includes, ... zoning laws, denial of use permits, ... that make housing opportunities unavailable."

"Disability" under FEHA

- GC 12926.1 Physical and mental disabilities
 - "The legislature finds and declares as follows:
 - (a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act....
 - (b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling."

Example 3

- "Flophouse"
 - IF the operation of a single family residence as a "group home" is:
 - NOT licensed by the state; or
 - NOT subject to licensing by the state, AND NOT protected under FEHA, ADA or equivalent; and
 - NOT a traditional family or legal substitute for family
 - THEN the operation is a boarding or rooming type house (i.e., a "flophouse") that is subject to local regulation including zoning laws and treatment as a business operation.

Op. Atty. Gen. 01-402 (2003)

"A city may prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence, in order to preserve the residential character of the neighborhood."

The investigation, if **complete**, will determine whether the subject "group home" is a facility subject to state licensing; an exempt, legal substitute for "family;" or a flophouse that can be regulated by ordinance. If you don't know, the investigation is incomplete.




CUT THROUGH THE
CHAOS

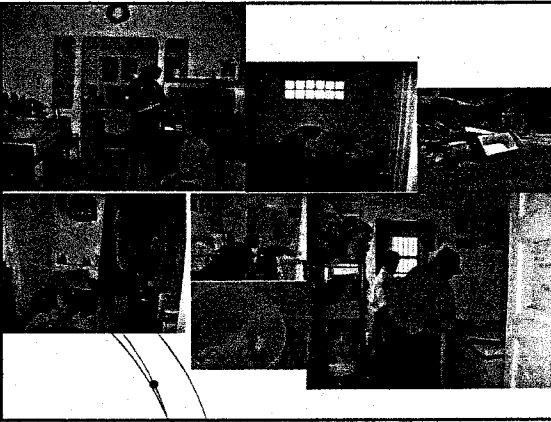
The Investigation Team

- Success requires a focused, collaborative approach of municipal departments:
 - Police
 - Fire
 - Code Enforcement
 - Building & Safety
 - Planning
 - City Attorney

Investigation Overview

- Gather background information
- Parole/Probation compliance check
- Joint inspection of the "group home" property
- Follow-up interviews
- Re-inspection for compliance with municipal code (refer state law violations to state agencies)
- Prepare inspection reports





Investigation Tips



Look for these conditions

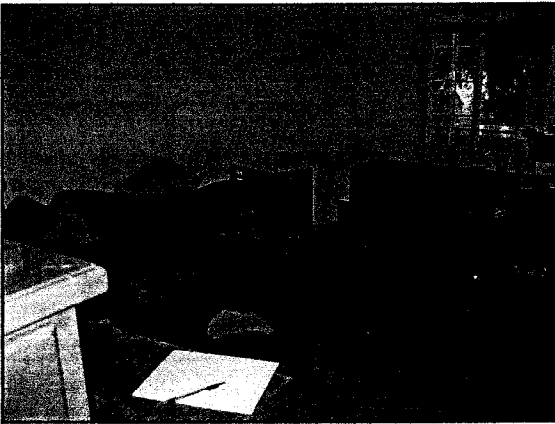
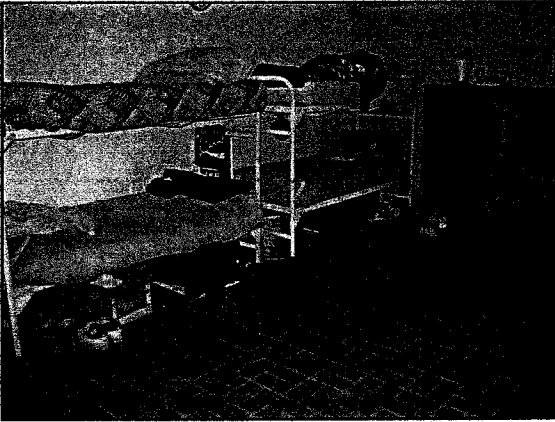
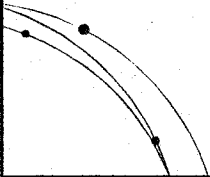
- Whether the residents are "welcoming" or "going over the fence" upon your arrival
- Overcrowding (UHC 503.2 Floor Area)
- All residents must have an alcohol or drug abuse problem or addiction
- "House rules"—particularly for alcohol and drug testing
- Use of pre-admission screening questionnaires ("why are you here?" focus)
- Resident manager or peer control

Conditions Cont'd

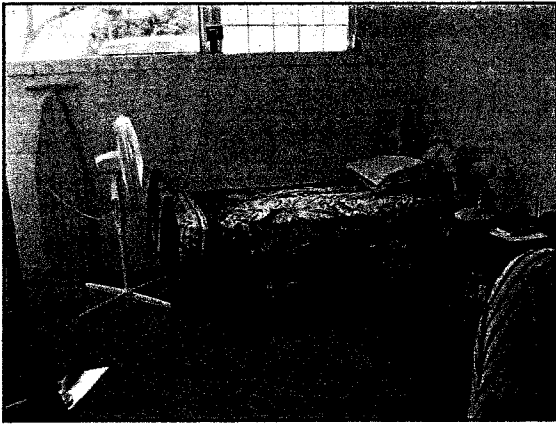
- Membership in recognized sober living organizations
- Living arrangement agreements or rental contracts
- Presence of alcohol, drugs, paraphernalia (be alert to trash)
- Traffic flow in and out of the residence—particularly Friday and Saturday nights (most frequent occurrence of relapse)
- Nighttime hours—when does house shut down for the night?

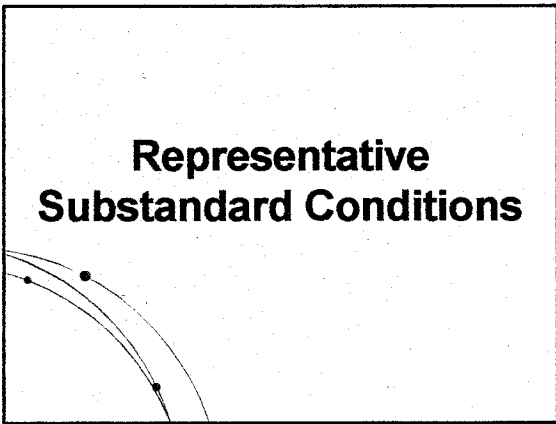
Conditions Cont'd

- Drug testing kits (i.e., "First Step 5-panel"), alcohol test kits (saliva)
- Drug test records (if not self test, where are tests sent for results?)

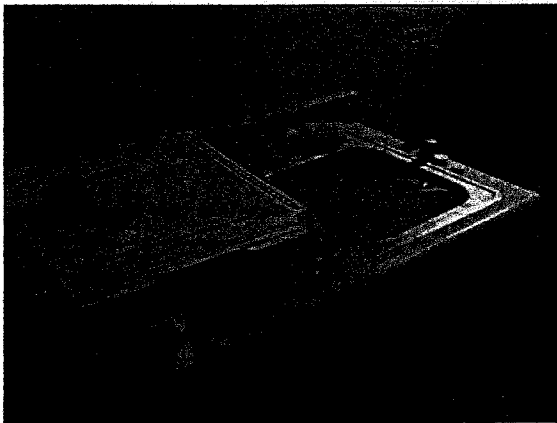




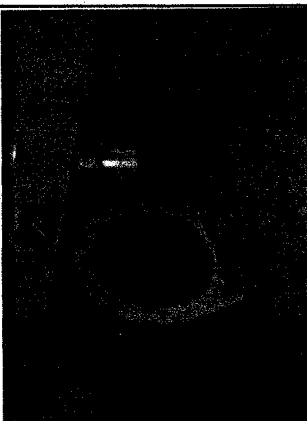


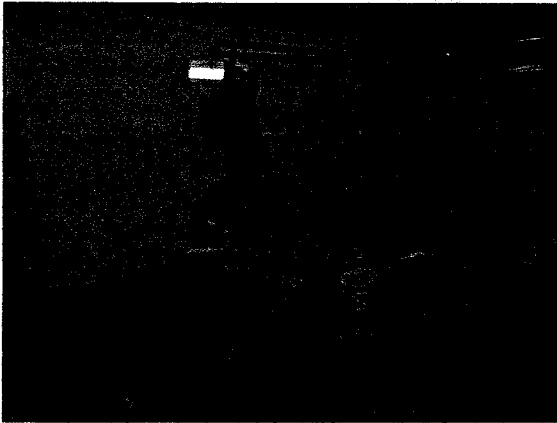


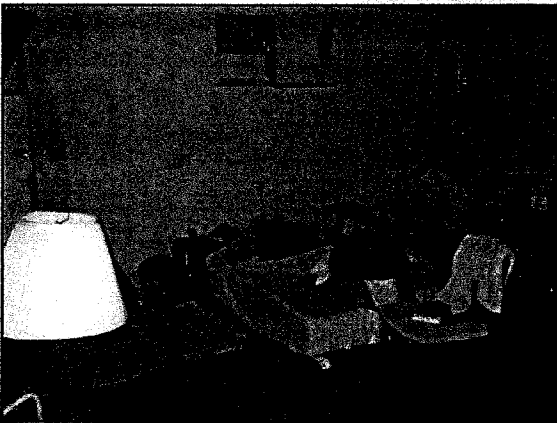


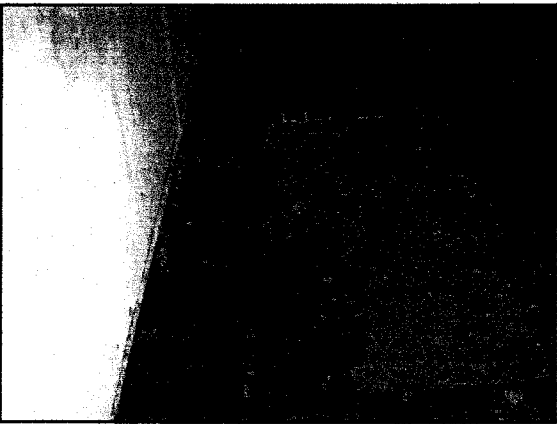


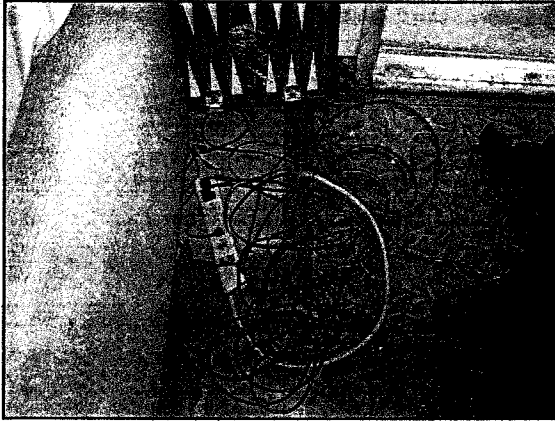
As is the case with vacant board-ups, a lack of utilities (water & power) will not deter occupants of "group homes"

A dark, grainy photograph of a person sitting on a bed. The person is mostly obscured by the darkness, but their form is visible against the lighter background of the bed. The overall scene is very dark and grainy.

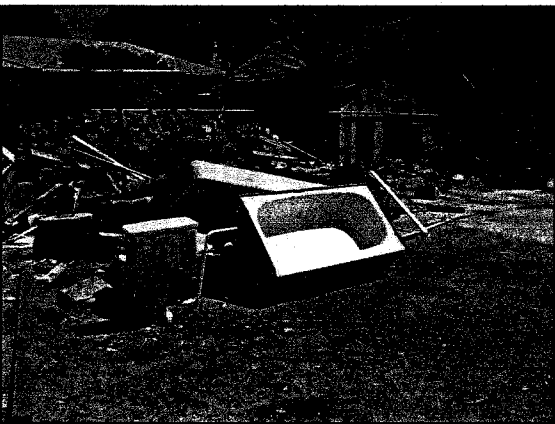








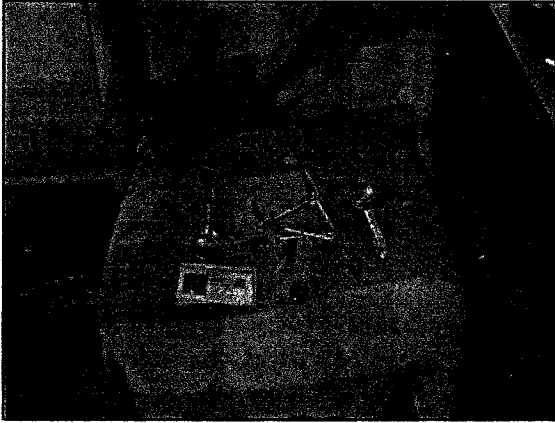
**Be alert to other
code violations**

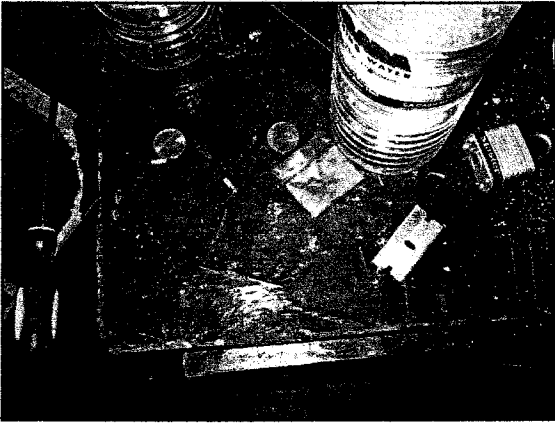


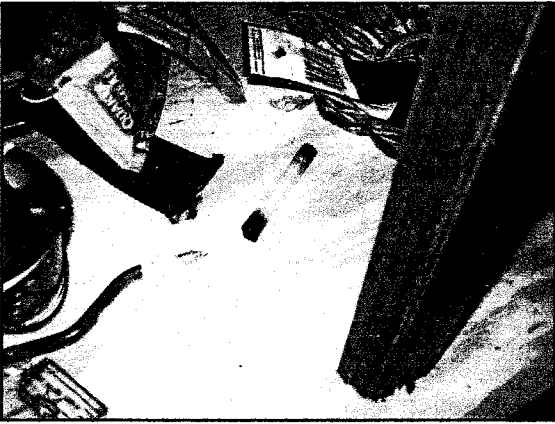
Until your investigation proves otherwise, the term "Sober Living Home" is just a self-serving label.

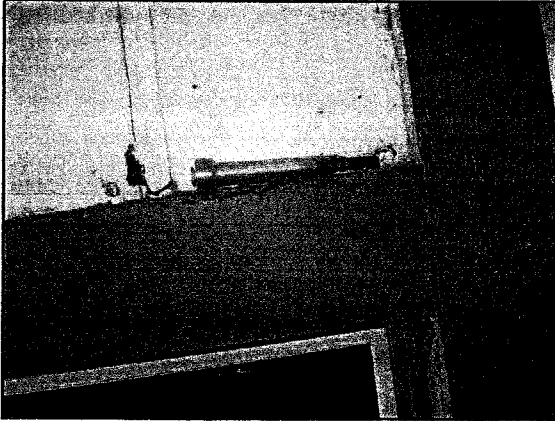












Sober Living Homes

- Typically, the use of a single family residence by a group of recovering addicts and/or alcoholics choosing to live in a cooperative living arrangement and in an alcohol/drug free environment to maintain sobriety and stay clean.



Characteristics of Legitimate Sober Living Homes

- Democratic, self-governing or house manager
- Zero tolerance of alcohol/drug use by residents
- Each resident is in recovery and participating in NA or AA program
- AA or NA meetings on-site are permissible
- Residents legally deemed "disabled"
- Not subject to state licensing
- No "Title 9" services permitted on-site
- Regular, random drug testing

Proposed SLH Definition

• For purposes of this (article, chapter, section), the term "sober living home" shall mean the use of a residential property for a cooperative living arrangement to provide an alcohol and drug free environment for persons recovering from alcoholism and/or drug abuse who seek a living environment in which to remain clean and sober, and which demonstrates each of the following characteristics that shall serve to distinguish the sober living home use from similar land uses such as drug treatment facilities or community care facilities that are subject to state licensing requirements:

- All residents, including live-in managers, operators, or owners, are recovering from alcohol and/or drug abuse;

SLH Definition Cont'd

- All residents actively participate in legitimate AA or NA programs;
- All residents maintain up-to-date records of their AA or NA meeting attendance and make such records available for inspection by law or code enforcement officers;
- All owners, managers, and residents observe and enforce a "zero tolerance" policy regarding the consumption or possession of alcohol and/or controlled substances, except prescription medications obtained and used under direct medical supervision;

SLH Definition Cont'd

- All residents submit to mandatory, random alcohol and/or drug testing conducted on-site by managers, operators, or peer leaders in self-governed homes. All records of such testing are maintained on-site and kept up to date. These records are made available for inspection by law and code enforcement officers;
- Owners, operators, managers and residents do not provide or permit any of the following services on-site as these services are defined by Section 10501(a)(6) of Title 9, California Code of Regulations:
 - Detoxification;
 - Educational counseling;
 - Individual or group counseling sessions; or
 - Treatment or recovery planning;

SLH Definition Cont'd

- The number of residents who are also parolees who are subject to the sex offender registration requirements of Penal Code Section 290 does not exceed the limit set forth at Penal Code Section 3003.5;
- No resident requires non-medical care and/or supervision as those terms are defined at Health and Safety Code Section 1503.5 and Section 80001(c)(3) of Title 22 of the California Code of Regulations;
- The operators and/or residents maintain current membership in a recognized association of sober living homes or have received a sober living home certification from the State of California Department of Alcohol and Drug Programs;

SLH Definition Cont'd

- All residents are responsible for their own meals. Owners, managers, or operators do not provide food service to residents; and
- Owners, managers, operators, and residents ensure the use of the property and the property itself comply with all applicable state law and local laws.

PC 3003.5

- A parolee who is a PC 290 registrant cannot reside with another PC 290 registrant in ANY SINGLE FAMILY RESIDENCE, unless they are related or married, or the residence is a state-licensed group home serving six or less residents. [PC 3003.5; Atty. Gen. Opinion 05-1106 (2006)]

Proposed Amendments to PC 3003.5

- Subdivision (a):

Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility, as defined in Health & Safety Code Section 1502(a)(1), which serves six or fewer persons.

Proposed Amendments to PC 3003.5

- Subdivision (d):

If a city, county or city and county determines that a placement of more than two paroled individuals for which registration is required pursuant to Section 290 and those individuals reside in a "single family dwelling" in violation of Section 3003.5, the city, county, or city and county shall have legal standing to seek judicial enforcement and compliance with this section.

Enforcement Overview

- Prepare and serve Administrative Civil Penalties (ACP) Notice & Order*
- Prepare Hearing packet
- Conduct pre-hearing witness review
- Present case at ACP hearing
- Prepare for judicial review (i.e., appeal pursuant to CCP 1094.6)

* or other appropriate notice or pleading depending upon the requirements of the administrative or legal remedy sought.

Conclusion

- Investigate "group home" complaint thoroughly.
- Determine actual nature of the use of the property investigated as a "group home."
- Nature of the property's use determines the legality of the use and identifies enforcement options.
- Vigorously enforce local ordinances when they apply.



ORANGE COUNTY
ADULT ALCOHOL AND DRUG SOBER LIVING
FACILITIES CERTIFICATION
GUIDELINES

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ORANGE COUNTY
ADULT ALCOHOL AND DRUG SOBER LIVING
FACILITIES CERTIFICATION
GUIDELINES
(revised 2004)

CHAPTER 1: INTRODUCTORY PROVISIONS

**ARTICLE 1: HISTORY AND PURPOSES OF
CERTIFICATION PROGRAM**

Section 100 Historical Perspective

The County of Orange recognizes the desirability of "home" type facilities designed for and dedicated to providing drug and alcohol free environments to individuals with alcohol and drug addictions. To date, certain of these facilities have operated in Orange County without a method of ensuring that these facilities provide quality environments for recovery or provide for community safety.

In 2000, the Orange County Board of Supervisors directed the Orange County Sheriff's Department to form a committee that included the Probation Department, District Attorney, Public Defender, Health Care Agency, State Parole Board, the Courts, representatives of Orange County cities, and a wide spectrum of community providers. The Sober Living Coalition and the Orange County Addiction Treatment Provider Association later added representatives to the committee, and a community representative was designated by the Board of Supervisors. The purpose of this committee was to develop a process for certifying and monitoring adult residential drug and alcohol sober living facilities.

In 2001, by ordinance and resolution, the Board of Supervisors approved the Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program (hereafter "Certification Program"). The standards and procedures for the Certification Program are contained in this document, entitled "Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program Guidelines" (hereafter "the Certification Guidelines"), and in Article 1 of Division 6 of Title V (Sections 5-6-1 et seq.) of the Orange County Codified Ordinances.

In 2004, following a report to the Board of Supervisors, the Board made minor amendments as recommended.

Section 101 Purpose

The sole purposes of the Certification Program are to provide access to quality residential facilities for persons in need of drug- and alcohol-free recovery environments, and to promote public safety.

Section 102 Reserved

ARTICLE 2: DEFINITIONS

Section 103 Definitions

The following general definitions apply to terminology used in the Certification Guidelines, except where specifically noted otherwise:

1. **ADULT** – A person who is 18 years of age or older or a minor who has been emancipated pursuant to former Part 2.7 (commencing with former section 60), Division 1 of the Civil Code or Part 6 (commencing with section 7000), Division 11 of the Family Code.
2. **CERTIFICATE OF COMPLIANCE** – A certificate that is issued by the Orange County Sheriff-Coroner Department to a sober living facility that has applied for certification under the Certification Guidelines and has met the requirements set forth in the Certification Guidelines. The Certificate of Compliance is valid for one year from the issue date.
3. **CERTIFICATION APPEALS BOARD** – The body having the administrative responsibility for conducting hearings on all appeals of denial of certification or sanctions imposed by the Certification Coordinator.
4. **CERTIFICATION COORDINATOR** – A lieutenant with the Orange County Sheriff-Coroner Department who is responsible for the overall management and coordination of the Certification Program.
5. **CERTIFICATION GUIDELINES** – This document, entitled “Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program Guidelines”.
6. **CERTIFICATION PROGRAM** – The Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program, adopted by the Orange County Board of Supervisors in December 2001 and administered by the Orange County Sheriff-Coroner. The standards and procedures for the Certification Program are set forth in Article 1 of Division 6 of Title V (Section 5-6-1 et seq.) of the Orange County Codified Ordinances and in the Certification Guidelines.
7. **CERTIFIED FACILITY** – A sober living facility that has been issued a Certificate of Compliance that currently is valid.

8. **COUNSELOR CERTIFYING ORGANIZATION** – A statewide or national professional organization offering counselor certifications in the field of drug or alcohol addiction to eligible individuals. The organization must have standardized qualifications for certification, including education and/or employment requirements. Counselor certifying organizations include, but are not limited to, the California Association of Alcohol and Drug Counselors (CADAAC) and organizations providing certification as a Certified Addiction Specialist (CAS). Local community college certification programs are also accepted counselor certifying organizations.

9. **CONVICTION** – A final judgment or a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

10. **COUNTY REFERRAL** – A person directed to a sober living facility by the Probation Department, the Orange County Health Care Agency or another agency of the County of Orange for continued recovery from drug or alcohol addiction. The person being referred still may be under the supervision of the Orange County Superior Court or the Probation Department. This may include a person referred to a facility prior to adjudication of his/her criminal case.

11. **COURT REFERRAL** – Any person directed to a sober living facility by the Orange County Superior Court. This may include a person referred to a facility prior to adjudication of his/her criminal case.

12. **D.A.D.P.** – State of California, Department of Alcohol and Drug Programs. This is the State agency responsible for licensing of residential recovery treatment facilities. D.A.D.P. does not license sober living facilities.

13. **DAY** – A calendar day unless otherwise specified.

14. **DIRECTOR AND HEAD OF ADMINISTRATIVE STAFF** – Also referred to as “Director.” The manager of a sober living facility who is responsible for the supervision of all residents and of all staff employed by, or volunteering for, the facility, and for approving all progress reports about residents' recovery that are provided to courts, county or city agencies, or other providers of recovery services. He/ she is responsible for overall management of the facility.

15. **FACILITY** – Depending on context, a sober living facility or the person or entity that operates a sober living facility.

16. **HOUSE MANAGER** – A person who resides at a sober living facility, or any of multiple persons who collectively are present at the facility during curfew hours which shall be at a minimum between the hours of 11:00 p.m. and 6:00 a.m. weekdays and 12:00 a.m. to 6:00 a.m. on weekends, and who is/are in charge of the day-to-day operation of the facility. The house manager shall be responsible to ensure the safety of the building(s) and grounds; to collect fees from residents; to maintain compliance by residents and staff with facility rules and the Certification Guidelines; and to provide

support and referral information, but not counseling or treatment, to residents of the facility.

17. OUTPATIENT – Refers to drug and alcohol treatment programs in which the resident does not reside at the facility where the resident receives treatment.

18. PAROLE BOARD – State Parole Board.

19. PEER COORDINATOR – A paid or volunteer staff member who assists the house manager. The peer coordinator may oversee the household chore list and schedule; help to facilitate facility meetings; and report concerns regarding the behavior of residents and the maintenance of the facility to the house manager or director.

20. PROBATION DEPARTMENT – Orange County Probation Department.

21. PROGRESS REPORT – An oral and/or written report of the overall progress towards recovery from substance abuse of a resident who is residing at a sober living facility. Progress reports may be made due to a court order or the terms of a resident's probation or parole, or, at the request of and with the consent of a resident, may be made to other entities or individuals, such as the resident's therapist or referring agency.

22. RESIDENT – An individual who resides in a sober living facility.

23. RESIDENTIAL FACILITY – Refers to programs in which the residents reside at the facility. Hospitals are not included in this category. Facilities covered by the Certification Guidelines are residential facilities.

24. REVOCATION OF CERTIFICATION – A disciplinary action that is imposed by the Certification Coordinator and upheld by the Certification Appeals Board to revoke certification of a facility. Revocation of certification is indefinite. Except in emergency situations, a revocation will not become effective until the time for the facility to appeal has elapsed, or if the facility appeals, until the revocation is upheld by the Certification Appeals Board. To the extent it is clinically appropriate, all County referrals shall be asked to move from a facility from which certification has been revoked and will be placed in a certified facility. Except as required by law or contractual obligations or as permitted by the Certification Guidelines, County personnel shall cease referring individuals to a facility from which certification has been revoked.

25. SECTION 200 REVIEW – A written determination from the applicable local jurisdiction, made following an inspection of a facility by the local jurisdiction, that the facility is in compliance with the requirements of Section 200 of the Certification Guidelines.

26. "SHALL" and "WILL" mean mandatory, "SHOULD" means recommend, and "MAY" means permissive.

27. **SOBER LIVING FACILITY** – A facility offering an alcohol and drug free residence for unrelated adults who are recovering from alcohol or drug addictions. These facilities may also be known as Transitional Living Environments. No drug or alcohol treatment services are provided on site. D.A.D.P. does not license such a facility to offer residential treatment for drug or alcohol abuse or addiction.

28. **SUSPENSION OF CERTIFICATION** – A disciplinary action taken by the Certification Coordinator to suspend certification of a facility. A suspension is for a specific period of time. Except as required by law or contractual obligations or as permitted by the Certification Guidelines, County personnel shall cease referring individuals to a facility from which certification has been suspended. At their option, or, if applicable, at the discretion of the Superior Court, the Probation Department or the Parole Board, residents who were residing at the facility prior to the suspension may remain and complete their programs.

Section 104 Reserved

ARTICLE 3: AUTHORITY FOR AND EFFECT OF CERTIFICATION

Section 105 Voluntary Certification

The Certification Program is purely voluntary. No sober living facility shall be required to apply for or obtain certification under the Certification Guidelines. No facility shall be required to cease operation on account of its not being certified under the Certification Guidelines.

Section 106 Effect of Certification

1. It is anticipated that a period of approximately nine (9) months, until October 1, 2002, will be required to process all applications for certification that are filed during the initial response to the adoption of the Certification Program. During the period until October 1, 2002, it is anticipated that there will not be sufficient certified facilities to meet the demand for placement in said facilities.

2. Effective on October 1, 2002, and except as otherwise provided in the Certification Guidelines or as required by law or contractual obligations, County of Orange personnel, when referring a person to a sober living facility within the County of Orange, other than a facility operated by a State agency, shall refer a person who qualifies for admittance to a certified sober living facility only to a certified facility, if the referring County personnel determine that space is available in a certified facility that is suitable for the person being referred.

3. Certification, or lack of certification, is not intended to convey approval or disapproval of any sober living facility or its programs by the County of Orange or the

Orange County Sheriff-Coroner. Rather, certification shall be for informational purposes only.

4. Certification does not create a relationship of principal and agent between the County of Orange and any sober living facility, or between the County of Orange and any of the officers, employees, agents, contractors, or volunteers of any sober living facility.

5. On October 1, 2002, and as often thereafter as the list is updated, the Certification Coordinator shall provide to the Orange County Superior Court the list of certified facilities, in order to assist the Court in directing defendants into appropriate recovery environments.

Section 107 Reserved

CHAPTER 2: OBTAINING CERTIFICATION

ARTICLE 1: ELIGIBLE APPLICANTS

Section 108 Type of Facilities Eligible for Certification

1. Sober living facilities are eligible for certification pursuant to the Certification Guidelines.

2. In order to obtain a Certificate of Compliance, a facility must comply with the Certification Guidelines for each physical building comprising the facility.

Section 109 Who May Apply for Certification?

Any adult or firm, partnership, association, corporation or governmental entity may apply for certification. Strict nondiscrimination rules applicable to government programs shall be followed when considering applications for certification. The Certification Program shall be administered so as to be free of any unlawful discrimination based on ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age, political affiliation, medical condition, physical or mental disability, or sexual preference.

Section 110 Reserved

ARTICLE 2: APPLICATION PROCESS

Section 111 How to Obtain Application and Information

Applications and application information may be obtained by contacting the Orange County Sheriff/Certification Coordinator, Adult Alcohol and Drug Sober Living Facilities Certification Program, North Justice Center, 1275 North Berkeley, Fullerton,

California 92832 (Telephone: (714) 773-4520). Completed applications for certification should be submitted to the Certification Coordinator.

Section 112 Documentation to Be Submitted with Application

Each applicant facility shall submit to the Certification Coordinator a completed application form and the following additional documents:

1. The facility's Policy and Procedures Manual (Sections 157 and 158 of the Certification Guidelines).
2. The facility's rules for residents, including:
 - a. The facility's policy prohibiting alcohol or non-prescribed drugs on the premises (Section 166 of the Certification Guidelines);
 - b. The facility's' prescription drug policy (Section 167 of the Certification Guidelines);
 - c. The facility's smoking policy (Section 168 of the Certification Guidelines);
 - d. The facility's rules and procedures regarding co-ed interaction, if applicable (Section 177 of the Certification Guidelines);
 - e. The facility's visitation policy (Section 180 of the Certification Guidelines).
3. Copies of all forms provided to residents and potential residents, including blank copies of all forms that residents or potential residents are required to complete and/or sign.
4. The facility's staff information (Section 132 of the Certification Guidelines).
5. The facility's resident selection criteria (Section 153 of the Certification Guidelines).
6. The facility's policy for alternative referral (Section 153 of the Certification Guidelines).
7. The facility's intake procedures (Section 155 of the Certification Guidelines).
8. The facility's relapse policy (Section 165 of the Certification Guidelines).

9. The facility's fee schedule (Section 187 of the Certification Guidelines).
10. The facility's policy regarding delinquent payments and payment plans (Section 188 of the Certification Guidelines).
11. The facility's policy regarding refunds for advance payment of fees and repayment of fees (Section 189 of the Certification Guidelines).
12. The facility's food services and preparation schedule and policy, if applicable (Section 195 of the Certification Guidelines).
13. Proof that the names of all staff, paid and volunteer, of the facility have been submitted to the Orange County Sheriff Department for the purpose of conducting a background check.

For those staff who submit to voluntary fingerprint checks and criminal history checks, the results will be sent directly from the State Department of Justice or the U.S. Department of Justice, as applicable, to the Certification Coordinator.

14. A Section 200 Review from the applicable local jurisdiction, or permission for the Certification Coordinator to notify the local jurisdiction or the County of Orange, as appropriate, to conduct a Section 200 Review. The application will not be deemed complete until the Section 200 Review is completed and received by the Certification Coordinator. The local jurisdiction or the County of Orange, as applicable, will advise the applicant of the fees for the Section 200 review, and the fees for this inspection will be paid by the facility. All pending inspections must be completed and the Section 200 Review must be received by the Certification Coordinator within thirty (30) days of the original application to the local jurisdiction or the County of Orange, as applicable, for the Section 200 review.

For a fee, County of Orange personnel will complete the Section 200 Review if requested by a) the local jurisdiction, or b) the Certification Coordinator when the facility is located in an area where no other local jurisdiction performs Section 200 reviews. In addition, if the local jurisdiction is unable to complete the Section 200 Review within the thirty (30) day period, County personnel will conduct the inspection, for a fee, and submit the results to the Certification Coordinator.

15. Written consent, on the form provided with the application and executed by both the director and the house manager of the facility, to inspections of the facility by appropriate local jurisdiction or County of Orange personnel for the purposes of determining initial compliance with the Certification Guidelines, monitoring continued compliance with the Certification Guidelines, and investigating complaints of violation of the Certification Guidelines.

16. Proof that the facility has obtained insurance coverage at least as extensive in both coverage and amount as is required by County's CEO/ Risk Management

Services, from an insurer that is acceptable to County's CEO/ Risk Management Services. CEO/Risk Management Services' current insurance requirements will be made available with the application for certification.

a. The Certification Coordinator will notify the facility when it appears that all other aspects of the application are in order and the application for certification will be granted, so that the applicant may obtain amendments of its insurance policies to include Orange County as an additional insured and to include such additional policy language as is specified by CEO/ Risk Management Services.

b. Before certification is finally granted and a Certificate of Compliance issued, the facility must present to the Certification Coordinator written proof that all required insurance policies have been amended to include Orange County as an additional insured and to include such additional policy language as is specified by CEO/Risk Management Services.

Section 113 Certification Coordinator Review of Application

1. The Certification Coordinator will review applications for certification in the order in which the applications became complete.

2. The Certification Coordinator shall:

a. Review each application for certification and supporting documentation to determine completeness and compliance with the Certification Guidelines;

b. Verify the information provided by the facility about its paid and volunteer staff with information obtained by the Sheriff-Coroner, and from the State Department of Justice and the U.S. Department of Justice (if available), as specified in Section 133;

c. Verify that the facility has a completed Section 200 Review;

d. Make or arrange such additional inspection(s) of the facility, interview(s) with its staff and/ or residents who are court referrals, review(s) of records and documents, or such other activities as may be necessary or appropriate to ascertain whether the facility complies with the Certification Guidelines;

e. Within thirty (30) working days of receipt of a completed application, issue to the facility by mail a Certificate of Compliance, if the facility is in compliance with the Certification Guidelines, or a written notification of denial of certification, if the facility is not in compliance with the Certification Guidelines;

f. If an application is still incomplete at the end of ninety (90) working days after receipt of an incomplete application, notify the facility in writing of the information that is missing. The facility will have thirty (30) days from the date of the notification to provide the missing information;

g. If an application is otherwise complete, but areas of non-compliance with the Certification Guidelines that are susceptible of correction within thirty (30) days are identified, notify the facility in writing of the deficiencies, in accordance with Section 208 of the Certification Guidelines. Thereafter, the Certification Coordinator shall treat the application as incomplete until the deficiencies are timely and adequately corrected.

3. The Certification Coordinator may terminate the review of an application if:

a. The facility fails to provide additional information or correct deficiencies within the required time period unless good cause is shown for delay;

b. The facility fails to provide a Section 200 Review within 30 days of notification pursuant to Section 113(2)(f) that the Section 200 review is missing from its application;

c. The facility submits a written request to withdraw the application;

d. The facility provides false, misleading or incomplete information on or with its application.

4. Termination of the review process shall not constitute denial of certification.

Section 114 Withdrawal of Application

1. A facility may withdraw an application for certification by submitting a written request to the Certification Coordinator.

2. Withdrawal shall not prohibit the Certification Coordinator from taking action to deny any application for certification.

Section 115 Reserved

Section 116 Reserved

ARTICLE 3: CERTIFICATE OF COMPLIANCE/ PERIOD OF CERTIFICATION

Section 117 Requirement to Post Certificate of Compliance

1. Upon obtaining certification, a facility shall post its Certificate of Compliance in a conspicuous place in the facility, where it can be seen by anyone entering the facility.

2. Each facility shall make the Certificate of Compliance available for inspection upon request.

Section 118 Period of Certification

Certification shall be effective for a one-year period and shall expire automatically on the anniversary of the date of issuance of the Certificate of Compliance, unless the certification earlier has been renewed.

Section 119 Automatic Termination of Certification during One-Year Certification Period

Certification shall automatically terminate during the one year certification period whenever the owners or operators of a certified facility:

1. Sell or transfer an ownership interest in the facility; however, when the facility is owned by a corporation, the corporation will not be deemed to have transferred an ownership interest in the facility when the transfer or sale was solely of stock in the corporation and does not constitute a majority change in ownership of the stock of the corporation;

2. Transfer to a person(s) or entity(s), other than a resident or a live-in staff person, a right to occupy or possess all or any part of the facility;

3. Change the personnel responsible for management of the facility, without completing the steps outlined in Sections 145-148 of the Certification Guidelines;

4. Voluntarily surrender the Certificate of Compliance to the Certification Coordinator;

5. Move the facility to a new location;

6. Die (only if the facility is owned and operated by a sole proprietor); or

7. Actually or constructively abandon the facility for a period of thirty (30) days or more.

Section 120 Reserved

ARTICLE 4: RENEWAL OF CERTIFICATION

Section 121 Renewal of Certification

1. At least sixty (60) working days prior to the expiration date noted on the Certificate of Compliance, the Certification Coordinator shall send a notice informing the facility of the date when the current period of certification will expire and advising the facility that it must submit within thirty (30) days any information described in Section 112 of the Certification Guidelines that has changed during the certification period.

2. The facility also will be required to obtain a re-inspection from the local jurisdiction or the County of Orange, as applicable, and submit an updated Section 200 Review. The updated Section 200 Review shall be submitted to the Certification Coordinator no later than fifteen (15) days before the expiration of certification.

3. The facility must be found to be in compliance with the Certification Guidelines in order for certification to be renewed.

Section 122 Reserved

ARTICLE 5: DENIAL OF CERTIFICATION

Section 123 Grounds for Denial of Certification

The Certification Coordinator may deny a facility's application for certification for any of the following reasons:

1. The facility is not in compliance with any provision of the Certification Guidelines;

2. The facility has failed to remedy each deficiency identified by the Certification Coordinator within the time period specified;

3. The facility provided false, misleading or incomplete information to the Certification Coordinator.

Section 124 Facility Notice and Advisement of Right to Reconsideration

If the Certification Coordinator denies certification, a written notice shall be sent to the applicant by first class mail. The notice shall:

1. Explain the reasons for denial;

2. Detail the correction(s) required to bring the facility into compliance with the Certification Guidelines;

3. Advise the facility of the rights to reconsideration and appeal in accordance with the Certification Guidelines.

Section 125 Reserved

ARTICLE 6: RECONSIDERATION

Section 126 Procedure for Reconsideration

1. A facility that has been denied certification may file a request for reconsideration with the Certification Coordinator. The request shall be in writing and shall be filed within fifteen (15) calendar days from the date of the notice of denial of certification.

2. The Certification Coordinator shall schedule a hearing that shall be held no later than thirty (30) calendar days after receipt of a timely request for reconsideration.

3. The Certification Coordinator shall serve a notice of hearing on the facility, no later than ten (10) calendar days prior to the scheduled date of the hearing.

4. At the hearing before the Certification Coordinator, the facility shall be given an opportunity to present witnesses and documentary evidence.

5. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence that the Certification Coordinator deems reliable, relevant and not unduly repetitious may be considered.

6. Within fifteen (15) calendar days after the hearing, the Certification Coordinator shall issue and transmit to the facility a written decision sustaining, reversing, or modifying his/her earlier decision.

7. The decision by the Certification Coordinator after the hearing shall be final unless the facility or, if applicable, a member of its staff, files an appeal to the Certification Appeals Board pursuant to Sections 228, 229 and 234 of the Certification Guidelines.

Section 127 Reserved

CHAPTER 3: GENERAL CERTIFICATION REQUIREMENTS

ARTICLE 1: GENERAL REQUIREMENTS

Section 128 General Requirements

1. Each sober living facility, including sober living facilities associated with licensed residential recovery treatment facilities, and its staff shall comply with the Certification Guidelines.

2. Each sober living facility, including sober living facilities associated with licensed residential recovery treatment facilities, and its staff shall comply with all rules, policies and procedures of the facility.

Section 129 Reserved

ARTICLE 2: CONTRACTUAL REQUIREMENTS

Section 130 Greater or Conflicting Contract Requirements

Facilities certified pursuant to the Certification Guidelines may be under contract with the County of Orange to provide alcohol and drug-free housing services. The Certification Guidelines are not intended to supersede contractual requirements, unless the requirements of the Certification Guidelines are greater than those in the contract. To the extent a contract between a certified facility and the County of Orange imposes requirements or obligations on the facility that are greater than the requirements of the Certification Guidelines, the contract requirements and obligations shall prevail.

Section 131 Reserved

CHAPTER 4: STAFF REQUIREMENTS

ARTICLE 1: STAFF APPLICATION DATA

Section 132 Staff Information to Be Provided with Application

An application for certification and supporting documentation shall contain the following information about the staff of the facility:

1. A list of all staff positions, paid or volunteer, and a clear description of the duties of each position.

2. The following information about each staff member, whether paid or volunteer:

- a. Full name, and any other names used previously or currently;
- b. Current residence address and phone number;
- c. Date of birth;
- d. Social Security number;
- e. Driver's license number;
- f. Education and academic achievements
- g. Prior work experience
- h. History of convictions, if any;
- i. Current criminal street gang and/or prison gang participation, if any.

Section 133 Staff Required to Submit to Background Check

1. Prior to certification of a facility, all staff, paid and volunteer, of the facility shall be subject to a background check by the Orange County Sheriff's Department.

2. In order for the facility to qualify for certification, the director and house manager will be requested to voluntarily submit to a more extensive background check including "live scan" fingerprinting and a check of summary criminal history information through the State Department of Justice and, if available, the U.S. Department of Justice. In addition, any other staff member may be requested to voluntarily submit to the above-described more extensive background check when the Sheriff's background check raises a reasonable suspicion that the staff member does not meet the criminal history requirements for his/her position. All criminal history information will be sent directly from the State Department of Justice and the U.S. Department of Justice to the Certification Coordinator.

Section 134 Falsifying Information

1. No staff member of a facility shall falsify information on his/her application for employment or on an application for certification of a facility.

2. Falsifying information may include but is not necessarily limited to the following: falsifying true legal name, date of birth, current address, social security number, or driver's license number.

3. The presence at the facility of an employee or volunteer who falsified information on a certification application or on his/her application for employment or a volunteer position is a violation of the Certification Guidelines and shall be grounds for denial of certification, if the employee or volunteer remains at the facility for more than fifteen (15) calendar days after the director knew or should have known of the falsification.

Section 135 County Authority to Conduct Staff Background Check

In 2001, the Orange County Board of Supervisors adopted an Ordinance to Authorize Voluntary Certification of Alcohol and Drug Sober Living Facilities. The ordinance includes section 5-6-4, entitled "Criminal activity by owners, operators, managers, employees and volunteers of certified sober living facilities." That section authorizes the Sheriff-Coroner to access summary criminal history information about specified facility personnel pursuant to Penal Code sections 11105(b)(10) and 13300(b)(10) and sets forth the types of criminal history that disqualify individuals from holding specified positions at certified facilities.

Section 136 Reserved

ARTICLE 2: STAFF QUALIFICATIONS AND DUTIES

Section 137 Prior Employment History of Improper Conduct

No staff member, paid or volunteer, of a facility shall have a prior employment history of any of the following improper conduct:

1. Forging or falsifying documents to a court, referring agencies or an alcohol or drug recovery facility;
2. Sexual assault or sexual harassment
3. Inappropriate behavior with staff or residents at another alcohol and drug recovery facility that resulted in termination or resignation from that facility. Inappropriate behavior shall include, but is not limited, to the following:
 - a. Physical assault;
 - b. Embezzlement or other theft related conduct;
 - c. Falsifying a drug test;
 - d. Selling or furnishing illegal drugs;
 - e. Selling or furnishing alcohol to a resident; or

- f. Entering into a financial agreement, venture or proposition with a resident unless previously approved by the director of the facility.

Section 138 Paid and Volunteer Staff – Criminal History Qualifications

1. Prior to certification of a facility, all staff, paid and volunteer, shall pass an Orange County criminal justice background check conducted by the Orange County Sheriff Department.

- a. No sober living facility shall be certified if any of its staff have been convicted of any of the following offenses:

- (i) Sex offenses for which the person is required to register as a sex offender under California Penal Code section 290;

- (ii) Arson offenses – Violation of Penal Code sections 451, 451.1, 451.5, 452, 452.1, 453, 454, or 455; or

- (iii) Violent felonies, as defined in Penal Code section 667.5, which involve doing bodily harm to another person, and for which the staff member was convicted within five years prior to employment.

- b. No alcohol or drug recovery facility shall be certified if any of its staff participates in the criminal activities of a prison gang and/or criminal street gang, as defined in Penal Code section 186.22(f).

2. No certified facility shall employ a person or permit a person to act as a volunteer at the facility if that person has not passed a criminal background check by the Orange County Sheriff's Department using the criteria set forth in subsection 1 of Section 138 of the Guidelines.

3. Individual exceptions to staff qualifications set forth in Section 138, subsection 1 a.(iii) may be requested if the facility deems the decision will benefit the program. Requests for exceptions shall be submitted in writing, include appropriate justification of request, and must be approved by the Certification Coordinator in advance of employment.

Section 139 Director-Duties and Qualifications

1. A facility shall employ one or more persons who collectively perform the duties of Director and Head of Administrative Staff (also known as "director") that are set forth in Section 103 and elsewhere in the Certification Guidelines. The facility may designate a different title for this position, and may have two or more employees perform the duties of this position, as long as each person performing any of the duties meets the minimum requirements set forth in the Certification Guidelines for the position. In smaller facilities, the director also may perform the duties of other positions, as long as

he/she has adequate time during assigned work hours to perform the duties of director and all his/her other duties, and as long as he/she meets the requirements of the Certification Guidelines for all the positions he/she holds.

2. Education and Experience: The director shall have education, training and/or experience qualifying him/her to supervise drug or alcohol addicted residents, including residents who have criminal backgrounds. Each person performing any of the duties of the director shall also meet at least one of the following minimum requirements:

- a. Possession of a four year college degree in a field related to rehabilitation of substance abusers; or
- b. Certification by a professional counselor certifying organization;
- c. A minimum of eighteen (18) months full time experience as a counselor, supervisor, or professional in a position similar to the director's position.

Proof that (a), (b), or (c) above has been met will be required (e.g., photocopy of professional degrees, references to show prior service in the recovery field).

3. Criminal History:

- a. A director shall meet the requirements set out in Section 138 of the Certification Guidelines.
- b. In addition, no facility shall be certified if its Director and Head of Administrative Staff is currently under parole or formal probation supervision.

4. Training: Persons holding positions encompassing the duties of director of a facility accepting court referrals or referrals from the Probation Department or the Parole Board, or the director's designee, shall attend all required meetings and training conducted by a Superior Court, the Probation Department, the Parole Board, or the Certification Coordinator. The Certification Coordinator shall provide notice of such required meetings and training.

5. Sobriety: The director, if he or she is a former drug or alcohol abuser, should have a minimum of two years of sobriety, and should be participating in a continued program of personal enhancement and recovery.

Section 140 House Manager-Duties and Qualifications

1. Each facility shall have a designated house manager or person of higher authority such as a director, who resides at the facility and performs the duties of house manager set forth in Section 103 of the Certification Guidelines. Alternatively, two or more employees may perform the duties of house manager, as long as each person

performing any of the duties meets the minimum requirements for house manager set forth in the Certification Guidelines.

2. The facility shall clearly identify the house manager to all residents. The lines of authority within the organization shall be clearly defined, with the director or house manager having final authority.

3. Drug Testing: The house manager will be subject to alcohol and drug testing as determined by the director of the facility and in accordance with applicable law.

4. Duties:

a. The house manager's duties include the duties described for the position in Section 103 of the Certification Guidelines.

b. A house manager shall not approve progress reports.

c. The house manager may administer drug and alcohol tests to the residents, to the extent permitted by law.

5. Criminal History:

a. A House Manager shall meet the requirements set out in Section 138 of the Certification Guidelines.

b. In addition, no facility shall be certified if its house manager is under parole or formal probation supervision on the date of the facility's application for certification or the house manager's employment by the facility, whichever is later.

6. Sobriety: If a house manager is a former drug or alcohol abuser, he/she should have a minimum of one year of sobriety and should be participating in a continued program of personal enhancement and recovery.

Section 141 Peer Coordinator-Duties and Qualifications

1. If a facility has a peer coordinator, it still shall have a house manager and/or director who resides at or is present or on call whenever residents are present at the facility. Notwithstanding the foregoing, in case of an emergency or unforeseen circumstance, the availability of other designated supervisory personnel to respond to the facility shall be sufficient.

2. Duties:

a. Each facility may have a designated resident who assists the house manager, and who may perform the duties listed in Section 103 for a Peer Coordinator.

b. The peer coordinator shall not supervise or provide referral information, counseling or treatment to residents.

c. The peer coordinator shall not write or sign progress reports.

3. Compensation: A person working in the capacity of peer coordinator shall receive compensation for his/her services.

4. Drug testing: A peer coordinator shall be subject to alcohol and drug testing as determined by the director or house manager of the facility in accordance with applicable law.

5. Criminal History:

a. A peer coordinator shall meet the requirements set out in Section 138 of the Certification Guidelines.

b. In addition, no facility shall be certified if, on the date of the facility's application for certification or the peer coordinator's employment by the facility, whichever is later, a peer coordinator is under parole or formal probation supervision for a violent felony, as defined in Penal Code section 667.5.

c. A facility will not be disqualified from certification on account of its peer coordinator's being under probation or parole supervision solely for a non-violent offense(s), if the peer coordinator otherwise meets the requirements of this section.

6. Sobriety: If a peer coordinator is a former drug or alcohol abuser, he/she should have a minimum of three months of sobriety and should be participating in a continued program of personal enhancement and recovery.

Section 142 Subsequent Criminal Activity or Convictions of Disqualifying Offenses

Certification previously granted to a sober living facility shall be revoked and a pending application for certification shall be denied if:

1. a. Any of the staff of a sober living facility or a peer coordinator are found to have been convicted, prior to the application for certification, of any offense that would have disqualified the facility from certification;

b. Any of the staff of a sober living facility or a peer coordinator are convicted, while the application is pending or during the period of certification, of any offense that would have disqualified the facility from certification if the conviction had occurred earlier; or

c. It is discovered that any of the staff of the facility is required to register as a sex offender pursuant to Penal Code section 290 or currently participates, or has participated at any time since the submission of the application for certification, in the criminal activity of a prison gang and/or criminal street gang, as defined in Penal Code section 186.22 (f); and

2. The staff member's conviction, sex offender registration requirement or membership or participation in the criminal activities of a prison gang and/or criminal street gang would have disqualified the facility from certification if it had occurred or had been discovered earlier.

Section 143 **Reserved**

Section 144 **Reserved**

ARTICLE 3: NEW STAFF DURING CERTIFICATION PERIOD

Section 145 **Qualifications of Staff Added After Certification**

1. At a minimum, within three (3) working days of making a job offer, a facility shall provide the Certification Coordinator with the information about the new staff member listed in Section 132 of the Certification Guidelines. The Sheriff's Department thereupon will conduct a background check. If the background check is not completed within two (2) business days, the employee may begin work at the facility, subject to later completion of the background check of the new employee to determine whether he or she meets the staff qualification requirements of the Certification Guidelines.

2. Continued employment of a new staff member who does not meet the staff qualifications set out in the Certification Guidelines shall be grounds for suspension or revocation of certification.

Section 146 **Replacement of Director and House Manager**

In order to be assured that a facility continues to meet certification standards for the safety of residents, staff, and the community, a permanent director or house manager shall be replaced as soon as possible, but no later than:

Director – Sixty (60) days from the date the position becomes vacant.

House Manager – Thirty (30) days from the date the position becomes vacant.

Section 147 Appointment of Acting Director or House Manager

In order to be assured that a facility continues to meet certification standards for the safety of residents, staff, facility and the community, an acting director and acting house manager shall be appointed no later than the following:

1. An acting director shall be appointed as soon as possible, but no later than 72 hours after the departure of the preceding director. The acting director shall qualify under the standards of the Certification Guidelines.
2. An acting house manager shall be appointed immediately (within 24 hours) after the departure of the preceding house manager. The acting house manager shall, at a minimum, qualify under the standards of the Certification Guidelines for peer coordinator.

Section 148 Reserved

ARTICLE 4: DENIAL OF CERTIFICATION DUE TO STAFF

Section 149 Denial of Certification Due to Lack of Staff Qualifications

The Certification Coordinator shall deny certification to a facility if:

1. Review of its staffing or staff's qualifications indicates that the facility is not in compliance with Sections 133-144 of the Certification Guidelines.
2. The facility fails to remedy each deficiency identified in the written notice of deficiency.
3. The facility provides false, misleading or incomplete information about any of its staff positions or staff members.

Section 150 Staff Notice and Advisement of Right to Reconsideration

If the Certification Coordinator determines to disqualify a facility from certification on account of the qualifications of a member of its staff, the Certification Coordinator shall first send a written notice to both the facility and the staff member by first class mail. The notice shall:

1. Explain the reasons for disqualification;
2. If the reason for disqualification is subject to correction, detail the correction required to the particular noncompliance specified in the notice;
3. Specify a time period for compliance;

4. Advise the facility and the staff member of the right to reconsideration and appeal in accordance with the Certification Guidelines.

Section 151 Staff Procedure for Reconsideration

1. A facility or a staff member or prospective staff member of a facility whose qualifications have been determined to disqualify the facility from certification may file a request for reconsideration by the Certification Coordinator. The request shall be in writing and shall be filed fifteen (15) calendar days from the date of the service of the notice of denial of certification.

2. The Certification Coordinator shall schedule a hearing, which shall be held no later than thirty (30) calendar days after receipt of a timely request for reconsideration.

3. The Certification Coordinator shall serve notice of hearing on the facility and the staff member, not later than ten (10) calendar days prior to the scheduled date of the hearing.

4. At the hearing before the Certification Coordinator, the facility and the staff member shall be given an opportunity to present witnesses and documentary evidence. For example, letters from the Probation Department, the Parole Board or a sponsor.

5. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence that the Certification Coordinator deems reliable, relevant and not unduly repetitious may be considered.

6. Within fifteen (15) calendar days after the hearing, the Certification Coordinator shall issue and transmit to the facility and the staff member a written decision sustaining, reversing, or modifying his/her earlier decision.

7. The decision by the Certification Coordinator after the hearing shall become final unless the facility or staff member files an appeal to the Certification Appeals Board pursuant to Sections 228, 229 and 230 of the Certification Guidelines.

Section 152 Reserved

CHAPTER 5: ADMISSION AND INTAKE REQUIREMENTS

ARTICLE 1: ADMISSION

Section 153 Resident Selection Criteria

In order to help safeguard residents, staff, visitors, and neighbors, each certified sober living facility shall have and adhere to written criteria for resident selection. Prospective

residents will be advised of the criteria prior to admittance, and be offered referrals to non-certified facilities when appropriate.

Resident Selection Criteria shall include:

1. **Criminal History:** The facility shall require each prospective resident to complete a form listing any crimes specified in Section 138 of the Certification Guidelines of which the prospective resident has been convicted and the dates and locations of such convictions. If the prospective resident claims not to have been convicted of any such crimes, he/she shall certify on the form that he/she has never been convicted of any of the crimes specified in Section 138 of the Certification Guidelines. No certified facility shall accept as a resident a person who discloses a conviction for any of the crimes specified in Section 138 of the Certification Guidelines.

2. All criteria for selecting residents shall be objective and shall relate to the facility's strengths or expertise in assisting in recovery from alcohol and drug addictions.

3. A facility shall not unlawfully discriminate against prospective applicants on the basis of ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age, political affiliation, medical condition, physical or mental disability, or sexual preference, and shall adhere to all applicable federal and state laws and regulations related to nondiscrimination.

4. The facility shall admit any person who meets the facility's objective and non-discriminatory admissions criteria and who is physically and mentally able to comply with the facility's rules. Such persons include those who otherwise qualify for admission and who are living with Human Immunodeficiency Virus (HIV) disease, as well as persons with a mental illness diagnosis.

5. Each facility shall comply with the applicable provisions of law pertaining to the prohibition of discrimination against qualified persons with disabilities with respect to admission to the facility, accessibility of the facility, and participation in the facility's services, programs and activities, including Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq., as implemented by 45 C.F.R. § 84.1 et seq.), if applicable, and with such provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq. as amended) as may be applicable.

6. Before admission to the facility, the facility shall require potential residents who show signs of any communicable disease, or who, through medical disclosure during the intake and admission process, disclose a health related problem that would put others at risk, to be cleared medically to reside in housing with uninfected persons.

7. If a prospective resident is denied admission into a facility, the facility shall have a written policy for alternative referral and shall provide a copy of that policy to the prospective resident who is denied admission.

Section 154 **Reserved**

ARTICLE 2: INTAKE

Section 155 **Intake Procedures**

1. The facility shall have a written intake procedure for new residents.
2. The director or house manager shall hold an intake appointment with each new resident, during which the director or house manager shall:
 - a. Review and place in the new resident's file his/her treatment-related court orders and/or treatment plan recommendations from referral sources and others, if available;
 - b. Determine and document in the resident's file how the facility can assist the new resident in implementing his/her treatment related court orders and/or treatment plan recommendations, and so advise the new resident;
 - c. Identify and document in the new resident's file any prescribed medication used by resident;
 - d. Provide the new resident with a copy of the facility's rules for residents;
 - e. Have the new resident sign all consent forms and confidentiality waivers required by the facility and his/her referring agencies or the Superior Court, and place such signed forms in the resident's file;
 - f. All court referrals and residents referred by the Probation Department or the Parole Board, who have not already done so, shall sign a waiver of confidentiality at the time of initial intake into the facility, and the facility shall maintain that waiver in its records. The waiver shall permit disclosure of information about the resident to whichever of the courts, the Probation Department and/or the Parole Board is monitoring the resident's progress.

Section 156 **Reserved**

CHAPTER 6: PROGRAM REQUIREMENTS

ARTICLE 1: POLICIES AND PROCEDURES MANUAL

Section 157 Policy and Procedures Manual

1. Each facility shall maintain, and have available for inspection, a Policy and Procedures Manual.
2. Each staff member shall be familiar with the policies and procedures contained in the Manual.

Section 158 Contents of Policy and Procedures Manual

At a minimum, a facility's Policy and Procedures Manual shall contain the following:

1. Employees
 - a. Job descriptions for all staff positions;
 - b. Drug testing procedures and requirements;
 - c. Staff discharge procedures;
 - d. A procedure to immediately notify the Certification Coordinator of any change in the personnel holding staff positions.
2. Nondiscrimination/Compliance with the Law
 - a. A prohibition against sexual harassment by and of staff and residents;
 - b. A prohibition against unlawful discrimination against employees and applicants for employment on the basis of ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age, political affiliation, medical condition, physical or mental disability, martial status, or sexual preference, in accordance with all applicable federal and state laws and regulations. This prohibition shall extend to all of the following: employment, upgrade, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training.
 - c. A prohibition against unlawful discrimination in the provision of services, the allocation of benefits or in the accommodation in facilities on the basis of ethnic group identification, race, religion, ancestry, color,

creed, sex, marital status, national origin, age, political affiliation, medical condition, physical or mental disability, or sexual preference in accordance with all applicable federal and state laws and regulations.

d. Drug free work place policy, including procedures for compliance with the California Drug Free Work Place Act, Government Code sections 8350-8357.

e. A procedure for keeping staff and the residents informed and updated on all aspects of the above-described policies.

3. Drug testing: Procedures for drug testing of house managers and peer coordinators and such other staff and applicants for staff positions as the facility specifies.

4. Prescription Medications: A prohibition against the inappropriate use of prescribed medications on the facility premises, as described in Section 167 of the Certification Guidelines.

5. Conflicts of Interest: A prohibition against personal and financial conflicts of interest including a prohibition against entering into a financial agreement, venture or proposition with a resident unless previously approved by the director of the facility.

6. Designation of staff other than the director who may have access to residents' files. All staff with access to residents' files must have a legitimate need for such access as part of performing their duties at the facility.

7. Policies to support residents' recovery efforts, as follows:

a. A requirement that staff maintain respect for the dignity of each resident at all times;

b. A requirement that staff encourage residents to accept personal responsibility for their behavior.

c. Recommendations about encouraging active involvement of residents and staff with the recovery community through appropriate activities such as drug and alcohol free social events and recovery-oriented services and events.

d. Recommendations about providing residents opportunities to acquire life skills for sobriety, crime free behavior, education and employment.

- e. A written drug and alcohol relapse policy and procedure for residents, as set forth in Section 165 of the Certification Guidelines.

Section 159 Reserved

ARTICLE 2: RESIDENTS' ACTIVITIES

Section 160 Staff Presence and Availability

1. At each facility, a person or persons performing the duties of director and/or house manager shall reside at the facility or shall be present at the facility during curfew hours, which shall be, at a minimum, between the hours of 11:00 p.m. and 6:00 a.m. weekdays and 12:00 a.m. to 6:00 a.m. weekends. Whenever a director or house manager is not present at the facility, a responsible member of the facility's staff shall be on call to respond to the facility within twenty (20) minutes of being summoned. The phone number that the certification coordinator can call to summon a staff member to the facility within twenty (20) minutes shall be on file with the certification coordinator at all times.

2. The staff person in charge shall be readily identifiable at all times.

3. Each facility shall designate and post the hours that individual staff members will be on site.

Section 161 Criminal Activity

No type of criminal activity shall be promoted, condoned or permitted at the facility or at any activity associated with the facility.

Section 162 Residents' Court Orders and Treatment Plans

1. Facility staff shall support and cooperate with all residents' known court orders and accommodate residents' schedules for compliance with the residents' treatment plans.

2. Failure to support a resident's court orders shall be deemed a serious violation of the Certification Guidelines, resulting in suspension or revocation of certification.

Section 163 Participation in Recovery Activities

1. The facility shall provide adequate opportunities for residents to participate in activities consistent with the stated goals and objectives of their treatment plans.

2. Facility staff shall encourage all residents to be active during the day in activities appropriate to recovery, e.g., participating in treatment or counseling, attending school, working a job, searching for a job or performing other activities that are appropriate for recovery.

Section 164 Reserved

ARTICLE 3: ALCOHOL/ DRUGS/ SMOKING

Section 165 Drug and Alcohol Testing/ Relapse Policies

1. The Parole Board, the Probation Department, and the Superior Court may impose mandatory drug testing on residents and provide such testing. Each facility shall facilitate its residents' compliance with such mandatory testing requirements.

2. The facility may, but is not required to, adopt a policy requiring residents, including residents without mandatory testing requirements, to submit to drug tests in order to determine whether residents remain sober while residing at the facility. If such a policy is adopted, the facility shall be solely responsible for ensuring that all legally required consent forms are signed by residents and that all legal requirements pertaining to such testing are satisfied.

3. The frequency of tests should be noted in each resident's file.

4. Resident's drug test results shall be kept confidential to the extent required by law. Except as may be required by court orders and/or the terms of residents' probation or parole, residents' test results will not be disclosed to the Certification Coordinator.

5. If it is the policy of the facility to require drug tests of residents who do not have mandatory drug test requirements imposed by court orders and/or the terms of probation or parole, the facility shall have a written relapse policy and procedure describing the actions to be taken when such a resident tests positive for alcohol and/or drug use.

6. The facility shall have a similar written relapse policy applicable to residents who do not participate in drug tests and to relapses discovered by methods other than drug tests.

Section 166 Prohibition against Alcohol and Non-Prescribed Drugs

The facility shall have a written policy prohibiting alcohol and any drugs other than prescription medication on the premises. This policy shall be prominently posted at the facility.

Section 167 Prescription Drug Policy

1. The facility shall have a written policy regarding the possession, use and storage of residents' prescribed medications. The facility may not dispense medication, but must make it available to residents.

2. The facility shall prohibit the possession of prescription medication by any resident other than the resident for whom it is prescribed, and in any quantity greater than the amount prescribed.

Section 168 Smoking Policy

The facility shall have and enforce a written smoking policy designating places in or around the facility as the only places where smoking is permitted.

Section 169 Reserved

ARTICLE 4: REPORTS

Section 170 Accurate Progress Reports

1. The facility shall provide accurate reports about a resident's progress to courts, the Probation Department and the Parole Board, in accordance with residents' court orders and/or the terms of residents' probation or parole.

2. Upon the request and with the consent of a resident, the facility shall provide accurate reports about the resident's progress to the resident's referring agency or personnel involved in the resident's recovery, such as therapists.

Section 171 False Reports

It is a felony to prepare any type of written instrument that is false or antedated, with intent to present it for any judicial trial or proceeding or inquiry. (Penal Code section 134).

Section 172 Approval of Progress Reports

The Director shall approve all progress reports issued by the facility.

Section 173 Notification of Resident's Departure

If a county referral or a court referral moves out of the facility, or is terminated for cause from a facility, the appropriate court, or referring County department or agency shall be notified within 24 hours or the next working day.

Section 174 Reports to Certification Coordinator

1. Each facility shall follow the procedures prescribed in this section if any events identified in subsection (3) of this section occur.
2. Upon the occurrence of any of the events identified in subsection (3) of this section, the director or house manager of the facility shall make a telephonic report to the Certification Coordinator within one (1) working day. The telephonic report shall be followed by a written report within seven (7) working days of the event. If a report that meets the requirements of this section is made to State or local authorities, a copy of such report will suffice for the written report to be submitted to the Certification Coordinator.
3. Events that require reporting shall include:
 - a. Death of any resident due to any cause.
 - b. Any facility-related injury of a resident or staff member, which requires medical treatment.
 - c. All cases of communicable disease reportable under section 2502 of Title 17, California Code of Regulations. Such cases of communicable disease shall be reported only to the local health officer.
 - d. Poisonings.
 - e. Catastrophes such as flooding, tornado, earthquake or any other natural disaster.
 - f. Fires or explosions that occur on the premises or grounds.
 - g. Any criminal activity that occurs on the premises or the grounds of the facility.
4. Information provided in the report shall include the following:
 - a. Resident's and/or staff member's name, age, sex, and date of admission.
 - b. Date, time, and nature of the event.
 - c. Attending physician's name, findings and treatment, if available.
5. Any change in the facility owner or operator's mailing address shall be reported to the Certification Coordinator within ten (10) working days following the change.

Section 175 Reserved

ARTICLE 5: INTERACTION OF RESIDENTS

Section 176 Single Gender Facilities

Single gender facilities are encouraged but not required. The rules and regulations for single gender facilities shall include, but need not necessarily be limited to the following:

1. Residents shall wear appropriate attire when in shared areas of the facility and in the presence of other residents, staff or visitors.
2. Sexual harassment of residents or staff is prohibited. Sexual harassment policies, procedures and rights shall be posted in the facility along with the name and telephone number of a contact person.
3. Staff shall not engage in behavior with any resident that leads to a romantic or sexual relationship while the resident is residing at the facility.

Section 177 Co-ed Facilities

If the facility has both male and female residents, it shall have written rules and procedures regarding co-ed interaction, including but not necessarily limited to the following:

1. Residents shall wear appropriate attire when in shared areas of the facility and in the presence of other residents, staff or visitors.
2. Male and female residents shall not share bedrooms.
3. Sexual harassment of residents or staff is prohibited. Sexual harassment policies, procedures and rights shall be posted in the facility along with the name and telephone number of a contact person.
4. Staff shall not engage in behavior with any resident that leads to a romantic or sexual relationship while the resident is residing at the facility.
5. A facility is permitted to make exceptions to the foregoing rules in situations that a court or residents' referring agencies deem appropriate, e.g. if a married couple or a couple in a long term committed relationship enter a facility as a couple, some of the foregoing rules would be inapplicable to them.

Section 178 Reserved

ARTICLE 6: VISITORS

Section 179 Access to Facility by Unauthorized Persons

Access to the facility by individuals who are neither residents, facility staff, volunteers, nor authorized visitors shall be monitored by the facility and limited so that neither the program nor the comfort of residents is disrupted by such access.

Section 180 Visitation Policy

The facility shall have a written visitation policy. The following are the minimum requirements:

1. All visitors shall sign in and out of the facility, using their full names;
2. Visitors shall be permitted in the facility only between such hours as the facility may designate, but in no event after 10:00 p.m. or before 8:00 a.m.;
3. There shall be designated visiting areas, which shall be located in the common living areas of the facility, and which shall be available to all residents for meetings and receiving and entertaining guests. The bedrooms and garages shall be off limits for visitors and shall not be used at any time for visits or meetings without the prior written approval of the Certification Coordinator, the Probation Department or the Orange County Health Care Agency;
4. No visitors shall be permitted on the premises while intoxicated;
5. Visitors shall not be left alone in the facility at any time;
6. Regulations regarding children visiting the facility shall include:
 - a. Specific hours for visitation;
 - b. The type of supervision required; and
 - c. Restriction of children to the common areas.

Section 181 Reserved

ARTICLE 7: LEAVING THE FACILITY

Section 182 Resident Sign In/Out Log and Schedule

1. The facility shall maintain a resident sign in and sign out log for all residents who are court or county referrals.

2. Each resident who is a court referral or a county referral shall be required to sign his/her complete name in the log with the time that he/she left the facility and the location and telephone number of his/her destination.

3. Each resident who is a court referral or a county referral shall be required to sign his/her complete name in the log upon returning to the facility, and the time he/she returned.

4. The facility shall retain its sign in/sign out logs for a minimum of one (1) year.

5. Every resident's schedule for treatment, work, education or other activities shall be provided to, and maintained by, the facility management.

6. Every resident's schedule shall include the location and telephone number where the resident can be reached.

7. Every resident shall be required to notify the management of any change in his/her schedule for treatment, work, education or other activities.

Section 183 Master Log for Multiple Facilities

Programs with multiple residential facilities shall maintain a current master log of all residents at all of the program's certified facilities. The master log shall be maintained and shall be available at the program's business office or main facility.

Section 184 Curfew

The facility shall have a curfew for residents starting no later than 11:00 p.m. on weeknights and 12:00 a.m. on weekends and ending no earlier than 6:00 a.m. on any day. Allowable exceptions may include residents who work during these hours and residents who have prior approval of the facility's staff, the Health Care Agency, or the resident's Probation Officer or Parole Officer.

Section 185 Overnight Passes

1. Overnight passes may be given to a resident after he/she becomes eligible, at the discretion of and with the approval of the director or house manager, or on order of a Superior Court, the Probation Department or the Parole Board. No overnight pass shall be granted if it would conflict with any existing court order.

2. When going on an overnight pass, a resident shall be required to sign in and out of the facility on the resident sign in and sign out log.

3. The facility will notify the referring agency of any violation of Section 185.

Section 186 Reserved

ARTICLE 8: FEES

Section 187 Fee Schedule

1. The facility shall have a written fee schedule that is provided to all residents and posted at the facility.
2. The current fee schedule shall be provided to the Certification Coordinator.
3. At the time of acceptance and admission into the facility, each resident shall be informed of the exact fees required, and fee payment policies and procedures.
4. The facility may establish a reasonable and appropriate fee, to be approved in advance by the Certification Coordinator, for any drug or alcohol testing conducted by the facility.
5. The resident shall be informed of all items that are provided by the facility and which personal items residents must provide themselves.
6. Residents shall not be charged a relapse or re-entry fee.

Section 188 Delinquent Payments and Payment Plans

1. The facility shall have a written policy regarding delinquent payments and payment plans.
2. If a resident has not paid the amount due, the decision whether to terminate the resident, extend a grace period or make a payment plan arrangement is at the discretion of the director.

Section 189 Advance Payment of Fees and Repayment of Fees

The facility shall have a written policy regarding refunds for advance payment of fees and repayment of fees.

Section 190 Receipt for Fees

A resident shall be given a signed receipt at the time of payment of any fees.

Section 191 Reserved

ARTICLE 9: RESIDENTS' FUNDS

Section 192 Co-mingling Funds

Staff shall not co-mingle their own funds or the facility's funds with residents' funds.

Section 193 General Assistance

If the facility accepts a resident's General Assistance rent allowance, the facility shall follow all procedures required by the Orange County Social Services Agency.

Section 194 Reserved

ARTICLE 10: FOOD SERVICE

Section 195 Food Service

1. If food service is offered by the facility, the facility shall provide the residents with the facility's food services and preparation schedule and policy.
2. The kitchen shall be clean.
3. Food shall be properly maintained and stored.
4. The facility may provide meals, which may be included in the fees paid by residents.
5. Residents may be responsible for their own food items.
6. There shall be adequate seating in the dining area.

Section 196 Reserved

ARTICLE 11: RESIDENTS' FILES

Section 197 Maintenance of Residents' Files

All files pertaining to residents shall be handled in the following manner:

1. All files shall be kept in a locked cabinet.
2. Residents' files shall not be co-mingled.
3. Access shall be limited to the director and other personnel with a legitimate need for access who are specified in the facility's policies and procedures.

4. Each staff member, paid or volunteer, with access to residents' files shall be required to agree in writing with the facility to maintain the confidentiality of the records and information in such files unless required by law to disclose file records or information. This agreement shall specify that it is effective irrespective of the subsequent resignation or termination of the staff member.

Section 198 Contents of Individual Residents' Files

The content of individual residents' files shall include, but need not be limited to, the following:

1. A personal information form which contains:
 - a. Personal data for proper identification;
 - b. Length of sobriety and prior recovery experience;
 - c. The names of the resident's current outpatient treatment and educational facilities;
 - d. The name of the source of referral to the facility.
2. Copies of the resident's currently effective court orders, if any.
3. The resident's recovery plan recommendations from referral sources and others.
4. Notations about how the facility can assist the resident in implementing his/her recovery-related court orders and/or recovery plan recommendations.
5. List of prescribed medication used by the resident.
6. Signed originals of all consent forms and confidentiality waivers required by the facility or the residents' referring agencies or the Superior Court. For all court referrals and residents referred by the courts, the Probation Department or the Parole Board, the resident's file must include a waiver of confidentiality, signed at the time of the resident's initial intake into the facility, to permit disclosure of designated information about the resident to whichever of the courts, the Probation Department and/or the Parole Board is monitoring the resident's progress.
7. Copies of all progress reports and all correspondence written by the staff regarding the resident.
8. Dates and results of all drug and alcohol tests and all forms related to such tests, including consent forms and/or court orders.

9. Overnight pass information.
10. Dates of the resident's entry and completion or termination from the facility, including the circumstances of his/her exit.
11. The resident's fee payment record, including amount of fee(s), and the date(s) and amount(s) of payment.
12. A copy of the facility's rules and resident in-take forms, signed and dated by the resident upon entry to the facility.

Section 199 Reserved

CHAPTER 7: BUILDING AND GROUNDS **REQUIREMENTS**

ARTICLE 1: SECTION 200 REVIEW

Section 200 Compliance with Codes, Permits and Other Requirements Related to Buildings and Grounds

Prior to certification, each sober living facility shall obtain from the applicable local jurisdiction an inspection and a written determination [called a "Section 200 Review"] that the facility complies with all of the following requirements:

1. Conformance with all locally applicable and regularly enforced zoning regulations.
2. Possession of all required local, county and state permits.
3. Conformance with applicable fire safety standards, including occupancy limit, smoke detectors and emergency exit plan.
4. Building and Grounds Requirements.
 - a. The facility shall be clean, safe, sanitary and in good repair at all times.
 - b. The interior of the facility shall be free of flies and other insects.
 - c. The facility shall provide for the safe disposal of contaminated water and chemicals used for cleaning purposes.
 - d. Living areas in the facility shall be separate and secure. Permanent walls, floors, ceilings and doors shall enclose the facility's living, sleeping, bathing and toileting areas. This does not preclude the

use of more than one building or the use of wing(s) of a building or floor(s) of a building in meeting this requirement.

e. All residents shall be protected against safety hazards within the facility through provision of appropriate protective devices, including, but not limited to, non-slip material on rugs.

f. All outdoor and indoor passageways, stairways, inclines, ramps, open porches, and other areas of potential hazard shall be kept free of obstructions.

g. Permanent or portable storage space shall be available for storage of facility equipment and supplies. Facility equipment and supplies shall be stored in appropriate space and shall not be stored in space designed for other activities.

h. Every in-ground pool and every above-ground pool that cannot be emptied after each use shall have an operative pump and filtering system.

i. Adequate living space for each resident in the bedrooms and bathrooms shall be provided as follows:

(i) Bedrooms shall not be overcrowded. The definition of a bedroom for the purposes of this requirement is the definition contained in the Uniform Building Code. There should be a minimum of 70 square feet for the first two people and 50 square feet for each additional person in bedrooms.

(ii) Each resident shall have a closet and dresser space made available to him/her.

j. Adequate bathing, hand washing and toilet facilities shall be provided with a maximum ratio of one bathroom facility per six (6) residents. Space for each resident's toilet articles shall be provided.

k. The bathrooms shall be clean, shall provide privacy, and shall contain general hygiene items such as soap and toilet paper.

l. When female and male residents are housed in the same facility, the facility shall ensure minimal personal security and privacy, which shall include the following:

(i) Separate and adequate toilet, hand washing, and bathing facilities for females and males. Such facilities shall be in proximity of designated sleeping quarters.

(ii) Separate and adequate sleeping areas for females and males. Such areas shall be enclosed by permanent walls, which extend from the floor to the ceiling and have permanent doors.

m. Locks shall be placed on all exterior doors and windows in order to maintain proper security.

5. Fixtures, Furniture, Equipment and Supplies:

a. A comfortable temperature for residents shall be maintained at all times.

b. All window screens shall be in good repair and be free of insects, dirt and other debris.

c. The facility shall provide lamps or lights as necessary in all rooms and other areas to ensure the safety of all persons in the facility.

d. Hot water faucets used by residents for personal care shall meet the following requirements:

(i) Hot water delivered to plumbing fixtures used by the residents shall not be less than 105 degrees Fahrenheit (40.5 degrees Celsius) and not more than 130 degrees Fahrenheit (54.4 degrees Celsius).

(ii) Taps delivering water at 131 degrees Fahrenheit (54.9 degrees Celsius) or above shall be prominently identified with warning signs.

e. All toilets, hand washing and bathing facilities shall be maintained in safe and sanitary operating conditions.

f. Solid waste shall be stored, located and disposed in such a manner that it will not transmit communicable diseases, emit odors, create a nuisance, or provide a breeding place or food source for insects or rodents.

(i) All containers, including movable bins, used for storage of solid waste shall have tight fitting covers that are kept in place. The containers and covers shall be in good repair, leak proof and rodent proof.

(ii) Solid waste containers, including movable bins, receiving putrescible waste shall be emptied at least once per week or more often if necessary to comply with subsection (f) above.

g. The facility shall provide each resident with clean linen in good repair, including lightweight, warm blankets; top and bottom sheets; pillowcases; mattress pads; bath towels and wash cloths. The quality of the linen provided shall permit changing, at a minimum, once a week or with greater frequency if needed.

h. The facility shall provide each resident with an individual bed maintained in good repair, equipped with good springs and a clean mattress, and supplied with pillow(s), and with bed linens as described above. Bunk beds are not excluded provided they otherwise meet the requirements of this Section 200.

Section 201 Reserved

CHAPTER 8: GOOD NEIGHBOR POLICY

ARTICLE 1: POLICY

Section 202 Good Neighbor Policy

1. The purpose of the Certification Guidelines is to promote safe and effective services for residents with substance abuse issues. Neighborhood support of an alcohol or drug recovery facility enhances the facility's ability to meet this goal.

2. To increase the likelihood that the residents of the facility are able to be integrated into the community with an improved quality of life, it is required that each facility shall adopt a good neighbor policy similar to the one enumerated here.

3. A good neighbor policy must include, but would not necessarily be limited to, the policies outlined in Sections 204-206 of the Certification Guidelines.

Section 203 Reserved

ARTICLE 2: POLICY CONTENTS

Section 204 Neighborhood Complaints

You are in a better position if you have the first opportunity to respond to concerns.

Each facility shall ensure that the neighboring residents are advised about whom to contact at the facility if they have complaints or questions, and how to get in contact with that person.

Each facility shall develop a written protocol of procedures for staff to follow when a complaint is received.

Each facility shall train the staff member(s) responsible for receiving complaints and questions to field complaints in a positive way.

If a neighbor's complaint is legitimate, the facility shall address it with a commitment that steps will be taken immediately to prevent its happening again. Then, the facility shall review its systems and/or staff to make changes or improvements as needed.

Section 205 Reserved

Section 206 Reserved

CHAPTER 9: MONITORING AND REVIEW OF FACILITIES

ARTICLE 1: MONITORING

Section 207 Monitoring Certified Facilities

1. On site follow-up monitoring of any certified sober living facility may be conducted by the Certification Coordinator or any agency referring residents to the facility to determine continuing compliance with any of the requirements of the Certification Guidelines. Each certified sober living facility shall be inspected at least once during each period of certification to insure compliance with the Certification Guidelines, and follow-up inspections shall be conducted as needed.

2. The purpose of these inspections will be solely to determine whether the facility continues to meet the Certification Guidelines. These inspections shall not be used as an excuse to conduct searches for evidence of crime without required probable cause, warrant or consent.

3. The monitoring personnel may conduct a site inspection of the facility, may interview facility staff and/or residents in private, and may review facility records, with or without advance notice, at any reasonable time, upon presentation of proper identification, in order to determine compliance with the Certification Guidelines. The facility's staff shall cooperate with the monitoring personnel and assist him/ her upon request. The inspection shall be conducted with due regard for the privacy of residents. Monitoring personnel shall not access any files of residents unless there is a court order permitting such access or the resident has given written informed consent.

4. After completion of the monitoring review, the monitoring personnel shall prepare a written report. All reports shall be submitted to the Certification Coordinator and a copy provided to the facility inspected.

Section 208 Notice of Deficiency

1. If deficiencies are identified, a written notice of deficiency, listing all deficiencies, shall be mailed to the facility's director or his/her designee within ten (10) working days of completion of the monitoring review.

2. The notice of deficiency shall specify:

a. The section number of the Certification Guidelines or the title and code section number of each statute or regulation which has been violated, if relevant;

b. The manner in which the facility fails to comply with the specified section of the Certification Guidelines or statute/regulation;

c. Recommended corrections;

d. The date by which each deficiency shall be corrected;

e. Procedure for appeal to the Certification Appeals Board.

3. The facility's director or his/her designee shall respond to the notice of deficiency and prove compliance to the Certification Coordinator in writing within the time specified in the notice of deficiency.

Section 209 Contract Monitoring

Nothing in this Article supersedes monitoring and review of a contract provider by the Orange County Health Care Agency, or any other County agency, pursuant to the terms of a contract between that provider and the County of Orange.

Section 210 Reserved

ARTICLE 2: INVESTIGATION OF COMPLAINTS

Section 211 Complaint Defined

A complaint is a formal or informal negative charge or allegation regarding a violation of an applicable section of the Certification Guidelines. A complaint may include, but is not limited to, the following issues: criminal activity, resident safety, zoning codes, staff or resident use of drugs, or facility safety.

Section 212 Complaints Regarding Criminal Activity

All complaints about criminal activity at a facility shall be immediately reported to the law enforcement agency having jurisdiction where the facility is located.

Section 213 Complaints Regarding Certification Guidelines

1. Any person may file a complaint regarding a violation of an applicable section of the Certification Guidelines by contacting the Certification Coordinator in person, by telephone, in writing, or by any other automated or electronic means.

2. To the extent permitted by law, the Certification Coordinator shall keep confidential the identity of the complainant, unless authorized by the complainant to disclose his/her identity.

3. If requested by the complainant, the Certification Coordinator shall notify the complainant, in writing, of the results of the investigation, to the extent that such information legally may be disclosed to a member of the public.

4. The Certification Coordinator shall cause to be investigated by the appropriate authority all complaints filed against the facility or staff. The Probation Department shall investigate issues related to probationers at the facility.

5. The authority selected to investigate the complaint may conduct a site inspection of the facility, may interview facility staff and/or residents in private, and may review facility records with or without advance notice, at any reasonable time, upon presentation of proper identification, in order to determine compliance with the Certification Guidelines. The facility's staff will cooperate with the investigator and assist him/her upon request. The inspection shall be conducted with due regard for the privacy of residents. Complaint investigators shall not access any files of residents unless there is a court order permitting such access or the resident has given written informed consent.

6. After completion of the investigation, the authority investigating the complaint shall prepare a written report. All reports shall be submitted to the Certification Coordinator. The complaint investigation is complete when all evidence has been inspected and all witnesses who have information relevant to the allegations have been interviewed.

Section 214 Notice of Deficiency

1. If a complaint investigation discloses deficiencies, a written notice of deficiency, listing all deficiencies, shall be mailed to the facility's director or his/her designee within five (5) working days of completion of the investigation.

2. The notice of deficiency shall specify:

a. The section number of the Certification Guidelines or title and code section number of each statute or regulation that has been violated, if relevant;

- b. The manner in which the facility fails to comply with the specified Guidelines or statute/regulation;
- c. Recommended corrections;
- d. The date by which each deficiency shall be corrected;
- e. The procedure for appeal to the Certification Appeals Board.

3. The facility's director or his/her designee shall respond to the notice of deficiency and prove compliance to the Certification Coordinator in writing within the time specified in the notice of deficiency.

Section 215 Emergency

If the Certification Coordinator or any of its allied agencies determines that there is an emergency situation that jeopardizes the public safety and/or the safety of the facility's residents, the Certification Coordinator shall recommend to referring County agencies and the Superior Court that referrals to the facility be suspended immediately pending further investigation. Examples: Owner/Director of a program using drugs, sexual harassment of residents or criminal activity at the facility.

Section 216 Reserved

ARTICLE 3: CORRECTIVE ACTION PLANS

Section 217 Deficiency

A "deficiency" means a failure to comply with the Certification Guidelines or applicable laws. A deficiency may be a cause for a denial of certification or notice of sanction.

Section 218 Corrective Action Plan

1. When a facility is sent a notice of deficiency, the director of the facility shall submit to the Certification Coordinator written verification of correction for each deficiency that is identified in the notice of deficiency. The written verification shall substantiate that the deficiency has been corrected and specify the date when the deficiency was corrected. The written verification shall be postmarked no later than the date specified in the notice of deficiency.

2. If the facility cannot correct a deficiency by the date specified in the notice of deficiency, the director shall submit a written corrective action plan to the Certification Coordinator. The written corrective action plan shall be postmarked no later than the date specified in the notice of deficiency.

3. The written corrective action plan shall:
 - a. Specify the steps already taken and to be taken in the future to correct the deficiency;
 - b. Specify a date when the deficiency will be corrected.
4. In reviewing the corrective action plan, the Certification Coordinator shall consider:
 - a. Potential hazards presented by the deficiency;
 - b. Number of residents impacted;
 - c. Whether the documentation submitted by the director demonstrates that the deficiency will be timely corrected.
5. Within fifteen (15) days of receipt of the written verification and/or corrective action plan, the Certification Coordinator shall notify the director in writing, by first class mail, whether the written verification and/or corrective action plan has been approved.

Section 219 Follow-up Review to Verify Correction of Deficiency

1. The Certification Coordinator, Orange County Health Care Agency, Probation Department and/or appropriate local jurisdictions may conduct follow-up reviews to determine if the facility has corrected all deficiencies specified in the notice of deficiency.
2. If a follow-up review indicates that a deficiency has not been corrected on or before the date specified in the notice of deficiency or subsequently approved corrective action plan, the Certification Coordinator shall impose a sanction pursuant to Sections 221-227 of the Certification Guidelines.

Section 220 Reserved

ARTICLE 4: SANCTIONS

Section 221 Sanctions Defined

A sanction is a disciplinary action taken by the Certification Coordinator that is designed to secure enforcement of the Certification Guidelines by imposing a penalty for a violation of the Guidelines.

Section 222 Purposes of Sanctions

1. The purposes of imposing sanctions are:
 - a. To protect the safety of the community and the residents.
 - b. To assist the certified facility in maintaining a quality level of continuing care and service.
2. All sanctions imposed shall be handled on an individual basis.

Section 223 Types of Sanctions

1. The Certification Coordinator may impose sanctions for a violation of the Certification Guidelines. The sanctions may include any one or more of the following:
 - a. Counseling: A verbal reprimand and recommendations to the facility director of possible remedies that the facility might explore. Corrective action by the provider is expected.
 - b. Letter of Reprimand: This document places the facility on notice that the violation will be made a permanent part of the facility's file with the Certification Coordinator. This is an offense, which if it continues, may result in imposition of more severe sanctions. This letter should contain a description of the problem and recommended corrective action with an expected date of completion.
 - c. Suspension of Certification: A disciplinary action taken by the Certification Coordinator to suspend certification. A suspension is for a specific period of time. Except as required by law or contractual obligations or as permitted by the Certification Guidelines, County personnel shall cease referring individuals to a facility from which certification has been suspended. At their option, or, if applicable, at the discretion of the Superior Court, the Probation Department or the Parole Board, residents who were residing at the facility prior to the suspension may remain and complete their programs.
 - d. Revocation of Certification: A disciplinary action that is imposed by the Certification Coordinator to revoke certification of a facility. Revocation of certification is indefinite. Except in emergency situations, a revocation will not become effective until the time for the facility to appeal has elapsed, or if the facility appeals, until the revocation is upheld by the Certification Appeals Board. To the extent it is clinically appropriate, all County referrals shall be asked to move from a facility from which certification has been revoked and will be placed in certified facilities. Except as required by law or contractual obligations or as permitted by the Certification Guidelines, County personnel shall cease

referring individuals to a facility from which certification has been revoked.

Section 224 Right to Appeal Sanctions

A facility has a right to appeal any sanction that is imposed on it. When imposing sanctions consisting of a letter of reprimand, suspension of certification or revocation of certification, the Certification Coordinator shall advise the facility of the procedures for appeal.

Section 225 Failure to Correct Deficiencies for which Sanctions Imposed

Failure to correct deficiencies for which sanctions were imposed may result in the imposition of more severe sanctions.

Section 226 Notice to Interested Parties

If a facility's certification is suspended or revoked, the Certification Coordinator shall give written notice of the sanction to the District Attorney, the Orange County Superior Court, the Probation Department, the Orange County Health Care Agency, the Parole Board and other interested County agencies and to the city where the facility is located.

Section 227 Reserved

CHAPTER 10: APPEAL AND HEARING

**ARTICLE 1: RIGHT TO APPEAL DENIAL OF
CERTIFICATION OR IMPOSITION
OF SANCTIONS**

Section 228 Facility Right To Appeal

1. If a facility has been denied certification, and the request for reconsideration has been denied, the director of the facility may file an appeal to the Certification Appeals Board at the District Attorney's Office. All appeals shall be forwarded through the Certification Coordinator to the Certification Appeals Board.

2. If a sanction consisting of a letter of reprimand, suspension of certification or revocation of certification has been imposed on a facility, the director may file an appeal to the Orange County District Attorney's Certification Appeals Board. A prior request for reconsideration to the Certification Coordinator is not available for an imposition of a sanction. All appeals will be forwarded through the Certification Coordinator to the Certification Appeals Board.

Section 229 Staff Right To Appeal

1. A staff member or prospective staff member of a facility whose qualifications or lack thereof have been determined to disqualify the facility from certification, and whose request to the Certification Coordinator for reconsideration has been denied, may file an appeal to the Certification Appeals Board.

2. If a sanction consisting of a letter of reprimand, suspension of certification or revocation of termination has been imposed on a facility as a result of the qualifications or lack thereof of a staff member, the staff member and/or the facility's director and head of administrative staff may file an appeal to the Certification Appeals Board. (There is no request for reconsideration by the Certification Coordinator available for an imposition of a sanction.)

Section 230 Reserved

ARTICLE 2: CERTIFICATION APPEALS BOARD

Section 231 Certification Appeals Board

The Certification Appeals Board shall be the administrative responsibility of the Orange County District Attorney's Office. The District Attorney's Office will conduct all appeal hearings before the Certification Appeals Board.

Section 232 Board Membership

1. The Certification Appeals Board shall consist of five (5) members designated by their respective organizations, as follows:

- a. One former employee or director of a sober living facility, who is not currently affiliated with a sober living facility.
- b. One current or retired city manager or assistant city manager.
- c. One current or retired deputy probation officer or police officer.
- d. One current or retired deputy public defender.
- e. One member who is employed by the Orange County Health Care Agency, Behavioral Health Services.

2. The members shall be nominated and appointed in accordance with rules of the Board of Supervisors to be filed with the Clerk of the Board.

3. The term of each member shall be three years. The members shall serve staggered terms so that no more than three members' terms will lapse in the same year.

4. A vacancy shall exist and shall be reported to the Board of Supervisors or its designee whenever a member fails to attend more than three consecutive meetings of the Certification Appeals Board without good cause.

Section 233 Duties of the Certification Appeals Board

1. It shall be the function of the Certification Appeals Board, upon request, to review the decisions of the Certification Coordinator when there is an appeal filed for a denial of certification and/or the imposition of sanctions.

2. The Certification Appeals Board shall meet at least once a year and shall appoint a chairperson at its first meeting each year.

Section 234 Filing Appeals

1. The director of a facility whose application for certification has been denied or that is being sanctioned, and when applicable, a staff member or prospective staff member of a facility on whose qualifications or lack thereof the denial or sanction is based, may file an appeal in writing of the denial of certification or sanction. No particular form is required. The appeal must be received within ten (10) days from the date the notice of denial of certification or imposition of sanction is received.

2. The appeal should be addressed to: Orange County Sheriff/Certification Coordinator, Adult Alcohol and Drugs Sober Living Facilities Certification Program, North Justice Center, 1275 North Berkeley, Fullerton, California 92832 (Telephone: (714) 773-4520).

3. The Certification Coordinator shall forward the appeal and all supporting documentation to the Certification Appeals Board via the District Attorney's Office.

Section 235 Procedures for Hearing Before the Certification Appeals Board

1. If an appeal is timely filed, the District Attorney's Office shall schedule a hearing before the Certification Appeals Hearing Board within thirty (30) days, but no sooner than ten (10) days after the appeal was filed by the facility or staff member.

2. The District Attorney's Office shall provide the facility and/or staff member with written notice of the hearing, giving the time, date, and location of the hearing.

3. During the hearing, the facility and/or staff member shall be given the opportunity to present evidence including, but not limited to, sworn testimony, sworn affidavits, and documentary evidence.

4. The District Attorney and/or the Certification Coordinator may also present evidence as noted above.

5. At the close of the hearing, the Certification Appeals Board may uphold or overturn the decision to deny certification or uphold, set aside, or modify the sanctions, as applicable. The Board members shall make their individual decisions based upon a preponderance of the evidence presented at the hearing.

6. A majority vote of the Board members present determines the result. There must be a minimum of three members voting.

7. Within five (5) calendar days after the hearing, the Certification Appeals Board shall issue and transmit to the facility and/or staff member a written decision sustaining, reversing, or modifying the Certification Coordinator's decision.

8. The Certification Appeals Board's decision shall be the final administrative determination.

Section 236 Reserved

SPEAKER BIOS

Gregory P. Priamos
City Attorney
3900 Main Street
Riverside, CA 92522
(951) 826-5567

Since July of 2002, Gregory P. Priamos has been the City Attorney of the City of Riverside. Under general policy direction of the City Council, he is the City's chief legal advisor and the manager of the City Attorney's Office. He is the General Counsel to the Riverside Redevelopment Agency.

Prior to his appointment as City Attorney, Greg was the interim City Attorney/Interim Agency General Counsel from August of 2001. He was the Supervising Deputy City Attorney in charge of the Litigation Services section since 1995 and a member of the office since 1993. He received his Juris Doctor degree from Loyola School and his undergraduate degree in political science from the University of Southern California.

Before coming to the Riverside City Attorney's Office in 1993, he was a senior associate with Burke, Williams & Sorenson, a municipal law firm in Los Angeles. While at Burke, Williams & Sorenson, he represented numerous public entities including the cities of Alhambra, Azusa, Bell, Costa Mesa, Downey, El Segundo, Gardena, Glendora, Manhattan Beach and Santa Maria.

He and his wife Michele live in Riverside with their two children, Catherine and Nicholas.

DEAN J. PUCCI

(714) 446-1400

Associate

Practice Areas

Police Litigation/Legal Advisor
City Prosecutor
Receiverships
Personnel and Employment Law
Investigations

Education

J.D., Southwestern University School
of Law, Los Angeles, CA 2002,
Student-Faculty Relations Committee

Bachelor of Arts undergraduate
degree from University of Nevada
Reno, 1999, Founding President, Phi
Alpha Delta Law Fraternity, Board of
Regents Outstanding Student Award,
Student Ambassador.

Bar and Court Admissions

California Supreme Court

United States Court of Appeals for the
Ninth Circuit

U. S. District Court for the Central,
Northern, Eastern and Southern
Districts of California

Other Professional Affiliations

State Bar of California
American Bar Association
California State Sheriffs= Association
California Police Officers=
Association
California Police Chiefs= Association

Mr. Dean J. Pucci is currently an Associate with the law firm of Jones & Mayer. Mr. Pucci primarily limits his practice to police litigation and city prosecution. His practice involves representing cities, counties and the State as legal advisor to their Chiefs of Police or Sheriffs and in that capacity represents or has represented over one-hundred agencies throughout California. In this capacity Mr. Pucci represents law enforcement management in a variety of contexts including personnel disciplinary proceedings, civil rights litigation, constitutional law and appellate/writ practice.

Mr. Pucci conducts internal affairs investigations on behalf of municipal police departments involving allegations of misconduct by peace officers. He has additionally served as legal advisor and representative to a number of law enforcement agencies reviewing internal affairs investigations and reports; conducting *Skelly* hearings as well as termination/disciplinary appeal hearings.

Mr. Pucci serves as Deputy City Prosecutor for approximately thirteen cities. In his capacity as City Prosecutor, Mr. Pucci is responsible for handling all aspects of the criminal prosecution of city municipal code violations.

Mr. Pucci founded a program identified as the complex health and safety receivership program which was designed to place severely sub-standard residential and commercial properties into health and safety receiverships and has successfully marketed and implemented the program for cities and counties throughout the State of California.

Mr. Pucci has handled numerous complex litigation cases in both state and federal court successfully defending municipal and county governments. Specifically Mr. Pucci has extensive experience litigating complex health and safety and housing matters; class action lawsuits in both state and federal courts involving allegations of constitutional violations. Mr. Pucci's experience includes handling of litigation in AQuo Warranto@ (or on behalf of the California Attorney General) and serving as counsel for amici curiae on numerous high profile cases involving various law enforcement issues.

Prior to joining the Law Offices of Jones & Mayer, Mr. Pucci served as a Certified Senior Law Clerk for the Los Angeles County District Attorney=s office. In that capacity, Mr. Pucci conducted numerous felony preliminary hearings as well as assisted with numerous trials.

Margaret Dooley
Prop 36 Statewide Coordinator
Southern California Office
Drug Policy Alliance
610 S. Ardmore Ave
Los Angeles, CA 90005
858 336 3685

Margaret Dooley is the Drug Policy Alliance's state-wide coordinator for Proposition 36, California's landmark treatment-instead-of-incarceration law. In partnership with a growing network of Prop. 36 treatment providers and alumni, Ms. Dooley works to educate the public on the success of the diversion law and advocate for the program's continuous improvement and funding. She also builds alliances in the recovery and treatment communities and with the prison reform movement.

Ms. Dooley earned her B.A. in linguistics and languages (Spanish and Mandarin Chinese) from Bryn Mawr College. She worked for the Economist Intelligence Unit in Shanghai, working there and in Hong Kong as an editor for several years before moving back to Southern California in 2004. Prior to joining the Drug Policy Alliance, Ms. Dooley was a freelance writer in San Diego.

Biographical Data

Geoff Henderson

Senior Program Director- Phoenix Houses of Orange County

Mr. Henderson currently holds the position as the Senior Program Director for Phoenix Houses of Orange County in California. The programs under his supervision include Residential Adult and Adolescent treatment, Adult Outpatient, In-Custody and Post-Custody Treatment at Theo Lacy Jail Facility, and a Men's Transitional Living facility. Phoenix House in Orange County currently serves approximately 400 clients and families on any given day. His past titles within his 15 year history with Phoenix House include Program Director, Adult Services; Regional Training Coordinator for the California Region, Program Director at Lake View Terrace-Adolescent Academy and numerous Counselor roles that include working in our New York Programs both residentially and in prevention/education departments. He has extensive understanding and skill in the development and implementation of therapeutic community treatment for many various populations including short and long term, outpatient, co-occurring disorders, custody-based and gender-specific models.

Mr. Henderson holds a Master's degree in Special Education and worked in the special needs community for seven years. He is certified in Applied Behavioral Analysis and specializes in Functional Analysis of dysfunctional behavior, positive support plan development and family integration. He has served as a behavioral consultant to various non-profit programs that targeted their psychiatric emergency contingency and crisis intervention plans. He continues to train all Phoenix House clinical staff in the topics of crisis management and positive behavioral interventions. As a certified trainer of the Pro-Act model of the management of assault behavior, he serves as an internal consultant for high risk client behavioral challenges.

As a college educator, Mr. Henderson implemented the Human Services Occupational Certificate Program for generalist counselors at Riverside Community College. He was successful in the development of a new educational track for social workers by establishing a collaborative education model between the colleges; two local four-year institutions; county agencies; such as Child Protective Services; and the private group home system of care in Riverside and San Bernardino Counties. He also served at California State University Fullerton campus as a Special Education Teacher Supervisor as a Master Teacher with interns.

Mr. Henderson continues to remain innovative in collaborative approaches in the helping field. He spearheaded a new program collaborative that included the Orange County Sheriff, Probation Department, Health Care Agency and other community supports to provide substance abuse treatment services inside the county jail that included a continuum of care post-release.

James Allen Brierly

24312 Bark Street
Lake Forest, CA 92630

Message (949) 533-8053
Home (949) 390-4315

JOB SUMMARY: Nineteen years administrative and managerial experience. Extensive experience as a counselor, facilitator and trainer. Program Director for ten years in state contracted drinking driver and drug diversion services. State certified program administrator, involved in day-to-day operations, budgeting, staff development, proposal and grant writing, program development, community networking, outreach and compliance with federal and state regulations. Successful proposal preparation.

EDUCATION:

California State University, Long Beach Long Beach, California Certificate in Non-Profit Administration	1996
University of California, Irvine Irvine, California Certificate in Counseling and Alcohol Studies	1987-1989
California State College (Fullerton) 800 N. State College Boulevard Fullerton, CA 92634 B.A. Political Science (Public Administration)	1968-1973
Orange Coast College 2701 Fairview Road Costa Mesa, CA 92628 A.A. Social Science	1965-1967

EXPERIENCE:

South California Community Recovery Center 24312 Bark Street Lake Forest, CA 92630 Owner/Operator	6/98-Present
Academy of Defensive Driving 31726 Rancho Viejo Road #120 San Juan Capistrano, CA 92675 Vice President	4/96-6/98
National Traffic Safety Institute 1901 East Fourth Street #311 Santa Ana, CA 92705 Regional Director	3/92-4/96
Department of Veterans Affairs Vets Center of Orange County 859 Harbor Boulevard Anaheim, CA 92801 Readjustment and Substance Abuse Coordinator	1991
National Council on Alcoholism and Drug Dependence 22471 Aspan St., Suite 103 El Toro, CA 92630 Program Director (Drinking Driver & Drug Treatment)	1989-1991
South Coast Counseling Center 28052 Camino Capistrano, Suite 210 Laguna Niguel, CA 92677 Program Director (Drinking Driver & Drug Treatment)	1988-1989

Professional Achievements

State Licensure #30094AN October 1998
Dept. of Drug and Alcohol Programs
65 – Bed Residential Treatment Facility
Veterans Recovery Center - Santa Ana, CA

Certification #9805 1 June 1998
County of Orange - Drug Diversion
Veterans Charities of Orange County
VOICE Center – Anaheim, CA

RFP-Contract #0000000022
County of Orange – Traffic Violator School
NTSI – 5 municipal courts
Awarded 10 October 1995

Certification: #000095, 7 December 1994
County of Orange – Drug Diversion (PC1000)
NTSI-South and Central Courts, November 1994

RFP-First Offender DUI Program
County of Orange - 1993
NTSI-South Municipal Court- Satellite Office
Awarded Contract August 12, 1993

FRP-Municipal Offender DUI Programs
Santa-Clara County - 1992
NTSI-San Jose District
Awarded Contract November 1992

FRP – First Offender DUI Program
County of Orange, 1990
NCA-DD South and North Court
Obtained South Contract 10 January 1991

RFP-Multiple Offender DUI Program
County of Orange 1989
South Court Counseling Center
Obtained Harbor Contract October 1989

Military Service

27 May 1969-17 Jan 1971 – U.S. Army Infantry
22 Jan 1971-26 May 1975 – California Nat'l Guard
3 March 1982-20 Feb 1983 – California Nat'l Guard
20 Feb 1983-5 June 1987 – U.S. Army Infantry
20 June 1987-21 June 1989 – California Nat'l Guard
22 June 1989-27 May 1993 – U.S. Army Reserve

Military Awards

Combat Infantryman Badge, Parachute Infantry
Badge, Bronze Star (V-3 Clusters) Good Conduct
Medal, Air Medal, Jungle Training Badge

Military Service

Basic Infantry Training – Fort Ord, CA 1969
Advanced Infantry Training – Ft. Gordon, GA, 1969
Parachute Infantry Training – Ft. Benning, GA, 1969
Combat NCO School, Camp Evans – Vietnam, 1970
Drill Sergeant School – San Luis Obispo, Ca, 1973
Jungle Warfare Training – Panama, 1983
Advanced NCO Academy-Augsburg, Germany, 1985
Drug & Alcohol Counseling-Stuttgart, Germany, 1986

Professional Affiliations

National Council on Alcoholism and Drug Dependents Treasurer Advisory Board
Drug Abuse Testing Industry Association Certified Affiliate
Mothers Against Drunk Driving (Orange County) Advisory Board
Orange County Substance Abuse Prevention Network Member
Catalina Conservancy – Volunteer Member
P.A.L.M. (Orange Coast Chapter) Advisory Board
101st Airborne Association – Life Member – Vietnam Conflict

Personal Characteristics

- * Dedicated
- * Goal Oriented
- * Strong Leadership
- * Trustworthy and Dependable
- * High Moral and Ethical Standards
- * Success Driven

Hobbies

- * Hiking and Camping
- * Jogging and 10K Runs
- * Ski and Scuba Diving
- * Sky Diving

References furnished upon request

Lieutenant Jeff Bardzik
Orange County Sheriff's Department

1275 N. Berkeley, Fullerton, CA 92632 (714) 773-4523, jbardzik@ocsd.org

Orange County Adult Alcohol and Drug Sober Living Facilities Certification Coordinator

PROFILE: Twenty Two years experience as a proven leader, manager and mentor in the Sheriff's Department. Recent assignments include Operation Management positions with emphasis on planning and resource assessment with outside departments, community collaboration and public presentations.

EDUCATION:

- **Bachelors of Arts, Communication**
California State University, Long Beach, 1976
- **Associate of Science, Aeronautics**
Cypress Junior College, Cypress, CA, 1973

TRAINING:

- USMC Officer Candidate School, 1980
- Admin. of Justice Command Hostage Negotiations School - 1994
- Sherman Block Supervisory Leadership Institute - 1998
- POST Management Course - 2003
- Incident Command System - 2005
- Proactive Leadership Strategies - 2006

EXPERIENCE:

- Facility Commander, North Justice Center - 05 to present
- Reserve Division Commander - 03 to 05
- Facility Commander, Harbor Justice Center - 4/03 to 11/03
- Hostage Negotiation Team - 90 to 03
- Security/Weapon Screening Sgt, Superior Court - 4/01 to 4/03
- Sheriff's Academy Tactical Sergeant - 98 to 01
- Jail Supervisor - 94 to 98
- Gang Enforcement Team - 5/94 to 8/94
- Tactical Training Center Instructor - 92 to 94
- Patrol Deputy, (Stanton, Midway City and Anaheim) - 87 to 92
- Jail Deputy - 85 to 87

DISTINCTIONS:

- Implemented Reserve Division Decentralization, noted as a "highlight" of 2005 in the Sheriff's "State of the Department" letter.
- Designed the Reserve Division expansion, launched in 2006.
- Medal of Courage Recipient.

PUBLIC EDUCATION MATERIALS

PUBLIC EDUCATION MATERIALS

**JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.⁽¹⁾ The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

Questions and Answers on the Fair Housing Act and Zoning

Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.⁽²⁾ Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

Q. Who are persons with disabilities within the meaning of the Fair Housing Act?

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

Q. What is a reasonable accommodation under the Fair Housing Act?

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

Q. What is the procedure for requesting a reasonable accommodation?

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

Q. What is the status of group living arrangements for children under the Fair Housing Act?

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

Q. How are zoning and land use matters handled by HUD and the Department of Justice?

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
 2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

The following documents were prepared by the Newport Beach City Attorney's Office as handouts for educating members of the public. The documents address some of the provisions of federal and state law affecting residential care facilities, sober living homes, and alcohol and drug abuse recovery and treatment facilities. Emailed copies in Word form may be requested from cwolcott@city.newport-beach.ca.us; please copy dalcaraz@city.newport-beach.ca.us.

Federal and State Statutes and Cases
Limiting Cities' Ability to Regulate
Residential Recovery Facilities

State and federal laws, and the court cases interpreting them, impact cities' ability to regulate:

- residential alcohol and drug recovery and treatment facilities,
- residential care facilities
- sober living homes
- many (but not all) other group living arrangements.

SECTION ONE

Federal Statutes, Regulations and Case Law

The federal **Fair Housing Act Amendments (FHAA)** and the **Americans with Disabilities Act (ADA)** set stringent limits on what cities can do to regulate the location and size of residential treatment facilities, sober living homes, and residential care facilities. Federal court decisions interpret and expand on the statutory law, and in some cases create confusion with diverging opinions on selected issues.

Americans with Disabilities Act

The federal **Americans with Disabilities Act**, passed in 1990, prohibits discrimination against individuals with disabilities. A subsequent U.S. Supreme Court decision, *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) clarified that the ADA required states to place individuals with mental disabilities in community settings rather than institutions when the state's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

Handicapped Status Established

The broad protections of the FHAA and similar provisions in the ADA apply to individuals who are in recovery from addiction and are living temporarily in alcohol and drug treatment facilities and sober living homes. This is because individuals who are not currently using illegal drugs, but who are recovering from an addiction to alcohol or drugs, are defined as "handicapped" under the Code of Federal Regulations and federal court opinions.

Code of Federal Regulations §100.201. (Definitions)

CFR §100.201 (Definitions)

"Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such impairment. This term does not include current, illegal use of or addiction to a controlled substance . . ."

CFR §100.201(a) "Physical or mental impairment includes:

(2) Any mental or psychological disorder . . . The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as . . . drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.”

Selected quotes from case on handicapped status:

U.S. v. Southern Management Corp.

955 F.2d 914

C.A.4 (Va.), 1992.

February 03, 1992

“(In an earlier case,) the Supreme Court . . . reasoned that the ‘negative reactions of others to the impairment’ could limit a person's ability to work regardless of the absence of an actual limitation on that person's mental or physical capabilities . . . (and) effectively expanded the scope of the term ‘limitation on major life activities’ to include limitations on one's capability to maintain or obtain a job as well as the ability to perform a job . . . The inability to obtain an apartment is, we feel, on a par with the inability to obtain a job.” *U.S. v. Southern Management*, 955 F.2d at 919.

“The clients are clearly impaired, and their ability to obtain housing (a major life activity) was limited by the attitudes of the . . . officials. Thus, we conclude that the clients qualify as having a handicap under the general definition at 42 U.S.C. § 3602(h)(1)-(3).” *Id.* at 919.

“The House report submitted with the proposed amendments to the Fair Housing Act, which report remained unchanged in the Senate substitute, makes reference to ‘current addicts’ and unequivocally expresses the intent not to exclude ‘recovering addicts.’” *Id.* at 921.

“Our ruling is fair notice regarding the ambit of the Act's coverage of drug addicts/abusers. The Rehabilitation Act's current definition, 29 U.S.C. § 706(8)(C)(ii)(I-III) (1991), should serve as a definitive guidepost for all future controversies under the Fair Housing Act. We emphasize that our ruling is fairly narrow in its scope. We hold that 42 U.S.C. § 3606 does not per se exclude from its embrace every person who could be considered a drug addict. Instead, we believe that Congress intended to recognize that addiction is a disease from which, through rehabilitation efforts, a person may recover, and that an individual who makes the effort to recover should not be subject to housing discrimination based on society's ‘accumulated fears and prejudices’ associated with drug addiction.” *Id.* at 923. (footnotes omitted)

Fair Housing Act Amendments

The FHAA does not pre-empt local authority over zoning laws. However, it *applies* to local government entities, and prohibits them from making or implementing local zoning or land use rules or policies that exclude or discriminate against protected classes, such as individuals with disabilities. Relevant excerpts from the FHAA follow:

Fair Housing Act § 3604

“. . . it shall be unlawful –

(1) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter . . . “ (42 USC §3604(f))

“For purposes of this subsection, discrimination includes . . . a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .”
“ (42 USC §3604(f)(3)(B))

“Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”
(42 USC §3604(f)(3)(C)(9))

Fair Housing Act § 3607(b)(1)

“[A]ny reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling,” are exempted entirely from FHAA coverage.

The FHAA protects disabled individuals from discrimination by government entities and sellers or renters of property. Court cases interpreting the FHAA have established that no city regulation may:

- Be enacted for a discriminatory reasons, or involve discriminatory treatment of the handicapped;
- Have a disparate impact on the availability of handicapped housing (this occurs when outwardly neutral practices impact housing availability for a disabled group more than other similarly situated groups;
 - “Similarly situated groups” usually means other groups of unrelated individuals wishing to share a dwelling but not live as a single housekeeping unit or other family-like structure. (See *Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997)
- Refuse to make reasonable accommodations

Reasonable accommodation is determined on a case-by-case basis, and should be the least drastic measure necessary to achieve its purpose. The reasonable accommodation requirement applies to zoning ordinances and other land use regulations. Local governments may deny a request for a reasonable accommodation if it would:

- Fundamentally alter the nature of the ordinance, neighborhood, or local zoning procedures;
- Undermine the legitimate purpose and effects of existing zoning regulations; or
- Impose undue financial and administrative burdens on the municipality. (See *U.S. v. Village of Marshall, Wisc.*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991)

Selected quotes from cases interpreting the Fair Housing Act:

Issue One – Discriminatory Intent

Oxford House, Inc. v. Town of Babylon
819 F.Supp. 1179
E.D.N.Y., 1993.
April 28, 1993

(In this case, residents of a sober living home for sought an injunction to prevent the town from enforcing its zoning ordinance to evict them. The court held that: (1) the zoning ordinance was discriminatory; (2) evicting residents would not advance town's interest; (3) discriminatory effect outweighed town's interest; and (4) town failed to reasonably accommodate group home residents.)

"Recovering alcoholics or drug addicts require a group living arrangement in a residential neighborhood for psychological and emotional support during the recovery process. As a result, residents of an Oxford House are more likely than those without handicaps to live with unrelated individuals. Moreover, because residents of an Oxford House may leave at any time . . . the town's eviction of plaintiffs from a dwelling due to the size or transient nature of plaintiffs' group living arrangement actually or predictably results in discrimination." *Oxford House v. Town of Babylon*, 819 F.Supp at 1183. (footnote omitted)

"Even if the Town's proposed enforcement of its zoning ordinance advances a legitimate governmental interest, the Court nevertheless finds that plaintiffs' showing of discriminatory effect far outweighs the Town's weak justifications . . . Plaintiffs in the present case have set forth substantial evidence to indicate that the Town had the intent to evict them because they were recovering alcoholics." *Id.* at 1184.

"On September 3, 1991, a public meeting was held to discuss the East Farmingdale Oxford House. So many neighbors came to the meeting that Supervisor Pitts suspended the normal rules . . . These neighbors were 'hostile' to (the sober living home), expressing their fears regarding the safety of children and senior citizens. ^{FN8} No one from the community or the Town Board spoke in favor of the East Farmingdale Oxford House." *Id.* (citations omitted)

"FN8. One speaker exclaimed that an elderly neighbor with a bad heart would die of fright if one of the Oxford House residents broke into his house." *Id.*

"The citizens of East Farmingdale made it clear that they did not want recovering individuals living in their neighborhood. One individual stated, 'I don't want [my son] subjected to irrational, unpredicted [sic] behavior from people.' Another demanded, '[w]hat [can you] do to help us remove this threat from our community[?]' In response to their concerns, Supervisor Pitts made the following statements:

'Merely not wanting to have someone there doesn't necessarily mean that we can stop them, but what it does mean is that there are all kinds of laws about single room occupancy, occupancy limitations in the town, motel/hotel in the town.'

'I don't want to sit up here and say we can keep them out, because we've had other instances with group homes in the town where we have been unable to keep group homes out of the town.'

'If it is coming under the laws of the State of New York, we're going to have a real hard time because it's a fight we fought before, and it's a fight we've unfortunately lost before.'

A Town of Babylon councilman also spoke at the Town meeting, stating,

'So I wish I could say absolutely, we'll keep them out. But we're not an army. I mean if they move in tomorrow, we can't go in there and yank them out of their beds either. I'd like to say that....'" *Id.* (citations omitted)

Oxford House-C v. City of St. Louis

77 F.3d 249

C.A.8 (Mo.), 1996.

February 23, 1996

(A case in which the court did not find discrimination on the part of the city imposing its zoning restrictions on a sober living home.)

"Cities have a legitimate interest in decreasing congestion, traffic, and noise in residential areas, and ordinances restricting the number of unrelated people who may occupy a single family

residence are reasonably related to these legitimate goals.” *Oxford House v. City of St. Louis*, 77 F.3d at 252.

“We do not believe these isolated comments reveal City officials enforced the zoning code against the Oxford Houses because of the residents’ handicap, especially considering the Oxford Houses were plainly in violation of a valid zoning rule and City officials have a duty to ensure compliance.” *Id.*

“The Fair Housing Act does not ‘insulate [the Oxford House residents] from legitimate inquiries designed to enable local authorities to make informed decisions on zoning issues.’ *City of Virginia Beach*, 825 F.Supp. at 1262. Congress did not intend for the Act to remove handicapped people from the ‘normal and usual incidents of citizenship, such as participation in the public components of zoning decisions, to the extent that participation is required of all citizens whether or not they are handicapped.’ In our view, Congress also did not intend the federal courts to act as zoning boards by deciding fact-intensive accommodation issues in the first instance.” *Oxford House v. City of St. Louis* at 253. (citations omitted)

Issue Two – Disparate or Discriminatory Impact

Gamble v. City of Escondido

104 F.3d 300
C.A.9 (Cal.), 1997.
January 10, 1997

“(First,)[u]nder the disparate impact theory, a plaintiff ~~must~~ prove actual discriminatory effect, and cannot rely on inference. Second, the (plaintiff’s) position relies on a comparison between physically disabled groups and single families to establish the discriminatory effect. The relevant comparison group to determine a discriminatory effect on the physically disabled is **other groups of similar sizes living together**. Otherwise, all that has been demonstrated is a discriminatory effect on group living. . . . No evidence has been presented suggesting that the City’s permit denial practices disproportionately affect disabled group living as opposed to other kinds of group living.” *Gamble v. City of Escondido*, 104 F.3d at 306-307 (citation and internal quotation marks omitted, emphasis added).

“A municipality commits discrimination under Section 3604(f)(3)(B) of the FHA if it refuses ‘to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [the physically disabled] equal opportunity to use and enjoy a dwelling.’” *Id.* at 307.

“These portions of the statute affirmatively require the City to make reasonable accommodations for handicapped residences The statute does not, however, require reasonable accommodation for health care facilities. The record establishes that a significant portion of the building size is devoted to the proposed adult health care facility. It occupies nearly half the square footage of the building and the bottom floor of the two-story building.” *Id.* (citations omitted)

Oxford House, Inc. v. Town of Babylon

819 F.Supp. 1179
E.D.N.Y., 1993.
April 28, 1993

“Defendant in the present case asserts that the ordinance is designed to keep boarding houses, rooming houses, multiple family dwellings, and other similar arrangements out of residential neighborhoods. The Town contends that it enforces the ordinance against all violators; the enforcement of the ordinance furthers a legitimate governmental interest in maintaining the residential character of the areas zoned for single family dwellings; and any discriminatory effect

it may have on plaintiffs is due to plaintiffs' transiency and failure to live as a family, not because of their handicap.

"Although a town's interest in zoning requirements is substantial, the Court finds that evicting plaintiffs from the East Farmingdale Oxford House is not in furtherance of that interest. Five Town officials testified that the Town has received no substantial complaints from plaintiffs' neighbors within the past year. Furthermore, the house is well maintained and does not in any way burden the Town or alter the residential character of the neighborhood. The presence of the East Farmingdale Oxford House in a single family, residential district does not undermine the purpose of the Town's zoning ordinance. Therefore, defendant cannot justify evicting plaintiffs as being in furtherance of its asserted governmental interest." *Oxford House v. Town of Babylon*, 819 F.Supp. at 1183 (citations and internal quotation marks omitted).

Issue three – Reasonable Accommodation

Oxford House, Inc. v. Town of Babylon

819 F.Supp. 1179

E.D.N.Y., 1993.

April 28, 1993

"[T]Court finds that defendant's conduct constituted discrimination as it is defined in 42 U.S.C. § 3604(f)(3)(B). Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Courts have unanimously applied the reasonable accommodations requirement to zoning ordinances and other land use regulations and practices.

"In the present case, plaintiffs requested that the Town modify the definition of a 'family' as it was applied to them. Plaintiffs have demonstrated that as recovering alcoholics and drug addicts, they must live in a residential neighborhood because an Oxford House 'seeks to provide a stable, affordable, and drug-free living situation so as to increase the likelihood that a person will stay sober.' In *Township of Cherry Hill*, the court held that the location of the houses in a drug-free, single family neighborhood played a crucial role in an individual's recovery by 'promoting self-esteem, helping to create an incentive not to relapse, and avoiding the temptations that the presence of drug trafficking can create.' This Court finds that reasoning persuasive." *Oxford House v. Town of Babylon*, 819 F. Supp. at 1185. (citations omitted)

"Plaintiffs have also established that the requested accommodation was reasonable. An accommodation is reasonable under the FHA if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve. Because one of the purposes of the reasonable accommodations provision is to address individual needs and respond to individual circumstances, courts have held that municipalities **must** change, waive, or make exceptions in their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities." *Id.* at 1186 (citations omitted, emphasis added).

Keys Youth Services, Inc. v. City of Olathe, KS

248 F.3d 1267

C.A.10 (Kan.), 2001.

May 11, 2001

"[W]e can affirm the court's reasonable accommodation ruling for a separate reason. Even assuming that Keys presented its economic necessity argument to the City Council, we conclude that the requested accommodation-housing ten troubled adolescents instead of eight-is not

'reasonable' in light of Olathe's legitimate public safety concerns. Common sense dictates that when a defendant possesses a legitimate nondiscriminatory reason for a housing decision, a plaintiff's requested accommodation must substantially negate the defendant's concern in order to be considered reasonable." *Keys Youth Services v. City of Olathe* at 1276.

Smith & Lee Associates, Inc. v. City of Taylor, Mich.

102 F.3d 781
C.A.6 (Mich.), 1996.
December 16, 1996

"The statute links the term 'necessary' to the goal of equal opportunity. See 42 U.S.C. § 3604(f)(3)(B) ('accommodation ... necessary to afford ... equal opportunity'). Plaintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice. See *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir.1995) ('[T]he concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.'" *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* at 795.

Oxford House-C v. City of St. Louis

77 F.3d 249
C.A.8 (Mo.), 1996.
February 23, 1996

"The Fair Housing Act does not insulate [the Oxford House residents] from legitimate inquiries designed to enable local authorities to make informed decisions on zoning issues. Congress did not intend for the Act to remove handicapped people from the normal and usual incidents of citizenship, such as participation in the public components of zoning decisions, to the extent that participation is required of all citizens whether or not they are handicapped. In our view, Congress also did not intend the federal courts to act as zoning boards by deciding fact-intensive accommodation issues in the first instance." *Oxford House v. City of St. Louis*, 77 F.3d at 253. (citations and internal quotation marks omitted)

SECTION TWO

California State Statutes

State laws also impact local land use practices with respect to alcohol and drug abuse recovery and treatment facilities, residential care facilities and sober living homes. The **California Fair Employment and Housing Act (California Government Code § 12955)** contains provisions similar to the FHAA and prohibits housing discrimination based on disability or familial status.

The **California Health and Safety Code** regulates the licensing of *residential care facilities* (licensed by the California Department of Health Services, hereinafter "DSS") and the licensing of *alcohol and drug abuse recovery and treatment facilities* (licensed by the California Department of Alcohol and Drug Programs, hereinafter "ADP".) *Sober living homes* are not licensed by any government agency, and are not addressed in the Health and Safety Code (except to be specifically excluded from provisions of Code, in some sections). Whether a particular facility is an alcohol and drug abuse recovery and treatment facility or a sober living home depends primarily on whether "nonmedical services" are offered on-site at the home. If nonmedical services are offered onsite, the facility must be licensed as an alcohol and drug abuse recovery and treatment facility.

Cities attempting to regulate alcohol and drug abuse recovery and treatment facilities must be aware of and comply with the following sections of the California Health and Safety Code:

- **Health and Safety Code § 11834.02 Definitions**

"(a) As used in this chapter, 'alcoholism or drug abuse recovery or treatment facility' or

'facility' means any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(b) As used in this chapter, 'adults' may include, but is not limited to, all of the following:

(1) Mothers over 18 years of age and their children.

(2) Emancipated minors, which may include, but is not limited to, mothers under 18 years of age and their children.

(c) As used in this chapter, 'emancipated minors' means persons under 18 years of age who have acquired emancipation status pursuant to Section 7002 of the Family Code.

(d) Notwithstanding subdivision (a), an alcoholism or drug abuse recovery or treatment facility may serve adolescents upon the issuance of a waiver granted by the department pursuant to regulations adopted under subdivision (c) of Section 11834.50."

• **Health and Safety Code § 11834.26. Nonmedical services**

"(a) The licensee shall provide at least one of the following nonmedical services:

(1) Recovery services

(2) Treatment services

(3) Detoxification services"

• **Health and Safety Code § 11834.30. Operation of unlicensed facility.**

"No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct or maintain an alcoholism or drug abuse recovery or treatment facility to provide recovery, treatment or detoxification services within this state without first obtaining a current valid license issued pursuant to this chapter."

• **Health and Safety Code § 11834.20**

"The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need.

The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purposes of this article, 'six or fewer persons' does not include the licensee or members of the licensee's family or persons employed as facility staff."

• **Health and Safety Code § 11834.22. Exemption from fees and taxes**

"An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 11834.23, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities

which serve six or fewer persons.”

- **Health and Safety Code § 11834.23. Facilities considered residential use of property**

“Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.

This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents.”

- **Health and Safety Code § 11834.24. Permits, licenses, clearance or similar authorizations; denial prohibited**

“No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to an alcoholism or drug abuse recovery or treatment facility because of a failure to comply with local ordinances from which the facility is exempt under Section 11834.23, if the applicant otherwise qualifies for a fire clearance, license, permit, or similar authorization.”

- **Health and Safety Code § 11834.25. Transfer of real property; facility considered residential use of property**

“For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.”

SECTION THREE

Other Issues

Overconcentration and Distancing Requirements

Many members of the public reviewing the California Health and Safety Code become understandably confused by the different Code sections. Some important differences are:

- One large section of the Health and Safety Code (referred to as “The Community Care Licensing Act”) contains provisions that apply *only* to DSS-licensed residential facilities.
- In particular, confusion about when 300-foot distancing is required between facilities has come up because the Community Care Licensing Act requires the DSS to deny a license to any new community care facility that applies to locate within 300 feet of any existing community care facility. DSS reports that this distancing requirement is applied to the three following types of community care facilities:
 - children’s group homes (usually housing adolescents)
 - adult residential care facilities (usually serving developmentally or mentally disabled non-senior adults)
 - small family homes (housing up to six children in a community setting)
- **This policy against overconcentration and requirement for 300-foot distancing is not present in the sections of the Health and Safety Code regulating alcohol and drug recovery homes and residential facilities for the elderly. Sober living homes are also expressly exempted from the distancing requirements in the Health and Safety Code. (See Cal. Health and Safety Code §1505)**
- To provide for the distancing discussed above, in **Health and Safety Code § 1520.5. (Overconcentration of residential care facilities; license denial; ownership change; facilities considered)** the Legislature stated:
 - “a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of residential care facilities that impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration.
 - (b) As used in this section, "overconcentration" means that if a new license is issued, there will be residential care facilities that are separated by a distance of 300 feet or less, as measured from any point upon the outside walls of the structures housing those facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet with the approval of the city or county in which the proposed facility will be located.
 - (c) At least 45 days prior to approving any application for a new residential care facility, the director, or county licensing agency, shall notify, in writing, the planning agency of the city, if the facility is to be located in the city, or the planning agency of the county, if the facility is to be located in an unincorporated area, of the proposed location of the facility.
 - (d) Any city or county may request denial of the license applied for on the basis of overconcentration of residential care facilities.
 - (e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to

grant a license upon a change of ownership of an existing residential care facility where there is no change in the location of the facility.

- (f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.
- (g) Any transitional shelter care facility as defined in paragraph (11) of subdivision (a) of Section 1502 shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.”

Legislation requiring distancing between alcohol and drug abuse recovery and treatment facilities is frequently introduced in the California State Legislature, and is routinely defeated. Broader public awareness and support of such legislation might increase the legislation's chances of becoming law.

Selected quotes from cases on distancing and overconcentration:

Federal Court decisions on overconcentration and distancing have been inconsistent. The more recent cases come down firmly against state and local attempts to impose overconcentration and distancing requirements. Federal statutory clarification of this issue would be helpful, because the confusion generated by conflicting federal court decisions leaves state and local governments without clear guidelines in an important area.

Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.

923 F.2d 91

C.A.8 (Minn.), 1991.

January 08, 1991

(A case upholding the validity of state statute and local zoning ordinances limiting the placement of residential facilities for retarded or mentally ill persons because the dispersal requirements constituted the legitimate governmental interest of deinstitutionalization. This case stands alone, and later cases have dismissed it.)

“Familystyle sought special use permits for the addition of three houses to its existing campus of group homes, intending to expand its capacity from 119 to 130 mentally ill persons. Twenty-one of Familystyle's houses, including the three proposed additions, are clustered in a one and one-half block area. On the condition that Familystyle would work to disperse its facilities, the St. Paul City Council issued temporary permits for the three additional houses. Familystyle failed to meet the conditions of the special use permits, and the permits expired. After St. Paul denied renewal of the permits, Familystyle exchanged its license for one excluding the three additional houses.

Relying upon the provisions of the Fair Housing Amendment Act of 1988, Familystyle challenges the city ordinance and state laws that bar the addition of these three houses to its campus.

Familystyle argues that the Minnesota and St. Paul dispersal requirements are invalid because they limit housing choices of the mentally handicapped and therefore conflict with the language and purpose of the 1988 Amendments to the Fair Housing Act. We disagree. We perceive the goals of non-discrimination and deinstitutionalization to be compatible. Congress did not intend to abrogate a state's power to determine how facilities for the mentally ill must meet licensing standards. Minnesota's dispersal requirements address the need of providing residential services in mainstream community settings. The quarter-mile spacing requirement guarantees that residential treatment facilities will, in fact, be “in the community,” rather than in neighborhoods completely made up of group homes that re-create an institutional environment—a setting for which Familystyle argues. We cannot agree that Congress intended the Fair Housing Amendment Act of 1988 to contribute to the segregation of the mentally ill from the mainstream of our society. The

challenged state laws and city ordinance do not affect or prohibit a retarded or mentally ill person from purchasing, renting, or occupying a private residence or dwelling." *Familystyle*, 923 F.2d at 93-94.

Larkin v. State of Mich.

883 F.Supp. 172
E.D.Mich., 1994.
November 01, 1994

(A case striking down a state 1,500-foot distancing requirement between community residential facilities.)

"Defendants claim that a legitimate governmental interest exists for their statutory scheme, that is, the integration of handicapped individuals into mainstream society, thereby ensuring that no one area or neighborhood becomes saturated with similar institutions. Defendants argue that the Michigan statutory scheme prevents the formation of 'ghettos' of AFC homes, which would result in reinstitutionalization. Defendants claim that they are trying to provide a 'normal' environment for handicapped persons through these dispersal requirements, which are the best methods available to promote this compelling governmental concern." *Larkin*, 833 F.Supp. at 176-177.

"Plaintiffs claim that the 'ghettoization' to which Defendants refer resulted from earlier state exclusionary zoning policies which prevented homes for handicapped persons from locating in single-family residential zones. These discriminatory policies were prohibited by the Michigan Legislature in 1976, at the same time that the legislature also established the restrictions at issue in the present case. It follows, then, that if the zoning policies which resulted in the growth of handicapped 'ghettos' have long since been removed, the threat of such 'ghettoization' should be eliminated. Defendants do not assert any reason why adult foster care homes will currently choose to congregate in the same areas.

"Plaintiffs also doubt that integration is the real reason for the adoption of the dispersal provisions. The court in *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F.Supp. 683, 695 (E.D.Pa.1992), *aff'd*, 995 F.2d 217 (3d Cir.1993), for example, found evidence that the dispersal rule was based on unfounded fears about people with handicaps. *Horizon House*, 804 F.Supp. at 695.^{FN2} *Horizon House*, on which plaintiffs rely, involved a township ordinance similar to that of the State of Michigan. It imposed a distance requirement of 1,000 feet for group homes for mentally retarded persons. The court held that the ordinance violated the FHAA because it was facially invalid, purposefully discriminatory, and had a disparate impact upon the housing choices of handicapped persons. The court found that preventing the "clustering" of people with disabilities to promote their "integration" into the community was not an adequate justification under the FHAA. The court further held that the ordinance had no rational basis and was a violation of equal protection.

"^{FN2} The court is aware that property values are often concerns as well, but notes that this is not a legal basis for such restrictions. Defendants agree." *Larkin* at 177. (citations omitted)

"The court . . . believes that there is no rational basis for the 1,500-foot spacing requirement and the provision that all neighbors within 1,500 feet be notified of the proposed site. As such, the court finds that M.C.L. § 125.583b(4) and § 400.716(3) violate the FHAA. As there is no rational basis for such requirements, the court also finds that Defendants State of Michigan and Michigan Department of Social Services violated the Equal Protection Clause through their enactment and enforcement of these provisions. The court finds that the Michigan statutory scheme at issue has a discriminatory effect on handicapped persons." *Id.*

Children's Alliance v. City of Bellevue

950 F.Supp. 1491
W.D.Wash., 1997.
January 08, 1997

"To rebut a finding of facial discrimination . . . the defendant must show either (1) that the ordinance benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes. This scrutiny requires an examination of the characteristics of the specific individuals impacted by the ordinance." *Children's Alliance v. City of Bellevue*, 951 F.Supp. at 1498 (citation omitted).

"Bellevue's justifications cannot satisfy the scrutiny established by *Larkin* and *Bangerter*. Generalized interests in public safety, stability, and tranquility have been enough to redeem ordinances that drew distinctions between groups when subjected to rational basis review. But under the stricter level of scrutiny appropriate here, these interests are only sufficient if they are threatened by the individuals burdened by the Ordinance.

"Bellevue asserts that its interests in stability and tranquility support limiting to commercial zones those Class II homes not operated by Resident Staff or those which accept short-term residents. According to Bellevue, the Group Facilities within Class II meeting these criteria have a commercial character and are disruptive, thus rendering these homes inappropriate for residential neighborhoods. While these two justifications have been upheld under rational basis review, they cannot withstand the more rigorous scrutiny required by *Larkin*. At any rate, there is no evidence demonstrating that the presence of Resident Staff, as opposed to shift staff or staff who do not hold the license for the facility, distinguishes a commercial operation from a residential one. Furthermore, the Court cannot reconcile these supposed interests with the fact that the land use code allows bed and breakfast establishments, commercial enterprises with short-term occupants, in any residential neighborhood." *Children's Alliance* at 1498-1499 (citations omitted).

"As to the concern for public safety, that too must fail because the Court finds that defendant is operating under stereotyped notions about certain types of group home residents rather than specific concerns raised by individuals. For example, Bellevue's city attorney stated that the evidence of crime committed by individuals with a prior criminal history prompted Bellevue's concern for public safety. But Bellevue offers no evidence showing that residents of Class II facilities are more dangerous than if they lived with their relatives or than the residents of Class I facilities. Defendant's public safety rationale does not stand up under scrutiny and defendant cannot invoke the statutory exemption from the FHA found in 42 U.S.C. § 3604(f)(9) because it has not demonstrated how any specific individuals attempting to reside in a Class II facility constitute a 'direct threat.'" *Children's Alliance* at 1499. (citations omitted)

"Defendant contends that its dispersal requirement is intended to help residents of group homes rather than harm them. Page two of the preamble to the Ordinance professes an intention of ensuring sufficient dispersion of Group Facility uses to allow persons with handicaps equal opportunity to enjoy the benefits of residence in single-family, multi-family, and other zoning districts,' and at page nine of its response memorandum to plaintiffs' motion, docket no. 49, defendant cited an interest in 'furthering the integration of such facilities into their neighborhoods and preventing the development of mini-institutional ghettos.' Courts should be wary of justifications purporting to help members of the protected class; the court should assess whether the benefits of the requirement 'clearly' outweigh the burdens." *Id.* (citations omitted)

"Because Bellevue has *no* group homes for youth, concerns of clustering or the creation of an institutionalized setting cannot be supported by the evidence. Even if other types of group-care facilities would support these concerns, the Ordinance as written is overbroad due to its unjustifiable impact on group homes for youth. Furthermore, defendant has not pointed to any evidence demonstrating that those burdened by the restriction would benefit from it." *Id.* (citations omitted)

Occupancy Restrictions Permitted – what is an occupancy restriction?

Some exemptions are provided for in the FHAA, including an exception for occupancy restrictions in 42 USC 3607(b)(1).

City of Edmonds v. Oxford House, Inc.
514 U.S. 725, 115 S.Ct. 1776
U.S. Wash., 1995.
May 15, 1995

(A US Supreme Court decision, in which a city attempted to characterize its definition of "family" as an occupancy restriction, exempted from the FHAA. The Court reasoned that the definition of "family" was a description of a type of residential use pattern, whereas an occupancy restriction concerned itself purely with the maximum number of persons who could inhabit a dwelling.)

"This case presents the question whether a provision in petitioner City of Edmonds' zoning code qualifies for § 3607(b)(1)'s complete exemption from FHA scrutiny. The provision, governing areas zoned for single-family dwelling units, defines 'family' as 'persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons.'" *Oxford House v. City of Edmonds*, 514 U.S. at 728.

"The defining provision at issue describes who may compose a family unit; it does not prescribe 'the maximum number of occupants' a dwelling unit may house. We hold that § 3607(b)(1) does not exempt prescriptions of the family-defining kind, *i.e.*, provisions designed to foster the family character of a neighborhood. Instead, § 3607(b)(1)'s absolute exemption removes from the FHA's scope only total occupancy limits, *i.e.*, numerical ceilings that serve to prevent overcrowding in living quarters." *Id.*

"Land use restrictions aim to prevent problems caused by the 'pig in the parlor instead of the barnyard.' *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 118, 71 L.Ed. 303 (1926). In particular, reserving land for single-family residences preserves the character of neighborhoods, securing 'zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.' . . . To limit land use to single-family residences, a municipality must define the term "family"; thus family composition rules are an essential component of single-family residential use restrictions. *Id.* at 732-733. (citations and internal quotations omitted)

"Maximum occupancy restrictions . . . cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. These restrictions ordinarily apply uniformly to *all* residents of *all* dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding." *City of Edmonds v. Oxford House*, 514 U.S. at 733.

Issues Specific to California

Two cases decided in California state courts restrict the regulatory ability of California cities even more than cities in some other states.

City of Santa Barbara v. Adamson
27 Cal.3d 123 (1980)

(In this case, the California Supreme Court found that the portion of a city's zoning code that defined "family" as either related persons living in a single household unit, or no more than five unrelated persons living together in a single housekeeping unit violated the right to privacy guaranteed by the California State Constitution. Part of the reasoning for this was that the Santa Barbara zoning code allowed unlimited numbers of related people to live together, which could be more injurious to the goals of the zoning code than a smaller number of related persons.)

"As long as a group bears the generic character of a family unit as a relatively permanent household, it should be equally entitled to occupy a single family dwelling as its biologically related neighbors. We do not here address the question, How many people should be allowed to live in one house? . . . We merely hold invalid the distinction effected by the ordinance between

(1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons.” *Santa Barbara v. Adamson*, 27 Cal.3d at 134. (citations omitted)

Briseno v. City of Santa Ana
6 Cal.App.4th 1378 (1992)

(In this case, the California Court of Appeals answered the question (“How many people should be allowed to live in one house?”) that the California Supreme Court did not address in *Santa Barbara v. Adamson*. To address dense occupancy of apartments within the city, the City of Santa Ana adopted occupancy standards that allowed fewer persons to live in its dwelling units than would be allowed under the state’s Uniform Housing Law.)

“[D]oes the Uniform Housing Law preempt local occupancy ordinances generally? We believe it does.” *Briseno v. City of Santa Ana*, 6 Cal.App.4th at 1381-1382.

“[M]unicipalities can modify the uniform codes only if local climactic, geological, or topographical conditions exist (that would justify the modification of the code), and only if the municipality makes an express finding that such conditions exist.” *Id.* at 1383.

“FN3. We think it highly unlikely, if not impossible, that the City could make such findings. There is nothing remarkable about the topography of Santa Ana; it is built on a plain. Similarly, the climate is as mild as most of the rest of Southern California. Finally, we are unaware of any relevant geological eccentricities in Santa Ana.” *Id.*

“The relationship of individuals living in a dwelling unit has no relevance to the health and safety of those living in a dwelling, certainly insofar as an ‘occupancy standard’ is concerned. An occupancy standard is merely a ‘numbers’ game; a dwelling unit is overcrowded because there are too many people living in it, regardless of whether they are related.” *Id.* at 1384.

As a result, while the zoning codes of cities in some other states may restrict the number of unrelated persons who live together as a single housekeeping unit in certain residential zones, zoning codes in California cities may not. The size of single housekeeping units in California are limited by the occupancy standards of the state’s Uniform Housing Law. California cities may, however, place appropriate zoning restrictions on non-single housekeeping units, such as boarding houses and group homes whose residents are not handicapped.

#

Prepared by the City of Newport Beach
 (some information specific to the City of Newport Beach)

Group Home Matrix						
	Needs a City Use Permit?	Allowable in R-1, R-2 Zone?	State License Required?	Ability to limit concentration?	Ability to Regulate like a Business in a Residential Zone?	Can City know where these are located?
Residential Treatment Home Six or fewer residents Seven or more	no yes - FEP	ok all res zones R1.5, R-2, MFR (with FEP only)	yes yes	currently - no currently - no	no* city license - y*	yes** yes**
"Sober Living" Home Six or fewer residents Seven or more	no yes - FEP	ok all res zones R1.5, R-2, MFR (with FEP only)	no no	currently - no currently - no	probably not* probably not*	no source no source
Community Care Facilities Six or fewer residents Seven or more	no FEP	ok all res zones R-1.5, R-2, MFR (with FEP only)	yes yes	3 types - yes 3 types - yes	no city license - y*	yes** yes**

*City Attorney's Office believes City can regulate non-residential business aspects of facilities

**Through state licensing agency lists. Sober living facilities can only be located by self-reporting, neighbor reports or observation

Laws Impacting Residential Care Facilities and Day Care Homes

What California laws impact residential care facilities and day care homes?

The following statutes deal with residential care facilities, day care homes, and the related disclosure issues: The California Community Care Facilities Act (California Health & Safety Code Sections 1500-1567.9), Residential Care Facilities for Persons With Chronic Life-Threatening Illness (Cal. Health & Safety Code §§ 1568.01-1568.092), Residential Care Facilities for the Elderly (Cal. Health & Safety Code §§ 1569-1569.87), the California Adult Day Health Care Act (Cal. Health & Safety Code §§ 1570-1595), the California Child Day Care Act (Cal. Health & Safety Code §§ 1596.70-1596.895), Day Care Centers (Cal. Health & Safety Code §§ 1596.90-1597.21), Family Day Care Homes (Cal. Health & Safety Code §§ 1597.30-1597.621), Alcoholism or Drug Abuse Recovery or Treatment Facilities (Cal. Health & Safety Code §§ 11760 et seq.), the Lanterman Developmental Disabilities Services Act (Welfare & Institutions Code Sections 4500 et seq. and Sections 5115-5116), the California Fair Employment and Housing Act (California Government Code Sections 12948, and 12955 et seq.), and the Unruh Civil Rights Act (California Civil Code Sections 51 et seq.).

In addition to statutes, several cases and California Attorney General Opinions deal with the subject: *Broadmoor San Clemente Homeowners Ass'n v. Nelson* (1994) 25 Cal. App. 4th 1, 30 Cal. Rptr. 2d 316; *Barrett v. Lipscomb* (1987) 194 Cal. App. 3d 1524, 240 Cal. Rptr. 336; *Welsch v. Goswick* (1982) 130 Cal. App. 3d 398, 181 Cal. Rptr. 703; 73 Cal. Ops. Atty. Gen. 58 (1990); and 79 Ops. Cal. Att'y Gen. 112 (1996).

California Community Care Facilities

Community Care Facility - A Community Care Facility is any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired persons, incompetent persons, and abused or neglected children. (Cal. Health & Safety Code § 1502(a).)

Residential Facility - A "Residential Facility" is any family home, group care facility, or similar facility determined by the director of Social Services (California State Department of Social Services), for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. (Cal. Health & Safety Code § 1502(a)(1).)

Adult Day Care Facility - An "Adult Day Care Facility" is any facility that provides nonmedical care to persons 18 years of age or older in need of personal services,

supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. (Cal. Health & Safety Code § 1502(a)(2).)

Therapeutic Day Services Facility - A "Therapeutic Day Services Facility" is any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. (Cal. Health & Safety Code § 1502(a)(3).)

Foster Family Home - A "Foster Family Home" is any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. (Cal. Health & Safety Code § 1502(a)(5).)

Small Family Home - A "Small Family Home" is any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. The Social Services department may also approve placement of children without special health care needs, up to the licensed capacity. (Cal. Health & Safety Code § 1502(a)(6).)

Social Rehabilitation Facility - A "Social Rehabilitation Facility" is any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. (Cal. Health & Safety Code § 1502(a)(7).)

Community Treatment Facility - A "Community Treatment Facility" is any residential facility that provides mental health treatment services to children in a group setting and has the capacity to provide secure containment. (Cal. Health & Safety Code § 1502(a)(8).)

Transitional Shelter Care Facility or Transitional Housing Placement Facility - A "Transitional Shelter Care Facility" is any group care facility that provides for 24-hour nonmedical care of persons, under 18 years of age, in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. (Cal. Health & Safety Code § 1502(a)(11), 1502.3.) These facilities are for the sole purpose of providing care for children who have been removed from their homes as a result of abuse or neglect; for children who have been adjudged wards of the court; and for children who are seriously emotionally disturbed. (Cal. Health & Safety Code § 1502.3(c).)

"Transitional Housing Placement Facility" means a community care facility licensed by the department to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program (Cal. Health &

Safety Code § 1502(a)(12)).

Adult Day Support Center - An "Adult Day Support Center" is a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care in a structured comprehensive program that provides a variety of social and related support services in a protective setting on less than a 24-hour basis. (Cal. Health & Safety Code § 1502.2.)

Are there any residential care facilities which are not subject to the California Community Care Facilities Act? - Yes.

- The Act does not cover residential care facilities for the elderly which are subject to the California Residential Care Facilities for the Elderly Act [See Section V of this legal memorandum]. (Cal. Health & Safety Code § 1502.5.)
- The Act does not cover any health facility. (Cal. Health & Safety Code § 1505(a), H&S 1250.)
- The Act does not cover a clinic. (Cal. Health & Safety Code § 1505(b), H&S 1202.)
- The Act does not cover any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county. (Cal. Health & Safety Code § 1505(c).)
- The Act does not cover any place in which a juvenile is judicially placed after having violated the law. (Cal. Health & Safety Code § 1505(d), Cal. Welf. & Insti. Code § 1727.)
- The Act does not cover any child day care facility. (Cal. Health & Safety Code § 1505(e).) Those are subject to the California Child Day Care Act, Day Care Centers, or Family Day Care Homes [See Section VII].
- The Act does not cover any church facility providing care or treatment of the sick who depend upon prayer or spiritual means for healing. (Cal. Health & Safety Code § 1505(f).)
- The Act does not cover any school dormitory. (Cal. Health & Safety Code § 1505(g).)
- The Act does not cover any house, institution, hotel, or homeless shelter that supplies board and room only, or room only, or board only, without any element of care. (Cal. Health & Safety Code § 1505(h).)
- The Act does not cover any recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision. (Cal. Health & Safety Code § 1505(i).)
- The Act does not cover any alcoholism or drug abuse recovery or treatment facility which is covered by the Alcoholism or Drug Abuse Recovery Act [Section VIII]. (Cal. Health & Safety Code § 1505(j).)
- The Act does not cover any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly. (Cal. Health & Safety Code § 1505(k).)
- The Act does not cover any supported living arrangement for individuals with developmental disabilities. (Cal. Health & Safety Code § 1505(l).) They are

covered by the Lanterman Developmental Disabilities Services Act [Section IX].
The Act does not cover any family home covered by the Lanterman Developmental Disabilities Services Act [Section IX]. (Cal. Health & Safety Code § 1505(m).)
The Act does not cover any facility in which only Indian children eligible under the federal Indian Child Welfare Act are placed. (Cal. Health & Safety Code § 1505(n).)

Impact of the California Community Care Facilities Act on local government - A residential facility, which serves six or fewer persons, must not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. (Cal. Health & Safety Code § 1566.2.) This restriction applies equally to any chartered city, general law city, county, city and county, district, and any other local public entity. (Cal. Health & Safety Code § 1566.)

Furthermore, a residential facility which serves six or fewer persons is not included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential facility is a business run for profit or differs in any other way from a family dwelling. (Cal. Health & Safety Code § 1566.3.)

In addition, neither the State Fire Marshal nor any local public entity may charge any fee for enforcing fire inspection regulations on a residential care facility serving six or fewer persons. (Cal. Health & Safety Code § 1566.2.)

What is meant by the term "family dwelling" in the previous question? - The term "family dwelling" includes, but is not limited to, single-family dwellings, units in multi-family dwellings, units in duplexes, apartments, mobilehomes, stock cooperatives, condominiums, townhouses, and units in planned developments. (Cal. Health & Safety Code § 1566.2.)

Does "six or fewer persons" include everyone in the facility? - No. To determine the "six or fewer," the following are not included: the licensee-care giver, the members of the licensee's family, or staff persons. (Cal. Health & Safety Code § 1566)

Definition of "handicap" under California and federal law - According to the HUD regulations pursuant to the Fair Housing Amendments Act of 1988 "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment:

As used in this definition: (a) Physical or mental impairment includes: (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) [a]ny mental or

psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthogenic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. (24 C.F.R. § 100.201.)

□ Drug addiction is considered a disability (handicap). "Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs." (ADA Handbook; 42 U.S.C. § 12211; 28 C.F.R. § 36.209.) Former substance abusers involved in counseling and therapy in a drug and alcohol abuse program are considered "handicapped" pursuant to the federal Fair Housing Law. (*United States v. Southern Mgmt. Corp.* (1992) 955 F.2d 914.)

The description under California law of the meaning of "physical disability" and "mental disability" is extremely similar to the discussion above from the federal regulations. Furthermore, California law has expanded its definition of "physical disability," and "physical handicap" to encompass all the meanings of "disability" provided under the federal law entitled the Americans with Disabilities Act of 1990. (Cal. Gov't. Code § 12926(k).)

Residential Care Facilities for Persons with Chronic Life-Threatening Illness

Chronic Life-Threatening Illness - For the purposes of the Residential Care Facilities For Persons With Chronic Life-threatening Illness Act, "Chronic Life-Threatening Illness" means the HIV disease or AIDS. (Cal. Health & Safety Code § 1568.01(c).)

Residential Care Facility - For the purposes of this law, "Residential Care Facility" means a residential care facility for persons who have a chronic life-threatening illness and who are 18 years of age or are emancipated minors, or for family units (at least one adult has HIV or AIDS or at least one child has HIV or AIDS, or both). (Cal. Health & Safety Code § 1568.01(j),(g).)

Impact of the Residential Care Facilities for Persons With Chronic Life-threatening Illness Act on local government - A residential care facility which serves six or fewer persons is considered a residential use of the property. In addition, the residents and operators of the facility are considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property. (Cal. Health & Safety Code § 1568.0831(a)(1).)

Furthermore, a residential care facility which serves six or fewer persons is not included within the definition of a boarding house, rooming house, institution, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the

residential care facility is a business run for profit. (Cal. Health & Safety Code § 1568.0831(a)(2).) The implication of this section of the law is that local government cannot impose any business taxes, registration fees, or any other fees to which other family dwellings would not be subject. The terms "family dwelling" and "six or fewer persons" have the same meaning as in the California Community Care Facilities Act.

Residential Care Facilities For The Elderly

Residential Care Facility for the Elderly - Persons under 60 years of age with compatible needs, as determined by the Department of Social Services, may be allowed to be admitted or retained in a Residential Care Facility for the Elderly. (Cal. Health & Safety Code § 1569.2(k).)

Impact of Residential Care Facilities for the Elderly on local government - The California legislature has declared that it is the policy of this state that each county and city (whether a chartered city or general law city) must permit and encourage the development of sufficient numbers of Residential Care Facilities for the Elderly "as are commensurate with local need." (Cal. Health & Safety Code § 1569.82.)

A Residential Care Facility for the Elderly which serves six or fewer persons is not subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. (Cal. Health & Safety Code § 1569.84.)

The term "family dwellings" includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned developments. (Cal. Health & Safety Code § 1569.84.)

"Six or fewer persons" does not include the licensee or members of the licensee's family or staff persons. (Cal. Health & Safety Code § 1569.82.)

Furthermore, whether or not unrelated persons are living together, a residential care facility for the elderly which serves six or fewer persons is considered a residential use of property. In addition, the residents and operators of the facility are considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property. (Cal. Health & Safety Code § 1569.85.)

For the purpose of all local ordinances, a residential care facility for the elderly which serves six or fewer persons is not included within the definition of a boarding house, rooming house, institution or home for the care of the aged, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility for the elderly is a business run for profit or differs in any other way from a family dwelling. (Cal. Health & Safety Code § 1569.85.)

California Adult Day Health Care Act

Adult Day Health Care - "Adult day health care" is an organized day program of therapeutic, social, and health activities and services provided to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal capacity for self-care.

"Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an option to institutionalization in long-term health care facilities, when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family." (Cal. Health & Safety Code § 1570.7(a).)

These facilities serve not only persons 55 years of age or older, but also other adults who are chronically ill or impaired and who would benefit from adult day health care. (Cal. Health & Safety Code § 1570.7(e).)

Purpose of the California Adult Day Health Care Act - The California legislature has determined that there exists a pattern of over utilization of long-term institutional care for elderly persons, and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable elderly persons to maintain maximum independence. (Cal. Health & Safety Code § 1570.2.) One goal is to establish adult day health centers in the community that will be easily accessible to all participants. (Cal. Health & Safety Code § 1570.2(c).)

California Child Day Care Facilities Act and Family Day Care Homes

Child Day Care Facility - A "Child Day Care Facility" is a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. (Cal. Health & Safety Code § 1596.750.) "Child Day Care Facility" also includes day care centers, employer-sponsored child care centers, and family day care homes. (Cal. Health & Safety Code § 1596.750.)

Family Day Care Home - A "Family Day Care Home" is a home which regularly provides care, protection, and supervision for 12 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away. (Cal. Health & Safety Code § 1596.78.) □ □ A "Large Family Day Care Home" provides day care to 7 to 12 children, including any children under the age of 10 years who reside at the home. (Cal. Health & Safety Code § 1596.78(a).) □ □ A "Small Family Day Care Home" provides family day care to 6 or fewer children, including children under the age of 10 years who reside at the home. (Cal. Health & Safety Code § 1596.78(b).) □

Exemptions from the law governing Child Day Care Facilities and Family Day Care

Homes: The law does not apply to:

- . Any health facility,
- . Any clinic,
- . Any Community Care Facility (See Section III),
- . Any Family Day Care Home providing care to the children of only one family in addition to the operator's own children,
- . Any cooperative arrangement between parents for the care of their children where no payment is involved and other specified conditions are met,
- . Any arrangement for the care of children by a relative,
- . Any public recreation program, or school extended day care program,
- . Any child day care program operating only one day per week for no more than four hours,
- . Any temporary child care facility on the same premises as parents or guardians, and other facilities, as listed in Health and Safety Code, Section 1596.792. (Cal. Health & Safety Code § 1596.792.)

Intent of the California legislature concerning the Family Day Care Homes Law - It is the intent of the California legislature that Family Day Care Homes for children must be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a Family Day Care Home the same home environment as provided in a traditional home setting. (Cal. Health & Safety Code § 1597.40(a).) □ □ The legislature has declared this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of Family Day Care Homes for children, and to prohibit any restrictions relating to the use of single-family residences for Family Day Care Homes for children except as provided by this law. (Cal. Health & Safety Code § 1597.40(a).)

Impact of the Family Day Care Homes law on local government - The use of a single-family residence as a small Family Day Care Home is considered a residential use of property for the purposes of all local ordinances. (Cal. Health & Safety Code § 1597.45(a).) No local jurisdiction may impose any business license, fee, or tax for the privilege of operating a small Family Day Care Home. (Cal. Health & Safety Code § 1597.45(b).) Neither a city nor a county may prohibit large Family Day Care Homes on lots zoned for single-family dwellings, but instead must do one of the following:

- (1) Classify these homes as a permitted use of residential property for zoning purposes.
- (2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large Family Day Care Home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards must be consistent with local noise ordinances implementing the noise element of the general plan and must take into consideration the noise level generated by children. The permit issued pursuant to this paragraph must be granted by

the zoning administrator, if any, or if there is no zoning administrator by the person or persons designated by the planning agency to grant such permits, upon the certification without a hearing. (3) Require any large Family Day Care Home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, if any, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits must review and decide the applications. The use permit must be granted if the large Family Day Care Home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children.

The local government must process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process. Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle such use permits must give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100 foot radius of the exterior boundaries of the proposed large Family Day Care Home. No hearing on the application for a permit issued pursuant to this paragraph may be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant must pay the cost, if any of the appeal. (Cal. Health & Safety Code § 1597.46(a).) A Large Family Day Care Home is not subject to the California Environmental Quality Act. (Cal. Health & Safety Code § 1597.46(b).) Large Family Day Care Homes are to be considered single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal. (H&S 1597.46(d).) Small Family Day Care Homes must contain a fire extinguisher and smoke detectors that meet standards established by the State Fire Marshal. (Cal. Health & Safety Code § 1597.45(d).)

Alcoholism or Drug Abuse Recovery or Treatment Facilities

Alcoholism or Drug Abuse Recovery or Treatment Facility - An "Alcoholism or Drug Abuse Recovery or Treatment Facility" is any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services. (Cal. Health & Safety Code § 11834.02(a).) These facilities may also have as residents mothers over 18 years of age and their children, emancipated minors (children under 18 years of age who have acquired emancipation status pursuant to section 7002 of the California Family

Code), or adolescents upon the issuance of a waiver granted by the Department of Alcohol and Drug Programs. (Cal. Health & Safety Code § 11834.02(b).)

Intent of the legislature when it created the law governing Alcoholism and Drug Abuse Recovery or Treatment Facilities - The California legislature declared "that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need." (Cal. Health & Safety Code § 11834.20.)□□

Impact of the law related to Alcoholism and Drug Abuse Recovery or Treatment Facilities on local government - An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons must not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. (Cal. Health & Safety Code § 11834.22.) Neither the State Fire Marshal nor any local public entity may charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons. (Cal. Health & Safety Code § 11834.22.) Furthermore, whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons must be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility must be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article. (Cal. Health & Safety Code § 11834.23.) For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons may not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence. (Cal. Health & Safety Code § 11834.23.) This law applies equally to any chartered city, general law city, county, district, or any other local public entity. (Cal. Health & Safety Code § 11834.20.)

Lanterman Developmental Disabilities Services Act

The Lanterman Developmental Disabilities Services Act - The Lanterman Developmental Disabilities Services Act promulgates California's policy that "mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability." (Cal. Welf. & Insti. Code § 5115(a).)

Impact of the Lanterman Developmental Disabilities Services Act on local government:

The use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning. (Cal. Welf. & Insti. Code § 5115(b).) A state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, is considered a residential use of property for the purposes of zoning if such homes provide care on a 24-hour-a-day basis (Cal. Welf. & Insti. Code § 5116). Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. (Cal. Welf. & Insti. Code § 5116.)

Does the Lanterman Developmental Disabilities Services Act establish separate residential facilities? No. The law anticipates that a developmentally disabled person will either be admitted or committed to a state hospital, or a health facility, or reside in a Community Care Facility (as discussed in Section III). (Cal. Welf. & Insti. Code § 4503.) Those facilities located in residential areas will generally be licensed under the Community Care Facilities Act and, thus, are subject to that law.

Miscellaneous

To inquire as to the licensed status of a care facility:

For the following types of residential facilities:

- **California Community Care Facilities**
- **Residential Care Facilities for Persons With Chronic Life-threatening Illness**
- **Residential Care Facilities For The Elderly**
- **Child Day Care Centers**
- **Family Day Care Homes, and**
- **California Adult Day Health Care Homes**

Contact: California Department of Social Services
744 P Street
Sacramento, CA 95814
(916) 324-4031

The California Department of Social Services regulates and licenses residential care facilities. Additional information about the various residential care facilities is available on their website at http://www.dss.cahwnet.gov/cdssweb/Residentia_180.htm. Information on the licensing of these facilities is also available at <http://cclcd.ca.gov/>.

For Alcoholism or Drug Abuse Recovery or Treatment Facilities, contact:

California Department of Alcohol and Drug Programs
1700 K Street
Sacramento, CA 95814
(916) 322-2911 [Give the county, name of the provider (owner or facility name), and

the address. The licensing information is also provided at the Department's website at www.adp.cahwnet.gov]

The ADP Resource Center can be reached at (916)327-3728 and (800) 879-2772.

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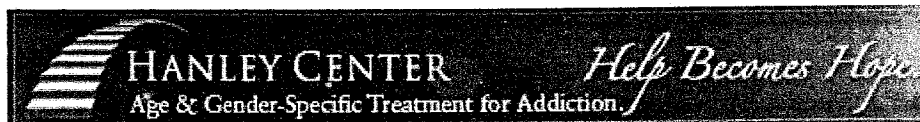
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Department of Justice Intervenes In Florida Halfway House Battles

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Boca House Case Has National Implications, DOJ Says Anti-Sober House Moves Are Illegal



By Eben Lasker

Over the past couple of decades, as South Florida has grown into one of private addiction treatment's leading regions, so too has the ancillary business of providing sober living facilities and services boomed. Not only is the sober house business highly profitable in and of itself, but it has provided an ideal way in which to finance entrepreneurial participation in South Florida's red hot real estate market, where housing prices have doubled and tripled over the past decade.



Florida ACLU lawyer Jim Green is leading the charge against local ordinances seeking to stop or limit the expansion of halfway houses and sober homes.

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It is within this business and economic environment that Steve Manko has built his Boca House sober living community in Boca Raton into what is quite possibly the largest for-profit halfway house operation in the country, with over 400 beds and more than two dozen facilities. Manko has become a millionaire many times over as his beds remain consistently full and the value of his real estate holdings has skyrocketed. Despite its status as one of the nation's major centers for stock market and other types of white collar fraud, with strong participation these activities by the New York mob, the City of Boca Raton nevertheless inexplicably considers itself to be an upper class community. As Boca House and other players like him in Boca Raton and thrived, a substantial NIMBY - not in my backyard - movement grew to

oppose the expansion of the halfway house businesses. The City of Boca Raton, which has led the Palm Beach County regional efforts to quash the growth of halfway houses, a few years ago passed a highly controversial ordinance that effectively prohibited the opening of new halfway houses in the city, with the police presence around Boca House facilities suddenly strengthening and Boca House residents, according to Manko, increasingly harassed.

Quickly swinging into action, Manko did not hesitate to commit the considerable

financial resources he had amassed as a result of his halfway house business success to defend the business in the region and, as it has turned out, nationally as well. He hired private Miami attorney William Hill, and got local American Civil Liberties Union, ACLU, attorney Jim Green of West Palm Beach heavily involved as well. For Green, the Boca Raton halfway house battle was natural one for the ACLU to become involved in. "There are a whole range of levels in which the actions of Boca Raton, and the cities around it that have been considering similar legislative action, are wrong," said Green. "And not only are they wrong, they are also massively illegal." Green and Hill filed a suit challenging the legality of the Boca Raton ordinance, which prompted cities like nearby Delray Beach to hold off passing similar ordinances while the courts determined their legality. "Our suit challenged the Boca Raton ordinance on a number of different levels," said Green. "Firstly, we argued that the law was in direct contravention of the federal Fair Housing Act and the Americans With Disabilities Act, as well as being generally unconstitutional in a number of different ways."



BOCA HOUSE PRINCIPAL STEVE MANKO, LEFT, WITH EXECUTIVE DIRECTOR LOU AGUDO

The effort by Manko to challenge the Boca Raton ordinance in court has not been cheap, with costs so far amounting to \$800,000, costs that have come directly out of Manko's pocket. Manko says he is not concerned about the money, but is nevertheless happy that there is now a likelihood that the ...

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City of Boca Raton will have to pay him that money as part of settling the case. In recent weeks, the U.S. Department of Justice has stepped in, signaling its intent to side with Manko, using its considerable clout to seek to force the City of Boca Raton to rescind its ordinance, while also reimbursing Manko the expenses he has been forced to underwrite in his effort to defend himself and the local halfway house industry. According to Green, the DOJ is also siding with the ACLU in a similar case in Sarasota on the west coast of Florida, where that city has also passed an ordinance restricting and inhibiting the activities of halfway houses. "There is no question that this case has national implications," says Manko's Miami attorney William Hill. "The DOJ action will have a chilling effect on efforts by municipalities nationwide that seek to restrict halfway houses."

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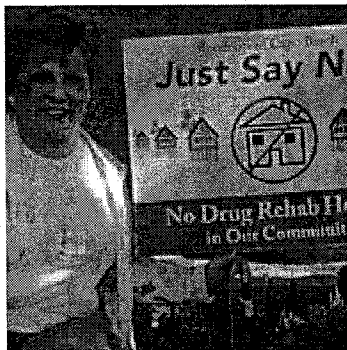
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Speaking out: "We have no rights," said Carol Wilson, sitting with Jack Brace. " ... The only right we have is to exercise our First Amendment rights and say we don't like it."

ANGELA POTTER, THE REGISTER

Saturday, December 23, 2006

Rehab houses anger neighbors

A group of Capistrano residents hands out signs to protest sober-living homes.

By ANGELA POTTER
The Orange County Register

Carol Wilson didn't intend to become a community activist. But when she learned a sober-living home was opening in a single-family residence across the street from her house, she decided to speak up.

"Those of us living on this block were not even aware it was going on," she said. "Then it was like: 'They can do that? What do you mean they can do that?'"

The sober-living home, like others in the county, poses a challenge for lawmakers: how to balance the desires of homeowners who don't want the facilities in their communities with the rights of sober-living operators.

John Kahal leases the house that led Wilson to start her campaign.

He also owns Solutions for Recovery, a treatment center in San Juan Capistrano, and Capo by the Sea, another sober-living home in Capistrano Beach.

He said the neighbors' protest is a classic case of "NIMBY" – not in my back yard.

"Everyone says it's OK to have treatment programs, it's OK to have sober-living facilities, but not in my back yard," he said.

State and federal laws protect drug and alcohol rehabilitation homes, and cities can do little to prevent them from opening in their jurisdictions. There are more than 100 drug and alcohol rehabilitation homes in Orange County.

Wilson said she is not targeting just one house, but is instead concerned about the proliferation of such homes in Capistrano Beach.

The state's Web site, which lists licensed residential facilities, shows six alcohol and drug rehabilitation homes in Capistrano Beach and an additional one in Dana Point as of Nov. 17.

Kahal said the sober-living home at Calle Fortuna does not do on-site detoxification and doesn't need a license.

Wilson, a 29-year Capistrano Beach resident, is concerned the new home, which opened this month, will bring noise, cigarette smoke and too many people to her otherwise quiet neighborhood.

Her case has already got the attention of lawmakers. In January, she is scheduled to meet with representatives from Laguna Niguel Assemblywoman Mimi Walters' office to discuss tighter restrictions on the homes.

Wilson is affiliated with a neighborhood group instrumental in getting most of the homes along Calle Fortuna to display signs that say: "Just say no! No drug rehab homes in our community."

The neighborhood group has distributed 50 signs and ordered 25 more.

Kahal said Wilson and her neighbors completely misunderstood the nature of the program at the new sober-living house. The residents are under 24-hour supervision by a staff person and are so busy with the program and required meetings that they won't have time to bother the neighbors, Kahal said.

"They won't see any tattooed, pink-haired people walking around," he said. "These are people who voluntarily come into treatment. Most of our clients are executives, businesspeople. They're very well-educated, well-heeled people."

Capistrano Beach resident Anna Brace walks by the sober-living home on Calle Fortuna several times a day to take her 3-year-old son Jack to nearby Pines Park. She worries about having a young child so close to the home.

"I just feel we're being bullied," she said. "We have a nice little neighborhood. But now we're almost scared just to walk by the place."

Wilson said a neighborhood watch meeting, which will focus on the drug and alcohol rehabilitation homes, is planned in January.

"Unless they are living next to one of these homes, they don't know what's happening," she said. "We're trying to educate the community about our problem."

Kahal said he would be happy to meet with concerned residents to discuss and try to ease their concerns.

"They have nothing to fear," he said. "I would be willing to talk, certainly, as long as they're friendly. Hopefully, everyone will be happy at the end of this."

Contact the writer: 949-454-7377 or apotter@ocregister.com

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TALK ABOUT IT

JOIN THE DISCUSSION

Rehab homes rile residents

Newport Beach aims to hold a conference in March on oversight.

A transplant from the East Coast, Bob Rush set-
tled into the sandy rows of west Newport Beach
20 years ago and thought he had "died and gone to
heaven."

A few years back, though, Rush sensed a little trou-
ble in paradise as the quaint bungalows that once cap-
tivated him began housing men and women struggling
to kick drug and alcohol addictions.

The newcomers maintained
odd hours. They smoked heavy-
ly, used profanity and loitered
"menacingly."

"All of a sudden, everywhere
I turn, they're everywhere,"
Rush said while walking along
River Avenue on a recent
morning. Using state records
and anecdotal evidence, he
counts 14 units within five
blocks of his house.

Now politicians in Newport,
around the county and even in
Sacramento are taking notice
as well.
Saying the character of
neighborhoods is at stake, offi-
cials are seeking more control
of drug-treatment and sober-
living houses they say have
proliferated unchecked. Be-
cause various laws restrict
oversight of the homes, their
exact numbers in various com-
munities are unknown.

Some rehabilitation-home
operators sympathize with
community concern. But, they
argue, most treatment houses
are quiet and well-kept, their

apples.

Nevertheless, Newport's
leaders want to bring stake-
holders from around Califor-
nia together for a conference
on the issue in March. A state
senator has agreed to carry a
bill to give cities more over-
sight.

Several Orange County ci-
ties, including Laguna Beach,
Costa Mesa and Orange, also
have sizable numbers of treat-
ment homes and are looking to
join the effort, officials say.
But similar efforts have
flagged repeatedly.

BEHIND THE GROWTH

Many homeowners blame
Proposition 36, which was ap-
proved in 2000 and allows
drug treatment instead of pris-
on for some offenders, for the
growth of the rehab centers.

The number of drug-posses-
sion offenders in California
prisons fell by more than 25
percent from December 2000
to December 2005, a study by
the Washington, D.C.-based



ANDY TEMPLETON, FOR THE REGISTER

RULES: Mike Bailue, above, runs Ocean Recovery, where
profanely outdoors and loitering in alleys are prohibited.

"We're trading overcrowd-
ing in our prisons" for over-
crowding in neighborhoods,
Rush said.

Many home operators say
their clients come from out of
state, lured by the sun-and-

There's also a strong profit
motive.

A beachfront house can
lease for about \$5,000 a
month, but patients pay hefty
premiums for their care, often
more than \$20,000 for a 90-

Drug-rehab homes in Orange County

The state licenses some drug-rehabilitation homes, in-
cluding ones that provide treatment and detoxification ser-
vices. Homes that simply supply a cooperative living envi-
ronment, often called sober-living homes, don't need licens-
es, hampering cities' ability to track them.

Newport Beach, for example, has 11 homes licensed by the
state, but officials say there could be 50 or more. One com-
pany, Sober Living by the Sea, runs more than 30 rehabili-
tation homes on the Balboa Peninsula.

Here's a look at the number of state-licensed, residential
drug-treatment homes in Orange County as of Sept. 13.

Costa Mesa: 20	Tustin: 5
Santa Ana: 20	San Clemente: 4
Orange: 17	Fullerton: 3
Newport Beach: 11	San Juan Capistrano: 2
Anaheim: 9	Dana Point: 2
Laguna Beach: 8	Huntington Beach: 2
Capistrano Beach: 7	Irvine: 1
Garden Grove: 5	Laguna Hills: 1

EMOTIONS RUN HIGH

Whatever the cause, the in-
flux is raising hackles. In re-
cent months, six to eight com-
plaints have come in every
month to Newport Beach City
Hall.

Residents blame the homes
and their occupants for noise,
loitering, trash and savaged
property values.

"If your house is right next
to one, good luck selling your
home," said resident Drew
Wetherholt, a landlord who
says the rehab homes have
made finding female tenants
and charging market-rate
rents difficult.

At Newport's largest reha-
bilitation home, a triplex on
West Oceanfront, police were
summoned 20 times in the past
year, mainly for illegal parking
or medical aid. One call in-
volved a disturbance resulting
in an arrest, and another in-
volved assault with a deadly
weapon.

Conversely, four of New-
port's licensed recovery
houses had no police activity
since August 2005, and several
others summoned police only
for medical situations.

Operators say they do their
best to stay under the radar

"I hope it's not a situation where a whole entire field gets blanketed because of a few bad operators."

MIKE BALLUE
PROGRAM DIRECTOR, OCEAN
RECOVERY TREATMENT HOME

"It's causing huge problems for all the coastal communities. ... That's not to say there's not a place for these homes, but these streets are being overrun."

DREW WETHERHOLT
NEWPORT BEACH RESIDENT

REHAB: State bill in the works

FROM PAGE 4

and maintain rapport with neighbors. "We just try to have everybody keep to themselves," said Kevin Sullivan, president of The Shores Treatment and Recovery Center, which runs two homes in Newport.

At Ocean Recovery on West Balboa Boulevard, house rules prohibit profanity outdoors and loitering in alleys. "I don't think it's a majority of the treatment centers the problems are coming from, but some are pretty lax about keeping a rein on their folks, and people have a right to be concerned about their community," said Mike Ballue, program director at the facility.

TOUGH TO TRACK

While complaints can be quantified, there's one thing that can't - the actual number of homes. The state lists 11 drug-treatment homes licensed in Newport Beach. But the Web site of one company, Sober Living by the Sea, describes "over 30 gender-specific houses along the Balboa Peninsula."

The discrepancy can be chalked up to state and federal statutes that limit oversight of the homes.

State law says rehabilitation houses with six or fewer residents are to be treated as regular homes, meaning cities can't control where they locate. In Balboa, where two-story duplexes and three-story triplexes are common, 10 to 30 residents may be squeezed onto a single lot.

Fair-housing laws classify

recovering addicts as handicapped, and so distinct regulations would in many cases be discriminatory. "We don't know" how many treatment homes exist, Newport Beach City Attorney Robin Clauson said. "We have no idea."

State laws that allow a 300-foot buffer between certain group homes don't apply to drug-treatment and sober-living houses. There are at least six sober-living homes in a six-block stretch of Seashore Drive, state records show, and several homes on adjoining blocks.

The story is the same elsewhere, as is the emerging discontent. Newport's idea for a conference has brought overtures from cities across the state, including Bakersfield, Chula Vista, Oceanside, Sacramento and Walnut Creek, officials say.

FINDING HELP

Recovering addicts can find help in many forms, including counseling, medication and outpatient therapy. Residential drug treatment supplements those methods by immersing patients in society. Such "therapeutic communities" typically reduce subsequent arrests among patients by 40 percent or more, according to the National Institute on Drug Abuse.

Locals acknowledge as much. But they wonder whether the concentration of homes undermines the goal of acclimating drug offenders to daily life. "You're basically creating institutions in the middle of a residential area," Clauson said.

"We don't mind them spo-

radically throughout our neighborhoods, but it's the overproliferation," resident Joe Reiss said.

THE POLITICAL LANDSCAPE

Two bills proposed last year would have subjected the locations of rehabilitation homes to greater scrutiny. One proposed law was actively opposed by handicapped-rights groups, including a California nonprofit called Protection and Advocacy Inc.

The group said the legislation could result in limited rehabilitation opportunities because of "local opposition that may be based on unwarranted fears, derogatory stereotypes, or the belief that such facilities simply do not belong."

Both bills died in the Senate Appropriations Committee.

In the latest endeavor, state Sen. Tom Harman, R-Huntington Beach, next year plans to introduce a bill to clamp down on the homes.

"It's just an area that frankly is calling out for legislative reform," Harman said.

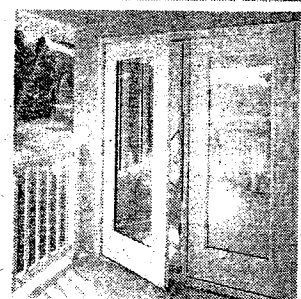
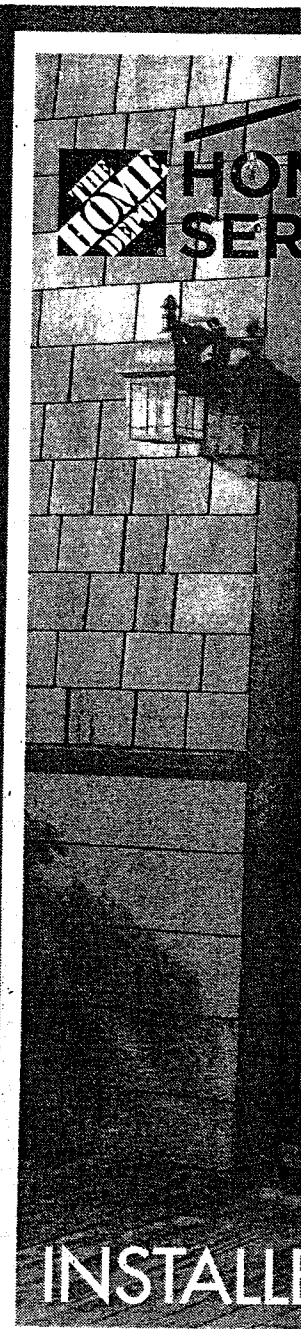
Expecting opposition, officials have broached the idea of a ballot initiative if state legislation again hits roadblocks.

Money will be key to successful lobbying, and officials say cooperation among cities is essential. "We as cities need to band together," said Councilman Steve Rosansky, who represents west Newport. "No one city is going to solve this problem. We need to sink or swim together."

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Daily Pilot

Newport Beach and Costa Mesa, California

Print Page

Published Monday, February 26, 2007 11:12 PM PST

Politics

Bill seeks to limit rehab facilities

Sen. Tom Harman proposes to regulate drug and alcohol recovery homes in Newport Beach.

By Alicia Robinson

Under a new bill by state Sen. Tom Harman, Newport Beach could potentially gain more power to regulate or limit drug and alcohol rehabilitation homes in the city.

It's exactly what some residents have been asking for. They've been pressuring the city to address the proliferation of drug and alcohol recovery facilities that they say are causing problems in their neighborhoods.

City officials say state and federal laws severely limit how they can regulate the facilities, because recovering drug and alcohol addicts are classified as disabled and thus entitled to legal protections.

"We're trying to give local authorities jurisdiction over these types of operations so that they can have the right to inspect, and the right to license and the right to do a number of things," Harman said. "Local control is what we're really trying to establish here."

The existing laws are a tangled mess, and officials aren't yet totally clear on what the new bill will do. Here are some of the bill's provisions, which could change as it goes through the legislative process:

A key provision could allow the city to prohibit recovery "campuses" with multiple facilities clustered together, though it wouldn't prevent a cluster of facilities run by different operators.

State law requires cities to treat facilities with six or fewer clients like any residential home. Under Harman's bill, if a recovery home with six or fewer residents is within 300 feet of another home with the same owner or operator and they share services, both facilities would be subject to the rules for bigger facilities, which are more stringent.

State law would be changed to better define the "local need" cities are expected to serve. It's a broad term, but the bill would narrow it down.

"What this bill clarifies is when they say 'local need,' they mean local need. They don't mean recruiting people to come here," said Cathy Wolcott, a contract attorney for Newport Beach.

If needed, cities could inspect drug and alcohol recovery facilities on the state's behalf to make sure they're complying with rules.

"We think Senator Harman and his staff have done a great job addressing a complex issue," Wolcott said. "As I interpret the bill, it would address a number of the problems cities have been having with the state code."

Last week, Harman held a town hall meeting in Newport Beach on recovery homes. Among the written comments submitted at the event, residents complained of cigarette butts thrown onto their property, van pick-ups at least 12 times daily, traffic and parking issues, and one resident said six rehab facilities are within 200 feet of the family's home.

Residents also wrote questions that were discussed by a panel. The city attorney's office plans to post answers on the city's website to questions that weren't addressed at the forum.

City officials said Laguna Niguel Assemblywoman Mimi Walters and Redlands Assemblyman Bill Emmerson also have introduced bills that cover drug and alcohol recovery facilities or group homes, but details on those bills were not immediately available.

[CLOSE WINDOW]

Daily

Serving the Newport
FRIDAY

Rocky path to control over rehab homes

As residents fire builds, city officials try to sort through the morass of state, federal regulations.

By Alicia Robinson
Daily Pilot

In the ongoing debate over how to control drug and alcohol activity in Newport, city officials have long held their hands up to state and federal restrictions.

But in the last several months, residents have increasingly demanded action. Some suggest the city is hiding behind state and federal laws that protect the homes rather than enforcing local rules, such as the zoning code. Others say the recovery homes have spawned sort of "ghetto" around the city and are not always good neighbors. They complain of noise, litter and overcrowding, and they worry about drugs in the homes. Under state law, some nonviolent drug offenders must go to drug treatment instead of jail.

So city officials are caught between the laws of the land and the will of the people.

Denys Oberman, a Newport resident who's been active in the rehab home issue, asked the City Council on Jan. 23 to place a three-year moratorium on drug recovery homes. City officials don't seem to have a clear idea what they can do to regulate the homes, so maybe during a moratorium they could figure it out, she said.

City officials admit that part of the problem is that they don't know how many residential drug recovery homes are in the city because only those that offer drug treatment must have a state license. According to the state, there are 22 licensed facilities in Newport Beach, but residents believe there are at least 112 recovery homes in the city.

"The city is loath to administer local land-use policy... and the citizens are at a loss to understand why," Oberman said.

City Atty. Robin Clouston disagrees. A maze of state and federal laws protect the right of recovering addicts to live in the community, whether they're receiving treatment or just living in a sober environment, and case law has overwhelmingly gone against cities that try to restrict drug recovery homes, she said.

Here's what the laws say. Most important, federal law classifies recovering alcoholics and drug addicts as having a "handicap" because their addiction can limit their activities in a similar way that a physical disability can. Federal housing law

QUESTION

Where should drug and alcohol recovery homes be located? Call our hotline at 336-3333.



WHAT'S NEXT

The city council will meet on Jan. 27 to discuss the moratorium proposal. City officials are also looking for ways to regulate the homes, such as zoning changes and licensing requirements.

City officials are also looking for ways to regulate the homes, such as zoning changes and licensing requirements.

City officials are also looking for ways to regulate the homes, such as zoning changes and licensing requirements.

says you can't refuse to sell or rent property to someone because of a "handicap" and governments can't make rules that discriminate against people with "handicaps," including housing regulations.

"If it's, 'We don't want those people here,' then that wouldn't be the basis for denying a permit," said Cathy Wolcott, a contract attorney for Newport Beach. "That's the way the law

Daily Pilot

Serving the Newport-Mesa community since 1907
FRIDAY, DECEMBER 1, 2006

Grumbles over rehab facilities intensify

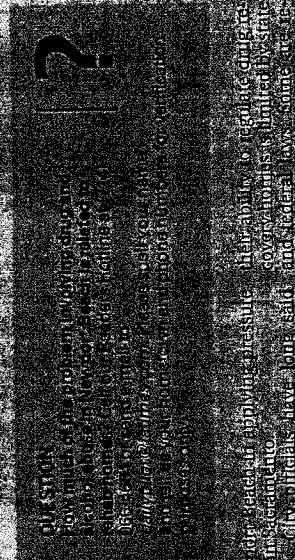
Local leaders want to build up support for legislative changes; Sacramento may be unwilling to budge.

By Alicia Robinson
Daily Pilot

Complaining of illicit drug use and frequent police visits, some Newport Beach residents have

ramped up demands that city officials take action to control drug and alcohol rehabilitation homes in the city.

The City Council has wrestled with the issue at least three times in as many years, but this time there seems to be some movement, as residents have not let the issue fade after picking candidates during the recent council campaign. A referendum has been set for March, to get other cities to join New



and they attribute it to the rehab homes. Julie Ebeling, who lives on 39th Street in West Newport, said 20% of the homes on the street are rehab facilities. "I'm happy to take my share of it, but this is just a little extra," she said.

People with complaints about the rehab facilities stress that they don't oppose drug rehab. She cites drug overdoses and crime, and several residents told the city council on Tuesday they've seen "chilly parties" and drunk people in the street.

See REHAB, Page A1

REHAB

Continued from A1

itself — they object to what they think is too close a concentration of rehab facilities.

The issue is often a passionate one, and it's caused some residents to turn a critical eye on Newport Beach city leaders. They say the city hasn't enforced existing regulations that could make the rehab facilities easier to live with or stop those that break the rules.

"All we're asking is that the city regulate the houses that are here now, and they're not," West Newport resident Lori Morris said.

City Manager Homer Bludau disputed that the city has refused to address the issue.

"Where would be the benefit for the city allowing these homes to come in and disrupt the neighborhoods?" he said. "There is certainly no benefit to us looking the other way."

Malibu Mayor Ken Kearsley, who's been fighting a similar battle for eight years in his city, backed up Newport officials' claims that they can't do any more than they have.

"I have been down this road so long. I have trampled the halls of Sacramento legislators. I have testified before legislators," he said. "There is zero, zip, zilch, nada that we can do."

He's tried and failed to get bills passed by state lawmakers, he said. In his city, Kearsley said, the problem isn't drug abuse and crime; it's largely having a commercial enterprise and the

traffic it generates in a residential neighborhood.

In Newport, some rehab homes won't tolerate irresponsible behavior by their clients, said Michael Ballue, program director for Ocean Recovery on West Balboa Boulevard.

"I understand to some extent where some of the neighbors are coming from," he said. "Different places have different levels of supervision."

At Ocean Recovery's two facilities — one for men and one for women — there is a 10 p.m. curfew for clients, they require clients to be sober to stay, and employees put out cans so clients don't throw cigarette butts on the ground, Ballue said.

Some facilities are more lax with their rules, he said, but "I just hope that the field as a whole doesn't get tarred with that brush."

At the moment, the city seems poised to take action, with Newport planning to sponsor state legislation and use the spring conference to drum up statewide support. And City Councilman Steve Rosansky said it's likely the city will participate in a committee that resident Bob Rush is asking to form.

If a committee begins researching the rehab issue and suggesting regulations, it may find unexpected support from facilities themselves. Ballue said if they're suggesting monitoring and more accountability for drug recovery homes, that's fine.

"I don't see anything wrong with that," Ballue said. "I think that would weed out the ones that are doing the stuff they aren't supposed to."