

APPLICANT:

City of Huntington Beach

**PROPERTY
OWNER:**

Multiple Various Residential Property Owners

**BUSINESS
OWNER:**

Multiple Various Business Owners

STATEMENT OF ISSUE:

Currently, the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) does not adequately identify or regulate group homes in all areas of the City. It is the intent of the City Council to develop an Ordinance that strikes an appropriate balance between the interests of the City and its residents to preserve residential neighborhood character, and the need to provide housing accommodations to disabled persons, including those in recovery from chemical addiction to reside in normalized residential environments.

The Planning Commission shall consider the following:

1. Does the project satisfy all the findings required for approving a Zoning Text Amendment?
2. Has the appropriate level of environmental analysis been determined?

RECOMMENDATION:

That the Planning Commission take the following actions:

A) Finds and determines that the project will not have any significant effect on the environment and is categorically exempt from the California Environmental Quality Act pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the amendment to the HBZSO will have a significant effect on the environment (Attachment No. 1).

B) Forward Zoning Text Amendment No. 19-005 to City Council for consideration with a recommendation of approval (Attachment No. 1).

ALTERNATIVE ACTION(S):

A) Do not recommend approval of Zoning Text Amendment No. 19-005 to the City Council.

PROJECT PROPOSAL:

Background:

At the September 16, 2019 City Council meeting by a vote of 7-0, the City Council directed the City Attorney to return to Council with one or more Ordinance(s) that regulates "Group Homes and Sober

Living Homes” with an appropriate balance between the interests of the City and its residents to preserve residential neighborhood character and the need to provide reasonable accommodation for the disabled, including those recovering from chemical addiction, to reside in normalized residential environments.

Like many California cities, the City of Huntington Beach has experienced a rise in the number of Group Homes within single family residential neighborhoods. A type of Group Home, commonly referred to as Sober Living Homes, are single family homes where many occupants reside while recovering from alcohol and drug addiction. These Sober Living Homes provide a place to live in “a residential setting” between detox and the resident’s future housing. These homes are not required to be licensed by the State and are not allowed to provide services that State licensed alcoholism or drug abuse recovery or treatment facilities provide.

The proliferation of Sober Living Homes in Huntington Beach has resulted in a substantial increase in complaints generated by neighbors and community members regarding the operation of these uses. Reported impacts of sober living homes include excessive amounts of noise, loitering, second-hand smoke, trash and debris, and increased parking demands within residential neighborhoods. Of particular concern are complaints regarding the over-concentration of sober living homes, and when in close proximity to one another, these uses may change the character of a residential neighborhood to a more institutional environment.

The proposed amendments are intended to preserve the residential character of single-family residential neighborhoods and to further the purposes of State law, by, among other things: (1) ensuring that Group Homes are actually entitled to the special accommodation and/or additional accommodation provided under the Huntington Beach Municipal Code and not simply skirting the City’s land use regulations; (2) limiting the secondary impacts of Group Homes by reducing noise and traffic, preserving safety and providing adequate on street parking; (3) providing an accommodation for the disabled that is reasonable and actually bears some resemblance to the opportunities afforded non-disabled individuals to use and enjoy a dwelling unit in a single-family neighborhood; and (4) to provide comfortable living environments that will enhance the opportunity for the disabled and for recovering addicts to be successful in their programs. The proposed regulations will require Group Homes, including Sober Living Homes, to obtain a ministerial permit to operate in a manner consistent with the nature of the single-family residential neighborhoods in which they are located.

The Federal Fair Housing Act (FHA) and California Fair Employment Housing Act (FEHA), prohibits cities from enforcing zoning laws that have the effect of discriminating against the disabled with regard to housing opportunities. A disabled person is defined by The Americans with Disabilities Act (ADA) as one that has: 1. A physical or mental impairment that affects one or more major life activities; 2. A history of recovery from alcoholism or illegal use of drugs; or 3. Has been regarded as having such impairment. The ADA protects persons in recovery from chemical addiction, even if they are no longer engaged in the illegal use of drugs and otherwise meet the definitions in the statute.

Additionally, pursuant to the California Government and Welfare and Institutions Codes, and The Lanterman Developmental Disabilities and Services Act (Lanterman Act), people with developmental disabilities have the right to obtain the services and support they need to live like people without disabilities. A core purpose of this State law is to provide a broader range of housing options to the disabled, and to free the disabled to the extent possible from institutional style living. As such, a disabled person is afforded an equal opportunity to use and enjoy a residential dwelling. Likewise, pursuant to the California FEHA, individuals with physical and mental disabilities have the right under

State law to rent, lease, or buy housing accommodations free from discrimination due to a disability.

State law requires cities to treat certain state-licensed residential care facilities that provide care, services, and/or treatment serving six or fewer disabled tenants as a single family residential use. (As such, and consistent with State law, the existing HBZSO provides that both “Residential Alcohol Recovery, Limited” and “Residential Care, Limited” uses that house six (6) or fewer individuals are permitted by right in the City’s Residential districts.)

The Health and Safety Code does not regulate supportive living facilities that provide no treatment, and the HBZSO does not currently classify such a use specifically, which has encumbered the City’s ability to effectively mitigate impacts from such uses.

Finally, the California Constitution and Huntington Beach Charter grants broad police powers to Huntington Beach to preserve the residential characteristics or its various types of residential zones.

It is the intent of the City Council to develop an Ordinance that strikes an appropriate balance between the interests of the City and its residents to preserve residential neighborhood character, and the need to provide housing accommodations to disabled persons, including those in recovery from chemical addiction to reside in normalized residential environments that promote effective recovery. State and Federal laws require the City to make reasonable accommodations in its zoning laws when such accommodation is reasonably necessary to afford the disabled the opportunity to use and enjoy a dwelling. The proposed Ordinance will apply to all districts Citywide, but affect only residential districts.

Study Session:

The Planning Commission held a study session for ZTA No. 19-005 on May 26, 2020.

In addition to minor text adjustments, the Commission asked staff to return with information regarding the following items:

- HBZSO Chapter 230.28 (B)(1)(k)(ii) - What is the final option for an operator who is in the process of evicting a tenant if that operator cannot find a facility or agency willing to accept them?

Staff added *“If the operator cannot find accommodation, the occupant must continue to house on premises until such accommodation can be found for the occupant”* to Chapter 230.28 (B) (1)(k)(ii).

- Clarify definition of Boarding House. Can we add language to Use Classification to Group Residential to exclude Single Housekeeping Units?

Upon further consideration, the proposed definition of Boarding House was revised. However, the distinctions of the proposed definitions of both Boarding House and Group Residential are of legal significance and staff does not recommend further modification.

- Can the requirements include a blanket buffer for GH/SLH to also be minimum 1000 feet from any City boundary to avoid cross-jurisdictional overconcentration?

A buffer requirement from City boundaries has not been legally tested by the Courts and is

therefore not recommended. The proposed 1000' buffer is in excess of the 650' buffer that has been tested and any additional deviations could be a future issue.

- How does a Referral Facility become a Referral Facility? Does an applicant have to declare that upon application to the City?

The operator of any existing or future Group Home, Sober Living Home, or Residential Care Facility may choose to accept residents as ordered from a court or similar directive, thus classifying their operation as a Referral Facility. As such, the operator is responsible for identifying this element of operation to the City and staff will build into the applications for a Special Use Permit or Conditional Use Permit a statement requiring that the operator identify whether they intend to operate as a Referral Facility.

- Can the City tie the revocation of an Operator's Permit to a corresponding Conditional Use Permit for the same property and operator?

A recommended condition of approval will be included with the Planning Commission's review of any Group Home Conditional Use Permit Home that will require a valid Operator's Permit for the duration of the operation of said Group Home. The condition will identify that should an Operator's Permit be revoked by the Finance Director, a hearing shall be held to formally revoke the corresponding Conditional Use Permit by the Planning Commission.

- Are there any recent relevant legislative updates?

The City of Costa Mesa is in various stages of litigation concerning their Group Home Ordinance. The litigation spans from the earliest which is an administrative appeal of a denial of a SUP to a pending case before a trial court to a case appealed to the Ninth Circuit Court of Appeal.

ISSUES AND ANALYSIS:

General Plan Conformance:

The proposed ZTA is consistent with the goals and policies of the City's General Plan including:

Land Use Element

Policy LU-2 (D): Maintain and protect residential neighborhoods by avoiding encroachment of incompatible land uses.

Goal LU-4: A range of housing types is available to meet the diverse economic, physical, and social needs of future and existing residents, while neighborhood character and residences are well maintained and protected.

Policy LU-4 (A): Encourage a mix of residential types to accommodate people with diverse housing needs.

Housing Element

Goal H-1: Maintain and enhance the quality and affordability of existing housing in Huntington

Beach.

Policy H-1.1: Preserve the character, scale, and quality of established residential neighborhoods.

Policy H-5.1: Continue to enforce fair housing laws prohibiting arbitrary discrimination in the building, financing, sales, or rental of housing on the basis of race, religion, family status, national origin, physically (sic) disability or other factors.

Policy H-5.3: Support the provision of permanent, affordable, and accessible housing that allows persons with disabilities to live independent lives. Provide assistance to residents making accessibility improvements to their homes.

The ZTA will provide the City appropriate regulations to reduce impacts of existing and future group homes, sober living homes, and residential care facilities thereby preserving the residential neighborhood character of the communities in which they operate. Further, the ZTA promotes effective recovery for disabled persons, including those suffering from the effects of alcoholism or illegal use of drugs, by providing housing accommodations in normalized residential environments.

Zoning Compliance:

The following provides a review of the proposed amendments organized by each Chapter.

A. CHAPTER 203 DEFINITIONS

To provide context to the scope of changes in this ZTA, several new definitions must be established in Chapter 203 Definitions, identified below.

- Modify existing definition of Boarding House
- Add Disabled
- Add Fair Housing Laws
- Add Household
- Add Integral Facilities
- Add Integral Uses
- Add Operator
- Add Single Housekeeping Unit

These definitions work in concert with the other elements of the proposed ZTA to more clearly define specific uses as they pertain to the regulation of Group Homes in Huntington Beach.

B. CHAPTER 204 USE CLASSIFICATIONS

To provide for the regulation of Group Homes, including Sober Living Homes, this ZTA will establish four new use classifications in Chapter 204 Use Classifications. Staff is summarizing them below in order to introduce and differentiate each classification.

Group Home

A residential unit utilized as a supportive living environment for people meeting the legal definition of disabled.

- Provides housing only for a classified group of people. No medical care, services, or treatment can take place in a Group Home
 - Only State licensed facilities can provide care, services, or treatment under State law (see Residential Care Facilities)

Sober Living Home

Sober Living Homes are also Group Homes, but specifically for people recovering from a chemical addiction that meet the legal definition of disabled.

- Provides housing only that is primarily meant for people who have just come out of rehab and need a place to live that is structured and supportive for those in recovery.
- For the purposes of the Ordinance, a Sober Living Home is not state licensed.
- No medical care, services, or treatment can occur in a Sober Living Home
 - Only State licensed facilities can provide care, services, or treatment under State law (see Residential Care Facilities)

Residential Care Facilities (RCF)

A State Licensed residential facility where care, services, or treatment are provided to persons living in a community residential setting.

- Provide housing and care/treatment for the elderly, developmentally disabled, chronically ill, and chemical addiction treatment facilities, among others.
- RCFs that specifically provide drug and or alcohol abuse treatment are licensed by the Department of Health Care Services (DHCS) and are known as alcoholism or drug abuse recovery or treatment facilities.
 - Homes are required to be licensed by the DHCS when at least one of the following services is provided: detoxification, group counseling sessions, individual counseling sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning.

Referral Facility

Either a Residential Care Facility, Group Home, or Sober Living Home where one or more person's residency is per a court order or similar directive. Referral facilities must follow the permit procedure according to the base use classification, and are not permitted in the RL zone.

C. CHAPTER 210 RESIDENTIAL DISTRICTS

In addition to establishing the new Definitions and Use Classifications identified above, this ZTA will also amend Chapter 210 Residential Districts to provide reference to land use controls and new requirements for Group Homes in Residential Districts (Legislative Drafts attached for reference). These changes are summarized below.

1. Add "Group Homes Including Sober Living Homes" to Land Use Controls matrix and create Additional Provision L-8:
 - A Group Home (GH) or Sober Living Home (SLH) with six (6) or fewer residents
 - In all Residential districts, requires a ministerial Special Use Permit (SUP) from the Community Development Director; and
 - Any SLH shall be one thousand (1000) feet from any other property that contains a GH, SLH, or RCF pursuant to Chapter 230.28
 - A GH or SLH with seven (7) or more residents
 - Not permitted in the RL zone

- In all other Residential Districts, requires a CUP from the Planning Commission; and
 - An Operator's Permit that complies with Huntington Beach Municipal Code (HBMC) Section 5.110; and
 - The GH or SLH (with 7 or more residents) shall be one thousand (1000) feet from any other property that contains a GH or SLH.
 - An applicant for a GH or SLH may seek relief from strict application of the requirements of Additional Provision L-8 by applying for reasonable accommodation pursuant to HBMC 17.77.
2. Add "Referral Facility" to the Land Use Controls matrix and create Additional Provision L-9:
- Referral Facilities are not permitted in the RL zone; and
 - No Referral Facility may be located:
 - Within five hundred (500) feet of property that is zoned either RL or Specific Plan Residential Low Density, or
 - Within five hundred (500) feet of a school, park, place of worship, or licensed day care facility.
 - Referral Facilities must have an on-site manager 24/7
 - Referral Facilities may not admit a resident convicted of specific crimes
3. Add "Residential Care Facility" to the Land Use Controls Matrix and create Additional Provision (T).
- Certain Residential Care Facilities are Permitted (P), and certain Residential Care Facilities require a CUP from the Planning Commission. The "P/PC" listing refers to this differentiation.
 - Additional Provision (T)
 - Identify that unlicensed Residential Care Facilities are not permitted in any R district
 - State licensed Residential Care Facilities serving six (6) or fewer residents are permitted in all R districts
 - State licensed Residential Care Facilities serving seven (7) or more residents in all R districts require a CUP from the Planning Commission

D. CHAPTER 230.28 GROUP HOMES

Finally, this ZTA will add a new section to Chapter 230 Site Standards, Article I. Residential Districts. Titled Chapter 230.28 Group Homes, this section represents the appropriate placement for new regulations that will be applicable to Group Homes in Residential Districts.

Special Use Permit (SUP)

Chapter 230.28 will identify that a Group Home that may otherwise be considered an unpermitted use may locate in a Residential District subject to the approval of a Special Use Permit (SUP) by the Community Development Director, provided that the Group Home is in compliance with applicable regulations. Should the Ordinance be adopted, all existing Group Homes as well as any new

proposed Group Home will be required to obtain a SUP. The SUP is ministerial and may be granted when a complete application is submitted to the Community Development Director that provides the following:

1. The name, address, phone number, and driver's license number of the owner, operator, and house manager;
2. A copy of the Group Home rules and regulations;
3. Written intake procedures;
4. The relapse policy (if applicable, depending on the type of Group Home);
5. 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;
6. Blank copies of all forms that residents and potential residents are required to complete; and
7. A fee for the cost of processing the application as set by resolution by the City Council.

Only basic information will be required to submit an application for a SUP, and the internal procedures and forms will be provided to applicants. Compliance with the application requirements should not present any significant hardship, since the requirements are in line with the routine capabilities expected from a professionally operated Group Home.

In general, the operational requirements to maintain a SUP include the following: no more than seven (7) tenants may reside in a Group Home, one of which must be a house manager. If the dwelling unit has a secondary accessory unit, occupants of both units will be combined to determine whether or not the limit of six (6) occupants has been exceeded. A Group Home shall not be located in an accessory secondary unit unless the primary dwelling unit is used for the same purpose. The SUP also requires garage and driveway spaces to be available and used for parking of vehicles and limits each tenant to one vehicle, which must be operable and used as a primary form of transportation.

In addition to the requirements for Group Homes outlined above, Chapter 230.28 will also identify that the following shall specifically apply to Sober Living Homes:

1. Sober Living Homes are prohibited from locating within one thousand (1000) feet of each other.
2. All occupants, other than the house manager, must be actively participating in legitimate recovery programs with supporting documentation required.
3. The Sober Living Home's rules and regulations must prohibit the use of any alcohol or non-prescribed drugs at the Sober Living Home or by any recovering addict either on or off site. Violation of the no drug policies are grounds for eviction for 90 days for the first offense. Any second violation of this rule shall result in permanent eviction.
4. The number of sex offenders in any group home shall be no more than one, pursuant to the applicable provisions of the Penal Code.
5. Each Sober Living Home shall have a written visitation policy that precludes any visitors who are under the influence of any drug or alcohol.
6. The Sober Living Home shall have a good neighbor policy that shall direct the 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.
7. The Sober Living Home shall not provide any of the following services as they are defined by the California Code of Regulations: detoxification; educational counseling; individual or group

counseling sessions; and treatment or recovery planning.

Chapter 230.28 will also provide provisions for requests for reasonable accommodation, cause for denial or revocation of a Special Use Permit, and compliance with the proposed regulations. If the Zoning Text Amendment is adopted by Ordinance, existing Group Homes, including Sober Living Homes, will have 90 days to apply for a Special Use Permit. Group Homes will have one year from the effective date of the Ordinance to comply with its provisions, provided that any existing group home, which is serving more than six (6) residents, must first comply with the six (6) resident maximum.

Conditional Use Permit

Finally, Chapter 230.28 will require a Conditional Use Permit to permit the operation of a Group Home, including Sober Living Homes, or Residential Care Facility with seven (7) or more occupants in the RM, RMH, RH, RMP, Specific Plan Residential and Specific Plan Mixed Use zones. This CUP requirement will be processed to the Planning Commission. A Group Home or Residential Care Facility will be prohibited in the RL zone and these stipulations are reflected in the Land Use Controls matrix of Chapter 210.

In addition to the Conditional Use Permit requirement, Group Homes or Residential Care Facilities with seven (7) or more occupants are subject to the following requirements:

1. The Group Home or Sober Living Home shall be at least one thousand (1000) feet from any other property that contains a Group Home, Sober Living Home, or State-licensed Residential Care Facility; and
2. An application for an Operator's Permit that complies with Chapter 5.110 of the Huntington Beach Municipal Code (HBMC).

OPERATOR'S PERMIT

In addition to the ZTA, the Huntington Beach Municipal Code Chapter 5.110 Group Homes will be amended to add a requirement that a Group Home obtain an Operator's Permit. Since Group Homes with more than seven (7) residents will be expressly prohibited in the RL zone, the Operator's Permit requirement applies to Group Homes with seven (7) or more residents in the RM, RMH, RH, RMP, Specific Plan Residential or Specific Plan Mixed Use zones.

The Operator's Permit requirement does not apply to:

1. A Group Home that has six (6) or fewer occupants, not counting a house manager, that is in compliance with Chapter 230.28 of the HBZSO;
2. A state-licensed alcoholism or drug abuse recovery or treatment facility; or
3. A state-licensed residential care facility.

An application for an Operator's Permit will be submitted to the Finance Director and must include similar information to that of a Special Use Permit. A Group Home subject to the provisions of Chapter 5.110 that is in existence as of the effective date of the Ordinance will have 120 days to comply with the provisions.

Urban Design Guidelines Conformance:

Not Applicable.

Environmental Status:

ZTA No. 19-005 is categorically exempt from the California Environmental Quality Act pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the amendment to the HBZSO will have a significant effect on the environment.

Coastal Status:

The proposed amendment will be forwarded to the California Coastal Commission as a minor Local Coastal Program Amendment for certification.

Design Review Board:

Not Applicable.

Subdivision Committee:

Not Applicable.

Other Departments Concerns and Requirements:

Should ZTA 19-005 be adopted by the City Council, the proposed regulations will require the development of application forms and review and approval processes to accommodate the dispensation of Special Use Permits by the Community Development and Operator's Permits by the Finance Department.

Public Notification:

Legal notice was published in the Orange County Register on May 28, 2020 and notices were sent to individuals/organizations requesting notification (Planning Division's Notification Matrix). As of June 3, no communications regarding the request have been received

Application Processing Dates:

DATE OF COMPLETE APPLICATION:	MANDATORY PROCESSING DATE(S):
Not applicable	Legislative Action - Not applicable

SUMMARY:

Staff recommends that the Planning Commission recommend approval of Zoning Text Amendment No. 19-005 with findings and forward to the City Council based on the following:

- Codifies new use classifications that modernize the HBZSO
- Provides appropriate regulations and permit processes to reduce operational impacts of existing and future group homes, sober living homes, and residential care facilities
- Provides housing accommodations to disabled persons to reside in normalized residential environments
- Promotes effective recovery for persons suffering from the effects of alcoholism or illegal use of drugs
- Preserves residential neighborhood character
- Consistent with General Plan goals and policies

ATTACHMENTS:

1. Suggested Findings of Approval - ZTA No. 19-005
2. Section 203 Definitions Legislative Draft

3. Section 204 Use Classifications Legislative Draft
4. Section 210 Residential Districts Legislative Draft
5. Section 230.28 Group Homes Legislative Draft
6. Huntington Beach Municipal Code Chapter 5.110 Group Homes Legislative Draft (Reference Only)