ORDINANCE NO. 4213

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH AMENDING TITLE 5 OF THE HUNTINGTON BEACH MUNICIPAL CODE TITLED BUSINESS LICENSES AND REGULATIONS
(ZONING TEXT AMENDMENT NO. 19-005)

THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THIS ORDINANCE:

Under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the residential characteristics of its RL, RHM, RH and RMP residential zones; and the residential portion of its Specific Plans, which powers have been recognized by both the California Supreme Court and United States Supreme Court, the latter of which has stated that, "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled"; and

The Federal Fair Housing Act ("FHA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of business regulation facially or effectively discriminate against equal housing opportunities for the disabled; and

A core purpose of the FHA and FEHA is to provide a broader range of housing opportunities to the disabled; to free the disabled, to the extent possible, from institutional style living; and to ensure that disabled persons may live in a similar fashion as non-disabled persons live in residential neighborhoods; and

To fulfill this purpose, the FHA and FEHA also require that the City provide reasonable accommodations to its zoning ordinances if such accommodation is necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling; and

Any facility which provides non-medical alcoholism or drug abuse recovery, treatment, or detoxification services must obtain a license from the California Department of Alcohol and Drug Programs ("ADP"). Health & Safety Code section 11834.30 provides that no person "shall operate, establish, manage, conduct, or maintain an alcoholism or drug abuse recovery or treatment facility to provide recovery, treatment, or detoxification services" with the State without first obtaining an ADP license; and

State law has preempted local regulation of ADP-licensed facilities, and requires that all California cities must permit in all residential zones pursuant to ADP-licensed facilities with six or fewer residents pursuant to Health and Safety Code Sections 11834.20 and 11834.23; and

A Group Home is residential facility that is being used as a supportive living environment for persons who are considered disabled under State or Federal law. Persons recovering from drug and/or alcohol addiction are considered disabled for the purposes of the FEHA and the Federal Americans with Disabilities Act ("ADA"); and

A Sober Living Home is a Group Home for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under FEHA or ADA; and

The City of Huntington Beach has seen a sharp increase in the number of Sober Living Homes, which has generated secondary impacts including, but not limited to neighborhood parking shortfalls, overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of Sober Living Homes in close proximity to each other creating near neighborhoods of Sober Living Homes; and

As of May 2020, the City has identified approximately 177 Sober Living Homes and residential care facilities in the multi-family and single-family residential zones; and

The number of Sober Living Homes in the City of Huntington Beach is rapidly increasing, leading to an overconcentration of Sober Living Homes in certain of the City's residential neighborhoods, which is both deleterious to the residential character of these neighborhoods and may also lead to the institutionalization of such neighborhoods; and

The purpose of Sober Living Homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the residential neighborhood of their choice; and

In enacting this Ordinance, the City Council of the City of Huntington Beach is attempting to strike a balance between the City's and residents' interests of preserving the characteristics of residential neighborhoods and to provide opportunities for the disabled to reside in such neighborhoods that are enjoyed by the non-disabled; and

Because of their extremely transient populations, above-normal numbers of individuals/adults residing in a single dwelling and the lack of regulations, Sober Living Homes present problems not typically associated with more traditional residential uses, including but not limited to: the housing of large numbers of unrelated adults who may or may not be supervised; disproportionate numbers of cars associated with a single housing unit, which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' use of their property; neighbors who have little to no idea who does and does not reside in the home; little to no participation in community activities that form and strengthen neighborhood cohesion; disproportional impacts from the average dwelling unit to nearly all public services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of congregating in the same general area; and the potential influx of individuals with a criminal record; and

Housing inordinately large numbers of unrelated adults in a single dwelling or congregating Sober Living Homes in close proximity to each other does not provide the disabled with an opportunity to "live in normal residential surroundings," but rather places them into living environments bearing more in common with the types of institutional dormitory living that the FEHA and FHA were designed to avoid for the disabled, and which no reasonable person could contend provides a normal residential surrounding; and

Notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, responsibly operated Sober Living Homes, and Group Homes, including Sober Living Homes, benefit society by providing the disabled the opportunity to live in residential neighborhoods, recovery programs for individuals attempting to overcome their drug and alcohol addictions, and providing Sober Living Homes greater access to residential zones; and

Without regulation there is no means of ensuring that (i) the individuals entering into Sober Living Homes are disabled individuals and entitled to reasonable accommodation under local and state law; (ii) the Sober Living Home is operated professionally to minimize impacts to the surrounding neighborhood; and (iii) the secondary impacts from over concentration of Sober Living Homes and Group Homes in a neighborhood and large numbers of unrelated adults residing in a single facility are lessened; and

At least some operators of Sober Living Homes and Group Homes are driven more by profit rather than intent to provide recovering addicts a realistic potential of sobriety, or a living environment resembling the manner in which the non-disabled use and enjoy a dwelling; and

The residents of Sober Living Homes and Group Homes come to the City from all parts of the country and often lack established ties to the community and a local support system independent of the Sober Living Home or Group Home; and consequently the residents are especially vulnerable to becoming homeless upon eviction; and

Is the intent of this Ordinance to require that operators of Group and Sober Living Homes provide the residents information regarding the available local housing resources prior to eviction from a Sober Living Home or Group Home; and

Pursuant to the California State Planning and Zoning Law, the Huntington Beach Planning Commission and Huntington Beach City Council have held separate, duly noticed public hearings to consider Zoning Text Amendment No. 19-005, which amends Title 5 relating to updated, clarified, and site standards utilized within the HBMC.

After due consideration of the findings and recommendations of the Planning Commission and all other evidence presented, the City Council finds that the aforesaid amendment is proper and consistent with the General Plan;

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That Title 5 Business Licenses and Regulations of the Huntington Beach Municipal Code is hereby amended.

SECTION 2. All other provisions of Title 5 not modified herein shall remain in full force and effect.

SECTION 3. This ordinance shall become effective immediately 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2020.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

REVIEWED AND APPROVED:

_____
City Manager

INITIATED AND APPROVED:

_____
Community Development Director

Huntington Beach Municipal Code

Chapter 5.110 GROUP HOMES

5.110.010 Definitions.

The definitions set forth in Title 20 Chapter 203 of the ZSO Code shall apply to the provisions of this article unless otherwise provided for herein.

5.110.020 Zoning Regulations.

In addition to the requirements of this article, all group homes subject to this article shall comply with the requirements set forth in Title 23 Chapter 230.28 of the ZSO Code.

5.110.030 Operator's Permit Required.

It is unlawful for any person to operate, or to permit any person to operate, a group home on any property located within the RL, RM, RMH, RH, RMP, Specific Plan Residential or Specific Plan Mixed Use zone, without a valid permit issued for that group home pursuant to the provisions of this article.

5.110.040 Exceptions.

The requirements of this article shall not apply to:

A. A group home that has six (6) or fewer occupants, not counting a house manager, and that is in compliance with the applicable provisions of Title 23 Chapters 230.28 of this Code;

B. A state licensed alcoholism or drug abuse recovery or treatment facility; or

C. A state licensed residential care facility.

5.110.050 Requirements for issuance of operator's permit.

A. The owner/operator shall submit an application to the Finance Director that provides the following information:

1. The name, address, phone number and driver's license number of the owner/operator;

2. A live scan of the operator and/or house manager;

3. If the applicant and/or operator is a partnership, corporation, firm or association, then the applicant/operator shall provide the additional names and addresses as follows and such persons shall also sign the application:

a. Every general partner of the partnership;

b. Every owner with a controlling interest in the corporation; and

c. The person designated by the officers of a corporation as set forth in a resolution of the corporation that is to be designated as the permit holder.

4. The license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit, has had such license and/or permit revoked or suspended, and the reason therefor;

5. The name, address, phone number and driver's license number of the house manager;

6. A copy of the group home rules and regulations;

7. Written intake procedures;

8. The relapse policy;

9. An affirmation by the owner/operator that only residents (other than the house manager) who are disabled as defined by state and federal law shall reside at the group home;

10. Blank copies of all forms that all residents and potential residents are required to complete; and

11. A fee for the cost of processing of the application as set by resolution of the City Council.

B. Requirements for operation of group homes.

1. The group home has a house manager who resides at the group home or any multiple of persons acting as a house manager who are present at the group home on a twenty-four (24) hour basis and who are responsible for the day-to-day operation of the group home.

2. All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Residents and the house manager may each only store or park a single vehicle at the dwelling unit or on any street within five hundred (500) feet of the dwelling unit. The vehicle must be operable and currently used as a primary form of transportation for a resident of the group home.

3. Occupants must not require and operators must not provide "care and supervision" as those terms are defined by Health and Safety Code section 1503.5 and section 80001(c)(3) of Title 22, California Code of Regulations.

4. Integral group home facilities are not permitted. Applicants shall declare, under penalty of perjury, that the group home does not operate as an integral use/facility.

5. If the group home operator is not the property owner, written approval from the property owner to operate a group home at the property.

6. At least forty-eight (48) hours prior to eviction from or involuntary termination of residency in a group home, the operator thereof shall:

a. Notify the person designated as the occupant's emergency contact or contact of record that the occupant will no longer be a resident at the home;

b. Contact the Orange County Health Care Agency OC Links Referral Line or other entity designated by the City to determine the services available to the occupant, including, but not limited to, alcohol and drug inpatient and outpatient treatment;

c. Notify the city's Homeless Task Force or its successor panel that an occupant is no longer a resident at the home, determine the services available therefrom; and

d. Provide the information obtained from paragraphs b and c of this subsection (B)(6) and any other treatment provider or service to the occupant prior to his or her release on a form provided by the city and obtain the occupant's signed acknowledgement thereon;

e. Provided, however, that if the occupant's behavior results in immediate termination of residency pursuant to rules approved by the city as part of the special use permit for that facility, the operator shall comply with paragraphs a though e of this subsection B.6. as soon as possible.

7. Prior to an occupant's eviction from or involuntary termination of residency in a group home, the operator thereof shall also:

a. Make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home;

b. Provided, however, that should the occupant decline transportation to his or her permanent address or otherwise has no permanent address, then the operator shall make available to the occupant transportation to another group home or residential care facility that has agreed to accept the occupant.

8. The group home operator shall maintain records for a period of one year following eviction from or involuntary termination of residency of an occupant that document compliance with subsections A.7. and A.8. of this section; provided, however, that nothing herein shall require an operator of a group home to violate any provision of state or federal law regarding confidentiality of health care information. The group home operator may not satisfy the obligations set forth in subsection A.8. by providing remuneration to the occupant for the cost of transportation.

9. All drivers of vehicles picking up or dropping off persons at a group home shall comply with all applicable provisions of this Code and the Vehicle Code, including, but not limited to, those provisions regulating licensure and parking, standing and stopping.

10. The property must be fully in compliance with all building codes, municipal code and zoning.

11. In addition to the regulations outlined above, the following shall also apply to Sober Living Homes:

a. All occupants, other than the house manager, must be actively participating in legitimate recovery programs, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous and the Sober Living Home must maintain current records of meeting attendance. Under the Sober Living Home's rules and regulations, refusal to actively participate in such a program shall be cause for eviction.

b. The Sober Living Home's rules and regulations must prohibit the use of any alcohol or any non-prescription drugs at the Sober Living Home or by any

recovering addict either on or off site. The Sober Living Home must also have a written policy regarding the possession, use and storage of prescription medications. The facility cannot dispense medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the Sober Living Home's rules for residency and the violator cannot be re-admitted for at least ninety (90) days. Any second violation of this rule shall result in permanent eviction. Alternatively, the Sober Living Home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.

c. The number of occupants subject to the sex offender registration requirements of Penal Code section 290 does not exceed the limit set forth in Penal Code section 3003.5 and does not violate the distance provisions set forth in Penal Code section 3003.

d. The Sober Living Home shall have a written visitation policy that shall preclude any visitors who are under the influence of any drug or alcohol.

e. The Sober Living Home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. The good neighbor policy shall establish a written protocol for the house manager/operator to follow when a neighbor complaint is received.

f. The Sober Living Home shall not provide any of the following services as they are defined by section 10501(a)(6) of Title 9, California Code of Regulations: detoxification; educational counseling; individual or group counseling sessions; and treatment or recovery planning.

C. An applicant may seek relief from the strict application of this section by submitting an application to the Community Development Director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to Chapter 17.77 of this Code,

D. The operator's permit shall be issued by the Director if the applicant is in compliance, or, where applicable, has agreed to comply, with the requirements of subsections A. and B. above.

E. In addition to denying an application for failing to comply, or failing to agree to comply, with subsections A. and/or B. of this section, an operator's permit shall also be denied, and if already issued shall be revoked upon a hearing by the Director, under any of the following circumstances:

1. Any owner/operator or staff person has provided materially false or misleading information on the application or omitted any pertinent information.

2. Any owner/operator or staff person has an employment history in which he or she was terminated during the past two (2) years because of physical assault, sexual

harassment, embezzlement or theft; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.

3. Any owner/operator or staff person has been convicted of or pleaded nolo contendere, within the last seven (7) to ten (10) years, to any of the following offenses:

a. Any sex offense for which the person is required to register as a sex offender under California Penal Code section 290 (last ten (10) years);

b. Arson offenses—Violations of Penal Code Sections 451—455 (last seven (7) years); or

c. Violent felonies, as defined in Penal Code section 667.5, which involve doing bodily harm to another person (last ten (10) years).

d. The unlawful sale or furnishing of any controlled substances (last seven (7) years).

4. Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.

5. The owner/operator accepts residents, other than a house manager, who are not disabled or disabled as defined by the FHAA and FEHA.

6. An operator's permit for a Sober Living Home shall also be denied, and if already issued shall be revoked upon a hearing by the Director, under any of the following additional circumstances:

a. The owner/operator of a Sober Living Home fails to immediately take measures to remove any resident who uses alcohol or illegally uses prescription or non-prescription drugs, or who is not actively participating in a legitimate recovery program from contact with all other sober residents.

b. For any other significant and/or repeated violations of this section and/or any other applicable laws and/or regulations.

5.110.060 Transfer of operator's permit.

A. An operator's permit shall not be valid for a location other than the property for which it is issued, unless and until the transfer of the permit is approved by the Finance Director pursuant to the requirements of section 5.110.060.

B. An operator's permit may not be transferred to any other person or entity. No operator's permit issued pursuant to this article shall be transferred or assigned or authorize any person or entity other than the person or entity named in the permit to operate the group home named therein.

5.110.070 Revocation of operator's permit.

An operator's permit may be revoked upon a hearing by the Finance Director pursuant to section 5.08.300 for failing to comply with the terms of the permit and/or for failing to comply with the applicable provisions of section 5.110.050.

5.110.080 Reapplication after denial or revocation.

A. An applicant for an operator's permit whose application for such an operator's permit has been denied may not apply for such an operator's permit for a period of six (6) months from the date such notice of denial was issued.

B. A holder of an operator's permit that has been cancelled, revoked, or otherwise invalidated may not reapply for an operator's or a user's permit for a period of six (6) months from the date that such revocation, cancellation, or invalidation became final.

5.110.090 Compliance.

A group home that is subject to the provisions of this article that is in existence as of the effective date of this ordinance shall have one hundred twenty (120) days to comply with the provisions of this article.