

**Community Meeting on Group Residential Uses
October 11, 2021
Meeting Summary**

Speakers

- Newport Beach City Council Members - Diane Dixon, Joy Brenner, Duffy Duffield
- State of California - Assemblywoman Cottie Petrie-Norris, State Senator Dave Min
- County of Orange - Supervisor Katrina Foley, District Attorney Todd Spitzer
- City of Newport Beach Staff – Community Development Director Seimone Jurjis, City Attorney Aaron Harp

Presentation

Opening Remarks - *Newport Beach City Council Member Diane Dixon served as the meeting moderator*

The Newport Beach ordinance has been in place since 2008. Since 2009, the only new facilities that have been legally permitted to operate in Newport Beach have been licensed by the State, not the City. For the past 12 years, the operators have preferred to be licensed by the State rather than permitted by the City, in part, because there is less regulation and enforcement by the State.

The City sees three options that it believes would be effective to address the concerns expressed by its constituents - the State commits more resources toward regulating and managing its licensed facilities, the State Legislature enacts enhancements to the current regulatory framework, or, the State makes changes in State law to give cities more regulatory authority.

When we're given the ability to regulate, we are effective. Since the Newport Beach ordinance has been in place, the City has worked effectively with operators and has seen complaints decrease substantially.

Sober Living Homes, Group Homes, and State-Licensed Residential Care Facilities – *Newport Beach Community Development Director Seimone Jurjis gave a presentation on the types of group residential uses and the history of group homes in Newport Beach. View the presentation [here](#).*

Persons in recovery from drug and alcohol addiction are considered disabled under State and Federal law.

In the early 2000s, the number of group homes in the City of Newport Beach rose and the community was concerned about overconcentration and the lack of local regulations. The City adopted an ordinance in 2008 to establish local regulations.

In 2008, there were 81 facilities and 614 total beds in Newport Beach. In 2021, there are 30 facilities with 210 total beds. Since 2009, the only new legal facilities in Newport Beach

have been those licensed by the State. This means that local regulations, set forth in the Newport Beach Municipal Code, do not apply to these State-licensed facilities.

The [presentation](#) includes a map of where the facilities are located. A second map shows the facilities located in Santa Ana Heights.

The State licenses “6 and under” facilities for those in alcohol and drug recovery, those needing social rehabilitation for mental illness and individuals in adult day care. Licensed 6 and under facilities are protected under the law and must be treated as a single-family use in California.

A new Social Rehabilitation Facility to be located at 2555 Vista Baya has a license pending from the State. We have been told that it will be a transitional facility for persons in recovery for mental illness.

In regard to Newport Beach’s and Costa Mesa’s ordinances they are very similar; however, they use different terminology and that can cause confusion.

The City would like to see the State adopt overconcentration standards, require distancing between State-licensed 6 and under facilities, allow City fire inspections of State-licensed group homes, and return local control. It would also like the State to provide additional funding for inspections of its licensed facilities.

Recent Legislation – *Assemblywoman Cottie Petrie-Norris gave a [presentation](#) on recent State legislation, including bills she has authored.*

The State Legislature has passed a number of bills that have been signed into law that address bad operators and exploit legal loopholes. Among them, the Assemblywoman authored:

- AB919 – established an enforcement arm at the State Department of Health Care Services
- AB1158 – which requires minimum insurance levels for recovery residences or treatment facilities that contract with a government entity

A bi-partisan working group on substance abuse treatment was formed to stop exploitation in the recovery industry, establish standards for treatment and providers, ensure taxpayer dollar go toward proven programs.

Recovery facility insurance fraud is the fastest growing insurance fraud in California.

- Action:
 - Raise standards in industry
 - Step-up oversight and enforcement
 - Increase local enforcement resources including inspectors.
- Possible legislation changes:
 - Address overconcentration of all types, increase distancing requirements
 - Annual fire inspection
 - Additional funding for State

County of Orange (Unincorporated) and Costa Mesa Sober Living Home Ordinances
County Supervisor Katrina Foley gave a [presentation](#) on the two ordinances, including their similarities and differences.

City of Costa Mesa and County of Orange are examples of improved local control and ordinances. Costa Mesa adopted its Sober Living Home ordinance in 2015. It was amended in 2017. A July 2019 Federal district jury trial before Judge Selna resulted in a defense verdict for Costa Mesa. It confirmed Costa Mesa's ordinance is lawful and nondiscriminatory. In September 2019, the County of Orange adopted a sober living home ordinance modeled after the Costa Mesa ordinance.

The presentation included a list of the key similarities between the Costa Mesa and County of Orange ordinances including a regulation that prohibits a new "group home" (i.e. a non-state licensed facility) from being within 650 feet of another existing non-licensed group home or an existing state-licensed treatment facility. For those non-State licensed facilities, a house manager must be present 24 hours a day, and 48-hours' notice must be provided before an eviction can occur. The presentation also included a list of the key differences between the Costa Mesa and County of Orange ordinances.

District 2 (the Supervisor's District) will continue to, among other things, monitor and request investigation and inspection of State-licensed facilities and assist the County's development services in updating the facility registry and in mapping sober living homes in the unincorporated areas, and provide assistance to cities interested in adopting regulatory schemes to protect patients and neighborhoods.

Senator Dave Min

Attended the meeting to listen to the community. He is supportive of legislative change and is available to meet with the City and its residents.

District Attorney Todd Spitzer

Attended the meeting to explain to the community why he cleared the Newport Beach homeowner of any criminal wrongdoing for shooting and killing the intruder who broke into his home in August. The decedent had been staying at a state-licensed residential detox facility in Santa Ana Heights. The District Attorney explained that a resident has a right to defend themselves inside their home by using deadly force. The situation was tragic for everyone involved.

The District Attorney also stated that mandating 24-hour staff in homes is flawed because the staff is not allowed to leave the home to follow a client that leaves.

Council Members Joy Brenner and Duffy Duffield

Thanked the community and encouraged the residents. The residents are being heard and the City is working to address their concerns.

Summary of Community Comments

Residents' comments have been grouped according to subject area

City, County or Costa Mesa Ordinances

Newport Beach should look at County of Orange as example and coordinate with County to have increased oversight.

The current Use Permit process provides for many metrics including Integral Facilities

Distancing

State needs to change distancing requirements to address overconcentration of all types of facilities.

Enforcement

Inspections are not being done by the State. Make sure those are carried out.

Ensure Code Enforcement is responding to and investigating complaints.

Work on developing appropriate inspection protocols because providing 24-hour notice before an inspection allows for an operator to modify operations and avoid legal requirements.

Quality of Life

There's been a big turnover in ownership in the SAH neighborhood.

These facilities are commercial enterprises that have commercial types of impacts.

The residents should not oversee patrolling or policing the neighborhood.

Yellowstone

Traffic in and out of these homes is far greater than 6 or 12 individuals.

Former Yellowstone manager said that the homes have converted to parolee/probationer type homes and have changed the type of care being offered.

Properties at 435 and 435½ Dahlia

Have seen many incidents

Code Enforcement discusses smoke and noise with the operator but nothing improves

The operator blocks alleys with van. Police arrive too late to witness problems

Concerned about safety, quality of life, right to quiet enjoyment of home.

State Department of Health Care Services (DHSC) has not done inspection since 2020
DHSC issued an Integral License to Miramar and Carnation houses in error in 2014. It has since been corrected.

Owner has changed and DHCS has wrong owner licensed

10508 CA Code on Licensure of Integral Facilities Need to push for change with integral facilities.

Pending Vista Baya Facility

2555 Vista Baya has applied for a license with the State Department of Social Services to operate a mental rehab facility, the first one in Newport Beach.

This is a big business. The property sold for 2 million and is currently being gutted.

Gratitude Lodge

Gratitude Lodge states that detoxing is the most dangerous time and that man should not have died.

Next Steps / Action Items

1. Community Development to set up meeting with Code Enforcement and residents
2. Costa Mesa, City, State officials to meet to review regulations

Questions and Answers

Explain licensed versus unlicensed facilities.

The term “licensed facilities” refers to uses that are licensed by the State and “unlicensed facilities” refers to uses that are not licensed by the State.

What is the definition of integral facilities?

Newport Beach Municipal Code Chapter 20.70.20 defines these as follows:

“Integral facilities (land use)” means any combination of two or more residential care (small licensed, small unlicensed, or general) facilities that may or may not be located on the same or contiguous lots, that are under the control and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one operation that shall be considered one facility for purposes of applying Federal, State, and local laws to its operation. Examples of integral facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

“Integral uses (land use)” means any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such integral use shall be considered one use for purposes of applying Federal, State, and local laws to its operation.

Can Newport Beach adopt an ordinance like Costa Mesa’s?

The two ordinances are very similar. They use different terminology, but the regulations are almost identical. For instance, Costa Mesa’s regulations are almost exclusively based upon the definition of “group home” and “sober living home” that excludes state licensed residential care facilities. For instance, Costa Mesa Code 13-6 defines a group home, sober living home, and residential care facility as follows:

“Group home. A facility that is being used as a supportive living environment for persons who are considered handicapped under state or federal law. A group home operated by a single operator or service provider (whether licensed or unlicensed) constitutes a single facility, whether the facility occupies one (1) or more dwelling units. **Group homes shall not include the following: (1) residential care facilities;** (2) any group home that operates as a single housekeeping unit.”

“Sober living home means a group home for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under state or federal law. **Sober living homes shall not include the following: (1) residential care facilities; (2) any sober living home that operates as a single housekeeping unit.**”

“Residential care facility. A residential facility licensed by the state where care, services, or treatment is provided to persons living in a supportive community residential setting. Residential care facilities include, but may not be limited to, the following: intermediate care facilities for the developmentally disabled (Health & Safety Code §§ 1267.8, 1267.9); community care facilities (Health & Safety Code § 1500 et seq.); residential care facilities for the elderly (Health & Safety Code § 1569 et seq.); residential care facilities for the chronically ill (22 C.C.R. § 87801(a)(5); Health & Safety Code § 1568.02); alcoholism and drug abuse facilities (Health & Safety Code §§ 11834.02—11834.30); pediatric day health and respite care facilities (Health & Safety Code § 1760 et seq.); residential health care facilities, including congregate living health facilities (Health & Safety Code §§ 1265—1271.1, 1250(i), 1250(e), (h)); family care home, foster home, group home for the mentally disordered or otherwise handicapped persons or dependent and neglected children (Wel. & Inst. Code §§ 5115—5120).”

However, Newport Beach will review Costa Mesa’s ordinance closely and consider any changes that could further strengthen the City’s ordinance.

What is the City’s position on integral facilities and can they be regulated?

The City can regulate integral facilities; however, a preliminary injunction was previously issued against the City prohibiting the City from attempting to treat licensed facilities as integral facilities for purposes of regulating them under the Newport Beach Municipal Code.

Can we control operators of multiple facilities crossing City lines such as Pacific Shores and Casa Capri which are licensed and unlicensed (one in city, one in county)?

The City can regulate unlicensed integral facilities that cross-jurisdictions and can investigate these types of complaints.

Why don’t the drug/alcohol facilities have distancing requirements like the homes for the mentally ill?

State law provides for distancing for some types of uses and not others. The State should consider adopting distancing requirements for all similar types of uses that are located in residential areas.

Why is a State licensed facility allowed to continue to operate after death of client?

The District Attorney responded that his office investigated the shooting incident but does not have regulatory authority to investigate the operator for purposes of revoking its license.

Can the two Yellowstone facilities do whatever they want?

The City settled its litigation with Yellowstone in 2015. If there are substantive complaints that Yellowstone has changed its use, such as the allegation that it is now a parolee/probationer home, is in violation of local codes or laws, or there is a nuisance complaint, then the City can investigate and take enforcement action, if appropriate.

How do you prove over-occupancy?

Code Enforcement must be called and must witness over occupancy. State licensed 6 and under facilities must be treated the same as single-family residences under the law.

What is best way to document over-occupancy at facilities?

The City will set-up a meeting with residents and Code Enforcement to discuss Code Enforcement investigative procedures.

Can the County do anything to address Yellowstone facilities?

No. The homes are within the jurisdiction of the City of Newport Beach.

Is there an executive order to fast-track changes to distancing/ overconcentration?

The City does not believe it has the ability under State law to require distancing of State-licensed 6 and under facilities. This position appears to be consistent with Costa Mesa's Municipal Code that applies distancing requirements to new non-state licensed homes such as "group homes" and "sober living homes" but does not apply distancing requirements to new State licensed residential care facilities. (See, definition of "group home" and "sober living homes" both of which do not include State licensed facilities). Newport Beach has agreed to explore this issue in more detail with Supervisor Foley and Assemblywoman Petrie-Norris and City, County and State representatives are planning a meeting to discuss distancing requirements.

What can be done about the two facilities on Dahlia?

The two facilities are licensed by the State and the State doesn't treat them as integral. One option would be to change State law to ensure these homes are licensed as integral. In the absence of a change in State law, the City can organize another meeting with the operator and neighbors to try to help improve the situation. Code enforcement staff will be included in the meeting.

What can be done about Yellowstone having too many occupants and allowing probationers or parolees to live onsite?

The City will investigate the concerns regarding the alleged change of use by Yellowstone to a parolee/probationer home as well as the allegation that there has been an increase in occupancy. The City Code generally considers a parole/probationer home as housing more than 2 parolees/probationers (See, Section 20.70.020). Parole/probationer homes are prohibited in the City.

What study says group residential uses have to be in residential neighborhood?

Case law supports that living in single-family environment improves recovery. City is able to work with operators when the State allows City to regulate. For instance, the Sober Living by the Sea Zoning agreement works well when local control established. Katrina Foley – Wellness Center concept is providing treatment in office/business areas with residential around.

What about Megan's Law?

The District Attorney explained that Megan's Law enables residents to look up criminals on website but needs to be updated to fix loopholes.