

**Approvals:**City Manager JMDept. Head CAO

Attorney \_\_\_\_\_

Finance JV

# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: July 7th, 2015

**Department:** Community Development  
**Prepared By:** Cecilia Gallardo-Daly, Community Development Director

**Subject:** *INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON PERMITTING OR ESTABLISHMENT IN RESIDENTIAL ZONES OF (1) SOBER LIVING HOMES AND (2) LARGE ALCOHOLISM OR DRUG ABUSE RECOVERY OR TREATMENT FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION, TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE.*

**Fiscal Impact:** Approval of this item will not result in net city costs beyond those anticipated in the City's 2015–2016 annual budget (discretionary general funding).

**Summary:** Staff recommends that Council adopt the interim urgency ordinance, along with the relevant findings and file a Notice of Exemption under CEQA, imposing a temporary moratorium on the establishment in residential zones of sober living homes and large alcoholism or drug abuse recovery or treatment facilities.

**Background:** Over the last few months, the City has received an increasingly large number of complaints relating to neighborhood nuisances such as excessive noise, unauthorized construction, invasions of privacy, second-hand tobacco smoke, unauthorized disposal of medical waste, poor property maintenance, trash and debris, and illegal parking. City investigation and follow-up on these complaints has revealed that a large portion of these impacts coincide with a proliferation of sober living homes and alcoholism or drug abuse recovery or treatment facilities in residential zones. City investigation has also revealed discrepancies in information submitted to state regulatory agencies relating to construction and occupancy of some of these homes. Many of these sober living homes and alcoholism or drug abuse recovery or treatment facilities lack necessary City licenses and permits.

City investigations have also raised concerns about the welfare and safety of sober living home and alcoholism or drug abuse recovery or treatment facility residents because of how these places are operated and maintained. While the City Code Enforcement, Planning, and Building Divisions, law enforcement, Finance and Administrative Services Department (business and home occupation licensing offices), and other departments have fully supported the therapeutic and rehabilitative goals and effects of sober living homes and alcoholism or drug abuse recovery or treatment facilities and, in particular, the benefits of appropriate treatment in residential neighborhoods, the City has received information indicating that some treatment providers may lack the training or credentials necessary to provide such treatment and support, and may be illegally converting single-family homes and related structures into institutional structures operated without proper building and

occupancy permits. Staff is concerned that these integral facilities and uses and these illegal buildings undermine the residential environment for sober living and recovery that state and federal laws are designed to further.

**Discussion:** While the City has Municipal Code criteria to address certain types of transitory uses in residential zones, staff believes that amendments to the Municipal Code may be necessary to ensure that sober living homes of any size and large alcoholism or drug abuse recovery or treatment facilities (facilities that serve seven or more persons) are reasonably regulated so that they blend in with single-family neighborhoods, do not overtake them, and continue to have the therapeutic and rehabilitative effects that state and federal lawmakers intend them to have.

### **State and Federal Regulation**

City regulation in these areas are subject to an overlay of preemptive state and federal regulations relating to housing for disabled persons:

1. Residents living together strictly as a sober "family." Members of a single-unit household that live together in a non-commercial, mutually supportive sober-living arrangement are altogether exempt from zoning regulations if they live as a single housekeeping unit.
2. Small state-licensed recovery facilities. State-licensed alcoholism or drug abuse recovery or treatment facilities (facilities that offer non-medical treatment services) that serve six or fewer persons must be considered a permitted residential use under state law, and the City may not require a special-use permit or business license for this type of facility in a single-family residential district.
3. Large state-licensed recovery facilities. While larger state-licensed alcoholism or drug abuse recovery or treatment facilities are also considered residential uses, the City may limit their location to multi-family residential districts and/or require special use permits for their establishment in single-family residential districts.
4. Non-"family" sober living homes. If facilities (a) do not offer services and (b) do not operate as a "family" (i.e., single housekeeping unit), then the City may establish reasonable standards for regulating them to balance the facilities' potential negative neighborhood impacts with the need to serve disabled persons seeking rehabilitation and treatment, subject to the limitations described below.

### **Purpose**

The purpose of the proposed ordinance is to provide the City time to evaluate and potentially amend its zoning ordinance as it relates to the interests of neighborhoods and the residents of group homes by prohibiting the establishment of (1) new sober living homes and (2) large alcoholism or drug abuse recovery or treatment facilities. It also bars any City approval of these uses. Existing code enforcement activities will continue to confirm whether facilities purporting to qualify as single housekeeping units and small state-licensed alcoholism or drug abuse recovery or treatment facilities truly qualify as such and operate in a manner consistent with state and non-

preemptive local laws. Code enforcement will also continue to work with state licensing agencies to confirm the legitimacy of single housekeeping units. Code enforcement will continue efforts to abate the negative impacts of *all* facilities and *all* uses to the extent that they violate City building and safety codes or otherwise constitute public nuisances.

This proposed ordinance satisfies the requirements of specific state and federal laws relating to fair housing and occupants' disabilities. The Federal Fair Housing Act, 42 U.S.C. § 3601 et seq. (FHA) and the California Fair Employment and Housing Act, Government Code § 12900 et seq. (FEHA), prohibit enforcement of zoning ordinances that intentionally discriminate or that have the effect of discriminating against the disabled in the provision of housing opportunities. The main objectives of the FHA and FEHA (and California's Lanterman Act, Welfare and Institutions Code § 4500 et seq.) are to provide a broader range of housing opportunities to the disabled; to free the disabled, to the extent possible, from institutional living; and to ensure that disabled persons have the opportunity to use and enjoy a dwelling in a manner similar to opportunities enjoyed by the non-disabled. To fulfill these objectives, the FHA and FEHA require that local regulations provide a "safety valve" or accommodation reasonably necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling. Specifically, California's Lanterman Act supports these objectives in part by requiring local jurisdictions to treat state-licensed alcoholism or drug abuse recovery or treatment facilities that serve six or fewer disabled persons as a single-family use for all zoning purposes. Under these state and federal laws, certain specified addictions relating to drugs and alcohol are considered disabilities.

California Government Code Section 65858 permits the City to adopt, as an urgency measure, an interim ordinance to temporarily prohibit for a period of 45 days the approval and/or establishment of any land use that may be in conflict with any land use designations or municipal code amendments that the City intends to study.

Staff believes that the adoption of this standstill interim ordinance is necessary for the City to study:

- Better coordination and expedition of information sharing between the City and state regulatory agencies (specifically the Department of Health Care Services (DHCS) and the Department of Health Services (DOH)) in order to determine which facilities require state licensing and whether information provided to state licensing agencies is bona fide.
- Means of sharing information among local regulatory agencies (the Orange County Fire Authority, the Orange County Health Department, and the Orange County Sheriff's Department) relating to code-enforcement complaints, building and occupancy permits, repeat citations, medical-waste disposal, emergency procedures, and evacuation plans.
- Accurate therapeutic information as it relates to potential accommodation requests.

- The approaches and successes of other municipalities in balancing neighborhood interests with the interests of persons in sober living homes and alcoholism or drug abuse recovery or treatment facilities.
- The potential of continued proliferation and over-concentration of sober living homes and/or alcoholism or drug abuse recovery or treatment facilities on particular blocks or neighborhoods to create the institutionalizing effects that state and federal laws are designed to prevent.
- Different approaches to the regulation of secondhand tobacco smoke in residential zones.
- Noise, traffic, and parking impacts from sober living homes and alcoholism or drug abuse recovery or treatment facilities in denser residential neighborhoods, especially those with smaller setbacks and limited off-street parking.
- The rapidly developing body of caselaw relating to sober living homes and alcoholism or drug abuse recovery or treatment facilities in residential zones.
- Specific operational characteristics of some San Clemente facilities that are apparently operating as aggregated commercial activities (integral facilities or uses), inconsistent with the intent of state and federal law favoring traditional single-family occupancies for group home rehabilitation.
- The application of the City's traditional business license and home occupation ordinances to sober living homes and alcoholism or drug abuse recovery or treatment facilities.

In adopting this urgency ordinance, the City is not required to follow the procedures otherwise required for the adoption of a land use regulation, and the ordinance becomes effective immediately. Upon adopting an interim ordinance, the City may subsequently extend the interim ordinance for 10 months and 15 days and then for an additional year.

The interim ordinance contains findings that its purpose is to address the continued expansion of sober living homes and large alcoholism or drug abuse recovery or treatment facility uses that might harm the residential character of San Clemente neighborhoods or impair the therapeutic and treatment goals that state and federal laws are designed to further. The ordinance places a 45-day moratorium — effective immediately — on the permitting and establishment of new (1) large alcoholism or drug abuse recovery or treatment facilities and (2) unlicensed alcoholism or drug abuse recovery or treatment facilities of all sizes and sober living homes. The ordinance's application is based on the number of persons that reside: (1) in the same building; or, (2) in multiple buildings, provided that all of the buildings are integral components of the same facility and are under the control and management of the same licensee, owner, or operator.

The interim urgency ordinance establishes a procedure for persons with disabilities to make a request to the City for reasonable accommodations in the application of this moratorium.

Government Code section 65858 permits an interim urgency ordinance to be adopted for a 45-day period without following the notice and hearing requirements normally



required for adoption of a zoning ordinance. After the 45-day moratorium, the City Council may, after notice and hearing, extend the urgency ordinance for an initial period of time up to 10 months and 15 days. Thereafter, after another public hearing, an additional one-year extension is permitted.

In summary, the adoption of this interim urgency ordinance will provide an opportunity for the City to assess the concerns the residents have brought forward concerning these types of transitory uses in residential zoning districts, analyze the impacts created by these types of transitory uses, develop regulations that are tailored to the impacts, protect residents of group homes, and comply with federal and state fair-housing laws.

**Recommended**

**Action:** Staff recommends that the City Council adopt an Interim Urgency Ordinance Imposing a Temporary Moratorium on the Permitting or Establishment in Residential Zones of (1) Sober Living Homes and (2) Large Alcoholism or Drug Abuse Recovery or Treatment Facilities, Subject to Reasonable Accommodation, to Allow Time for Consideration of Appropriate Amendments to the City Municipal Code; adopt the findings related thereto; and approve a Notice of Exemption under CEQA with regard to the moratorium.

**Attachments:** 1) INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR ESTABLISHMENT IN RESIDENTIAL ZONES OF (1) SOBER LIVING HOMES AND (2) LARGE ALCOHOLISM OR DRUG ABUSE RECOVERY OR TREATMENT FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION, TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY MUNICIPAL CODE.

**Notification:** No notification is required under Government Code section 65858.

ORDINANCE NO. \_\_\_

**INTERIM URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE  
IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR  
ESTABLISHMENT IN RESIDENTIAL ZONES OF (1) SOBER LIVING HOMES AND  
(2) LARGE ALCOHOLISM OR DRUG ABUSE RECOVERY OR TREATMENT  
FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION, TO ALLOW TIME  
FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE CITY  
MUNICIPAL CODE**

**WHEREAS**, over the last few months, the City has received an increasingly large number of complaints relating to neighborhood nuisances such as excessive noise, unauthorized construction, invasions of privacy, secondhand tobacco smoke, unauthorized disposal of medical waste, poor property maintenance, trash and debris, and illegal parking;

**WHEREAS**, City investigation and follow-up on these complaints has revealed that a large portion of these impacts coincide with a proliferation of sober living homes and alcoholism or drug abuse recovery or treatment facilities in residential zones;

**WHEREAS**, City investigation has also revealed discrepancies in information submitted to state regulatory agencies relating to construction and occupancy of some of these facilities;

**WHEREAS**, many of these sober living homes and facilities lack necessary City licenses and permits;

**WHEREAS**, City investigations have also raised concerns about the welfare and safety of sober living home and alcoholism or drug abuse recovery or treatment facility residents relating to the maintenance and operation of these homes and facilities: While the City Code Enforcement, Planning, and Building Divisions, law enforcement, Finance and Administrative Services Department (business and home occupation licensing offices), and other departments have fully supported the therapeutic and rehabilitative goals and effects of these uses and in particular, the benefits of particular treatment in residential neighborhoods, the City has received information indicating that some treatment providers may lack the training or credentials necessary to provide such treatment and support, and may be illegally converting single-family homes and related structures into institutional structures operated without proper building and occupancy permits;

**WHEREAS**, staff is concerned that these aggregate facilities and illegal buildings undermine the residential environment for sober living and recovery that state and federal laws are designed to further;

**WHEREAS**, existing zoning regulations do not adequately address the establishment of sober living homes and large alcoholism or drug abuse recovery or treatment facilities;

**WHEREAS**, this interim urgency ordinance is necessary to provide the City staff time to study and assess various approaches to regulating the subject land uses and to present recommendations to the City Council. Recommendations may include amendments to the City's Municipal Code addressing establishment of sober living homes and large alcoholism or drug abuse recovery or treatment facilities and compliance with state law, including appropriate review procedures;

**WHEREAS**, without this moratorium ordinance, such transitory residential uses could possibly locate in close proximity to each other or operate as an integral facility or integral use so as to create an overconcentration of such uses and so further threaten the health, safety, and welfare of facility residents and their neighbors;

**WHEREAS**, as a consequence, there is a current and immediate threat to the public health, safety and welfare if permits or entitlements for sober living homes and alcoholism or large drug abuse recovery or treatment facilities are issued, and such permits or entitlements could result in land uses and developments that conflict with amendments to the Municipal Code that may be adopted as a result of the study that the City intends to undertake;

**WHEREAS**, the adoption and immediate enactment of this ordinance is necessary for the preservation of the public health, safety, and welfare to prevent establishment of new uses and the expansion or modification of existing uses at locations that might conflict with and be inconsistent with the intended amendment to the Zoning Code;

**WHEREAS**, minimizing incompatibility of land uses promotes orderly development, which is necessary to encourage quality neighborhoods; and

**WHEREAS**, this is a matter of importance to the entire City of San Clemente and is not directed at any particular property.

**NOW, THEREFORE**, the City Council of the City of San Clemente, California, hereby ordains as follows:

**Section 1.** The recitals above are each incorporated by reference and adopted as findings of the City Council.

**Section 2.** For purposes of this ordinance, the following terms and definitions are used:

(a) *Alcoholism or drug abuse recovery or treatment facility* means adult alcoholism or drug abuse recovery or treatment facilities that are licensed under section 11834.01 of the California Health & Safety Code. Alcoholism or drug abuse recovery or treatment facilities are a subset of residential care facilities (defined below).

(b) *Disabled* has the same meaning as *handicapped* (defined below).

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(c) *Fair housing laws* means the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act, as each statute may be amended from time to time, and each statute's implementing regulations.

(d) *Group home* means a facility that is 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 or more dwelling units. Group homes do not include the following: (1) residential care facilities (defined below) or (2) facilities that operate as single housekeeping units (also defined below).

(e) *Handicapped* has the same meaning as under the fair housing laws, namely, a person who has a physical or mental impairment that limits one or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment, not including current, illegal use of a controlled substance.

(f) *Household* means all the people occupying a dwelling unit, as well as people who live in different units if the units are part of an integral facility (defined below).

(g) *Integral facility* means any combination of two or more group homes, which may or may not be located on the same or contiguous parcels of land, 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. These group homes are 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.

(h) *Integral use* means any two or more 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 programs are considered one use for purposes of applying federal, state, and local laws to its operation.

(i) *Large alcoholism or drug abuse recovery or treatment facility* means an alcoholism or drug abuse recovery or treatment facility that serves seven or more persons, as defined in Health and Safety Code section 11834.02.



(j) *Large residential care facility* means a residential care facility that serves seven or more persons, as defined in Health and Safety Code section 1566.

(k) *Operator* means a company, business, or individual who provides residential services, e.g., the placement of individuals in a residence, setting of house rules, and governing behavior of the residents as residents. Operator does not include a property owner or property manager that exclusively handles real estate contracting, property management and leasing of the property and that does not otherwise meet the definition of operator.

(l) *Planning division* means the planning division of the Community Development Department of the City of San Clemente.

(m) *Residential care facility* means a residential facility that is licensed by the state and is in compliance with the license where care, services, or treatment is provided to persons living in a supportive community residential setting. Residential care facilities include, but are not necessarily limited to, the following:

(1) intermediate care facilities for the developmentally disabled (Health & Saf. Code §§ 1267.8, 1267.9);

(2) community care facilities (Health & Saf. Code §§ 1500 et seq.); residential care facilities for the elderly (Health & Saf. Code §§ 1569 et seq.);

(3) residential care facilities for the chronically ill (22 C.C.R. § 87801(a)(5); Health & Saf. § 1568.02);

(4) alcoholism and drug abuse facilities (Health & Saf. Code §§ 11834.02–11834.30);

(5) pediatric day health and respite care facilities (Health & Saf. Code §§ 1760 et seq.);

(6) residential health care facilities, including congregate living health facilities (Health & Saf. Code §§ 1265–71.1, 1250(i), 1250(e), (h)); and

(7) family care home, foster home, group home for the mentally disordered or otherwise handicapped persons or dependent and neglected children (Wel. & Inst. Code §§ 5115–20).

(n) *Single housekeeping unit* means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient; members have some control over who becomes a

member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities and uses do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food storage facilities, such as separate refrigerators.

(o) *Small alcoholism or drug abuse recovery or treatment facility* means an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons, as defined in Health and Safety Code section 11834.02.

(p) *Small residential care facility* means a residential care facility that serves six or fewer persons, as defined in Health and Safety Code section 1566.

(q) *Sober living home* means a group home for persons who are recovering from a drug or alcohol addiction and who are considered handicapped under state or federal law. Sober living homes do not include either of the following: (1) residential care facilities or (2) any single-unit household that operates as a single housekeeping unit.

**Section 3.** The City Council hereby enacts this interim urgency ordinance under section 65858, subdivision (a), of the California Government Code, which allows the City to adopt an interim urgency ordinance by not less than a four-fifths vote, to protect the public safety, health, and welfare by prohibiting any use that may be in conflict with a zoning proposal that the City Council, Planning Commission, or Community Development Department of the City is considering or studying or intends to study within a reasonable time.

**Section 4.** Notwithstanding anything to the contrary in existing City law, including but not limited to the Municipal Code and the City General Plan, this ordinance establishes a 45-day moratorium on: the approval, issuance, or transfer of any use permit, variance, building permit, business license, or other applicable entitlement for the establishment or operation of a new sober living home or large alcoholism or drug abuse recovery or treatment facility in the City, as well as the expansion or modification of existing establishments.

**Section 5.** Nevertheless, the City may continue to accept and process applications for uses prohibited by this moratorium if so required by state law. Any application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for a sober living home or large alcoholism or drug abuse recovery or treatment facility may issue while this moratorium or any extension of it is in effect.

**Section 6.** In compliance with fair housing laws, it is the City's policy to provide reasonable accommodation in the application of this interim urgency ordinance to any disabled person who seeks access to fair housing. The purpose of this Section is to provide disabled individuals with reasonable accommodation in the enforcement of this urgency ordinance, as necessary to ensure equal access to housing and comply with applicable fair housing laws.

(a) Requesting Reasonable Accommodation.

(1) To make specific housing available to a disabled person, a disabled person may apply for a reasonable accommodation under this Section, relating to the enforcement of this urgency ordinance.

(2) If an applicant needs assistance in making a request for reasonable accommodation, or in appealing a determination regarding reasonable accommodation, the planning division will assist as necessary to ensure that the process is accessible to the applicant. The applicant may be represented at any stage of the proceedings in this Section by a person designated by the applicant as his or her representative.

(3) An application for reasonable accommodation in the enforcement of this urgency ordinance must be filed on an application form provided by the planning division. It must be signed by the owner of the property and must describe exactly what is being requested and why the requested accommodation is necessary. All documentation that supports the application must be submitted with the application form. The housing unit for which accommodation is requested must be the applicant's primary residence.

(b) Decision on Application for Reasonable Accommodation.

(1) The Community Development Director shall have the authority to consider and act on any application for a minor reasonable accommodation as defined in Section 6(f)(1) below of this urgency ordinance. The Director shall issue a written determination within 30 days of the date of receipt of a completed application and may:

- (i) grant the accommodation request,
- (ii) grant the accommodation request subject to specified nondiscriminatory conditions,
- (iii) deny the request, or
- (iv) in the alternative, refer the application to the Zoning Administrator or to the Planning Commission, whichever the Director deems appropriate, who shall render a decision on the application. An application may not be referred directly to the City Council.

(2) The Zoning Administrator shall have the authority to consider and act on any application for a major reasonable accommodation as defined in Section 6(f)(2) below, and on any application for a minor reasonable accommodation referred to it by the Director. The Zoning Administrator shall consider an application at the next reasonably available public meeting after submission of an application for reasonable accommodation, after the submission of any additional information required to make a determination, or after referral from the Director, whichever is later. The Zoning Administrator may:

- (i) grant the accommodation request,
- (ii) grant the accommodation request subject to specified nondiscriminatory conditions, or
- (iii) deny the request, or
- (iv) in the alternative, refer the application to the Planning Commission, which shall render a decision on the application. An application may not be referred directly to the City Council.

(3) If necessary to reach a determination on any request for reasonable accommodation, the Director, Zoning Administrator, Planning Commission may request additional information from the applicant consistent with this urgency ordinance. If such a request is made, the time period to issue a written determination is stayed until the applicant reasonably responds to the request.

(4) If, based on all of the evidence presented to the Director, Zoning Administrator, or the Planning Commission, the findings required in this urgency ordinance may reasonably be made, the Director, Zoning Administrator or the Planning Commission, as applicable, must grant the request for reasonable accommodation.

(5) A reasonable accommodation that is provided according to this urgency ordinance does not require the approval of any variance as to the reasonable accommodation.

(6) The reasonable accommodation is subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this urgency ordinance to further fair housing. Such conditions may generally include, but are not limited to, the following restrictions:

- (i) That the reasonable accommodation only applies to a particular disabled individual or individuals;
- (ii) That the reasonable accommodation only applies to the specific use for which application is made; or

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(iii) That any change in use or circumstances that negates the basis for the granting of the request renders the reasonable accommodation null and void.

(c) Required Findings. The following findings must be made to approve a request for reasonable accommodation:

(1) The housing that is the subject of the application for accommodation will be occupied as the primary residence by the applicant, and the applicant is an individual protected under the fair housing laws.

(2) The accommodation is necessary to make specific housing available to one or more individuals protected under the fair housing laws.

(3) The accommodation will not impose an undue financial or administrative burden on the City.

(4) The accommodation will not require a fundamental alteration of the City's zoning or building laws, policies, or procedures.

(d) Waiver of Time Periods. The applicant may request additional time beyond that provided for in this Section or may request a continuance regarding the time for any decision or appeal to be made under this urgency ordinance. Any extension of time sought by the applicant shall not be considered delay on the part of the City, shall not constitute failure by the City to provide for prompt decisions on applications, and shall not be a violation of any required time period set forth in this Section.

(e) Appeal of a Land Use Decision. The decision by the Director or Zoning Administrator to approve or deny any request for reasonable accommodation may be appealed by an interested party to the Planning Commission in accordance with section 17.12.040 of the City's Municipal Code.

(f) Reasonable Accommodation. The following reasonable accommodation terms are defined as follows:

(1) *Minor reasonable accommodation* means any deviation requested or granted from the strict application of the laws, rules, policies, practices, or procedures of the City, including land use and zoning regulations, that does not result in a physical modification to the property or that results in a physical modification to the property that can be terminated or restored within 90 days after authorization of the reasonable accommodation ends. The City may remove or terminate a minor reasonable accommodation after the need for the reasonable accommodation ends.

(2) *Major reasonable accommodation* means any deviation requested or granted from the strict application of the laws, rules, policies, practices or procedures of the City, including land use and zoning regulations,

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that results in a physical modification to the property that cannot be restored or terminated within 90 days after authorization of the reasonable accommodation ends.

**Section 7.** The City Council hereby directs the Planning Division to study and review potential amendments to the City's Zoning Code related to sober living homes and large alcoholism or drug abuse recovery or treatment facilities to re-establish appropriate regulations that are compatible with intent of the City's residential zones. The study should include, among other things,

(a) better coordination and expedition of information-sharing between the City and state regulatory agencies (specifically the Department of Health Care Services and Department of Health Services) to determine which homes require state licensing and whether information provided to state licensing agencies is bona fide;

(b) means of sharing information among local regulatory agencies (the Orange County Fire Authority, the Orange County Health Department, and the Orange County Sheriff's Department) relating to code-enforcement complaints, building and occupancy permits, repeat citations, medical-waste disposal, emergency procedures, and evacuation plans;

(c) accurate therapeutic information as it relates to potential accommodation requests;

(d) the approaches and successes of other municipalities in balancing neighborhood interests with the interests of persons in sober living homes and alcoholism or drug abuse recovery or treatment facilities;

(e) the potential that continued proliferation and over-concentration of sober living homes and alcoholism or drug abuse recovery or treatment facilities on particular blocks or neighborhoods could create the institutionalizing effects that state and federal laws are designed to prevent;

(f) different approaches to the regulation of secondhand tobacco smoke in residential zones;

(g) noise, traffic, and parking impacts from sober living homes and alcoholism or drug abuse recovery or treatment facilities in denser residential neighborhoods, especially those with smaller setbacks and limited off-street parking;

(h) the rapidly developing body of caselaw relating to sober living homes and alcoholism or drug abuse recovery or treatment facilities in residential zones;

(i) specific operational characteristics of some San Clemente facilities that are apparently operating as aggregated commercial activities (integral facilities or uses), inconsistent with the intent of state and federal law favoring traditional single-family occupancies for group home rehabilitation;

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(j) the application of the City's traditional business license and home occupation ordinances to sober living homes and alcoholism or drug abuse recovery or treatment facilities.

**Section 8.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment nor under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly and so is not a project.

**Section 9.** If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

**Section 10.** This ordinance is declared an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated in Section 3 above, and it takes effect immediately on adoption by the City Council, by at least a four-fifths vote, and signing by the City Clerk. The moratorium remains in effect for 45 days from the date of adoption unless the City Council extends it under Government Code section 65858. Ten days before this interim urgency ordinance or an extension of it expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this ordinance.

**[Signatures on following page]**

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APPROVED AND ADOPTED this \_\_\_ day of July, 2015.

ATTEST:

\_\_\_\_\_  
Joanne Baade, City Clerk  
City of San Clemente

\_\_\_\_\_  
Chris Hamm, Mayor  
City of San Clemente

**STATE OF CALIFORNIA**            )  
**COUNTY OF ORANGE**         ) **ss.**  
**CITY OF SAN CLEMENTE**     )

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Urgency Ordinance No. \_\_\_\_, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the \_\_ day of July, 2015, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_ day of July, 2015.

\_\_\_\_\_  
Joanne Baade, City Clerk  
City of San Clemente

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott C. Smith, City Attorney  
City of San Clemente

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