

CITY OF LAGUNA HILLS

QUESTIONS REGARDING GROUP HOMES AND SOBER LIVING HOMES

1. Do state and federal laws governing group homes and housing for the disabled trump Homeowner Associations and/or CC&Rs restricting such uses?

[Note: As used in this question and answer outline, group homes will refer to a state licensed home for the disabled serving six or fewer disabled individuals. Sober living home will refer to an unlicensed facility housing recovering drug or alcohol addicts which does not provide medical treatment. Recovering drug and alcohol addicts are considered disabled under state and federal law as long as they are not currently using drugs or alcohol.]

Yes. The California Fair Employment and Housing Act and the federal Fair Housing Act prohibits discrimination against the disabled. Homeowner Associations are required to make reasonable accommodations in their rules, policies and practices to afford the disabled an equal opportunity to use and enjoy a residence. State law specifies that group homes are a single-family use, which determination is likewise binding on an HOA.

2. Are any cities having success in regulating group homes?

State law pre-empts city regulation of group homes. Cities may regulate group homes housing more than six (6) disabled persons as a boarding house type use and require a permit as long as similar uses for the non-disabled require a permit. Attempts by cities to regulate sober living homes, however, have had mixed results. The City of Orange adopted a regulatory ordinance a number of years without legal challenge, and thus far Costa Mesa's recent attempts at regulating group homes for the disabled have withstood legal challenge; however, additional litigation is ongoing and it is too early to determine whether such ordinance will be meaningful and effective. Other cities have not fared so well.

3. Why are group homes not considered a business operation? Aren't they simply a commercial business operating in a residential zone?

The brief answer is because State law provides that cities must treat them as a single-family residential use. The why part is that the State legislature determined that without

this accommodation for homes serving six (6) or fewer disabled individuals that many would not be able to live in normal residential surroundings due to lack of income and the need for 24-hour care. The de-institutionalizing of the disabled from large state-run hospitals has been going on for decades and is a matter of statewide policy. While it may be a business to the owner/operator of a group home, for many disabled individuals the group home is their permanent and last place of residence.

4. Can the City compel operators to get a license?

Not with respect to group homes since they already have a state issued license. With proper non-discriminatory regulation, a City could require non-state licensed homes, such as a sober living home, to obtain a City permit or license. This is the zoning and regulatory approach that was recently enacted by the City of Costa Mesa, which is currently the subject of ongoing litigation. The City is currently reviewing and evaluating Costa Mesa's ordinance and monitoring that litigation.

5. Can the City enact a tax on various group homes?

If the tax was also imposed on similar residential uses, then yes. For instance if the voters imposed a parcel tax on residential units to fund park improvements, the tax would apply to a group home. However, the City cannot single-out group homes for a tax. As to sober living homes, taxes could be imposed if such taxes were also imposed on similarly-situated homes housing persons who were not disabled.

6. Do sober living homes truly satisfy the legislative intent of the State if there isn't any defined treatment being provided?

Initially, the Substance Abuse and Crime Prevention Act in 2000 ("Act") was passed by voters, not the legislature. The purpose of the Act was twofold—get treatment for specified non-violent drug and alcohol offenders and relieve pressure on jails crowded with such offenders. A 2005 UCLA study found that this resulted in 140,000 people diverted from jail to treatment in its first four years. The City is not aware of a study that has singled out whether sober living homes have furthered the voters' intent, but this same UCLA study found that by its fifth year 60,000 people will complete treatment programs and full-time employment doubled for this population. Drug use decreased by 71 percent. Studies have shown that a supportive living environment and enrollment in programs such as alcoholics anonymous and narcotics anonymous do increase recovery rates. A well run sober living home would provide both, as well as random drug testing.

Notwithstanding this, the same UCLA study showed that despite the improvements success rates are still low, 30-35% percent, highlighting the difficulty people have in overcoming addictions even with a supportive living system in place.

7. Can the City maintain a public data base of known group homes in the City?

Potentially, but only for the purpose of ensuring that group homes are abiding by State distance requirements and possibly to make a showing to the State that notwithstanding the fact that group homes are abiding by distance requirements that overconcentration still exists. The City is unaware of any city that has made that latter showing. The City would need to ensure that such a data base would not result in discrimination against group homes for the disabled.

8. Can the City adopt an Ordinance to require operators of sober living 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. How much do sober living home operators charge each resident?

It can vary widely, depending on location, amenities, number of persons per bedroom, etc. On the Sober Living Network website rates appear to be anywhere from \$850 per month to \$6,500 per month, with the average around \$1,000 per month. It appears that some rates shown on the website might be weekly rates.

10. Who actually pays for the cost of staying in a sober living home? Where do the residents get the money?

It can vary. It may come directly out of the resident's pocket, parents may be paying or there may be public or private grant funds available to subsidize the cost. It appears that insurance may also cover such costs.

11. 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.

12. Are there any laws governing the concentration of group homes in a neighborhood? Can the City adopt an Ordinance limiting the proximity of group homes?

Yes. For many group homes serving six or fewer there are distance requirements ranging from 300 to 1000 feet apart to avoid overconcentration. Somewhat inexplicably this does not apply to alcohol and drug abuse recovery homes. The City cannot adopt its own distance requirements. Under the current status of the law, the City could adopt distance requirements for sober living homes if the effect was not discriminatory, i.e., if it was applied equally to similarly situated housing for the non-disabled or actually provided preferential treatment for the disabled. This is the zoning and regulatory approach that was recently enacted by the City of Costa Mesa, which is currently the subject of ongoing litigation. The City is currently reviewing and evaluating Costa Mesa's ordinance and monitoring that litigation. A careful review of the City's zoning ordinance would be required.

13. Can the City notify lenders holding mortgages on residential property that the home in question is a group home?

There is no public purpose in doing so and it would likely be viewed as discriminatory since the City would be singling-out the disabled for such notification.

14. Are there maximum occupancy limits for the various categories of group homes?

Yes. To be considered a single-family residential use under State law, a group home can serve no more than six (6) or fewer disabled persons. There is often a house manager or two residing in the group home as well. Whether there are occupancy limits for sober living homes would be dependent upon how a city's municipal code treats boarding house type uses or whether the city regulates sober living facilities directly. The City is currently undertaking a review of its municipal code. Group homes could be larger than six (6), but they may be considered a boarding house use and potentially require a permit or become the subject of local regulation.

15. 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.

16. 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.

17. Since they are housing the disabled, do group homes need to be ADA compliant? If yes, how is this enforced?

That would be determined by the State under its licensing powers. As to sober living homes, it is unlikely because the residents thereof do not generally need physical alternations done to the home to reside in it.

18. Do I have to disclose the locations of nearby group homes or sober living homes when I sell my house?

The City is not aware of any law which requires you to disclose the location of a group home or sober living home by the mere fact it is a group home or sober living home; however, concerned residents should consult with their real estate agent as well as a qualified real estate attorney.

19. Do realtors have to disclose their knowledge of group homes or sober living homes near a listed property?

The City is not aware of any law which requires a realtor to disclose the location of a group home or sober living home due to the mere fact it is a group home or sober living home; however, concerned residents should consult with their real estate agent as well as a qualified real estate attorney.

20. How do we know that residents in a sober living home are disabled as defined by State and Federal laws? Who makes this determination?

The City would not know. Under current law, there is no legal requirement that persons living in a sober living home be in fact disabled. The City would not make any such inquiries unless a sober living home sought a reasonable accommodation from the City, i.e., an exemption from the City's zoning laws. In such a case, the applicant would have to verify that its residents are in fact disabled and an accommodation is reasonably necessary for the residents to use the residential unit. This is the zoning and regulatory approach that was recently enacted by the City of Costa Mesa, which is currently the subject of ongoing litigation. The City is currently reviewing and evaluating Costa Mesa's ordinance and monitoring that litigation.

21. 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. It is an interesting question as to whether using marijuana would remove a person from the definition of disabled since as noted above current users of drugs or alcohol are exempted from the definition of a disabled individual. Marijuana is still illegal and considered a narcotic under federal law and even under California law, only qualified patients, as that term is defined under State law, can possess or use marijuana without it also being a State crime.

22. Who inspects to ensure a substance-free environment in a sober living home?

If it is a home certified by the County for referrals, the County likely does spot checks. If a resident is on probation or parole, it is possible that the resident's probation or parole officer may check depending on probation or parole conditions. That is the extent to which independent checks would occur to the City's knowledge. The house manager or operator may also conduct checks. As noted, any well run sober living home would not permit drugs or alcohol and would evict any person using same and conducts random drug tests. Based on the experiences of other cities, not all sober living homes are well run.

23. Can the City limit the number of cars associated with a group home?

With group homes only --if it limits the number of cars for other non-disabled residential uses and the limit does not impose a hardship. The City does not impose restrictions on the number of cars associated with a particular residence. Most group homes do not have many cars because the residents do not or cannot drive.

24. Can the City require sober living homes to disclose the criminal history of occupants?

No, not under current local laws. It possibly could in general terms with the proper regulatory scheme that limits the number of probationers or parolees in the home, similar to the zoning and regulatory approach taken by the City of Costa Mesa , which is currently the subject of ongoing litigation. The City is currently reviewing and evaluating Costa Mesa's ordinance and monitoring that litigation. (See also, response to 33 below.)

25. If people abuse substances in a sober living home, what happens? How are they evicted? Who evicts them?

It would depend on the policies of the sober living home. It is not unusual for sober living operators to have a zero tolerance policy, i.e., one such instance results in eviction. They would be evicted by the operator of the home.

26. Are there any studies that demonstrate the success rate of sober living homes?

See answer to no. 6 above.

27. Are there any studies that demonstrate that sober living homes in single-family residential areas are more successful than other group living arrangements?

See answer to no. 6 above. In addition, studies going back to at least a 1961 Joint Commission on Mental Illness and Health concluded that the country should move away from housing the disabled in large state-run institutions into more normal residential settings.

28. Have there been any studies to determine if there is a correlation between the presence of sober living homes and crime?

Not to the City's knowledge.

29. 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. Many group homes are serving the elderly, abused women, foster children and others who are physically and/or mentally disabled and do not drive, are not loud, do not smoke and do not litter. These types of nuisance impacts are, however, often associated with sober living homes. Cities have reported complaints about loud conversations, use of foul language, smoke filtering over backyard fences, etc. 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.

30. Can the City increase proactive police patrols around sober living homes?

If it was justified based upon the determination of law enforcement personnel, i.e., if there was a correlation between sober living homes and the need for increased police patrols.

31. Will the City need to hire more Sheriff's Deputies to deal with sober living homes?

To the City's knowledge, no city has ever had to hire more peace officers due to the existence of sober living homes.

32. Is it illegal to smoke marijuana in one's backyard? Will the Sheriff respond to such a call?

It is not a violation of California law to smoke marijuana in the backyard if the person is a qualified patient as defined under California law. Although California law only makes it not a crime under State law to use marijuana for medicinal reasons, the reality is that access to marijuana is widespread because it is largely unregulated. Smoking marijuana or simply being in possession thereof remains a violation of federal law, but the Sheriff will typically not cite or arrest someone who is using marijuana in a manner which does

not violate California law. Whether the Sheriff would respond would be dependent on a number of factors.

33. Do registered sex offenders have to register a temporary address such as a group home or sober living home? If yes, within how many days? Who enforces this? Can operators of group homes be held responsible for sex offender registration?

As the City reads State law, registered sex offenders must report their new address within five days of a move, even if the address is temporary. This requirement would be enforced by law enforcement personnel and for group homes, the operators may be required to do so as part of their licensing under State law. With respect to sober living homes, the City is not aware of any laws which require operators to be responsible for sex offenders notifying law enforcement of the new address.

34. Can the City enact a charge for excessive calls from a group home or sober living home?

In general, no. To the extent a city could impose such a charge, it would have to be non-discriminatory, i.e., group homes could not be singled-out. The City is not aware that group homes for the disabled in general have excessive calls for service.

35. Can residents picket a single-family residence that is known to be associated with the ownership, rental or operation of group homes?

The California and United States constitutions protect a wide range of activities which are considered speech. Picketing is considered a form of speech. However, if the picketing was excessive, i.e., created a private nuisance to the residents and/or was directed at the residents simply because they were disabled, it could create personal liability exposure for the picketers, especially if the intent of the picketing was to convince the operator not to provide housing to the disabled or to make the neighborhood so hostile as to cause the disabled to move. Such picketing would likely not be viewed under the law any differently than if the picketers were picketing a house because they did not like the race, religion or nation of origin of the occupants. The City discourages persons from picketing a group home for the disabled merely because of that status.