

**RESOLUTION No. HO-2009-004**

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT NO. 2008-035 TO ALLOW AN EXISTING GROUP RESIDENTIAL USE TO CONTINUE AT 1621 INDUS STREET, NEWPORT BEACH, CALIFORNIA (PA2008-106)**

**WHEREAS**, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

**WHEREAS**, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

**WHEREAS**, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing nonconforming uses in residential areas, including existing group residential care facilities (except for state-licensed drug or alcohol treatment homes serving six or fewer clients), must apply for use permits to remain in operation at their current location beyond February 2009; and

**WHEREAS**, Yellowstone Women's First Step House, Inc., submitted Group Residential Use Permit applications for four sober living facilities located at 1561 Indus Street, 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive, all located in the City of Newport Beach, California; and

**WHEREAS**, Yellowstone Women's First Step House, Inc., located at 1621 Indus Street ("Use Location") in Newport Beach, California, is an existing group residential care facility operating an unlicensed "sober living" facility for 18 women in an existing single-family dwelling; and

**WHEREAS**, an application was filed by Yellowstone Women's First Step House, Inc. ("Use") pursuant to Ordinance No. 2008-05 within the applicable time period with respect to property located at 1621 Indus Street, and legally described as Lot 18, Tract 4307 in the City of Newport Beach, County of Orange, State of California (APN 119-361-04), as per map recorded in Book 153, Pages 18-20 of Miscellaneous Maps, in the Office of the County Recorder of Orange County, requesting approval of Use Permit No. 2008-035 to allow a residential care facility to continue its operations as an 18 bed adult sober living facility for females only; and

**WHEREAS**, on February 20, 2009, a Hearing Officer held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Hearing Officer at this meeting, and the hearing was continued to March 12, 2009, when the

public hearing was reopened to receive additional evidence, both written and oral from the applicant, staff and the public; and

**WHEREAS**, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the Yellowstone facility located at 1621 Indus Street was established on or after August 2003, during the time when the location was part of Orange County unincorporated territory and subject to the Orange County Codified Ordinances; and

**WHEREAS**, the Yellowstone facility located at 1621 Indus Street was established by Yellowstone in advance of the City's January 1, 2008, annexation of West Santa Ana Heights. Previous to January 1, 2008, the Yellowstone facility was subject to the regulations of the County of Orange, as such regulations apply to County unincorporated lands. The Orange County Codified Ordinances allows certain specified recovery facilities to establish in residential zones, provided that the facilities obtain a use permit issued by the Orange County Planning Commission. More specifically, the use permit requirement applies to "Community Care Facilities" and "Congregate Care Facilities" which house from seven (7) to twelve (12), inclusive, persons requiring care (Section 7-9-141, Section 7-9-141.3[b], and Section 7-9-150 of the Orange County Codified Ordinances). Congregate Care Facilities which house 13 or more persons are permitted with a use permit issued by the Orange County Planning Commission in any district, planned community, or specific plan area zoned for multifamily residential dwellings or hotels (Section 7-9-141.3[c] and Section 7-9-150 of the Orange County Codified Ordinances); and

**WHEREAS**, an inquiry made by the City to the County of Orange's Planning Department ("OC Planning") in February 2009 showed that only one use permit was issued by the County of Orange that applies to any of Yellowstone's four operations, and that use permit was a temporary use permit (TPU 050001) authorizing the facility at 1621 Indus Street to hold 40 meetings at 1621 Indus Street within Calendar Year 2005. The County has no record of any of the four Yellowstone facilities (1561 Indus Street, 1621 Indus Street, 1571 Pegasus Street, and 20172 Redlands Drive) having received use permits authorizing their operation as either Community Care Facilities or Congregate Care Facilities from the County of Orange's Planning Commission per the Orange County Codified Ordinances. Although County Planning staff and Code Enforcement staff informed City staff verbally and in writing (Exhibit 1, attached hereto) that sober living houses would be considered a Community Care Facility or a Congregate Care Facility, nothing in the record known to the City shows that the facilities were legally-established uses at any time Yellowstone operated them while the West Santa Ana Heights area was part of the County of Orange's unincorporated territory; and

**WHEREAS**, any person whose property in a residential district was rendered nonconforming by the passage of Ordinance No. 2008-05 adding Chapter 20.91A may seek the issuance of conditional use permit to allow the continued use of an existing group residential care facility if the application was timely filed; and

**WHEREAS**, pursuant to NBMC Section 20.62.030 (Determination of Nonconformity), a nonconforming use is "Any use found to have been lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City, shall be deemed to be a nonconforming use. A nonconforming use includes a use that was lawfully established and maintained but is conditionally permitted in the district and has not obtained a use permit. *A use shall not be considered to have been "lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including but not limited to permits and licenses required by any federal, state, or local government agency*" (emphasis added); and

**WHEREAS**, the Yellowstone facility located at 1621 Indus Street was not a lawfully established and maintained use when it was established within the Orange County unincorporated territory known as West Santa Ana Heights, and is therefore not qualified to seek a use permit to continue the use in its current location; and

**WHEREAS**, the project qualifies for a Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA; and

**NOW THEREFORE BE IT RESOLVED:**

**Section 1.** The Hearing Officer hereby denies with prejudice Use Permit No. 2008-035.

**Section 2.** The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED this 14<sup>th</sup> day of April, 2009.**

By: *Thomas W. Allen*  
Thomas W. Allen, Hearing Officer

ATTEST

*William P. Brown*  
CITY CLERK



Hearing Officer Resolution  
1621 Indus Street  
Use Permit No. 2008-035

**EXHIBIT 1**

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**From:** Wellborn, Michael [mailto:Michael.Wellborn@rdmd.ocgov.com]  
**Sent:** Tuesday, February 24, 2009 3:19 PM  
**To:** Kiff, Dave  
**Subject:** RE: Not an MB Issue

Dave ~

The only property from your list with any kind of Use Permit is 1621 Indus with a 2005 Temporary Use Permit to hold meetings (attached).

Also, the OC Zoning Code definitions of the possible facilities are below.

See ya,

Mike

*Congregate Care Facility:* A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility. Such a facility may be located in more than one (1) building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc., which have characteristics similar to the above.

*Community Care Facility:* Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes.

-----Original Message-----

**From:** Kiff, Dave [mailto:DKiff@city.newport-beach.ca.us]  
**Sent:** Tuesday, February 24, 2009 1:27 PM  
**To:** Wellborn, Michael  
**Subject:** RE: Not a M [REDACTED] B [REDACTED] Issue

Hi Mike ---

Many thanks for that input. Can I ask for one more favor, just to confirm the below question:

- 1561 Indus Street houses 12 women, in a congregate/community care environment, and the operator states that they have done so since 2007
- 1621 Indus Street houses 18 women, in a congregate/community care environment, and the operator states that they have done so since 2003
- 1571 Pegasus Street houses 18 women, in a congregate/community care environment, and the operator states that they have done so since 2005
- 20172 Redlands Drive houses 18 men, in a congregate/community care environment, and the operator states that they have done so since 2005

1 -- Do your records show any Use Permits issued for these locations?

2 -- Can you refer me to the OCCO section that defines a Congregate or a Community Care Facility?

Dave

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**From:** Wellborn, Michael [mailto:Michael.Wellborn@rdmd.ocgov.com]

**Sent:** Tuesday, February 24, 2009 12:28 PM

**To:** Kiff, Dave

**Subject:** Not a M [REDACTED] B [REDACTED] Issue

Hi Dave ~

In response to your inquiry to Tim and Nick, I have spliced on the relevant OC Zoning Code sections for Community Care and Congregate Care facilities (7-9-141 and 7-9-142).

Both allow up to six residents in a group home without any permit.

Both require a Use Permit from the Planning Commission for seven to twelve residents.

Mike

**Sec. 7-9-141. Community care facilities.**

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

(Ord. No. 3470, § 4, 6-20-84; Ord. No. 3560, § 15, 12-17-85; Ord. No. 3655, § 5, 8-25-87; Ord. No. 3816, § 29, 3-12-91; Ord. No. 3887, § 21, 3-23-93)

Sec. 7-9-141.1. Reserved.

**Editor's note:** Section 7-9-141.1 was repealed by § 21 of Ord. No. 3887, adopted Apr. 6, 1993. The section related to larger congregate care facilities and was derived from Ord. No. 3655, § 6, Aug. 25, 1987. See now § 7-9-142.

**Sec. 7-9-141.2. Child day care facilities/day care nurseries.**

Child day care facilities/day care nurseries serving more than fourteen (14) persons may be permitted in any district, planned community or specific plan area (except in designated airport accident potential zones) where this use is not otherwise identified as a permitted use, subject to the approval of a use permit by the Planning Commission per section 7-9-150.

(Ord. No. 3754, § 82, 5-16-89; Ord. No. 3887, § 21, 3-23-93; Ord. No. 3981, § 21, 4-22-97)

**Editor's note:** Section 7-9-141.3 was repealed by § 21 of Ord. No. 3887, adopted Apr. 6, 1993. The section related to single room occupancy facilities and was derived from Ord. No. 3834, § 2, adopted Aug. 20, 1991. See now § 7-9-138.

**Sec. 7-9-141.3. Congregate care facilities.**

(a) A congregate care facility serving six (6) or fewer persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.

(b) A congregate care facility serving seven (7) to twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission pursuant to section 7-9-150.

A congregate care facility shall;

- (1) Demonstrate compatibility with adjacent development;
- (2) Provide adequate on site parking for residents and staff;
- (3) Provide adequate screening of the facility by landscaping and/or fencing; and
- (4) Limit signage and lighting.

(c) A congregate care facility serving more than twelve (12) persons may be permitted in any district, planned community, or specific plan area zoned for either multifamily residential or hotels subject to the approval of a use permit by the planning commission pursuant to section 7-9-150.

(d) Equivalent dwelling unit counts for congregate care facilities shall be determined by the following table. The consequent unit counts are to be subtracted from the total number of allowed dwelling units for a planned community or specific plan area, and will also determine consistency with area per dwelling unit zoning limitations.

TABLE INSET:

Configuration	Dwelling Unit Counts
2 or more bedrooms in the unit	1 dwelling
1 bedroom in the unit	.5 dwelling
0 bedroom in the unit	.25 dwelling
Medical care rooms	0 dwelling

Density bonuses may be granted to congregate care facilities in residentially-zoned areas in the same manner that they may be granted to standard residential projects per the housing element. (Ord. No. 08-015, § 2, 11-18-08)

-----Original Message-----

**From:** Kiff, Dave [mailto:DKiff@city.newport-beach.ca.us]  
**Sent:** Monday, February 23, 2009 2:18 PM  
**To:** Chrisos, Nick [COCO]; Néely, Tim  
**Subject:** Not a M [REDACTED] B [REDACTED] Issue



Hi Tim and Nick –

Maybe a quick question for you. About six group homes in West Santa Ana Heights were added to the City after annexation in Jan 2008. The operators are saying that the County never required any kind of permit for these homes, despite the fact that at least four of them house 18 people each.

Is there anything in your codes for unincorporated areas that requires a Use Permit or other discretionary land use action for large group homes?

Dave Kiff  
Assistant City Manager  
949-644-3002