ORDINANCE NO. 4212

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH AMENDING CHAPTER 204 OF THE HUNTINGTON BEACH ZONING AND SUBDIVISION ORDINANCE TITLED USE CLASSIFICATIONS (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:

WHEREAS, 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 Chapter 204 of the Huntington Beach Zoning and Subdivision Ordinance relating to updated, clarified, and additional use classifications utilized within the ZSO.

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 Chapter 204 of the Huntington Beach Zoning and Subdivision Ordinance titled Use Classifications is hereby amended.

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SECTION 2. All other provisions of Chapter 204 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:

_____
Director of Community Development

Chapter 204 USE CLASSIFICATIONS

204.02 Applicability

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this title. The director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially different than those typical of uses named within the classification. The director's decision may be appealed to the Planning Commission. (3334-6/97, 4175-3/19, 4183-10/19)

204.04 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment. (3334-6/97, 4175-3/19, 4183-10/19)

204.06 Residential Use Classifications

A. **Day Care, Limited (or Small-Family).** Non-medical care and supervision of six or fewer persons, or eight or fewer persons if two of the persons are six years of age or older, on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. This classification includes nursery schools, preschools, and day-care centers for children and adults.

B. **Group Home.** A facility that is being used as a supportive living environment for persons who are considered disabled 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 (1) or more dwelling units. Group homes shall not include the following: (1) residential care facilities; (2) any unit operating as a single housekeeping unit.

C. **Group Residential.** Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boarding houses, but excludes residential hotels or motels, and Group Homes.

D. **Multifamily Residential.** Two or more dwelling units on a site. This classification includes manufactured homes.

E. **Referral Facility.** A Residential Care Facility, Group Home, or Sober Living Home where one or more person's residency in the facility is pursuant to a court order or directive from an agency in the criminal justice system.

F. **Residential Care Facility.** A residential facility licensed by the State where care, services, or treatment is provided to persons living in a supportive community residential setting. Residential care facilities include, but may not be limited to, the following: intermediate care facilities for the developmentally disabled (Health & Safety Code §§ 1267.8, 1267.9); community care facilities (Health & Safety Code § 1500 et seq.); residential care facilities for the elderly (Health & Safety Code § 1569 et seq.); residential care facilities for the chronically ill (22 C.C.R. §

87801(a)(5); Health & Safety Code § 1568.02); alcoholism and drug abuse facilities (Health & Safety Code §§ 11834.02—11834.30); pediatric day health and respite care facilities (Health & Safety Code § 1760 et seq.); residential health care facilities, including congregate living health facilities (Health & Safety Code §§ 1265—1271.1, 1250(i), 1250(e), (h)); family care home, foster home, group home for the mentally disordered or otherwise disabled persons or dependent and neglected children (Wel. & Inst. Code §§ 5115—5120).

~~Residential Alcohol Recovery, Limited. Twenty four hour care for no more than six persons suffering from alcohol problems in needs of personal services, supervision, protection or assistance. This classification includes only those facilities licensed by the State of California.~~

~~Residential Care, Limited. Twenty four hour non-medical care for six or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California.~~

G. **Single-Family Residential.** Buildings containing one dwelling unit located on a single lot. This classification includes manufactured homes.

H. Sober Living Home. A Group Home for persons who are recovering from a drug and/or alcohol addiction and who are considered disabled under State or Federal law. Sober Living Homes shall not include the following: (1) residential care facilities; (2) any unit operating as a single housekeeping unit.

I. **Supportive Housing.** Housing with no limit on length of stay that is occupied by the target population and is linked to on-site or off-site services that assist residents to retain the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. On-site and off-site services may include, but are not limited to, after-school tutoring, child care, and career counseling. Supportive housing uses are subject only to those restrictions and processing requirements that apply to other residential dwellings of the same type in the same zone.

J. **Transitional Housing.** Temporary housing (generally six months to two years) for a homeless individual or family who is transitioning to permanent housing. This type of housing includes multi-family unit developments and often includes a supportive services component to allow individuals to gain necessary life skills in support of independent living. Transitional housing uses are subject only to those restrictions and processing requirements that apply to other residential dwellings of the same type in the same zone. (3334-6/97, 3669-12/04, 3857-2/10, 4175-3/19, 4183-10/19)

204.08 Public and Semipublic Use Classifications

A. **Cemetery.** Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery, business and administrative offices, chapels, flower shops, and necessary maintenance facilities.

B. **Clubs and Lodges.** Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs and youth centers.

C. **Community and Human Service Facilities.**

1. Drug Abuse Centers. Facilities offering drop-in services for persons suffering from drug abuse, including treatment and counseling without provision for on-site residence or confinement.

2. Primary Health Care. Medical services, including clinics, counseling and referral services, to persons afflicted with bodily or mental disease or injury without provision for on-site residence or confinement.

3. Emergency Kitchens. Establishments offering food for the "homeless" and others in need.

4. Emergency Shelters. Establishments offering food and shelter programs for "homeless" people and others in need. This classification does not include facilities licensed for residential care, as defined by the State of California, which provide supervision of daily activities.

~~5. Residential Alcohol Recovery, General. Facilities providing 24 hour care for more than six persons suffering from alcohol problems, in need of personal services, supervision, protection or assistance.~~

~~These facilities may include an inebriate reception center as well as facilities for treatment, training, research, and administrative services for program participants and employees. This classification includes only those facilities licensed by the State of California.~~

6. Residential Care, General. Twenty-four-hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those facilities licensed by the State of California.

NO FURTHER CHANGES TO HBZSO CHAPTER 204 PROPOSED

REMAINDER OMITTED FROM LEGISLATIVE DRAFT