

City of Los Alamitos

Agenda Report Consent Calendar

December 14, 2015
Item No: 8H

To: Mayor Richard D. Murphy & Members of the City Council
Via: Bret M. Plumlee, City Manager
From: Steven A. Mendoza, Development Services Director
Subject: Residential Care Facilities

Summary: This report provides an explanation of Residential Care Facilities including Sober Living Homes, Detox facilities and group homes.

Recommendation: Review, discuss, and provide direction as necessary.

Background

At a recent meeting the City Council inquired as to their legal ability to affect uses such as residential care facilities, sober living homes, detox facilities and group homes. The short answer is that, because of federal and state law, the City must treat these homes (6 and under) just like any other single family residence, and may not impose any special land use regulations, fees or taxes upon their operation. There are several examples of state laws that preempt, or control, the ability of cities to regulate use of single family homes for special uses or occupants. Generally, these involve the care of six or fewer individuals.

In the fall of 2015, Council received comments and concerns from the public over a sober living home/detox home proposed in the Highlands neighborhood. The residents held a neighborhood meeting to discuss the topic wherein the applicant provided background on his proposed use. Days later, the applicant stated that he decided not to go forward with the planned facility; furthermore the lease agreement was terminated. Although the issues no longer remain for the specific property, the issue remains very important to Highland area residents whom remain concerned about the impacts these uses may have on their neighborhood and are urging that the City take further action to protect their neighborhoods.

What action is the City taking regarding these uses?

1. As required by the Fair Housing Act and other state laws, the City revised its code to permit these uses in a manner that does not discriminate.

2. City Officials participated in a neighborhood meeting.
3. The City has developed a Frequently Asked Questions form to better explain how Federal and State laws impact the City's ability to regulate such uses.
4. The City has posted this information on its' Website, Facebook page and Nextdoor.com to properly inform the public.
5. The City has begun reaching out to Federal, State and local legislators seeking measure that could lead to more local control of these uses.
6. The City has researched what other cities have done.

Discussion

To date, the City of Los Alamitos has fared well when compared to other Orange County cities. Although Los Alamitos is new to this issue, Orange County cities have been in the thick of the issue working within their own ordinances, the court system and their legislators to seek more autonomy toward regulating such uses. Orange County Assemblyman Matt Harper recently introduced additional legislation (AB 838) to assist Orange County cities. As written, AB 838 would not satisfy residents who do not want such uses in their neighborhood; it seeks simply to add additional regulation to the uses.

Thus far, our neighboring cities have had little luck in establishing distance requirements between multiple homes let alone trying to outlaw them at all. The goal of regulating these uses counters the aim of the State Legislature which is to promote a social goal deemed to be a matter of statewide concern. The State has, therefore, enacted laws that require cities to allow such uses of residential property without any special land use regulations or oversight by the local jurisdiction.

In Division 10.5 of the State Health and Safety Code, commencing at the Code's Section 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. A city may not deny a sober living home on the basis that the city believes it already has more than a sufficient number of such facilities, Ops Cal Atty Gen 07-601 (Dec. 18,2007).

Section 11834.23 continues: 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.

It should also be pointed out that persons recovering from alcohol and drug addictions are considered to be disabled persons under the American with Disabilities Act. Zoning actions by cities are covered by the ADA, Bay Area Addiction Research & Treatment v. City of Antioch (1999) 179 F.3d 725, and thus the City of Los Alamitos could face liability not only under the State law discussed above, but also under the ADA if it were found to have violated rights guaranteed under that law.

Conclusion

- The City of Los Alamitos is prohibited by State law from requiring the operators of the home to obtain a conditional use permit or home occupation permit or any other land use permit.
- The City of Los Alamitos may not impose any different or special fee or tax upon the sober living home.
- The City of Los Alamitos must treat the sober living home in all respects as it treats any other single-family home.
- The sober living home is not exempt from the penal laws or code enforcement, just as any other home is not exempt. Thus disturbances of the peace by way of loud music or noises can be dealt with by the Police Department, and code enforcement issues, such as accumulations of trash, weeds, abandoned cars, etc. can be abated.

Fiscal Impact

None.

Submitted By:



Steven Mendoza
Development Services Director

Approved By:



Bret M. Plumlee
City Manager

Attachments: 1. OC Register Article
2. Frequently Asked Questions

OC Register - Fight between rehab facilities and cities felt across Orange County

Oct. 14, 2015

Updated Oct. 15, 2015 12:55 p.m.

By JORDAN GRAHAM, FRED SWEGLER and ERIN DONNELLY / STAFF WRITERS

The battle between Orange County drug rehab facilities and the cities they have overwhelmed continued this week with a treatment center suing San Clemente, San Juan Capistrano residents protesting sobriety homes, and Costa Mesa attempting to expand its existing restrictions on sober-living centers.

All three cities have experienced an influx in recent years of drug and alcohol rehab facilities operating from houses and apartments in residential neighborhoods, sometimes co-opting whole blocks.

"We've been getting no help from Sacramento, and there isn't going to be any coming," Costa Mesa Planning Commissioner Colin McCarthy said Monday, noting that cities have so far been left to address sober-living issues without state help. "It's never been that we don't want these people in our city. It's that we're not going to take a disproportionate share and suffer the byproducts."

The pattern for some Orange County cities has become predictable: Sober-living homes arrive in numbers. Residents complain that the facilities change the character of neighborhoods, attracting higher traffic, transients and sometimes crime. City councils attempt to regulate. Sober-living homes sue the city, arguing the restrictions discriminate against recovering addicts – a group protected by the Americans with Disabilities Act.

Orange County cities are at different points in that progression.

San Juan Capistrano residents began protesting sober-living homes last week, with 30 neighbors signing a petition asking the city to create an action committee to address the influx of facilities on Paseo Terraza and Via Estelita streets and restrict how or when the centers can hold meetings.

A San Clemente drug treatment center operating "about seven" facilities in that town sued the city in federal court Oct. 7, alleging the city's July moratorium on sober-living home openings is discriminatory.

"The city has targeted Sovereign (Health of California) for arbitrary and malicious treatment," the suit says.

San Clemente City Attorney Scott Smith countered that the city had "clear authorization in California and federal law to... enact a short-term 'pause' on particular land uses."

In Costa Mesa, which estimates it has a quarter of the county's rehab homes, the Planning Commission voted Monday to expand the city's 2014 sober-living ordinance, which limited the number of rehab facilities that can operate in single-family-home neighborhoods. The new ordinance, if also approved by City Council, would extend those restrictions to nearly the entire city, preventing sobriety homes from simply relocating from one region of town to another.

"We've heard there are new (sober-living homes) still opening fairly regular," said Commissioner Tim Sesler. Costa Mesa's 2014 law was the first in Orange County to impede the spread of rehab facilities without paying hefty settlements. The city has been sued twice over the law, but federal judges dismissed both cases, saying the city's regulations actually help recovering addicts by preventing neighborhoods from becoming institutionalized settings. Newport Beach wasn't as lucky with its sober-living lawsuits. In July, the city ended a seven-year legal battle with sober-living homes by paying a \$5.25 million settlement on top of \$4 million in legal fees, relating to its 2008 attempt to regulate the facilities.

To date, cities have been left to address sober-living issues at a local level, but Assemblyman Matt Harper, R-Huntington Beach, said some help could be coming from the state. Earlier this year, Harper said he was concerned about the spread of sober-living homes, and he coauthored a two-year bill in February (AB-838) that could address some issues of overconcentration.

"This is not limited to these cities. This seems to be as statewide issue," Harper said. "Our goals

include more rigorous oversight of sober-living homes by the state, and also for the city to be able to manage the concentration in a particular neighborhood.”



Frequently Asked Questions Guide

Residential Care Facilities Non-licensed Residential Homes

This Frequently Asked Questions (FAQ) Guide provides information in response to questions raised regarding residential care facilities that serve six or fewer persons and other non-licensed residential homes. This FAQ does not address state-licensed facilities that are for more than six individuals. Should you have additional questions, you may contact the City of Los Alamitos Planning Division for more information at (562) 431-3538.

1. What is the difference between a residential care facility and non-licensed residential homes?

Residential care facilities are defined in the City's Code to mean **state licensed** facilities providing twenty-four (24) hour-a-day non-medical residential care to persons residing on the premises in need of assistance, guidance, personal services, protection, supervision, and training essential for sustaining the activities of daily living or for the protection of the individual. These facilities are licensed by the State of California Department of Social Services for non-medical care in compliance with the provisions of the State Community Care Facilities Act or other applicable state law. No medical care shall be provided except incidental medical service as may be allowed, without additional authorization, certification, or licensing for non-medical care in compliance with state law." The definition is taken from state law. These type of facilities include facilities such as "Alcoholism or Drug Abuse Recovery or Treatment facilities" and "Detox Facilities" as well as facilities such as elder care facilities. (Emphasis added.)

The primary area in which non-licensed residential homes comes up is with sober living homes. These facilities are used by people recovering from substance abuse, which serve as an interim environment between rehabilitation and their future lives. Sober living homes are not state licensed are not allowed to provide the same services of a residential care facility. Sober living homes are primarily meant to provide housing for people who have just come out of rehabilitation and need a place to live that is structured and supporting for those in recovery. They are not state licensed and are not a rehabilitation or treatment center, although they may have a meeting room used for assembly purposes, such as Alcoholics Anonymous meetings. Sober living facilities may have, but are not required to have, on-site resident managers. There is no state or federal definition of a Sober Living Home.

For purposes of this FAQ, the term "group homes" will be used to refer to both types of facilities.

2. What influence does the State of California and the Federal Government have regarding these types of uses within residential neighborhoods?

State law specifically requires the City to treat all state licensed residential care facilities serving six or fewer individuals as a single-family home for zoning purposes. These facilities are not subject to local regulations relating to business taxation or licensing because they are considered to be residential uses. Similarly, residential care facilities are not subject to zoning regulations that do not

apply to other residences in the zone, which means that the City cannot impose a permit requirement.

While state law does not specifically provide the same protection for non-licensed residential facilities of six or fewer people, facilities such as sober living homes are nonetheless protected by both federal law (such as the Fair Housing Act and the Americans with Disabilities Act) and state law (such as the Fair Employment and Housing Act) which prohibit discrimination against people with disabilities. A disability is defined to include people with substance and alcohol abuse problems. The idea behind these laws is to promote the integration of individuals with disabilities into the community. These same laws also require the City to make reasonable accommodations in policies and practices when accommodations are necessary to provide equal housing opportunities. It is questionable as to whether non-licensed residential facilities are subject to the six-person limitation or local regulations relating to business taxation or licensing as well as permitting requirements. Cities that have tried to impose such regulations have been engaged in lengthy and costly litigation costing millions of dollars.

3. What are the State licensing requirements?

California law requires that homes providing care and supervision and/or detoxification services to be licensed. The state agencies that license these facilities are:

- The California Department of Social Services (CDSS) is responsible for licensing and oversight of Community Care Facilities, which are facilities where nonmedical care and supervision are provided for children or adults in need of personal services.
- The State Department of Health Care Services (DHCS) licenses facilities providing 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug misuse or abuse.
- Sober living homes providing group living arrangements for people who have graduated from drug and alcohol programs, but do not provide care or supervision to those individuals, are not required to be state licensed.

4. Does State law include any overconcentration standards or separation requirements between residential care facilities?

State law prohibits overconcentration of certain types of care facilities. Overconcentration is defined as a separation of less than 300 feet from another licensed residential care facility. These separation requirements do not apply to residential care facilities for the elderly or drug and alcohol treatment facilities. Cities are prohibited from imposing separation requirements on these state licensed residential facilities.

5. Does State or federal law include any overconcentration standards or separation requirements on non-licensed facilities?

While there are no separation or overconcentration requirements for non-licensed facilities, local governments that have tried to impose such requirements, or permitting requirements, have faced federal lawsuits alleging violations of the Fair Housing Act and the Americans with Disabilities Act and for the most part, have not been successful. Neighboring Orange County cities such as Newport Beach and Costa Mesa which have attempted to regulate these type of facilities have spent millions of dollars trying to defend such regulations and have largely been unsuccessful, even with demonstrated overconcentration issues.

6. May the City restrict unrelated persons living together?

The law prohibits the City from restricting the number of people who are not related by blood or marriage from living together. In accordance with state law, the Los Alamitos Municipal Code defines a family as a group of people living as a single nonprofit housekeeping unit. Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities likely violate the Fair Housing Act and Americans with Disabilities Act. While cities often apply the “six or fewer” provision to non-state licensed facilities, sober living home advocates have argued that they are simply a family and are not bound by the six person limitation and no permit requirements may be imposed. As stated above, cities that have tried to impose regulations of sober living homes have faced multi-year and multi-million dollar litigation.

7. 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?

The City does not issue permits for residential care facilities of six or fewer individuals and does not have a permitting requirement for non-licensed residential homes. Although this FAQ is not intended to address larger Group Homes, it is noted that the City does require a conditional use permit (“CUP”) for residential care facilities that are seven or more people.

The City may not consider the feelings of neighbors in issuing a CUP if the concerns are related to “who” will live in the home as opposed to valid issues such as parking problems.

8. Can the City adopt an Ordinance to require group homes to release the names of residents?

No. Such an ordinance would likely be viewed as discriminatory because the City would be singling-out disabled individuals for disclosure and disparate treatment. It is difficult to imagine what legitimate public purpose would be served by disclosing the names of persons with drug and alcohol addictions.

9. Do the courts order people to stay in sober living homes?

Courts can require it as a condition of probation or as part of sentencing. The County of Orange keeps a list of sober living homes that it certifies as acceptable to fulfilling probation or sentencing requirements. These certified sober living homes have to abide by the County's guidelines for operations. According to law enforcement personnel, as of September 2015 such homes are not located within the City.

10. Are there any limits to the number of group homes owned by one owner, or leased by one lessor?

Not to the City's knowledge.

11. What is the average and maximum stay in a sober living home?

A study was done of Oxford House residences which indicated the average stay is 256.2 days. Oxford House is a national chain of sober living homes and has a reputation for operating well run sober living homes. Their average is likely above the norm, however, since the 2005 UCLA study found that 65-70% of persons do not finish treatment programs. Whether a maximum stay applies would be dependent upon the sober living home's own policies.

12. Does a seller or realtor have to disclose the locations of nearby group homes or sober living homes when a house is sold?

The City is not aware of any law which requires the disclosure of the location of a Group Home by the mere fact it is a Group Home. This is not meant to provide legal advice and individuals should contact a qualified real estate attorney.

13. If residents of a sober living home use prescription medications, including marijuana, does that trigger State licensing requirements?

No. State licensing requirements are generally required only when treatment is being administered by the operator of the home. Sober living homes cannot provide medication and only doctors can prescribe medications.

14. Can the City limit the number of cars associated with a Group Home?

The City does not impose restrictions on the number of cars associated with a particular residence and therefore could not impose such restrictions on residential care facilities. At this time the City does not impose permitting requirements on non-state licensed facilities as other cities are already in litigation over such regulations. In any event, most group homes do not have many cars because the residents do not or cannot drive.

15. How can we deal with ancillary issues such as loud noise, smoke, litter, increased traffic and excessive cars?

Initially, it should be pointed out that many Group Homes do not result in any of these impacts. The City has codes which address noise and litter, although loud talking and profanity in and of itself are not unlawful. The City also has codes which address property maintenance standards. The City does not regulate the maximum number of cars per residence or prohibit smoking at a private residence. Concerned residents should contract police services regarding any alleged criminal activity. Likewise, concerned residents should contact the City's code enforcement personnel regarding any alleged property maintenance or other nuisance conditions.

16. Which City departments do I contact if I experience disturbance or nuisance problems or other zoning violations with Group Homes?

The Los Alamitos Police Department can respond to any disturbance complaints in the City after normal business hours. The phone number to contact is (562) 594-7232.

The Code Enforcement Division can respond to issues with noise, property maintenance, use of garage, or any other zoning violations. The phone number to contact is (562) 431-3538.

The DHCS and CDSS can investigate complaints regarding licensed facilities. The links to these State departments are provided below.

17. Can the City enact a charge for excessive calls from a Group Home?

Such a charge could only be enacted if it applied to other residential facilities in the same zone. The City is not aware that group homes in general have excessive calls for service.

18. Where can I find a list of existing Group Homes in my community?

Since not all residential facilities are required to be licensed and facilities that serve six or fewer are treated like any other single-family residence, there is not a complete list of all existing Group Homes. The following websites provide information and a list of existing licensed facilities:

- California Department of Social Services (CDSS), Community Care Licensing Division (CCLD): www.cclد.ca.gov
- California Department of Health Care Services (DHCS): www.dhcs.ca.gov