



Community Meeting
Sober Living Homes, Group Homes,
and State-Licensed Residential Care
Facilities

Newport Beach Library Friends Room



**City of
Newport Beach**

October 11, 2021

Introductions

- Residents
- City Representatives
- County Representatives
- State Representatives

Fair Housing Act and American Disabilities Act

Background

- Provide an individual with any disability an equal opportunity to use and enjoy a dwelling.
- 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.

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Drug and Alcohol Addiction is a Disability

Background

- **Handicap** is defined as (1) a physical or mental impairment which (2) substantially limits (3) one or more of a person's major life activities.
- Persons **recovering** from addiction to drugs and/or alcohol are considered to be disabled under state and federal law.
- 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.

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Where we started?

• Early 2000's:

- Group homes on the rise.
- Overconcentration and lack of local regulations identified as a growing issue in neighborhoods City-wide.

• In 2007/2008:

- Licensed: 26 facilities with 213 beds
- Unlicensed: 55 facilities with 401 beds
- **614 total number of beds**

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City Ordinance

*Adopted in
2008*

- Established location regulations
- Revised for compliance with Fair Housing Laws
- Added Reasonable Accommodation provisions

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Types of Residential Care Facilities & State Licensing

Types of Residential Care Facilities

- **Drug and Alcohol recovery** – state license obtained from the Department of Health Care Services
- **Social Rehabilitation Facility for mental illness** – state license from the Department of Social Services

Elderly

- **Adult Day Care** - licensed 6 beds treated the same as Residential Care Facilities and allowed in all residential zones – state license from the Department of Social Services

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Licensed Facilities 6 and Under

Protected

- Must be treated as a single-family use in California, and no zoning requirement may be applied to that facility that is not applied to other single-family residences in the same zone.
- This applies to all of California cities and counties.

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Newport Beach Matrix of Allowed Uses

Applicability: New and retroactively to existing facilities
Nonconforming Uses: Must be abated or seek Reasonable Accommodation

Facility Type	Single-Family	Two-Family	Multi-Family
Licensed 6 and Under	Allowed	Allowed	Allowed
Unlicensed 6 and Under	Prohibited	Prohibited	Use Permit
7 and Over (Licensed or Unlicensed)	Prohibited	Prohibited	Use Permit
Integral – Not Licensed by State	Prohibited	Prohibited	Use Permit
Parolee Probationer	Prohibited	Prohibited	Prohibited

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Effects since 2008 Zoning Ordinance

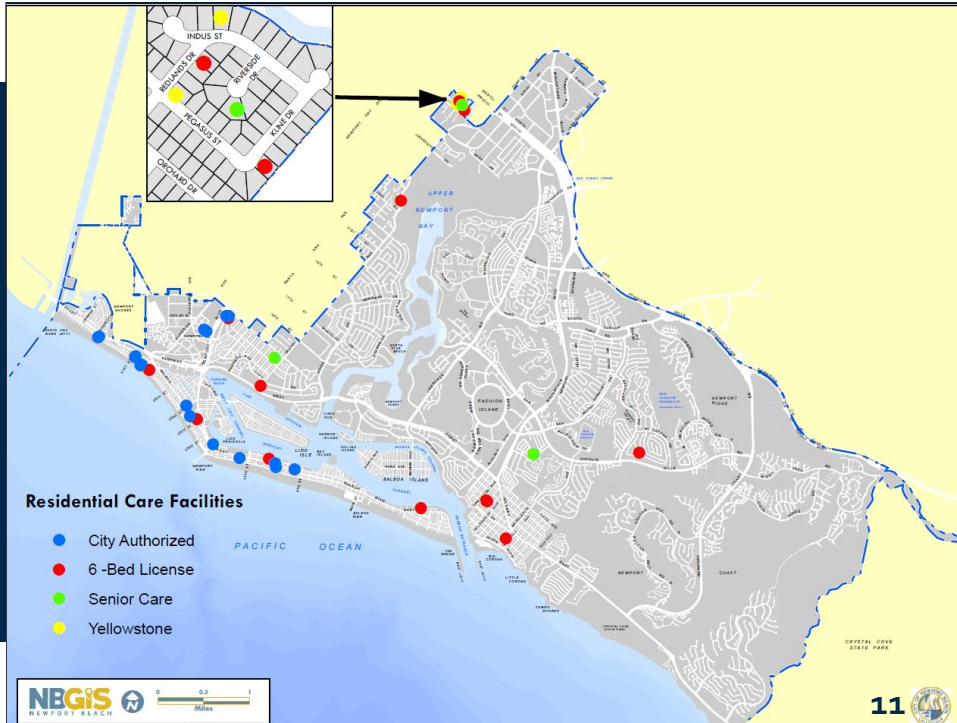
	2007	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Facilities	81	33	27	27	25	26	25	26	27	28	29	30
Beds	614	237	200	195	181	187	181	187	192	198	204	210

Use Permits • 3 Approved / 5 Denied	Reasonable Accommodations • 5 Approved / 6 Denied
Zoning Agreements • 2 Approved / 1 Revoked	

All new facilities since 2009 have been state licensed 6 and under

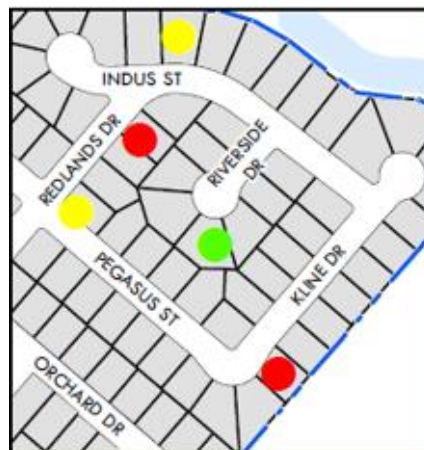
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Map



Santa Ana Heights

1. **Two** drug/alcohol residential state licensed (6 beds each)
2. **One** elderly care licensed facility (6 bed)
3. **Two** existing Yellowstone homes within same neighborhood (discussed on next slide)



Yellowstone

1621 Indus and 20172 Redlands

- Litigation challenging the 2008 ordinance was settled prior to the court entering final judgment. No changes were made to the 2008 ordinance.
- Properties at 1621 Indus and 20172 Redlands were part of litigation, which the City settled, without requiring Yellowstone to obtain a CUP.
- Judge issued a preliminary injunction prohibiting the City from treating two state licensed facilities as “integral facilities.”

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2555 Vista Baya

- Notice of application filed received from the *Community Care Licensing Division of the California Department of Social Services*
- Transitional (30-90 days) Social Rehabilitation Facility (SRF) for mental illness

24 hour a day non-medical care and supervision in a group setting to adults recovering from a mental illness who temporarily need assistance, guidance or counseling.

- 300 feet min. separation from any other state licensed facility **(Not within 300 feet)**
- Strict regulations and monitoring by the Orange County Community Care Licensing Division Regional Office 714-703-2840
- 6 bed licensed facility allowed in all residential areas

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Newport Beach v Costa Mesa Comparison Summary

Facility Type	Single-Family		Two-Family		Multi-Family	
	Newport Beach	Costa Mesa	Newport Beach	Costa Mesa	Newport Beach	Costa Mesa
Licensed 6 and Under	✓	✓	✓	✓	✓	✓
Unlicensed 6 and Under	✗	Special Use Permit	✗	Special Use Permit	Conditional Use Permit	Special Use Permit
7 and Over (Licensed or Unlicensed)	✗	✗	✗	Conditional Use Permit	Conditional Use Permit	Conditional Use Permit

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Licensing and Enforcement

- **DHCS** - *Department of Health Care Services* for drug and alcohol recovery homes 916-322-2911 or 877-685-8333
- **DSS** - Orange County Community Care Licensing Division of *Department of Social Services* regional office for mental health facilities and elderly facilities 714-703-2840

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Possible Legislative Changes

1. Establish overconcentration standards to avoid changing the neighborhood into a commercial setting and threatening the intent of promoting recovery in a normal residential setting
2. Require distancing and maximum allowed homes within a neighborhood or block
3. Allow annual City fire inspections to ensure compliance with license
4. Additional funding for State inspections
5. Return local control

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For more information contact

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Thank you

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ASSEMBLYWOMAN

Cottie Petrie-Norris

DISTRICT 74

Recent Legislation

	SUMMARY	Status
SB 1228 (Lara) 2018	<ul style="list-style-type: none"> Prohibits facilities that are licensed or certified by DHCS from gaining financially for referring a person to treatment 	Signed
AB 919 (Petrie-Norris) 2019	<ul style="list-style-type: none"> Establishes enforcement arm at DHCS Limits facilities offering housing, transport as inducement to treatment 	Signed
SB 406 (Pan) 2019	<ul style="list-style-type: none"> Requires DHCS take action against unlicensed facility disclosed as recovery residence 	Signed
AB 1158 (Petrie-Norris) 2021	<ul style="list-style-type: none"> Require a recovery residence that contracts with a government entity or substance abuse recovery or treatment facility that is licensed by the government to maintain minimum insurance coverage levels. 	Signed
SB 434 (Bates & Petrie-Norris) 2021	<ul style="list-style-type: none"> Prohibits facilities from making false statements or providing false information in advertising or marketing 	Signed
SB 541 (Bates & Petrie-Norris) 2021	<ul style="list-style-type: none"> Requires substance use disorder treatment services to disclose information about its license or certification 	Signed
AB 920 (Petrie-Norris) 2019	<ul style="list-style-type: none"> Establishes licensure program for all recovery treatment programs under DHCS 	Vetoed
AB 77 (Petrie-Norris) 2021	<ul style="list-style-type: none"> Builds on AB 920 Establishes licensure program for all recovery treatment programs under DHCS 	2 Year Bill
SB 349 (Umberg)	<ul style="list-style-type: none"> Establishes a client bill of rights for persons receiving treatment for a SUD and imposes requirements and proscribes unlawful acts relating to marketing and advertising with respect to SUD treatment providers. 	2 Year Bill

Bi-Partisan Working Group on Substance Abuse Treatment

- Stop exploitation in the recovery industry
- Establish standards for treatment programs and providers
- Ensure that taxpayer dollars are being directed to proven programs that work



AB 1158: Insuring Safety in Recovery Settings for Consumers

Effective January 1, 2022:

- Ensures patients and workers are made whole if harmed by a unscrupulous operator
- Establishes a mechanism for consumer attorneys to go after bad operators
- Allows the California Department of Insurance to do more regulation and investigations in the recovery industry

Contracted Recovery Residences & Licensed Facilities > 6

- Commercial general liability, min \$1M per occurrence
- Workers' compensation and employer's liability, min \$100K
- Commercial or business automobile liability, min \$1M
- Professional liability with contractual liability, min \$1M per occurrence and \$2M aggregate

Smaller Licensed Facilities < 6

- General Liability (Residential)



Insurance Fraud: Investigations and Prosecution

- **Fraud in the Recovery Industry = Fastest Growing Insurance Fraud in California**
- **CA Department of Insurance Investigations Unit - 300+ including law enforcement personnel**
- **Recent Actions:**
 - January 2020 - Orange County District Attorney's (OCDA) Office and California Department of Insurance (CDI) shut down a \$3.2 million health care fraud ring which preyed on vulnerable substance abuse patients in order to bilk an insurance company out of millions.
 - June 2020 - OCDA and CDI charged five additional defendants in a \$60 million sober living home fraud scheme designed to traffic vulnerable substance abuse patients from outside California into treatment facilities in Orange and Riverside counties and to bilk insurance companies out of millions of dollars



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Next Steps: Oversight and Enforcement

- **Oversight Hearing: Department of Healthcare Services**
- **Additional Resources Needed**
- **Legislation to Strengthen Local Enforcement**
 - Reintroduce AB 572 (Quirk-Silva, 2017)
 - Would require the Department of Health Care Services to place an investigator “within a participating county” to investigate problems with local licensed adult alcoholism and drug-abuse treatment and recovery facilities



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For more
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Questions?



KATRINA FOLEY

SUPERVISOR, SECOND DISTRICT

County of Orange (unincorporated) & Costa Mesa Sober Living Home Ordinances

Background

- ▶ 2015- Costa Mesa adopted Sober Living Home Ordinance
- ▶ 2017- Costa Mesa adopted and amended
- ▶ July 2019- federal district jury trial before Judge Selna results in defense verdict for Costa Mesa against Yellowstone, confirming the ordinance is lawful and non-discriminatory
- ▶ September 2019- County of Orange adopted sober living home ordinance modeled off City of Costa Mesa ordinance

Key Similarities: County vs. Costa Mesa Ordinances

- ▶ Grace period to comply with ordinances and apply for permits
- ▶ Both require permits for group homes of 7 or fewer;
- ▶ Similar application requirements and house management protocols
- ▶ Both prohibit the location of a group home being within 650 feet of another sober living home or any state-licensed alcohol and drug treatment facility;
- ▶ Both require a house manager present 24 hours a day;
- ▶ Both require 48-hour notice before eviction;
- ▶ Both prohibit sex offenders, violent felons, arsonists, and drug dealers from operating sober living homes;
- ▶ Both require a no-drug/alcohol and "good neighbor" policy;
- ▶ Both require house guests to actively participate in legitimate recovery programs
- ▶ Both prohibit services related to: detoxification, educational counseling, individual or group counseling, and treatment or recovery planning
- ▶ Similar enforcement and permit revocation

Key Differences: County vs. Costa Mesa Ordinances

- ▶ County ordinance prohibits in any unincorporated area not included in the ordinance, in other words, prohibited in multi-family, commercial, and industrial zones
- ▶ Permitting process and notice procedures different as to homes for six or fewer; but both require permits for six or fewer as well as seven or more whether state licensed or not
- ▶ County allows denial, revocation, or cancellation of a permit if any owner/operator/staff member is recovering with less than one year of sobriety; for failure to remove an abusing resident; if located within 1,000 feet of a sober living home; or for repeated violations of law or regulation
- ▶ County requires automatic expiration if you discontinue or abandon for six months

Legal Challenges to Costa Mesa (Federal)

Yellowstone v. Costa Mesa

- ▶ Requested a "reasonable accommodation" to be exempted from R1 ordinance's requirement of 6 or fewer occupants
- ▶ Request denied by Planning Commission
- ▶ Challenged the R1 ordinance in federal court primarily under FHA & ADA
- ▶ City prevailed at trial. Jury concluded the ordinance was not discriminatory as applied to the sober living homes in this case.
- ▶ **Ninth Circuit affirmed the jury verdict in September 2021**

The Court said: "A reasonable jury could conclude that the substantial, legitimate nondiscriminatory interests supporting Ordinance 14-13 would not be served by another practice that has a less discriminatory effect" and a "reasonable jury could also conclude that the passage of Ordinance 14-13 was not more likely than not motivated by a discriminatory reason." Thus, according to the Ninth Circuit, there was adequate evidence to support the jury's verdict for the City on the sober living homes' disparate treatment and disparate impact claims.

Relevant Litigation

Federal:

- ▶ City obtained summary judgement in 5 federal actions (Casa Capri, SoCal, Pacific Shores, Summit, and National Therapeutic); five appeals pending

State:

- ▶ City obtained judgement in 5 state court nuisance abatement actions (Casa Capri, SoCal, Pacific Shores, National Therapeutic, and Raw Recovery)

Next Steps from District 2

- ▶ Monitor and continue to request investigation and inspection of state licensed facilities
- ▶ Assist development services in updating the registry and mapping sober living homes in the unincorporated areas
- ▶ Research procedure to create a countywide registry
- ▶ Provide technical assistance to cities interested in adopting regulatory schemes to protect patients and neighbor
- ▶ Partner with Assembly member Cottie Petrie-Norris and others to advocate for state reforms

County Public Works

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