Attachment No. 1

Draft Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING SECTION 13-6 (DEFINITIONS) OF ARTICLE 2 (DEFINITIONS) OF CHAPTER I (GENERAL), ADDING CHAPTER XV (GROUP HOMES), AND REPEALING AND REPLACING ARTICLE 15 (REASONABLE ACCOMMODATIONS) OF CHAPTER IX (SPECIAL LAND USE REGULATIONS), OF TITLE 13 (ZONING CODE) AND AMENDING THE CITY OF COSTA MESA LAND USE MATRIX - TABLE NO. 13-30 OF CHAPTER IV. (CITYWIDE LAND USE MATRIX) OF THE COSTA MESA MUNICIPAL CODE RELATING TO GROUP HOMES

THE CITY COUNCIL OF THE CITY OF COSTA MESA MAKES THE FOLLOWING FINDINGS WITH RESPECT TO THE ADOPTION OF THE FOLLOWING ORDINANCE:

WHEREAS, under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the single-family characteristics of its single-family neighborhoods, 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

WHEREAS, both the California Supreme Court and United States Supreme Court have held that cities have the right to regulate both the number of people who may reside in a single family home and the manner in which the single family is used as long as such regulations do not unfairly discriminate or impair an individual's rights of privacy and association; and

WHEREAS, individuals and families often purchase homes in single-family neighborhoods for the relative tranquility and safety that often accompanies such neighborhoods and with the expectation of establishing close and long-standing ties with their neighbors; and

WHEREAS, with these expectations, individuals and families commit to making what will be, for most of them, the single largest financial investment of their lives, as well as one of the most significant emotional investments; and

WHEREAS, the Federal Fair Housing Act Amendments ("FHAA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of zoning

ordinances which would on their face or have the effect of discriminating against equal housing opportunities for the handicapped; and

WHEREAS, a core purpose of the FHAA, FEHA and California's Lanterman Act is to provide a broader range of housing opportunities to the handicapped; to free the handicapped, to the extent possible, from institutional style living; and to ensure that handicapped persons have the opportunity to live in normal residential surroundings and use and enjoy a dwelling in a manner similar to the way a dwelling is enjoyed by the non-handicapped; and

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

WHEREAS, the Lanterman Act fulfills this purpose in part by requiring cities to treat state licensed residential care facilities serving six or fewer as a residential use; and

WHEREAS, in enacting this Ordinance the City Council of the City of Costa Mesa is attempting to strike a balance between the City's and residents' interests of preserving the single family characteristics of single-family neighborhoods and to provide opportunities for the handicapped to reside in single-family R1 zones that are enjoyed by the non-handicapped; and

WHEREAS, over the past several years the City, County and State have seen a significant increase in the number of single-family homes being utilized as alcohol and drug recovery facilities for large numbers of individuals (hereafter, "sober living homes"); and

WHEREAS, the increase appears to be driven in part by the Substance Abuse and Crime Prevention Act of 2000 (hereafter, "the Act") adopted by California voters which provides that specified first-time drug and alcohol offenders are to be afforded the opportunity to receive substance abuse treatment rather than incarceration; and

WHEREAS, the Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment; and

WHEREAS, the City of Costa Mesa has seen a sharp increase of sober living homes, which has generated community outcry and complaints including, but not limited to overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of sober living facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, this significant increase in sober living homes has become an rising concern for cities statewide as local officials are in some cases being bombarded with complaints from residents about the proliferation of sober living homes; conferences drawing local officials from around the state are being held discussing what to do about the problems associated with sober living homes; it has been the topic of several League of California Cities meetings; there have been numerous city-sponsored attempts at legislative fixes that have failed in committee; and litigation is spreading across the state as cities attempt to address the problem; and

WHEREAS, as of the date of adoption of this Ordinance, it is estimated that the City of Costa Mesa is home to 1,214 alcohol and drug recovery beds, divided as follows: 40 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 398 beds; 94 unlicensed sober living homes in residential zones, providing 740 beds; and 1 sober living home on two separate parcels, providing 76 beds in a non-residential zone; and 28 nonresidential services facilities, providing support services such as administrative offices, therapy etc.; and

WHEREAS, the number of sober living homes in the City of Costa Mesa is rapidly increasing, leading to an overconcentration of sober living homes in the City's R1 neighborhoods, which is both deleterious to the single-family character of the R1 neighborhoods and may also lead to the institutionalization of such neighborhoods; and

WHEREAS, 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 single family neighborhood of their choice; and

WHEREAS, recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered handicapped under both the FHAA and FEHA; and

WHEREAS, concentrations of sober living homes and/or the placement of inordinately large numbers of recovering addicts in a single dwelling can undermine the benefits of home ownership in single-family neighborhoods for those residing nearby and undermine the single-family characteristics of neighborhoods; and

WHEREAS, in some cases, operators of sober living homes have attempted to house inordinately large numbers of recovering addicts in a single-family dwelling in Costa Mesa; for example, in one case an operator has placed 15 beds in a single-family home; and there has been a tendency for sober living homes to

congregate in close proximity (for example, five sober living homes are located next to each other on one street in a R1 zone); and

WHEREAS, the City has experienced situations in which single-family homes are remodeled to convert common areas such as family rooms, dressing rooms, and garages into bedrooms (in one case a patio was converted to a room where 6 beds were found) or to add multiple bedrooms for the sole purpose of housing large numbers of recovering addicts in a single dwelling; and

WHEREAS, it has been the City's experience that most, if not all, operators of sober living homes have taken the stance that the FHAA and FEHA prohibit the City from regulating them in any fashion, that they are free to house as many recovering addicts in a single home as they desire, and that they are not required to make any showing to obtain an accommodation from the City's zoning ordinances, which allow a sober living home to house up to six recovering addicts as a matter of right; and

WHEREAS, based on the City's experience it has become clear that at least some operators of sober living homes are driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential of recovery, or to provide a living environment which remotely resembles the manner in which the non-disabled use and enjoy a dwelling; and

WHEREAS, this Ordinance and the balance of the City's zoning scheme have built in an accommodation for group homes to locate in the R1 neighborhoods as long as they are serving six or fewer tenants, whereas a similarly situated and functioning home with non-handicapped tenants would be defined as a boarding house and only be allowed three residents; and

WHEREAS, this Ordinance will provide a mechanism for a group home to seek additional accommodation above the six residents upon making a showing, as required by state and federal law, that such additional accommodation is reasonably necessary to afford the handicapped the right to use and enjoy a dwelling in a manner similar to that enjoyed by the non-handicapped; and

WHEREAS, permitting six or fewer residents in a sober living home and establishing distance requirements is reasonable and non-discriminatory and not only helps preserve the single family characteristic of single family neighborhoods, but also furthers the purpose for which sober living homes are established: (1) the State legislature in establishing licensed residential care facilities as a residential use, including group homes serving recovering addicts, found that six residents was a sufficient number to provide the supportive living environment that experts agree is beneficial to recovery; (2) Group Homes serving six or fewer have existed and flourished in the State for decades and there has been no significant efforts or suggestions to increase the number; (3) the City has received expert testimony

stating that six is a reasonable number for a sober living facility and is sufficient to provide the supportive living environment that is beneficial to recovery and that larger numbers can actually reduce the chances of recovery; (4) a 2005 UCLA study found that 65-70% of recovering addicts do not finish the recovery programs into which they are placed and a comfortable living environment is a factor in whether recovering addicts will finish their programs; (5) drug and alcohol addiction is known to affect all income levels and there is no evidence in the record that individuals residing in sober living homes are financially unable to pay market rate rents and certainly the experience in the City of Newport Beach, where rents and property are among the most expensive in Orange County, is evidence that such addiction has a profound effect on the wealthy; (6) in any event, receiving rent from up to six individuals will provide sufficient income for operators of sober living homes and result in revenue which is well above market rate rents; (7) the evidence in the record indicates that in general operators of sober living homes do not incur significant costs over and above what landlords of other similarly-situated homes may incur; and (8) limiting the number of recovering addicts that can be placed in a single-family home enhances the potential for their recovery; and

WHEREAS, sober living homes do not function as a single-family unit nor do they fit the City's zoning definition of a single-family for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2005 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs); (2) the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; (3) neighbors generally do not know who or who does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) when residents disobey house rules they are often just kicked out of the house; (8) the residents generally do not share the same acquaintances; and (9) residents often pay significantly above-market rate rents; and

WHEREAS, the size and makeup of the households in sober living homes, even those allowed as a matter of right under the Costa Mesa Municipal Code, is dissimilar and larger than the norm, creating impacts on water, sewer, roads, parking and other City services that are far greater than the average household, in that the average number of persons per California household is 2.90 (2.74 in Costa Mesa's R1 zones according to the City's General Plan), while a sober living facility allowed as a matter of right would house six, which is in the top 5% of households in Orange County according to the most recent U.S. federal census data; and

WHEREAS, all of six individuals residing in a sober living facility are generally over the age of 18, while the average household has just 2.2 individuals over the age of 18 according to the most recent federal census data; and

WHEREAS, the City utilizes federal census data and other information relating to the characteristics of single-family neighborhoods for among other things: (1) determining the design of residential homes, residential neighborhoods, park systems, library systems, transportation systems; (2) determining parking and garage requirements of single-family homes; (3) developing its General Plan and zoning ordinances; (4) determining police and fire staffing; (5) determining impacts to water, sewer and other services; and (5) in establishing impacts fees that fairly and proportionally fund facilities for traffic, parks, libraries, police and fire; and

WHEREAS, because of their extremely transient populations, above-normal numbers of individuals/adults residing in a single home and the lack of regulations, sober living facilities present problems not typically associated with more traditional single-family uses, including: the housing of large numbers of unrelated adult who may or may not be supervised; disproportionate numbers of cars associated with a single-family home 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 interaction with the neighborhood; a history of opening facilities in complete disregard of the Costa Mesa Municipal Code and with little disregard for impacts to the neighborhood; disproportional impacts from the average dwelling unit to nearly all City 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

WHEREAS, a 650-foot distance requirement provides a reasonable market for the purchase and operation of a sober living home within the City and still results in preferential treatment for sober living homes in that non-handicapped individuals in a similar living situation (i.e., in boardinghouse-style residences) cannot reside in the R1 zone; and

WHEREAS, housing inordinately large numbers of unrelated adults in a single-family home or congregating sober living homes in close proximity to each other does not provide the handicapped 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/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the handicapped, and which no reasonable person could contend provides a life in a normal residential surrounding; and

WHEREAS, notwithstanding the above, the City Council recognizes that while not in character with a single-family neighborhood, that when operated responsibly, a group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in single-family neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater

access to R1 zones to group homes, including sober living homes, than to boardinghouses provides a benefit to the City and its residents; and

WHEREAS, without some regulation there is no way of ensuring that the individuals entering into a group home are handicapped individuals and entitled to reasonable accommodation under local and state law; that a group home is operated professionally to minimize impacts to the surrounding neighborhood; and that the secondary impacts from over concentration of both group homes in a neighborhood and large numbers of unrelated adults residing in a single facility in a single home are lessened; and

WHEREAS, in addition to group homes locating in single-family neighborhoods other state-licensed residential care facilities for six or fewer persons who are mentally disordered or otherwise handicapped or supervised, are also taking up residence in single-family neighborhoods; and

WHEREAS, the purpose of group homes for the handicapped is to provide the handicapped an equal opportunity to comfortably reside in the single family neighborhood of their choice; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1: The following definitions in Section 13-6 (Definitions) of Article 2 (Definitions) of Chapter I (General) of Title 13 (Planning, Zoning and Development) are hereby repealed, amended or added as follows:

Alcoholism or drug abuse recovery or treatment facility means adult alcoholism or drug abuse recovery or treatment facilities that are licensed pursuant to Section 11834.01 of the California Health & Safety Code. *Alcoholism or drug abuse recovery or treatment facilities* are a subset of residential care facilities.

Boardinghouse A residence or dwelling, other than a hotel, wherein rooms are rented under three or more separate written or oral rental agreements, leases or subleases or combination thereof, whether or not the owner, agent or rental manager resides within the residence. Boardinghouse, small means two or fewer rooms being rented. Boardinghouse, large means three or more rooms being rented.

Development Services Department means the Development Services Department of the City of Costa Mesa.

Disabled shall have the same meaning as *handicapped.*

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.

Group home. A facility that is being 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 shall not include the following: (1) residential care facilities; (2) any group home that operates as a single housekeeping unit.

Handicapped. As more specifically defined under the fair housing laws, 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.

Household includes all the people occupying a dwelling unit, and includes people who live in different units governed by the same operator.

Integral facilities. Any combination of two or more sober living facilities 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 shall be referred to as Integral Facilities and shall be considered one facility for purposes of applying federal, state and local laws to its operation. Examples of such 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.

Integral uses. Any two or more licensed or unlicensed 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 integral use shall be considered one use for purposes of applying federal, state and local laws to its operation.

Operator means a company, business or individual who provides residential services, i.e., 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.

Planning division. The planning division of the Development Services Department of the City of Costa Mesa.

Referral facility. A residential care facility or a group home where one (1) or more person's residency in the facility is pursuant to a court order or directive from an agency in the criminal justice system.

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 & Saf. Code §§ 1267.8, 1267.9); community care facilities (Health & Saf. Code §§ 1500 et seq.); residential care facilities for the elderly (Health & Saf. Code §§ 1569 et seq.); residential care facilities for the chronically ill (22 C.C.R. § 87801(a)(5); Health & Saf. § 1568.02); alcoholism and drug abuse facilities (Health & Saf. Code §§ 11834.02-11834.30); pediatric day health and respite care facilities (Health & Saf. Code §§ 1760 et seq.); residential health care facilities, including congregate living health facilities (Health & Saf. Code §§ 1265 – 1271.1, 1250(i), 1250(e), (h)); family care home, foster home, group home for the mentally disordered or otherwise handicapped persons or dependent and neglected children (Wel. & Inst. Code §§ 5115-5120).

[*Residential services facilities* is hereby deleted.]

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 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.

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

Section 2: Chapter XV (Group Homes) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

Chapter XV: Group homes.

13-310 Purpose.

This chapter is intended to preserve the residential character of single-family residential neighborhoods and to further the purposes of the FEHA, the FHAA and the Lanterman Act by, among other things: (1) ensuring that group homes are actually entitled to the special accommodation and/or additional accommodation provided under the Costa Mesa Municipal Code and not simply skirting the City's boarding house 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 handicapped that is reasonable and actually bears some resemblance to the opportunities afforded non-handicapped 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 handicapped and for recovering addicts to be successful in their programs.

13-311 Special use permit required.

(a) A group home that may otherwise be considered an unpermitted use may locate in an R1 zone with a special use permit provided:

1. An application for a group home is submitted to the director by the owner/operator of the group home. The application shall provide the following: (1) the name, address, phone number and driver's license number of the owner/operator; (2) the name, address, phone number and driver's license number of the house manager; (3) a copy of the group home rules and regulations; (4) written intake procedures; (5) the relapse policy; (6) an affirmation by the owner/operator that only residents (other than the house manager) who are handicapped as defined by state and federal law shall reside at the group home; (7) blank copies of all forms that all residents and potential residents are required to complete; and (8) a fee for the cost of processing of the application as set by Resolution of the

City Council. No person shall open a group home or begin employment with a group home until this information has been provided and such persons shall be responsible for updating any of this information to keep it current.

2. The group home has six (6) or fewer occupants, not counting a house manager, but in no event shall have more than seven occupants. 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.

3. The group home shall not be located in an accessory secondary unit unless the primary dwelling unit is used for the same purpose.

4. 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 24-hour basis and who are responsible for the day-to-day operation of the group home.

5. 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 650 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.

6. 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.

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

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

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

10. In addition to the regulations outlined above, the following shall also apply to sober living homes:

    i. The sober living home is not located within 650 feet, as measured from the closest property lines, of any other sober living home or a state licensed alcoholism or drug abuse recovery or treatment facility.

    ii. 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.

    iii. 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. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule or abuse of any hallucinogen or over the counter drug must be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least 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.

    iv. 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.

    v. 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.

vi. 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.

vii. 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.

11. An applicant may seek relief from the strict application of this Section by submitting an application to the director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to Section 13-200.62.

(b) The special use permit shall be issued by the director as a ministerial matter if the applicant is in compliance or has agreed to comply with subsections (a)(1) through (a)(9) above. The special use permit shall be denied, and if already issued, any transfer shall be denied or 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 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 to ten years, to any of the following offenses:

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

ii. Arson offenses – violations of Penal Code Sections 451-455 (last seven years); or
iii. Violent felonies, as defined in Penal Code Section 667.5, which involve doing bodily harm to another person (last 10 years).
iv. The unlawful sale or furnishing of any controlled substances (last seven 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 handicapped as defined by the FHAA and FEHA.

6. A special use permit for a sober living home shall also be denied, and if already issued, any transfer shall be denied or revoked, upon a hearing by the director under any of the following additional circumstances:

   i. Any owner/operator or staff person of a sober living home is a recovering drug or alcohol abuser and upon the date of application or employment has had less than one full year of sobriety.

   ii. 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.

   iii. The sober living home, as measured by the closest property lines, is located within 650 feet of any other sober living home or state licensed alcoholism or drug abuse recovery or treatment facility. If a state licensed alcoholism or drug abuse recovery or treatment facility moves within 650 feet of an existing sober living home this shall not cause the revocation of the sober living home's permit or be grounds for denying a transfer of such permit.

7. For any other significant and/or repeated violations of this Section and/or any other applicable laws and/or regulations.

8. Revocation shall not apply to any group home, which otherwise would cause it to be in violation of this Ordinance, that has obtained a reasonable accommodation pursuant to Section 13-200.62.

13-312 Compliance.

(a) Existing group homes must apply for a special use permit within 90 days of the effective date of this ordinance.

(b) Group homes that are in existence upon the effective date of this ordinance shall have one (1) year from the effective date of this ordinance to comply with its provisions, provided that any existing group home, which is serving more than six residents, must first comply with the six resident maximum.

(c) Existing group homes obligated by a written lease exceeding one year from the effective date of the ordinance, or whose activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are eligible for up to one additional years grace period pursuant to planning division approval.

13-313 Severability.

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

13-314 – 13-350 [Reserved.]

Section 3: Article 15 (Reasonable Accommodations) of Chapter IX (Special Land Use Regulations) of Title 13 (Planning, Zoning and Development) is hereby repealed and replaced with the following:

13-200.60 Purpose.

It is the city's policy to provide reasonable accommodation in accordance with federal and state fair housing laws (42 USC § 3600 et seq. and Government Code § 12900 et seq.) for persons with disabilities seeking fair access to housing in the application of the city's zoning laws. The term "disability" as used in this article shall have the same meaning as the terms "disability" and "handicapped" as defined in the federal and state fair housing laws. The purpose of this article is to establish the procedure by which a person may request reasonable accommodation, and how the request is to be processed.

13-200.61 Applicability.

Any person seeking approval to construct and/or modify residential housing for person(s) with disabilities, and/or operate a residential care facility, group home, or referral facility, which will substantially serve persons with disabilities may apply for a reasonable accommodation to obtain relief from a Zoning Code provision, regulation, policy, or condition which causes a barrier to equal opportunity for housing.

13-200.62 Reasonable accommodations – procedure.

(a) Application required. An application for a reasonable accommodation shall be filed and processed with the Planning Division. The application shall include the following information and be subject to the determinant factors required by this section.

(b) Submittal requirements. The application shall be made in writing, and shall include the following information:

1. The zoning code provision, regulation, policy, or condition from which accommodation is being requested;

2. The basis for the claim that the individuals are considered disabled under state or federal law, and why the accommodation is necessary to provide equal opportunity for housing and to make the specific housing available to the individuals;

3. Any other information that the director reasonably determines is necessary for evaluating the request for reasonable accommodation;

4. Documentation that the applicant is: (a) an individual with a disability; (b) applying on behalf of one or more individuals with a disability; or (c) a developer or provider of housing for one or more individuals with a disability;

5. The specific exception or modification to the Zoning Code provision, policy, or practices requested by the applicant;

6. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence;

7. Any other information that the Hearing Officer reasonably concludes is necessary to determine whether the findings required by Section (e) can be made, so long as any request for information regarding

the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected;

(c) Fees. No application fee is required.

(d) Director action. Within 60 days of receipt of a completed application, the director shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with this chapter. Any appeal to reasonable accommodation request denial or conditional approval shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for any other discretionary permit provided that, notwithstanding any other provision to the contrary, the standard of review on appeal shall not be *de novo* and the planning commission shall determine whether the findings made by the director are supported by substantial evidence presented during the evidentiary hearing. The planning commission, acting as the appellate body, may sustain, reverse or modify the decision of the director or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a *de novo* hearing.

(e) Grounds for reasonable accommodation. The following factors shall be considered in determining whether to grant a reasonable accommodation:

1. Special needs created by the disability;

2. Potential benefit that can be accomplished by the requested modification;

3. Potential impact on properties within the vicinity;

4. Physical attributes of the property and structures;

5. Alternative accommodations that may provide an equivalent level of benefit;

6. In the case of a determination involving a single family dwelling, whether the residents would constitute a single housekeeping unit;

7. Whether the requested accommodation would impose an undue financial or administrative burden on the City;

8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program;

9. Whether granting the request would be consistent with the City's General Plan; and,

10. The property will be used by an individual with disability protected under fair housing laws.

(f) Findings. The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval. In making these findings, the director may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.

2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.

3. The requested accommodation will not impose an undue financial or administrative burden on the city, as "undue financial or administrative burden" is defined in fair housing laws and interpretive case law.

4. The requested accommodation is consistent with the whether or not the residents would constitute a single housekeeping unit.

5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

6. Whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.

7. Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

8. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program.

(g) The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program.

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood.

2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

3. Whether granting the requested accommodation would substantially undermine any express purpose of either the city's General Plan or an applicable Specific Plan.

4. Whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

5. Any other factors that would cause a fundamental alteration in the City's zoning program, as may be defined in the Fair Housing Law.

13-200.63 Severability.

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

13-200.64 – 13.200.69 [Reserved.]

Section 4. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or

more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 6. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

Adopted this _____ day of _____, 2014

_____
Jim Righeimer, Mayor

DRAFT

ATTEST:

_____
Brenda Green
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF COSTA MESA)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2014, and thereafter at the regular meeting of said City Council duly held on the _____ day of _____, 2014, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Brenda Green
City Clerk of the City of Costa Mesa

DRAFT