

CC-3 ADDITIONAL DOCUMENTS

WARRANT INFORMATION					
Payment Ref.	Date	Remittance to:	Remittance ID:	Payment Amount	Explanation of payment
0192284	10/16/15	All City Management Services	0000009480	\$3,135.11	What do they do for us? What is this for? School Crossing Guard Services
0192467	10/23/15	Mitchell 1	0000011596	\$1,609.00	Online Vehicle Repair Database – What is this for? Online Vehicle Repair Tracking Software
0192488	10/23/15	Rotational Molding Inc.	0000021537	\$2,312.48	What is this for? Recycled Trash Receptacles for Bark Park

PH – 1

**2277 HARBOR
BOULEVARD –
MOTOR INN**

ADDITIONAL DOCUMENTS

These are my comments for the council meeting of 11-3-15 to be entered into the official record of the meeting.

I am writing concerning the decision to re-zone the area of the Costa Mesa Motor Inn to high density residential without providing permanent sustainable housing such as provided by Mercy House. I believe that the city must allow an entity such as Mercy House to establish permanent sustainable housing prior to re-zoning the motel.

Because many Costa Mesa Motor Inn residents do have jobs in Costa Mesa and their children attend school in the Newport Mesa district, I request a report from city staff as to where in Costa Mesa could these families rent with the \$5,000. reportedly planned to be given to the displaced residents by the motel owners. The staff report should identify the costs for renting a one (1) bedroom apartment to include the application fee, security deposit and the first and last month rent and then the number of months rent left in that \$5,000. We will find that \$5000. Is not a substitute for a process of learning to save and enabling a family to be ready for independent living through the programs of permanent , sustainable housing.

Margaret Mooney

Costa Mesa resident

MEJIA, JESSICA

Subject: FW: Don't forget, get rid of the Costa Mesa Motor Inn!

From: Jami JoAnne Russell [REDACTED]

Sent: Monday, November 02, 2015 6:26 PM

To: CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>

Subject: Don't forget, get rid of the Costa Mesa Motor Inn!

The place is a dangerous slum. You don't have 500+ 911 calls a year because you're safe. You don't have Yelp reviews mentioning RAPE and uncaring clerks because you're safe. It's a drug and prostitute infested dump filled with bedbugs, fleas, scabies, broken wiring, non-working smoke detectors. There are cheaper places to live right around the corner with kitchens people can use that \$5,000 to rent. Children deserve to grow up in a place with a kitchen where they can have a pet and their own room. Not 300 square feet with no privacy and a mattress filled with used heroin needles. Tear it down! Make Costa Mesa a little bit safer by forcing the drug addicts and hookers to move on.

--

~Jami JoAnne Russell~

[REDACTED]

MEJIA, JESSICA

Subject: FW: ATT City Clerk.....Please include in Council Packets

From: Lysa Ray [REDACTED]
Sent: Monday, November 02, 2015 6:47 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>
Subject: ATT City Clerk.....Please include in Council Packets

Dear Mayor Mensinger, Mayor Pro-Tem Righeimer and Councilmembers Monahan, Leece and Genis:

I am writing to express my emphatic support for Public hearing item #1, November 3, 2015 council meeting: GENERAL PLAN AMENDMENT GP-14-04/ REZONE R-14-04/ ZONING CODE AMENDMENT CO-14-02/ AND MASTER PLAN PA-14-27 FOR COSTA MESA APARTMENTS AT 2277 HARBOR BOULEVARD

Costa Mesa Motor Inn Zone Amendment & Master Plan...Group Home Multiple Family Zone Ordinance

This rezoning is crucial to not only rid our City of this blighted, outdated and problem motel but integral in helping the homeless families that are staying in this motel a chance to find true affordable housing with the help of the owners \$5000 relocation funds.

Please I urge your support on this important issue!

I thank you in advance,

Lysa Ray

47 year resident of Costa Mesa

MEJIA, JESSICA

Subject: FW: Attn: City Clerk: please place on Council Packet

From: Louise Rose [REDACTED]
Sent: Monday, November 02, 2015 7:00 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>
Subject: Attn: City Clerk: please place on Council Packet

Dear Council Members,

My name is Louise Rose, I live in CM. I have been a resident since 1969.

I am writing regarding my concerns about the rezoning of the CMMI property. My husband and I are 100% in favor of rezoning. We ask all 5 of you to please vote in favor of rezoning. CMMI is no longer being used as a Motel and hasn't been for some time. Many of it's residents are in danger living there. There are many drug abusers and people that commit crimes living there. I do feel for the families as wells as the seniors, disabled and veterans that are living there. It is my compassion for them that influences my decision to see the business closed. These people are living in roach and crime infested rooms. That is not a good situation. I personally know families and single residents. Some need to get out but haven't had the means. I also know of a couple of them that are complacent. They have the means but have become comfortable and fear change. As I said, I know them personally and believe the closing CMMI will be the best thing for many of the residents. It will force them take that next step they so desperately need.

I have so much more to say, but understand your time is limited.

Thank you,

Louise Rose

MEJIA, JESSICA

Subject: FW: Costa Mesa Motor Inn

-----Original Message-----

From: Diana [REDACTED]
Sent: Monday, November 02, 2015 8:06 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>
Subject: Costa Mesa Motor Inn

- > Attention City Clerk:
- >
- > Although I will not be able to attend the council meeting, please include my comments in the packet to the council.
- >
- > As a long term resident of Costa Mesa (over 40 years), I want to voice my support for the demolition of the Costa Mesa Motor Inn. Shopping on Harbor Blvd. nearby has become increasingly difficult due to the drug addicts that frequent the area.
- >
- > The city I love is becoming inundated with a criminal element that frequents these old hotels where they can pay weekly from the fruits of their thefts or begging.
- >
- > I hope after this hotel, the hotels on Newport Blvd. are addressed as well.
- >
- > Thank you,
- > Diana Olson
- >

CITY OF COSTA MESA AFFORDABLE RENTAL HOUSING

NAME	CITY	ADDRESS	ZIP	TYPE OF UNITS	#UNITS AFFORDABLE	TOTAL # OF UNITS
Camden Martinique	Costa Mesa	2855 Pinecreek	92626	Family Studio, 1 & 2 Bedroom	144	714
Camden Sea Palms Apartments	Costa Mesa	1850 Whittier Ave.	92627	Family 1 & 2 Bedroom	28	138
Canyon Crest Townhomes	Costa Mesa	2178 Canyon Dr.	92627	Family 2 & 3 Bedroom	4	17
Canyon Palms	Costa Mesa	2230 Canyon Dr.	92627	Family 2 Bedroom	2	7
Casa Bella	Costa Mesa	1844 Park Ave.	92627	Senior 62+ & Mobility Impaired 1-Bedroom	75	75
Civic Center Barrio Housing	Costa Mesa	Multiple Locations 721,717, 734, 740, & 744 James St. 745 W. 18th St. 707 & 711 W. 18th St.	92627	Family 1 & 2 Bedroom	30	30
Costa Mesa Family Village	Costa Mesa	1981 Wallace Ave. 1924 Wallace Ave. 2015 Pomona Ave.	92627	Family 2 & 3 Bedroom	72	72
Costa Mesa Village	Costa Mesa	2460 Newport Blvd.	92627	Studios	96	96
Hamilton Park	Costa Mesa	419-423 Hamilton St.	92627	Family 2 & 3 Bedroom	3	9
Hamilton Terrace	Costa Mesa	439 Hamilton St.	92627	Family 2 & 3 Bedroom	3	9
Mesa Breeze Apartments	Costa Mesa	867 W. 19 th St.	92627	Family 10 - 1 Bedroom 5 - 2 Bedroom	15	62
Park Place Village	Costa Mesa	1662 Newport Blvd.	92627	SRO Studios	60	60
Pomona Townhome Apartments	Costa Mesa	1985 Pomona Ave.	92627	Family 1, 2 & 3 Bedroom	4	22
South Court Apartments	Costa Mesa	736 Baker St.	92627	Family 2 Bedroom	5	24
South Coast Paularino	Costa Mesa	801 Paularino Ave.	92626	Family 1 & 2 Bedroom	10	46
St. John's Manor	Costa Mesa	2031 Orange Ave.	92627	Senior 62+ & Mobility Impaired 1 Bedroom	36	36
The Tower on 19th	Costa Mesa	678 W. 19th St.	92627	Senior 2+ Studio, 1 & 2 Bedroom	270	270

NAME	CITY	ADDRESS	ZIP	TYPE OF UNITS	#UNITS AFFORDABLE	TOTAL # OF UNITS
Wallace Court	Costa Mesa	1955 Wallace Ave.	92627	Family 2 & 3 Bedroom	5	22
No Name Provided	Costa Mesa	863 Center St.	92627	Family Studio 1 & 2 Bedroom	2	18
No Name Provided	Costa Mesa	2038 Maple St.	92627	Family 2 Bedroom	1	
No Name Provided	Costa Mesa	2241 Pomona Ave.	92627	Family 1 & 2 Bedroom	2	9
No Name Provided	Costa Mesa	650 W. 18th St.	92627	Family 2 Bedroom	2	8
No Name Provided	Costa Mesa	685 W. 18th St.	92627	Family 1 Bedroom	5	5
No Name Provided	Costa Mesa	2278 Newport	92627	Studios	7	11
No Name Provided	Costa Mesa	1980 – 1984 Anaheim	92627	1 Bedroom	1	10
No Name Provided	Costa Mesa	1301 Baker	92626	1 Bedroom	1	8
Bernard Apartments	Costa Mesa	514 Bernard	92627	2 Bedroom	3	14
No Name Provided	Costa Mesa	2225 Canyon	92627	2 Bedroom	2	6
No Name Provided	Costa Mesa	394 – 396 Hamilton	92627	2 Bedroom	1	6
No Name Provided	Costa Mesa	580 Hamilton	92627	2 & 3 Bedroom	3	9
No Name Provided	Costa Mesa	584 Hamilton	92627	2 & 3 Bedroom	3	9
Hamilton Court	Costa Mesa	690 Hamilton	92627	2 Bedroom	6	6
Silverado Pines	Costa Mesa	2567 Orange	92627	3 Bedroom	3	9
South Coast Fountains	Costa Mesa	739 Paularino	92626	1 & 2 Bedroom	10	50
Victoria Oaks	Costa Mesa	817 Victoria	92627	2 Bedroom	4	16
No Name Provided	Costa Mesa	2175 Maple/596 Victoria	92627	2 Bedroom	4	20
Newport Senior Village	Costa Mesa	2080 Newport	92627	Studios	71	91

NAME	CITY	ADDRESS	ZIP	TYPE OF UNITS	#UNITS AFFORDABLE	TOTAL # OF UNITS
Harbor Village	Costa Mesa	2051 Harbor Bl.	92626	Unknown	550	550

Updated 11.3.15

MEJIA, JESSICA

Subject: FW: Att City Clerk, please include in the Council Packet

From: dan hartloff [mailto:
Sent: Tuesday, November 03, 2015 11:49 AM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>
Subject: Att City Clerk, please include in the Council Packet

Dear Costa Mesa City Council:

I support the rezoning of the property where currently the Costa Mesa Motor Inn is operating and replacing with new apartments or other facilities that improve our city.

Regards-

Dan Hartloff


Costa Mesa, 92626

MEJIA, JESSICA

Subject: FW: Costa Mesa Motor Inn - Tonight's Agenda

From: McCARTHY, KERRY [REDACTED]
Sent: Tuesday, November 03, 2015 1:09 PM
To: GREEN, BRENDA <brenda.green@costamesaca.gov>
Subject: Costa Mesa Motor Inn - Tonight's Agenda

Dear City Council Members,
I fully support the conversion of the Costa Mesa Motor Inn. I see this as a significant improvement for Costa Mesa residents.

It is a fair plan that balances the interests of the owner, residents and current tenants.

I encourage the Council to listen to the residents who have been complaining about this property for years and approve the proposed conversion plan.

Thank you for your time.
Kerry McCarthy
Costa Mesa Resident
[REDACTED]

November 3, 2015

**VIA MESSENGER
AND E-MAIL**

Honorable Stephen Mensinger, Mayor, and
Members of the Costa Mesa City Council
c/o City Clerk's Office
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

**Re: City Council Agenda Item for November 3, 2015, Public Hearing No. 1, re:
224-Unit Luxury Apartment Complex at 2277 Harbor Blvd.**

Dear Mayor Mensinger and Members of the City Council:

We are writing on behalf of our clients, Phil Luchesi and his company, Luchesi Enterprises. Luchesi Enterprises owns Pals Vacuum Sewing Center, and Mr. Luchesi owns the underlying property on which this business is operated, located at 2299 Harbor Boulevard. Mr. Luchesi's property is located immediately adjacent to the proposed 224-unit luxury-apartment project that is on the City Council's agenda for its meeting of November 3, 2015, as item PH-1 (the "Project"). While Mr. Luchesi is generally supportive of the Project, he did raise valid concerns regarding the potential impact of the Project on cellular towers located on his property. (A copy of our October 12, 2015 letter to the Planning Commission on his behalf is attached hereto as Exhibit A.) Because those concerns were not addressed by the Commission, we are writing to reiterate them here, and to also outline the myriad legal infirmities associated with the City's approval of the Project.

As you know, the Project proposes a General Plan amendment and a rezoning of the 4.15-acre Project site to accommodate 224 multi-family residential units. The Project would be built at a density of over 2.5 times that specified for high-density residential development in the City's current General Plan and Zoning Ordinance ("ZO"). It would also be built to a height of 60 feet, including a 5-story garage, which is taller than the 4-story height-limit currently imposed by the General Plan. By comparison, Pals Vacuum Sewing Center, a long-time City business, is a small, single-story building, approximately 2,500-square-feet in size, located on an approximately 11,000-square-foot lot.

Mr. Luchesi leases portions of his property to five mobile-service providers, each of which has erected a separate cellular tower—approximately 60 feet in height—near the common boundary with the Project site. Mr. Luchesi is legitimately concerned that the proposed Project—with a building height of up to 60 feet (which is twice the height allowed under the site's current zoning designation)—could interfere with cellular reception and thereby compromise the

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substantial private and public value associated with the cellular towers. The City staff and Planning Commission dismissed these concerns as a private matter not within the City's jurisdiction. *See* October 23, 2015 City Council Agenda Report for the Project (hereinafter referred to as the "Staff Report"). However, the entitlements granted by the City are the cause of the concern and potential impact. ***Indeed, a qualified consultant has given his preliminary opinion that the Project buildings may adversely impact cellular transmission by as much as 30 percent or more.***¹ Thus, this is a City matter, and Mr. Luchesi respectfully asks the City Council to impose certain conditions on the Project to address his concerns.

First, prior to any approval of the Project, a qualified consultant should prepare a report analyzing the potential impacts of the Project on the adjacent cellular antennas, and the Project buildings should be modified as needed to eliminate any actual or potential risk of interference with the equipment demonstrated by this report. Second, ***the Project proponent should be required to indemnify Mr. Luchesi and his tenants, and their collective successors, against any damage to, or interference with, to the cellular equipment or their signals that is directly or indirectly attributable to the Project.*** Third, the developer should be required to provide appropriate notices to new residents informing them of the nearby cellular equipment, and should require the Project's residents (on behalf of themselves and their successors) to release Mr. Luchesi and his lessees, and their successors, from any claim of damages related to the cellular equipment.

We would also like to ensure that the Project will not result in any other adverse impacts to Mr. Luchesi's property, particularly with respect to drainage, traffic, and parking. Please ensure that adequate conditions are imposed to ensure that the Project runoff does not discharge onto neighboring properties, and that the proposed off-site median and related traffic improvements do not adversely impact access to our clients' property. The traffic study suggests that the Project will only provide 13 guest parking spaces. Our clients do not believe that this number of spaces is sufficient for 224 residential units and is concerned that guests will end up parking on his property as a result. Please require the developer to provide the number of guest spaces required by the City Code. Mr. Luchesi would also like the opportunity to review and comment on the design and height of the proposed block wall to be installed by the Project proponent between the two sites.

¹ As a result of this interference, the City's approval of the Project may be preempted by federal law. The Response to Comments ("RTC") for the Project correctly notes that federal law "generally preempts local land use authority regarding the placement of, or potential interference with cellular communications." (RTC, p. 8; 42 U.S.C. §§ 253(a), 332(c)(7)). In other words, the City lacks authority under its police powers to approve a project that would potentially interfere with cellular communications. To the extent the City acts in disregard of this limit, it would be acting contrary to federal law.

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We think the above requests are reasonable and can be validly imposed as conditions on the Project, especially given that new development in the City must be designed so as to “not adversely impact surrounding developments,” as well as to protect the “integrity of neighboring development.” (General Plan, Policy LU-1C.1; ZO § 13-29(g)(5).)² In our October 12, 2015 letter to the Planning Commission, we noted that we had additional concerns regarding the City’s proposed approval of the Project entitlements that we would raise in a separate detailed letter to the City. Because our clients’ concerns have not been addressed, we write now to outline the numerous legal infirmities associated with the Project.

In summary, we believe that the Project cannot legally be approved by the City because it (1) constitutes impermissible spot zoning, (2) conflicts with State and local laws regarding density bonuses, (3) is inconsistent with the City’s General Plan, (4) is not supported by the findings and/or substantial evidence, (5) is based on a mitigated negative declaration (“MND”) that fails to comply with CEQA, and (6) would result in the deprivation of numerous constitutional rights, including the taking of private property without the payment of just compensation. That said, depending upon the resolution of our clients’ primary concerns set forth above, our clients are prepared to refrain from bringing any legal challenge against the Project.

1. Approval of the Project would constitute impermissible spot zoning.

By allowing the Project to have a density of 54 units per acre (over 2.5 times the City’s density limit of 20 units per acre) and a height of five stories (when General Plan Policy LU-1C.2 plainly limits heights to four stories), the City is impermissibly spot zoning the Project site.³ While such zoning may be allowed in extraordinary cases to achieve an important public interest,⁴ there is nothing that would justify such preferential zoning treatment here. Moreover, such zoning would violate the uniformity requirement of the Planning & Zoning Law. (Gov. Code § 65852 [requiring zoning regulations to be “uniform for each class or kind of building or use of land throughout each zone”]; *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 [struck down agency’s granting of ad hoc exception to zoning regulations benefitting single property owner].)

² See also, General Plan Policy LU-IF.5 (requiring compatibility between new uses and existing uses); accord Policy HOU-3.2 and ZO § 13-29(e)(1).

³ The proposed resolution approving the General Plan amendment for the Project acknowledges that it provides “site-specific height and density for the development site” (Attachment 5 to the Staff Report.)

⁴ For instance, in *Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, the Court of Appeal found that the County’s application of a new senior residential housing zone to a project site was not impermissible spot zoning in light of a demonstrated need for additional senior housing units.

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In *Foothill Communities Coalition, supra*, the Fourth District Court of Appeal expressly rejected the claim made in the Response to Comments on the MND document (“RTC”) that spot zoning occurs only where a parcel is subject to *more* restrictive zoning than surrounding properties. (RTC, p. 7.) In *Foothill Communities Coalition*, the court held that “the creation of an island of property with *less* restrictive zoning in the middle of properties with more restrictive zoning is spot zoning.” (222 Cal.App.4th at p. 1314 [emphasis added].)⁵ The court further noted that “where spot zoning favors the owner of the spot by loosening the zoning restrictions that continue to apply to the surrounding property owners, those surrounding property owners have standing to challenge the zoning change.” (222 Cal.App.4th at p. 1312, fn. 5.)

2. The proposed density bonus is not consistent with State or local law.

Under California law, a project that proposes to provide units affordable to moderate-income households cannot qualify for a density bonus unless the units in the project consist of for-sale housing. (Gov. Code § 65915(b)(1)(D).) While the Project proposes to set aside 20 units for moderate-income households, because it is a rental-only project, it does not qualify for any density bonus at all. Moreover, even assuming it did qualify for a bonus, based on the number of moderate-income units proposed, it would be entitled, at most, ***to only a five-percent bonus*** above that allowed under current zoning. (Gov. Code § 65915(f).)

In this regard, the City’s Planned Development High Density Residential zoning district (to which the City proposed to re-zone the property) would allow a maximum of only 20 units per acre, or 83 units on the site, and the ZO indicates that a density bonus can be granted only up to this maximum amount. (ZO, Table 13-58; ZO § 13-58(b).) Thus, even assuming the density bonus applies to the all-rental Project, and the developer could get more than 83 units, at most, ***the Project would qualify for only four additional units***. (Gov. Code § 65915(f).) However, the Project actually proposes ***141 additional units, or a density bonus of 170 percent***. In light of this proposed density bonus, the City should ask what community or public benefits justify it, as well as what precedent it establishes for future City action.⁶ From our view, the Project consists of

⁵ *Accord, Foothill Communities Coalition*, 222 Cal.App.4th at p. 1307 (“spot zoning may occur whether a small parcel of property is subject to *more or less restrictive* zoning than the surrounding properties.”) (emphasis in the original).

⁶ As you know, the City is currently in the process of updating its General Plan. Under the proposed Residential Overlay designation, densities above 20 units per acre, *to a maximum of 40 units per acre*, can only be attained with the provision of significant community benefits or amenities.

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luxury apartments with few, if any, public benefits. Moreover, it would displace affordable housing for at least 66 long-term residents and possibly many others.⁷

The City claims it is somehow not providing a “density bonus” to the developer, but the facts show otherwise. Under the current General Plan and ZO, only 83 units would be allowed on the site, or 20 units per acre. However, the Project proposes 224 units, or 54 units per acre. Meanwhile, the developer itself describes the added density as a “bonus,” references the State Density Bonus Law, and claims that the units affordable to moderate-income households justify the increased density to 54 units per acre. (July 6, 2015 letter from Donald Lamm to the Planning Commission.) City staff refers to this increased density as a “development incentive” and claims that the increased density is needed to make the Project financially feasible. The reality is that the increased density is a density bonus that fails to comply with either State or local law.

3. The Project, including its height and density, is inconsistent with the General Plan.

The City cannot lawfully approve a project that is inconsistent with its General Plan. (Gov. Code § 65860(a); *Leshar Communications v. City of Walnut Creek* (1990) 52 Cal.3d 531.) The Project is inconsistent with certain key elements of the City’s General Plan.

First, the General Plan Land Use Element limits residential density for the proposed land use designation (High Density Residential) to 20 units per acre.⁸ (Table LU-1; General Plan, p. LU-26.) However, the Project proposes a density of 54 units per acre. Second, General Plan Policy LU-1C.2 limits building height on the site and surrounding area to 4 stories. However, the Project proposes a 5-story parking structure to accommodate the proposed Project density and avoid the cost of undergrounding a level of parking. Third, other policies in the General Plan stress the need for residential development to be compatible in scale and character with existing buildings and neighborhoods. (General Plan Policies CD-7A.1 and CD-7A.2.⁹) However, here the scale and character of the Project is not compatible with the scale of nearby residential and commercial uses, which consist entirely of low-density, one-story and two-story developments. As noted by Cynthia

⁷ For instance, in its October 10, 2015 letter to the City, the Costa Mesa Affordable Housing Coalition notes that over 150 people currently live on the site. The developer itself acknowledges that the current use is affordable, as it does not require annual leases, good credit, first month’s rent, or a security deposit. (July 6, 2015 letter from Donald Lamm to the Planning Commission, provided as Attachment 3 to the Staff Report.)

⁸ The only way to exceed this density is through a specific plan. (ZO § 13-20(p).) However, the proposed Project entitlements do not include a specific plan.

⁹ *Accord*, ZO §§ 13-29(e), 13-31(d). Even the MND admits the Project would be “dissimilar in scale to the site’s surroundings.” (MND, p. 39.)

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McDonald, Vice Chair of the City’s Bikeway and Walkability Committee, in her October 12, 2015 e-mail to City staff, the Project “is out of scale with the surrounding community, and should be significantly reduced in physical size and quantity of units . . .”

The General Plan also stresses the need for a balance of land uses, emphasizing the necessity of preserving commercial lands while providing low-density, owner-occupied housing. (General Plan, Goal LU-1; Objectives LU-1A, LU-1B; and Policies LU-1A.1, LU-1A.4, LU-1B.1, GM-1A.1.) The Plan also notes the need to provide a range of housing choices for all social and economic segments of the community. (Goals HOU-2 and HOU-3.) The Project site is located in the Harbor Boulevard commercial district—a district that encompasses almost one-third of the City’s commercial land and is responsible for approximately 40 percent of the City’s retail sales. (General Plan, p. LU-7.) Thus, in contravention of the above goals and policies, the Project would displace affordable housing with a self-described luxury apartment complex and permanently remove a valuable piece of commercially-zoned property from an important retail corridor.

Moreover, if approved prior to November 30, 2015, the Project proponent will pay zero fees to offset the increased impact on parks caused by the estimated additional 587 residents. (MND, pp. 120, 128.) If approved on or after that date, the Project proponent would pay approximately \$1.1 million in park-impact fees. Also, because the traffic fees were only calculated on the supposed net trips generated by the Project, the Project proponent will only pay \$41,992 in traffic fees instead of approximately \$270,000, which would have been the fee had it been imposed on all trips associated with the Project. Such fee waivers conflict with key policies of the City’s General Plan (*e.g.*, General Plan, Policies OSR-1A.1, CD-5.5, CIR-2D.3) and may well subject the Project to prevailing wages and/or constitute an improper gift of public funds.¹⁰

4. The City has failed to make necessary findings, and the findings it does purport to make are not supported by substantial evidence.

The City has not considered all of the applicable review criteria specified in the ZO or made all of the necessary findings to support approval of the Project. (ZO § 13-29(e), (g); ZO § 13-55.) For instance, the proposed findings do not address consistency with the density bonus law, affordable multi-family housing developments, or the potential precedent-setting nature of the Project. (ZO § 13-29(e)(5); ZO § 13-29(g)(3), (5).) The findings likewise do not address the findings necessary for a rezoning, variance, or common interest development conversion, all of which are implicated by the Project. (ZO §§ 13-29(g)(1), (10), (11).)

¹⁰ See, *e.g.*, Labor Code § 1771 and Blue Diamond Agricultural Processing Facility, City of Turlock (Public Works Case 2011-033); see also, Cal. Con., art. XVI, sec. 6; *Allen v Hussey* (1950) 101 CA2d 457, 473; and *County of Alameda v Janssen* (1940) 16 Cal. 2d 276, 281.

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Meanwhile, the findings the City does purport to make are not supported by substantial evidence, as required. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) As noted above, the Project is not consistent with the General Plan goals and policies, and conflicts with the density bonus law. Moreover, the findings claim that the Project “will be compatible and harmonious with uses that exist within the general neighborhood,” and “protect[] the integrity of neighboring development.” Those statements are not supported by any evidence, ***and are belied by the above-referenced fact that the Project could substantially interfere with the cellular equipment on Mr. Luchesi’s property.***

The findings also claim that the proposed 170-percent density bonus is needed in order to “make it financially feasible for the owner to redevelop the site.” However, the only purported “evidence” to support this finding is the developer’s statement to that effect. There is no economic study or other evidence showing that allowing density and height far in excess of that permitted by the General Plan and ZO is needed to provide a financially feasible project. Indeed, by assuming full occupancy in its analysis of key environmental topics, the City’s MND for the Project implicitly recognizes that the current motel use ***is*** a financially viable use of the property.

The findings further state that the Project provides a public benefit by replacing a non-conforming use that has served as a long-time nuisance property with a modern, high-quality residential apartment building. However, while the use of motel rooms for long-term residential use may be a non-conforming use, the motel use itself is not. (ZO, Table 13-30.) Moreover, the number of calls for police and fire service is not provided, nor is there any indication of how this number of calls relates to the number of calls citywide for comparable uses.

The findings also note that the “cumulative effect of all the planning applications has been considered.” However, as explained more fully in Section 5 below, the MND contains no analysis of cumulative impacts other than a cursory analysis of 2018 traffic impacts. The findings claim that the Project meets the parking requirements of the Code, but there is no table or chart demonstrating compliance with the ZO. Contrary to ZO Table 13-85, the Project would only provide 13 guest spaces for the 224 units.¹¹ Further, and contrary to the findings and CEQA, mitigation measures have not been imposed to avoid or lessen impacts to the extent feasible.¹²

¹¹ Table 12-1 of the Traffic Study indicates the need for 69 guest spaces per Code and a credit of 56 spaces for covered spaces. This credit is not explained in this table, which is buried in Appendix G to the MND.

¹² The findings indicate that such measures have been imposed to reduce impacts to the “fullest extent reasonable and practicable.” However, CEQA plainly requires that mitigation measures be imposed to lessen significant impacts to the extent *feasible*—*i.e.*, to the extent capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors. (Public Resources Code [“PRC”] §§

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5. The MND fails to comply with CEQA.

The MND does not thoroughly or adequately address the Project's significant environmental impacts and accordingly fails to provide substantial evidence to support a finding that all impacts have been reduced to a less-than-significant level. (PRC § 21064.5.)

First, the Project is inconsistently described throughout the MND, making the resulting analysis flawed and inadequate. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) For instance, the MND incorrectly specifies the maximum building height as 50 feet instead of 60 feet. (MND, pp. 1, 8.)¹³ It also states that construction activities will take approximately two years, but then later claims construction will be completed in as little as 9 months. (MND, pp. 10, 58.) In the analysis of hazards and noise impacts, the MND inconsistently reports the distance between the Project site and John Wayne Airport. (MND, pp. 84, 119.) It also reports varying amounts of Project open-space and landscaping features, thereby potentially skewing the storm water analysis. (MND, pp. 87, 128, 130.) The traffic analysis likewise contains inconsistent information regarding the amount of average daily trips. (MND, pp. 133, 137.)

In terms of aesthetics, the MND claims that Mr. Luchesi's property (the Pals Vacuum and Sewing site) will be subject to increased shade/shadow due to the Project, but fails to apply a threshold to determine whether this is significant. Instead, the MND simply asserts that this impact is "negligible" on the ground that it impacts only a small corner of the property's parking lot during the summer solstice. (MND, p. 40; MND, Appendix A, p. 1.) However, the MND neglects to mention the rather substantial increase in shade/shadow on the Pals site during the winter solstice. (*See* MND, Appendix A, Sheets SR.06, SR.08, and SR.09.) ***The MND itself thus provides substantial evidence of a fair argument of a significant environmental impact, but fails to acknowledge or address that impact.*** An environmental impact report ("EIR") must accordingly be prepared. (PRC § 21080(d); *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.)

In regard to air quality, although the high-density residential Project is inconsistent with the regional Air Quality Management Plan ("AQMP") (which assumed a low density commercial use on the site), the MND nonetheless claims that the Project is consistent with the AQMP. Compared to a shopping center with 8.9-million annual vehicle miles traveled ("VMT"), the MND claims that the Project's 5-million annual VMT is substantially less. (MND, p. 47.) The problem with that

21002, 21061.1.) In the context of a MND, such measures must avoid or mitigate effects to a point "where clearly no significant effect on the environment would occur" (PRC § 21064.5.) As explained below, the Project MND falls far short of those legal marks.

¹³ While the Staff Report is replete with references to the Project's proposed 60 foot height, the RTC persists in incorrectly claiming that the Project is only 46-50 feet in height. (RTC, pp. 6, 8.)

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conclusion is that there is no shopping center on the site. The Project's VMT needs to be compared to actual, on-the-ground conditions and not some theoretical plan condition. (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350.) In addition, the MND does not contain a health-risk assessment to verify that construction emissions will not result in any significant adverse health impacts to nearby sensitive receptors.

Furthermore, the MND's analysis of greenhouse gas ("GHG") emissions contains no discussion of the Project's consistency with the State's goal of reducing GHG levels by 80 percent below 1990 levels by 2050. Moreover, construction emissions will not be amortized over 30 years as stated. (MND, p. 77.) Instead, per the MND, they will occur over, at most, a two-year period. The MND claims the Project "will contribute to achieving SB 375 regional targets," but fails to specify how or why this is the case. (MND, p. 79.)

The MND notes that the Project site is located within Federal Aviation Regulation (FAR) Part 77 Notification Area for John Wayne Airport, and within the Airport Environs Land Use Plan Height Restriction Zone. (MND, p. 84.) The MND explains that this notification allows the Federal Aviation Administration ("FAA") to "identify potential aeronautical hazards *in advance* to prevent or minimize the adverse impacts to the safe and efficient use of navigable air space," and that the Project proponent would be required to contact the FAA for project review. (*Id.*) However, no **condition** has been imposed to require this consultation. More fundamentally, any such consultation would only occur *after* the City has already approved the Project at its proposed maximum height of 60 feet.¹⁴ As noted by the Airport Land Use Commission ("ALUC") in its comment letter on the MND, however, FAA review should occur *before* the City acts on the Project. In fact, ***review by the ALUC prior to approval of the Project is actually required by law.***¹⁵ The RTC nonetheless states that "the City Council hearing is scheduled for November 4, 2015 (sic), making a prior decision by the ALUC infeasible." (RTC, p. 6.) The reality is that there is nothing about the proposed hearing schedule that makes prior referral to the ALUC and FAA infeasible. The City should take no further action on the Project until it has received feedback from these entities as required by law.

¹⁴ Thus, the MND is wrong in stating that "[u]pon approval, project implementation would not result in an airport-related safety hazard for people residing or working at the proposed residential development." (MND, p. 84.) This statement is not known and cannot be known until the ALUC and the FAA review and approve the Project.

¹⁵ See Public Utilities Code § 21676(b) ("Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission . . . ***the local agency shall first refer the proposed action to the [ALUC].***") (emphasis added).

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As to land use, the MND contains no analysis of the Project's consistency with plan policies adopted for the purpose of avoiding or mitigating significant environmental impacts, as required by CEQA. (CEQA Guidelines, Appendix G, Section X(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.) Instead, the MND only considers a smaller subset of land-use-related goals and objectives. (MND, pp. 100, 103.) It also references traffic volumes of an entirely different project. (See MND, p. 103 ["The proposed residential project would reduce traffic volumes on Victoria Avenue as compared with the existing commercial office use"].)

In addition, the MND claims that construction noise impacts will be reduced to a less-than-significant level through adherence to specified construction hours and the taking of certain minimally required actions to reduce construction noise. (MND, pp. 108-113.) However, there is no evidence, let alone substantial evidence (as is required), that these measures will reduce construction noise levels (estimated to be as higher than 90 dBA) to at or less than the City's 55 dBA standard for residential uses. The MND also references and relies on a noise table (Table 14) that is not provided. (MND, p. 118.)

Commenters have raised substantial evidence of a fair argument that the Project may result in significant impacts in regards to population and housing. For instance, in its comment letter, the Public Law Center observes that the displacement of low-income residents by the Project will have a significant impact that requires the construction of replacement housing elsewhere. The Costa Mesa Affordable Housing Coalition likewise states that the Project will displace substantial numbers of existing housing and persons. Along those lines, it notes that over 150 people currently live on the site, and that the proposed Project includes zero units affordable to those residents. Instead of analyzing the potential impacts of replacement housing, as required, the RTC argues that the units are not really housing and are not needed in light of the City's Regional Housing Needs Allocation. (RTC, p. 4.)¹⁶ This does not represent an honest or forthright analysis of environmental impacts as required by CEQA.

Notably, while the existing motel appears to have been two-thirds occupied when traffic counts were conducted in March 2015, the MND nonetheless assumed that it was fully occupied. (MND, pp. 132-133.) ***This is not an accurate reflection of the existing, on-the-ground physical conditions, as required by CEQA.*** (CEQA Guidelines § 15125; *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.) Moreover, due to the motel's fluctuating occupancy, the MND should have considered a range of recent historical occupancies to provide a more accurate picture of existing environment conditions. (See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 and *Save*

¹⁶ While Standard Condition ("SC") 4.13-1 requires the hiring of a relocation consultant, the RTC nonetheless contends that the applicant has "volunteered" to provide this assistance. (RTC, p. 4.)

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Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99.) By assuming trips that do not currently exist, the resulting environmental analysis is flawed. This significant defect permeates the MND, skewing all of the ensuing analysis, including traffic, air quality, GHG emissions, water supply, and noise.

In regard to traffic specifically, the MND only examines two intersections located in close proximity to the Project site. No explanation is provided as to why a normal range of intersections was not studied, especially for a project of this size, nor is any rationale given for ignoring roadway and freeway segments. A more comprehensive effort should have been made to analyze this key topic, especially given that the Project consists of 224 units with nearly 1,500 average daily trips. The EIR also fails to analyze the significant impacts of traffic intrusion on neighborhood streets or to impose mitigation (such as traffic calming measures) to address those impacts.

Furthermore, the MND's conclusion that there are sufficient supplies to meet the Project's water demand is based on Mesa Water's 2010 Urban Water Management Plan ("UWMP"). (MND, pp. 91, 142-143.) However, the UWMP was prepared prior to the current severe drought and assumed a low-density commercial development on the site, not the proposed high-density residential use. In fact, Mesa Water itself submitted a comment letter indicating that the MND's information regarding water supplies and demands was "outdated or incorrect." The comment letter also stressed the need for a hydraulic study to determine whether the Project necessitates the expansion of existing facilities. That analysis must be done now, not later (as is proposed by SC 4.9-2 and SC 4.9-4), so that the impacts of any needed improvements are not impermissibly segmented, and mitigation measures are not impermissibly deferred.¹⁷

Moreover, the comments regarding water supply infrastructure apply with equal force to the need for additional sewer infrastructure. The MND notes that the existing sewer main does not have the capacity to handle unplanned flows, and that a sewer study should be done to assess necessary improvements. (MND, pp. 141, 143-144.) The failure to study this topic now constitutes improper segmentation of Project impacts and improper deferral of mitigation. (*See, e.g.*, MND, p. 144 [identifying the impact as significant, but imposing no mitigation measures to ensure that it is reduced to a less than significant level].) The analysis must be done now and included in an environmental document circulated for public review and comment before the City can lawfully take action on the Project.

In addition, contrary to the requirements of CEQA, the MND contains no analysis of cumulative impacts other than a cursory analysis of 2018 traffic impacts. Despite the lack of

¹⁷ The MND's conclusion that the Project will not be subject to any significant flooding risk appears to be based on a flood-improvement project known as the Santa Ana River Mainstream project, which has not yet completed construction. (MND, p. 94.)

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analysis, the MND claims that “the project would not result in any significant impacts that would substantially combine with impacts of other current or probable future impacts.” (MND, p. 150.)¹⁸ The MND’s conclusion in this regard is devoid of any analysis and is not supported by substantial evidence.

Furthermore, the MND improperly defers consideration of mitigation for impacts to the future without any clear commitment to mitigate or standards to guide mitigation of the impacts, as required by CEQA Guidelines § 15126.4 and supporting case law.¹⁹ Examples of measures deferring mitigation include: SC 4.1-1, 4.4-1, 4.6-2, 4.6-3, 4.6-4, 4.9-1, 4.9-2. SC 4.9-4, SC 4.16-2, SC 4.17-1 *et seq.*²⁰ Meanwhile, other measures are not really mitigation measures at all *since they do not constitute binding commitments to avoid or substantially lessen significant impacts to less than significant levels.* (CEQA Guidelines § 15126.4(a)(2).) Examples of such measures include: MM AQ-2, MM HAZ-1, MM NOI-1.

Finally, as documented above, the RTC does not reflect an accurate or good faith effort to respond to comments received on the MND. Comments by Mr. Luchesi and other interested parties, including the ALUC, the Mesa Water District, and affordable housing organizations, are largely ignored or dismissed. This is evident by the fact that despite the submission of 30 separate comments, the RTC proposes changing a mere two sentences of text in the MND.

As a result of the flawed MND analysis (including the RTC), the proposed finding that the Project will not result in any significant environmental impacts is not supported by substantial evidence.

6. Approval of the Project would result in a compensable taking of Mr. Luchesi’s property.

The Takings Clause of the Fifth Amendment to the United States Constitution guarantees that private property shall not “be taken for public use, without just compensation.” Article I, section 19 of the California Constitution also provides that “[p]rivate property may be taken or

¹⁸ This statement is belied by the previous page of the MND, wherein the box is checked indicating that cumulative impacts would only be less than significant with mitigation incorporated.

¹⁹ See, e.g., *Sacramento Old City Ass’n v. City Council* (1991) 229 Cal.App.3d 1011; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261; and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.

²⁰ Because these standard conditions were relied upon for the MND’s conclusion that impacts would be less than significant, the same prohibition on deferral of mitigation would apply to them.

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damaged for public use only when just compensation . . . has first been paid to . . . the owner.” A land use regulation effects an impermissible taking of property if it deprives an owner of all economically beneficial or productive use of his land (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003) or conflicts with an owners distinct investment-backed expectations (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104); causes the owner to suffer a permanent physical invasion of his property (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419); or imposes an exaction in violation of the “essential nexus” and “rough proportionality” standards respectfully set forth in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374.

A land-use regulation that deprives the owner of substantially all economically beneficial or productive use of his land constitutes a taking. (*Lucas v. South Carolina Coastal Council, supra* [property owner entitled to compensation for regulations precluding development of two beachfront lots, thereby depriving owner of all economic use of his property].) In addition, courts have recognized that land-use regulations that take all economically viable use of only a portion of private property can also constitute a taking. (*Twain Harte Associates, Ltd. v. County of Tuolumne* (1990) 217 Cal.App.3d 71; *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175.)

It appears that the Project would substantially interfere with the cellular antennas located on Mr. Luchesi’s property, thus denying Mr. Luchesi all economically viable use of that portion of his land. The City would thus have to pay just compensation (*i.e.*, the fair market value of the property based on its current use) to Mr. Luchesi if it were to approve the Project.

A regulation may affect a taking even though it leaves the property owner *some* economically beneficial use of his property. (*Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 774.) In order to determine whether a taking has occurred when the economic impact is less than total, a reviewing court looks to three factors in particular: (i) the economic impact of the regulation on the owner, (ii) the extent to which the regulation interferes with the property owner’s distinct investment-backed expectations as to the use of its property, and (iii) the character of the governmental action. (*Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124.) In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 618, the U.S. Supreme Court emphasized that the above factors are to be considered and applied in light of the “purpose of the Takings Clause, which is to prevent the Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

As explained above, the Project would likely deny *all* economically viable use of the portion of Mr. Luchesi’s property devoted to the cellular antennas and equipment. Moreover, even assuming some economic use of this portion of the property remained, it would not be sufficient to shield the City from takings liability based upon the *Penn Central* factors. At the very least, if

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approved, the Project would likely substantially diminish the economic value of this property. Thus, the economic impact of the Project is great. As to Mr. Luchesi's investment-backed expectations, he purchased the property for fair market value based on the height and density limits controlling his and the neighboring land. ***Based on these limits, he entered into leases with mobile carriers who improved the land with the cellular antennas and equipment that provide a substantial source of income to Mr. Luchesi.*** The Project would substantially burden use of the property for this economically viable use and thus annihilate Mr. Luchesi's investment-backed expectations with respect to the use of his land. Finally, the City's assertion that allowing building heights that are twice that allowed by the ZO and exceed the number of stories allowed by the General Plan are somehow beyond its jurisdiction would also favor a takings claim here. Thus, all three *Penn Central* factors weigh in favor of Mr. Luchesi and would subject the City to takings liability if it were to approve the Project without consideration of his important property rights.

7. Approval of the Project would violate Mr. Luchesi's and others substantive due process rights.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty, or property without due process of law. (*See also*, Cal. Con., art. I, sec. 7.) The touchstone of substantive due process is the protection of the individual against arbitrary government action; the due process clause was intended to prevent government officials from abusing their power or employing it as an instrument of oppression. *Wolff v. McDonnell* (1974) 418 U.S. 539, 558; *Collins v. City of Harker Heights* (1992) 503 U.S. 115, 126. Thus, a violation of substantive due process rights occurs if a government agency's actions are (1) irrational or arbitrary or (2) not rationally related to a legitimate government interest. The test is disjunctive. Thus, a property owner need only demonstrate facts to support one of the two bases in order to state a viable due process claim.

If the City were to approve the Project without affording protection to Mr. Luchesi's property rights, the City's actions would be arbitrary and irrational, and constitute an abuse of power, subjecting it to liability under the due process clause. *See Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337 (enactment of initiative downzoning ordinance was arbitrary and discriminatory where enacted without considering appropriate planning criteria and for sole and specific purpose of defeating a single development); *see also, Herrington v. County of Sonoma* (9th Cir. 1987) 834 F.2d 1488 (denial of subdivision and subsequent downzoning of property violated property owner's due process rights given evidence that county's general plan/subdivision inconsistency determination was irrational and arbitrary and aimed at defeating particular development project); and *Del Monte Dunes, Ltd. v. City of Monterey* (9th Cir. 1990) 920 F.2d 1496, 1508 (allegations that city council approved a 190-unit project with conditions that had been substantially met, then same council members abruptly changed course and rejected the

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project motivated not by legitimate regulatory concerns, but by political pressure from neighbors to preserve property as open space, could constitute arbitrary and irrational conduct).

Approval of the Project without consideration and treatment of impacts on neighboring properties constitutes irrational and arbitrary conduct not based on appropriate planning criteria and for the sole and specific purpose of benefiting another property owner. This does not comport with principles of due process.

8. By approving the Project, the City would be failing to treat similarly situated property owners fairly and equally.

The Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. (*See also*, Cal. Con., art. I, sec. 7.) The concept of equal protection has been defined to mean that no person or class of persons may be denied the same protection of law that is enjoyed by other persons or other classes in like circumstances. (*Hawn v. County of Ventura* (1977) 73 Cal.App.3d 1009, 1018.) A claimant must show that the state “has adopted a classification that affects two or more similarly situated groups in an unequal manner.” (*Walgreen Co. v. City & County of San Francisco* (2010) 185 Cal.App.4th 424, 434.) An equal protection challenge to a regulation that does not involve a suspect class or fundamental right must nevertheless bear a reasonable relationship to a legitimate state interest. (*Young v. American Mini Theaters* (1976) 427 U.S. 50). “[A] deliberate, irrational discrimination, even if it is against one person (or other entity) rather than a group, is actionable under the equal protection clause.” (*World Outreach Conference Center v. City of Chicago* (7th Cir. 2009) 591 F.3d 531, 538.)

In *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, the U.S. Supreme Court ruled that a plaintiff stated a viable equal-protection claim based on allegations that a municipality required a 33-foot easement from her as a condition of connecting her property to the municipal water supply, when it had only required a 15 foot easement from other similarly situated property owners. The Ninth Circuit has likewise upheld equal protection claims brought by property owners that were discriminated against or treated unfairly by local agencies as part of the land use approval process. (*See, e.g., Herrington, supra* [denial of proposed subdivision and subsequent downzoning violated property owner’s equal protection rights where there was evidence that county had approved sizable residential development projects on three other agricultural properties shortly after it rejected the owner’s proposal] and *Del Monte Dunes, Ltd., supra* [allegation that city arbitrarily and unreasonably limited use and development of property and set aside open space for public use, whereas owners of comparable properties were not subject to these conditions and restrictions states viable equal protection claim].)

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As explained above, the Project would receive special benefits in terms of height, density, and exemptions from impact fees that are not enjoyed by other similarly situated properties or developments. As such, approval of the Project would violate the equal-protection rights of the other similarly situated property owners.

Thank you for your consideration of our clients' views on these important matters. Mr. Luchesi and I will be in attendance at your hearing this evening. In the meantime, please do not hesitate to contact me with any questions regarding this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Mark J. Austin

MJA

cc: Phil Luchesi
Willa Bouwens-Killeen
Ryan Loomis
Tom Duarte, Esq.

October 12, 2015

**VIA MESSENGER
AND E-MAIL**

Honorable Robert L. Dickson, Jr., Chair, and
Members of the Costa Mesa Planning Commission
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: Planning Commission Agenda Item for October 12, 2015, Public Hearing No. 3, re: 224-Unit Luxury Apartment Complex at 2277 Harbor Blvd.

Dear Chair Dickson and Members of the Planning Commission:

We are writing on behalf of our clients, Phil Luchesi and his company, Luchesi Enterprises. Luchesi Enterprises owns Pals Vacuum Sewing Center, and Mr. Luchesi owns the underlying property on which this business is operated, located at 2299 Harbor Boulevard. Mr. Luchesi's property is located immediately adjacent to the proposed 224-unit luxury-apartment project that is on the Planning Commission's agenda for its meeting of October 12, 2015, as item PH-3 (the "Project"). While our client is generally supportive of the Project, he does have concerns that he would like to see addressed before the Planning Commission makes a recommendation on the Project to the City Council.

As you know, the Project proposes a General Plan amendment and a rezoning of the 4.15-acre Project site to accommodate 224 multi-family residential units. The Project would be built at a density of over 2.5 times that specified for high-density residential development in the City's current General Plan and Zoning Ordinance ("ZO"). It would also be built to a height of 60 feet, including a 5-story garage, which is taller than the 4-story height-limit currently imposed by the General Plan. By comparison, Pals Vacuum Sewing Center, a long-time City business, is a small, single-story building, approximately 2,500-square-feet in size, located on an approximately 11,000-square-foot lot.

Mr. Luchesi leases portions of his property to five mobile-service providers, each of which has erected a separate cellular tower—approximately 60-feet in height—near the common boundary with the Project site. Mr. Luchesi is legitimately concerned that the proposed Project—with a building height of up to 60 feet (which is twice the height allowed under the site's current zoning designation)—could interfere with cellular reception and thereby compromise the substantial private and public value associated with the cellular towers. Mr. Luchesi thus respectfully asks the Planning Commission to impose certain conditions on the Project to address his concerns.

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First, prior to any approval of the Project, a qualified consultant should prepare a report analyzing the potential impacts of the Project on the adjacent cellular antennas, and the Project buildings should be modified as needed to eliminate any actual or potential risk of interference with the equipment demonstrated by this report. Second, the Project proponent should be required to indemnify Mr. Luchesi and his tenants, and their collective successors, against any damage or interference to the cellular equipment that is directly or indirectly attributable to the Project. Third, the developer should be required to provide appropriate notices to new residents informing them of the nearby cellular equipment, and should require the Project's residents (on behalf of themselves and their successors) to release Mr. Luchesi and his lessees, and their successors, from any claim of damages related to the cellular equipment.

We would also like to ensure that the Project will not result in any other adverse impacts to Mr. Luchesi's property, particularly with respect to drainage, traffic, and parking. Please ensure that adequate conditions are imposed to ensure that the Project runoff does not discharge onto neighboring properties, and that the proposed off-site median and related traffic improvements do not adversely impact access to our client's property. The traffic study suggests that the Project will only provide 13 guest parking spaces. Our client does not believe that this number of spaces is sufficient for 224 residential units and is concerned that guests will end up parking on his property as a result. Please require the developer to provide the number of guest spaces required by the City Code. Mr. Luchesi would also like the opportunity to review and comment on the design and height of the proposed block wall to be installed by the Project proponent between the two sites.

We think the above requests are reasonable and can be validly imposed as conditions on the Project, especially given that new development in the City must be designed so as to "not adversely impact surrounding developments," as well as to protect the "integrity of neighboring development." (General Plan, Policy LU-1C.1; ZO § 13-29(g)(5).)¹

Please note that we do have additional concerns regarding the City's proposed approval of the Project entitlements. Amongst other issues, we believe the Project (i) could be subject to a spot-zoning challenge, (ii) likely involves inconsistencies with the City's General Plan, (iii) proposes a density bonus that is greater than allowed by state and local law, and (iv) is based on a mitigated negative declaration ("MND") that contains various inconsistencies and shortcomings in the analysis of the Project's impacts. That said, depending upon the resolution of our client's primary concerns set forth above, we reserve the right to raise these additional objections in a separate detailed letter to the City prior to final action on the Project.

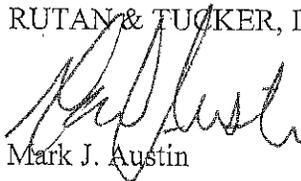
¹ See also, General Plan Policy LU-IF.5 (requiring compatibility between new uses and existing uses); *accord* Policy HOU-3.2 and ZO § 13-29(e)(1).

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Please include this letter as part of the materials considered by the Planning Commission at tonight's hearing on this item. We thank you for your consideration of our clients' views on these important matters. Although neither I nor my client will likely be able to attend the meeting this evening, we look forward to hearing from the City in the near future. In that regard, please do not hesitate to contact me with any questions regarding this correspondence at any time.

Very truly yours,

RUTAN & TUCKER, LLP



Mark J. Austin

MJA

cc: Ryan Loomis
Brenda Green
Tom Duarte, Esq.

City of Costa Mesa

Inter Office Memorandum

TO: Tom Hatch, CEO

FROM: Gary Armstrong, Economic and Development Services
Director / Deputy CEO

DATE: November 3, 2015

SUBJECT: Labor Force, Housing, and Jobs

The information provided below was gathered from the American Community Survey (2002 -2014) and Inside Prospects Inc. (2013). The total labor force trends upward and the percent of the labor force which is unemployed is decreasing post for the Great Recession.

	2006	2008	2010	2012	2014
Total In Labor Force	59495	57229	65611	67689	67004
Percent Unemployment	5.2	5.1	11.2	9.4	7.1

While we have over 65,000 jobs within the City and over 62,000 employed residents the percent that work and live within the City have hovered between 33% and 27% in the last 10 years.

	2006	2008	2010	2012	2014
Percent of Workers who Live in Costa Mesa	30.4	33.1	31.1	32.9	27.2

This relationship is further confirmed if we look at the percent of residents which commute less than 15 minutes to work.

	2006	2008	2010	2012	2014
Percent of residents who have less than a 15 minute commute to work.	34.6	32.5	36.9	32.1	29.5

The educational attainment within the City of Costa Mesa for the population between the ages of 25 and 64 consists of more than 37% having a bachelor's degree and 17% with less than a high school degree. This proportion is consistent with the Orange County percentage for educational attainment.

Industries where the City has found growth in the absolute number of residents employed as well as the percent share of residents employed within these industries are; manufacturing (2% share growth), professional, scientific, management, administrative (5% share growth), arts, entertainment, accommodation, recreation, and food service (2% share growth). Retail; finance and real estate; educational services, health care, and social assistance, are all industries with a 10% share or more of the civilian residents labor force within the City.

Housing

Housing market in Costa Mesa as well as Orange County has insufficient supply across all housing types and cost points to fill demand. The percent vacancy is less than 2% for apartments throughout the City. Heavy state regulation, lack of open space for new construction, additional costs for in-fill development all create a smaller margin of profit for a developer relative to national comparisons. However, location of the City and a variety of existing assets assist in stimulating residential development. The City still has considerably more rental units in comparison to ownership units within the City.

Type	Total	Percent
Owner Occupied	14,843	38.5%
Renter Occupied	23,667	61.5%
Total	38,510	

Jobs

According to Inside Prospects Inc. the total number of jobs within the City is just over 65,000. These jobs come from 4,247 firms which operate within the City.

Major Business Groups	Employment	Percent
Agriculture	654	1
Construction	2949	4.5
Manufacturing	7246	11.1
Transport	1407	2.1
Wholesale Trade	7075	10.8
Retail Trade	16231	24.9
Finance, Insurance, Real Estate	4989	7.6
Services: Personal, Business	13647	20.9
Medical, other Health	5576	8.5
Legal, Law Offices	2125	3.2
Engineers, Accounting, R&D	3185	4.8
Total	65084	

Conclusion

Costa Mesa has an excellent jobs to housing balance. The contiguous nature of cities in suburban Orange County make it difficult to separate area-wide jobs and City-wide jobs to housing. The proximity and accessibility from one municipality to another erases the geopolitical boundaries of cities for most job seekers and minimizes variation for home buyers.

While total population in Costa Mesa is 112,793, after you remove those who are too young to work, too old to work, and those who are not seeking work the labor force population is approximately 67,004. Within this population are also students who reside locally while they attend one of our 5 higher educational institutions within the City. While not all residents work within the City the percent that do is 3 percent higher than the County average.



CITY COUNCIL

SUPPLEMENTAL MEMO

MEETING DATE: NOVEMBER 3, 2015

ITEM NUMBER

PH-1

SUBJECT: GENERAL PLAN AMENDMENT GP-14-04/ REZONE R-14-04/ ZONING CODE AMENDMENT CO-14-02/ AND MASTER PLAN PA-14-27 FOR COSTA MESA LUXURY APARTMENTS AT 2277 HARBOR BOULEVARD

DATE: NOVEMBER 3, 2015

**FROM: WILLA BOUWENS-KILLEEN, AICP, ZONING ADMINISTRATOR
RYAN LOOMIS, ASSOCIATE PLANNER**

**FOR FURTHER INFORMATION CONTACT: RYAN LOOMIS (714) 754-5608
ryan.loomis@costamesaca.gov**

The objective of this memo is to provide the Police and Fire Departments' calls for service to Costa Mesa Motor Inn over the last three years. The following text has been added to the fifth paragraph of page 18 of the Agenda Report, and the third paragraph of page 79 of Exhibit A of the Resolution:

"Over the past 3 years, the motel has generated 372 calls for Fire service between 2012 and 2014; including 126 calls in 2012; 151 calls in 2013; and 95 calls in 2014. For Police services, the motel has generated 1,508 calls between 2012 and 2014, including 560 calls in 2012; 550 calls in 2013; and 398 calls in 2014. To date for 2015, there have been 264 Police service calls. This has resulted in a disproportionate amount...."

Distribution: Chief Executive Officer
Assistant Chief Executive Officer
Director of Economic & Development / Deputy CEO
City Attorney
Public Services Director
Transportation Svs. Mgr.
City Engineer
City Clerk (9)
Staff (7)
File (2)

Diamond Star Associates, Inc.
Attn: Don Lamm, Managing Principal
4100 MacArthur Blvd, #330
Newport Beach, CA 92660

Miracle Mile Properties
Attn: Lionel Levy, Chief Operations Officer
4221 Wilshire Blvd., Suite 480
Los Angeles, CA 90010


PUBLIC LAW CENTER
PROVIDING ACCESS TO JUSTICE
FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

November 3, 2015

Mayor Stephen Messinger
City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628

RE: Comment on Initial Study/Mitigated Negative Declaration, 2277 Harbor Boulevard Project

Dear Mayor Messinger and City Council members:

Public Law Center is writing on behalf of our client, the Costa Mesa Motel Residents Association ("CMMRA"). CMMRA consists of short- and long-term residents who consider the motels in Costa Mesa home. A majority of the members of CMMRA currently reside at Costa Mesa Motor Inn ("CMMI"), the location of the proposed project.

Costa Mesa City Council should not adopt the Negative Declaration for the 2277 Harbor Boulevard Project. This City Council should apply the tools provided by the State of California to replace low-income units into the redevelopment plans of CMMI.

The Initial Study fails to recognize the use of the Costa Mesa Motor Inn as long-term, permanent housing for low-income residents. While the report recognizes that some of the units are occupied for the purposes of permanent housing, it fails to recognize the significance of the demographics of these residents. In general, the residents of CMMI are low-, very-low-, and extremely-low-income families, veterans, and other residents, many of whom are disabled. The project contains no plans to mitigate the displacement of the low-income Costa Mesan residents. The adverse effect this project has on the low-income residents of the City is a significant impact and a negative declaration is inappropriate.

This City is violating its obligation to use California's Density Bonus Laws that allows City to provide incentives to the Developer and requires the Developer in return to build very low- and low-income units. As stated in the Planning Department's City Council Agenda report, Miracle

Mile Properties has requested a density bonus that would allow for it to build 54 units per acre. In return, the developer proposes to build 20 moderate units and to demolish the Costa Mesa Motor Inn in its entirety. Granting that bonus contravenes state law. Specifically, Government Code 65917 states that “[i]n the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.” In order to qualify for a density bonus in a rental-only property, units must be set aside for very-low- or low-income families, or seniors-only, which this proposal does not purport to do. Gov’t. Code 65915(b)(1). Twenty moderate-income rental units do not qualify for a bonus. By granting a density bonus for a project which will not include housing affordable to very-low- or low-income families, Costa Mesa will create a disincentive for building affordable housing and will illegally undermine the intent of the Density Bonus Law.

Moreover, if Costa Mesa provides a density bonus to Miracle Mile Properties for the redevelopment of 2277 Harbor Boulevard, it must replace every unit occupied by low- and very-low-income families. Pages five to six of the Planning Department’s report state that 49 rooms at the Costa Mesa Motor Inn are currently occupied by long-term occupants. In 2014, when long-term occupants were forced to register with the City, there were 63. The majority, if not all, of these long-term occupants have low incomes or less. Government Code 65915(c)(3) states that an applicant is ineligible for a density bonus or other incentive “if the housing development is proposed on any property that includes a parcel . . . on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been . . . occupied by lower or very low income households, unless the proposed housing development replaces those units.” In addition to replacing those units, the developer must still provide affordable units at the percentages required by the Density Bonus Law in order to ensure no net loss of affordable units. *Id.* Costa Mesa has long acknowledged that low- and very-low-income families reside at the Costa Mesa Motor Inn. In granting Miracle Mile Properties a density of 54 units per acre, it must require that the development include replacement affordable housing.

In addition, as required by state law, the proposed plan should undergo an EIR under a CEQA in accordance with California Public Resources Code § 21080. The Planning Commission and the City Council cannot ignore the fact that there will be a significant environmental effect with the loss of so many low-income units in Costa Mesa. Currently, the demolition of CMMI will displace at least 49 households without any alternative low-income units for the residents to move to.

Attached is PLC’s comment to the Planning Commission including questions left unanswered by the Planning Commission and issues raised regarding the proposed project that have not been sufficiently addressed by the Developer. In light of the legal issues and lack of low-income

housing alternatives in Costa Mesa, this City Council should vote against this proposed project and require the developer to include low-income units.

Sincerely,



Lili Graham
Richard Walker
Attorneys for CMMRA
Public Law Center



PUBLIC LAW CENTER

PROVIDING ACCESS TO JUSTICE

October 9, 2015

FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

Robert L. Dickson Jr.
Planning Commission
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628

RE: Comment on Initial Study/Mitigated Negative Declaration, 2277 Harbor Boulevard Project

Dear Commissioner Robert L. Dickson Jr.:

This letter is a comment to the September 10, 2015, *Initial Study/Mitigated Negative Declaration, 2277 Harbor Boulevard Project, City of Costa Mesa, Orange County, California* ("Initial Study"). This letter is written on behalf of the Costa Mesa Motel Resident Association ("CMMRA"). CMMRA consists of short- and long-term residents who consider the motels in Costa Mesa home. A majority of the members of CMMRA currently reside at Costa Mesa Motor Inn ("CMMI"), the location of the proposed project. In general, the members of CMMRA and the other residents of the motel are low-, very-low-, and extremely-low-income families, veterans, and other residents, many of whom are disabled.

A negative declaration under CEQA is inappropriate. The conversion of CMMI is likely to have a significant impact due to the adverse social and economic effects on the people of Costa Mesa. CMMRA urges its City's Planning Commission to reject the current proposal for a luxury apartment project at the Costa Mesa Motor Inn ("CMMI"). This project will cause a substantial displacement for the neediest and most vulnerable residents of Costa Mesa. CMMI has at least 63 units that are set aside for long-term occupancy and a similar amount of low-income units should be included in the new project.

The Planning Commission should reject the current proposal of converting CMMI into luxury apartments for a number of reasons, including: a) the plan lacks any requirement for providing low-income units; b) the inducement for substantial population growth will completely displace the current residents; c) there will be a significant loss of existing, low-income housing units; and d) there is a lack of alternative housing for Costa Mesa residents. The Planning Commission must require that a portion of the redevelopment project will include low-income units.

Plan Lacks Requirement for Providing Low-income Units

The current plan for redeveloping the CMMI does not include any low-income units, even though a substantial number of low-income people will be displaced by the demolition of the CMMI. The owner's about-face to create luxury apartments when the same owner has been operating a motel for low-income residents should not be encouraged. This owner for years has relied on the income of low-income residents and advocated on their behalf when City Council members from Costa Mesa targeted the CMMI for its poor operation. Yet now they do not want to work with low-income residents. It is this City's obligation to ensure that redevelopment occurs in a sensible way that meets the needs of all of its residents, without exclusion of its lowest income residents.

Complete Displacement of Current Motel Residents

This project will displace current residents and does not consider appropriate affordable replacement housing. The analysis of the population and housing impact is flawed as the *Initial Study* does not take into account that the inducement for population growth is for an altogether different demographic. The *Initial Study* fails to recognize the adverse impact of the project because it fails to recognize that the people that currently live and stay at the CMMI are low-income and unable to afford the luxury apartments proposed for this location. This displacement will have an adverse impact.

Contrary to the *Initial Study's* conclusion, the displacement of the low-income residents of CMMI will have a significant impact and require the construction of replacement housing. While the *Initial Study* references affordable housing constructed between the years of 2008-2011, the *Initial Study* makes no reference to the number of currently available affordable units in Costa Mesa. In fact, the *Initial Study* entirely omits any data on current, available resources for low-income residents. This quite simply is because there is a major shortage of available affordable housing in Costa Mesa, which is why the City has relied on motels to shelter its low-income residents. Additionally, as recently as February 2015, Orange County Housing Authority reported that because the demand for affordable housing in Costa Mesa is so great, most of the affordable housing units currently have multiple-year waiting lists. Because of this lack of affordable housing, many residents displaced by the project will become homeless. Any project that increases homelessness is a significant adverse impact on the greater Costa Mesa community.

What affordable units are actually available at present in Costa Mesa? What services will be provided and measures will be taken to prevent any current residents of CMMI from becoming homeless? What specific assistance will a relocation consultant provide? With a lack of available affordable housing, replacement housing is necessary and any new construction at 2277 Harbor Boulevard should contain low-income units.

Loss of Low-income Housing Units

The *Initial Study* errs in claiming that the "existing use only provides temporary housing." The CMMI has been used as long-term housing for low-income residents for over a decade. As recently as October of 2014, CMMI reported to Costa Mesa that approximately 89 people currently live at CMMI in a long-term capacity. Even though Costa Mesa has attempted to eliminate long-term occupancy at motels, convert motels to only temporary housing, and updated its Housing Element to no longer rely on motels for affordable housing, these 89 residents are able to maintain their status as long-term residents under the grandfather clause of Costa Mesa's ordinance and the preliminary injunction granted in the case of Dadey, et al. v. City of Costa Mesa, No. 30-2014-00757962-CU-CR-CJC. Additionally, as stated in its 2008-2014 Housing Element, Costa Mesa has relied on motels, including CMMI, to provide affordable housing to Costa Mesa residents. CMMI has historically been allowed to use as much as 40 percent of its rooms to provide long-term housing. To the extent that the *Initial Study* claims CMMI only offers "limited stay options, and does not represent a permanent housing use," while at the same time recognizing that at least 50 units are in fact used on a long-term basis, it is inconsistent. Additionally, there is no data in support of this number.

What data has the *Initial Study* relied on in claiming that the current use provides only temporary housing? This conclusion is not based on any evidence, is in fact contrary to the actual use, and is inconsistent with the *Initial Study*. What data does the *Initial Study* rely on for calculating the present number of units used as long-term housing?

Lack of Housing for Costa Mesa Residents

While the *Initial Study* makes note of resources to assist low-income residents in need of housing, it makes no reference of their present availability. As but one example of scant resources available to low-income residents, while hundreds of Orange County residents are receiving Housing Choice Vouchers, currently Orange County Housing Authority is not accepting any new applicants for these vouchers.

What vouchers and other housing assistance are currently available to low-income residents of Costa Mesa? What capacity in Costa Mesa do these resources have to provide for additional residents?

Even if such resources were presently available, displacing a minimum of 89 residents would cause a major strain on these resources. Such an impact would adversely affect all those who presently rely on those resources and such a social and economic effect would be significant.

Most of the long-term residents of CMMI have built their lives around living at CMMI. They are near their jobs, their doctors, and their children's schools. Many residents at CMMI do not have personal transportation and rely on CMMI's location for its convenient access to shopping centers and all of life's basic necessities. Such convenience is especially critical to the disabled residents of CMMI.

What support is there for the claim that the majority of residents will leave by attrition? What support is there for the claim that residents may not even stay in Costa Mesa when these residents have built their lives around living in Costa Mesa? The conclusion that these residents will leave by attrition or not stay in Costa Mesa is not based on any credible evidence and is just self-serving speculation. Instead of providing for its residents, including its most needy, the City is turning its back on their needs in exchange for just profit.

Sincerely,


Lili Graham
Richard Walker
Public Law Center
Attorneys on Behalf of CMMRA

MEJIA, JESSICA

Subject: FW: ATT City Clerk - Put in Council packets

-----Original Message-----From: [REDACTED]
Sent: Tuesday, November 03, 2015 3:15 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>
Subject: ATT City Clerk - Put in Council packets

City Council,

I support the demolition of the Costa Mesa Motor Inn with replacement of new residential units on tonight's agenda.

Thank you,

Cheryl DeFrenza
[REDACTED]
Costa Mesa, CA 92626

Sent from my iPhone

MEJIA, JESSICA

Subject: FW: City Clerk - put in Council packets

-----Original Message-----

From: Dawn Finicum [mailto: [REDACTED]]
Sent: Tuesday, November 03, 2015 3:05 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>
Subject: ATT: City Clerk - put in Council packets

Put in Council packets!

I support the action of the demolition of the Costa Mesa Motor Inn and want to be heard at tonight's city council meeting.

I am a long time homeowner/resident in Mesa Verde and I want this motel and all of its problems gone!

Thank you,

Dawn Finicum

[REDACTED]
Costa Mesa, Ca. 92626

MEJIA, JESSICA

Subject: FW: Meeting tonight

Importance: High

From: Gary Tarkington [REDACTED]
Sent: Tuesday, November 03, 2015 3:46 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>
Subject: Meeting tonight
Importance: High

I would like to express my feelings concerning the motels here in Costa Mesa. They NEED TO BE gone...like in torn down. The sooner the better!

Thank you,
Ann Tarkington

MEJIA, JESSICA

Subject: FW: Request from Council Member Foley

From: HATCH, THOMAS

Sent: Tuesday, November 03, 2015 4:44 PM

To: GREEN, BRENDA <brenda.green@costamesaca.gov>

Subject: Request from Council Member Foley

Council Member Foley had requested the number of Newport-Mesa School District students that live at the Costa Mesa Motor Inn. The District reports that 45 students live at the address for the Costa Mesa Motor Inn. Please provide this in the red folders. Thanks.

MEJIA, JESSICA

Subject: FW: Comments on Proposed Costa Mesa Motor Inn Development
Attachments: CM affordable housing coalition letter re neg dec on cmmi.pdf; Ltr_IS MD CMMI CC_15.11.3.pdf

From: linda tang [REDACTED]
Sent: Tuesday, November 03, 2015 4:35 PM
To: GREEN, BRENDA <brenda.green@costamesaca.gov>
Cc: Cesar Covarrubias [REDACTED] Kathy Esfahani [REDACTED] Lili Vo Graham
Subject: RE: Comments on Proposed Costa Mesa Motor Inn Development

Dear City Clerk Green,

Please find attached a comment letter from the Kennedy Commission and a comment letter from the Costa Mesa Affordable Housing Coalition regarding today's City Council Public Hearing Agenda Item #1 - General Plan Amendment/ Rezone/ Zoning Code Amendment and Master Plan for Costa Mesa Apartments at 2277 Harbor Boulevard Project.
Since it's past 3 p.m., we will provide 10 copies of each letter for distribution at the Council hearing today.

Thank you for your help.

--
Sincerely,

Linda Tang
The Kennedy Commission
17701 Cowan Ave., Suite 200
Irvine, CA 92614
p: (949) 250-0909
f: (949) 263-0647
www.kennedycommission.org

MEJIA, JESSICA

Subject: FW: ATT City Clerk - Put in Council packets

From: Cheryl DeFrenza [REDACTED]
Sent: Tuesday, November 03, 2015 4:53 PM
To: KATRINA FOLEY <foley4costamesa@gmail.com>
Cc: CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>
Subject: Re: ATT City Clerk - Put in Council packets

Katrina,

I understand the owner is providing a transition amount to those that stay to the end. I don't think any units should be used for "affordable housing units". If people can't afford to live in Costa Mesa they should move up the street.

As you know I used to live in a large, beautiful home in the inner loop section of Mesa Verde, but when my husband's architecture business failed in the recession and he filed bankruptcy, then we got divorced we couldn't afford to live in that area any longer. I had been a stay at home mom for several years and needed to work again. It took me over 2 years to find a job during the recession. I moved in with my mom in Orange, but when I was employed I found a nice landlord that would rent to me even though I had all those strikes against me. I NEVER looked for a hand out nor expected someone else to take care of me. And nobody gave me \$5,000 to get started.

I've been in my apartment in the spice streets for 5 years now. I live in 1100 square feet for only a couple hundred dollars more per month than the people are paying to live in 300 square feet. Even the teenager that lives there was quoted as saying she doesn't want that life for her future family.

Those people need to stop depending on everyone else to help them. They need to help themselves.

Sent from my iPhone

On Nov 3, 2015, at 4:11 PM, Katrina Foley-Costa Mesa City Councilmember <foley4costamesa@gmail.com> wrote:

Cheryl:

Thanks for your email. It's not really a question of removal, but of whether the property owner should include some affordable units as part of the windfall for the additional development, or at least provide some private relocation plan.

The windfall of additional units beyond the allowable build amounts to more than \$1.9 million per year indefinitely to this owner who has allowed the property to become what it is in the first place. Seems not right to me. Some people have lived there 5-20 years. Some NMUSD families live here. They have no place to move to. Seems he should help provide a transition given all the benefit he is receiving from the extra allowed density.

That's my focus.

Thanks,

Building Address	Avg Asking/Unit
1947 1955, 1965 Pomona Ave	1200
291-293 Avocado St	969
354 Avocado St	1500
366 Avocado St	1469
387 W Bay St	1595
2881 Bear St	1173
897 Center St	1135
2117 Elden Ave	1300
393 Hamilton St	1382
1959-1961 Maple Ave	1250
2500 Merrimac Way	1703
1621 Mesa Dr	1196
2080 Newport Blvd	1090
2450 Newport Blvd	820
2163 Pacific Ave	1180
801 Paularino Ave	1335
1846 Placentia Ave	1087
1945-1965 Pomona Ave	1248
2250 Vanguard Way	1417
352 E Victoria St	1088
1800 Wallace Ave	1257
1919 Wallace Ave	1248
530 Wilson St	1351

Katrina Foley
Costa Mesa City Council
www.costamesaca.gov

www.katrinafoley.com
@katrinafoley

Sent from my iPhone

On Nov 3, 2015, at 3:15 PM, Cheryl DeFrenza [REDACTED] wrote:

City Council,

I support the demolition of the Costa Mesa Motor Inn with replacement of new residential units on tonight's agenda.

Thank you,

Cheryl DeFrenza

[REDACTED]
Costa Mesa, CA 92626

Sent from my iPhone

Costa Mesa Affordable Housing Coalition

November 3, 2015

Mayor Stephen Mensinger and City Council Members
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

RE: General Plan Amendment/ Rezone/ Zoning Code Amendment and Master Plan for Costa Mesa Apartments at 2277 Harbor Boulevard Project

Dear Mayor Mensinger and City Council Members:

On behalf of the Costa Mesa Affordable Housing Coalition (the Coalition), I am writing to express our concerns about serious inadequacies in the Initial Study/ Mitigated Negative Declaration (Initial Study) regarding the 2277 Harbor Boulevard Project (the project). We are particularly disturbed the Initial Study mischaracterizes the effect that closure of the Costa Mesa Motor Inn (CMMI) will have on the city's housing stock available for lower income residents. The Initial Study is **wrong** in stating the project will have "less than significant impact" in regard to displacing "substantial numbers of existing housing" and that, as a result, there is no need for "construction of replacement housing elsewhere."¹

As our Coalition has explained to the City Council at numerous public hearings, the CMMI has for years served as last resort housing for Costa Mesa's poor. Until 2014, when the City began aggressively pushing the owner of the CMMI to change the property's use to upscale, high density residential, the motel's 236 rooms, 40% of which were used for "long term stays," were **consistently full**, providing housing for hundreds of lower income residents, including families with children, disabled people, and seniors who could find no alternative affordable housing in Costa Mesa. Consequently, the closure of the CMMI to make way for luxury apartments that include **zero** units affordable to these lower income households will result in a **significant adverse impact** on "existing housing" in our City.

236 rooms of last resort housing will be lost. CMMI's existing tenants will be priced out of the new apartments, displaced without replacement housing and at risk of becoming homeless. The Coalition is very concerned the proposed development will not only effectively remove existing "affordable homes" from the City's housing stock, but it will very likely increase Costa Mesa's existing homeless problem.

Obviously, the Coalition has serious concerns about the project. The Coalition believes the success of the project will depend on the City's leadership in thoroughly analyzing and

¹ Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 121, September 10, 2015.

addressing the project's environmental impacts. The Coalition urges the City to take the following recommendations into consideration:

- 1. Place this agenda item on hold and not vote on it.** The project has the potential to impose a negative impact on our community. The timeline for the project is being rushed through and the concerns of the community have not been thoroughly addressed. There needs to be meaningful community outreach and the incorporation of public input that reflects the decision-making and planning process for the project. The City has the ability to slow down the process to ensure the needs of the community are addressed. The Coalition requests the City to place this agenda item on hold and help facilitate a meeting that will include the developer, city staff, the Coalition and the community to further discuss the concerns on the project.
- 2. Under the Population/ Housing environmental factor, re-classify the displacement of existing housing and residents from “less than significant impact” to “potentially significant impact” necessitating the construction of replacement housing.** The Initial Study did not thoroughly evaluate and analyze the potential impacts the proposed project would have on the displacement of current tenants at the CMMI. There is no replacement housing plan in place to ensure the tenants, especially the long term tenants, have affordable housing options that are readily available near transit and job centers in the City.

Currently, there are approximately 160 occupied rooms at the CMMI and of that, 49 rooms are occupied by 66 long-term residents.² Because the project includes **zero** units affordable to the lower income tenants who currently live in the CMMI, all these existing tenants will be displaced, including the long-term tenants living in 49 of the units. The developer will provide relocation assistance ranging from \$4,000 to \$5,500 to long-term occupants³ and hire a relocation consultant to provide at least one on-site visit and offer relocation services to assist tenants in finding replacement housing.⁴ However, the cash relocation assistance and relocation consulting are short term solutions and would not be enough to realistically help tenants relocate and find affordable housing in the City.

The chances of finding existing housing that are affordable to lower income families in the City or anywhere else in the County is extremely low. In the City's 2008-2014 Housing Element planning period, only **one** low-income home was constructed in the City⁵ and there are currently **no** other proposed affordable home developments for lower income families in the City's development pipeline. With the serious lack of affordable homes, the housing crisis in the City is exacerbated with the rising and out-of-reach rents in the City. The average asking rent in the City is \$1,840 and that is a 6.3% increase from the year before.⁶ While the term “affordable” is defined as a household that spends less than 30 percent of their household income on housing costs,⁷ many renters are paying

² City Council Agenda Report: General Plan amendment GP-14-04/ Rezone R-14-04/ Zoning Code Amendment CO-14-02/ And Master Plan PA-14-27 For Costa Mesa Apartments at 2277 Harbor Boulevard, City of Costa Mesa, p. 5, November 3, 2015.

³ Costa Mesa Motor Inn 2270 Harbor Boulevard Long-term Occupant Relocation Assistance Plan, October 12, 2015.

⁴ Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 122, September 10, 2015.

⁵ Housing Element For The Costa Mesa General Plan 2013-2021, City of Costa Mesa, p. 10, January 21, 2014.

⁶ Feeling the Pinch? Local Rent Prices Hit A Record High, The Orange County Register, January 16, 2015.

⁷ Housing Element For The Costa Mesa General Plan 2013-2021, City of Costa Mesa, p. 31, January 21, 2014.

more. In the City, many renters overpaid and spent approximately 44% of their income towards rent.⁸ In addition, a substantial amount of households in the City are lower income families. Approximately 39 percent of households earned less than \$50,000 per year.⁹

According to the report, "...even if localized displacement occurred, it would not occur in substantial amounts as to warrant the need for replacement housing that would have a significant effect on the environment."¹⁰ We believe this is a wildly misleading statement. The amount of tenants being displaced will be much larger than the report indicates. The reason the report says localized displacement will not occur in "substantial amounts" is because it is not going to happen all at once. Instead, localized displacement at the CMMI is **already happening**, discreetly, in preparation for the project. Once the current tenants vacate the units, none of the newly vacant units are "advertised as vacant."¹¹ Since 2014, the CMMI has been systematically displacing potential tenants by intentionally not allowing them to rent these vacant rooms. This practice has negative impacts on the community as more and more individuals and families who are at-risk of being homeless will have not where else to go. They may end up on homeless on the streets. Because this displacement is happening discreetly at a slower rate, it is not being analyzed and quantified.

3. **Re-analyze and re-confirm the correct number of affordable units constructed in the City.** The Initial Study states: "Between 2008-2011, a total of 618 affordable units were constructed."¹² However, in the City's 2014-2021 Housing Element, the report identifies only **one** low-income home was constructed in the City during the 2006-2014 Housing Element planning period.¹³ Where in the city were these "618 affordable units" constructed? Are these units affordable to lower income working families or are the units affordable to moderate and above moderate income households? Also, are these units deed-restricted?
4. **Not exclude affordable homes from detailed analysis in the Initial Study.** With high housing costs and significant lack of affordable homes, many workers and families, especially those who earn lower wages, struggle financially to live close to where they work. Compared to other cities in Orange County, housing costs are significantly higher in Costa Mesa and simply out of reach for extremely low-, very low- and low-income families. These impacts not only hurt workers and families, but may also have negative environmental impacts to the City.

With the lack of vacant land in the City, the project at the CMMI provides a great opportunity for the development of homes to be set-aside as affordable to lower income working families. By living in an affordable home development that's near transit services, such as the frequent OCTA buses servicing Harbor Boulevard, many residents,

⁸ Lower Rents Might Cost You More: High Cost of Housing Chips Deeply into Low-Wage Earners Pay, The O.C. Register, April 18, 2015.

⁹ Profile of the City of Costa Mesa Local Profiles Report 2015, SCAG, p.10, May 2015.

¹⁰ Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 122, September 10, 2015.

¹¹ Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 122, September 10, 2015.

¹² Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 121, September 10, 2015.

¹³ Housing Element For The Costa Mesa General Plan 2013-2021, City of Costa Mesa, p. 10, January 21, 2014.

especially lower income working residents, can rely on the bus for their commute to and from work and to other destinations. Residents and workers who take transit become less dependent on driving their automobiles and can help decrease the environmental impacts of traffic congestion, vehicle miles travelled (VMT) and greenhouse gas (GHG) emissions. In addition, lower wage employees working at the Harbor Center across the street from the CMMI can also greatly benefit from living in close proximity to where they work. The employees would only have to walk across the street to their job site without needing to drive. Not only will the development of affordable homes help reduce VMT and GHG emissions, the proximity of the affordable homes to jobs will create a more walkable and healthier Costa Mesa.

The environmental impacts of a development are especially less drastic when people can afford to live and spend their money in the same community in which they work. With low wages and high housing costs, many workers live in other cities and become dependent on their automobile to commute to and from work and other destinations. These trips may increase traffic congestion and air pollutants that not only negatively impact the environment but also the quality of life for residents in the City. Addressing these environmental impacts will also align with the Sustainable Communities and Climate Protection Act of 2008 (SB 375) and help the City implement and comply with the regional goals of SB 375.

- 5. Only approve the Initial Study in exchange for community benefits where the developer commits to dedicating at least 20% of homes affordable to families at extremely low-, very low- and low-income levels at the project.** Given the City's high housing costs and serious lack of affordable homes, many individuals and families have turned to motels such as the CMMI as their last resort housing. With the proposed residential development, nearly all of the motel's existing tenants will be priced out, displaced, and may be at-risk of becoming homeless.

One of most effective solutions to homelessness is the development of permanent affordable homes. The proposed project will effectively take out existing "affordable" homes from the City's housing stock. The City has control over land use decisions and should take this great opportunity to request for community benefits that addresses the existing housing needs of the City. By changing the land use designations and up-zoning the existing property, the City has created additional value on the property and would be giving away these tremendous benefits to the developer. While these giveaways provide significant windfalls and increases the property values of the proposed development, what community benefits does Costa Mesa get in return?

With the lack of vacant land and funding for the development of affordable homes, the City should capitalize on this great opportunity by recapturing the increased value through community benefits. New proposed developments requesting additional development standards should only be approved in exchange for community benefits such as a set-aside of affordable homes for lower income families. In addition, by increasing the existing base density, the City is effectively circumventing the use of a

density bonus (SB 1818) for proposed projects, which would have facilitated the development of new affordable homes for lower income households in the City.

Other jurisdictions in Orange County have taken a stand for their residents and have requested new residential developments provide community benefits to the City. In the City of Santa Ana, the Housing Opportunities Ordinance applies to residential developments that request a discretionary approval (e.g., change in land use designation, zoning, density etc.). The Ordinance requires 15 percent of new homes to be affordable for low and very low-income households. In the City of Laguna Niguel, the City's Gateway Specific Plan allow increases in density in exchange for the provision of important community benefits such as the development of affordable homes. Laguna Niguel has two market rate rental developments that have set-aside homes that are affordable to lower income families.

6. **Reinstate extended stay units/ long term stays at motels in the City.** As stated throughout this letter, the CMMI provides last resort housing for hundreds of low income individuals and families. Currently, the CMMI has at least 50 units that are occupied by long-term tenants. Until 2014, the CMMI had a Conditional Use Permit that allowed up to 90 rooms (40 percent of all rooms) to be rented out as long-term stay units. In 2014, however, the City adopted an ordinance effectively outlawing long-term stays at the motels, including the CMMI, that provide last resort housing to the City's poor. Without long term stays at the motels, individuals and families are only allowed to stay 28 days before they are kicked out the motel. Without any other viable housing options, many individuals and families are subjected to moving from motel to motel.

In the years before it adopted that ordinance, the City specifically identified motels as an alternative option for affordable housing. In the City's 2008-2014 Housing Element, it specifically states: "the City recognizes a need to use motel/hotel rooms as a housing alternative for extended stay... extended stay units provide alternative affordable housing choices." Since that planning period, the City has not added any affordable housing for lower income households. Consequently, motels are still needed in the City to "provide alternative affordable housing choices." In light of this recognition, the City should reinstate its policies regarding extended stay units/long term stays at motels.

7. **Be consistent with the General Plan goals, objectives and policies.** The Initial Study states the project is consistent with the General Plan goals, objectives and policies; however, it is actually not consistent in that it is failing to meet the expectations of the following:
 - a. Goal Lu-1, Land Use: "...to provide its citizens with a balanced community of residential uses... to satisfy the needs of the social and economic segments of the population"¹⁴ and;
 - b. General Plan Land Use Objective LU-1A1: "to provide for the development of a mix and balance of housing opportunities... in consideration of the needs of the business and residential segment of the community."¹⁵

¹⁴ Initial Study/Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 100, September 10, 2015.

The City has not expanded housing choices for lower income residents living near transit and job opportunities. In the City's Housing Element 2008-2014 planning period, while 1,047 moderate and above moderate income homes were constructed, only one low-income home was constructed in the City.¹⁶ In the City's Urban Master Plan, 501 units are entitled, under-construction or completed.¹⁷ Not one of these units are affordable to lower income working families. The City has only prioritized its efforts to building homes that are affordable to moderate- and above moderate-income households.

- 8. Provide a detailed jobs-housing "fit" analysis.** Different from jobs-housing balance, which evaluates the number of jobs to the number of homes in a specific geographic location, the jobs-housing fit provides a more detailed analysis. The jobs-housing fit analyzes the discrepancies between the types of jobs and wages (especially for low-wage jobs) that are available in a City and the housing costs and opportunities that are available in the City.

Locating homes, especially affordable homes, near job centers (i.e. Harbor Center), mass transit and neighborhood amenities will create a more walkable, healthier and sustainable Costa Mesa. As the City evaluates and addresses the potential environmental effects of the project at the CMMI, the **Coalition strongly urges the City to prioritize the development of homes affordable to lower income working families as an effective strategy to decrease negative environmental impacts.**

The Coalition looks forward to hearing the City's response to our concerns. We hope that the City and the CMMI developer/ owner will be a community partner in helping facilitate the development of affordable homes for lower income families.

Please keep us informed of any upcoming meetings and proposed changes regarding the proposed project. If you have any questions, please free to contact Kathy Esfahani at kmesfahani@att.net.

Sincerely,

Kathy Esfahani

Kathy Esfahani
For The Costa Mesa Affordable Housing Coalition

¹⁵ Initial Study/ Mitigated Negative Declaration 2277 Harbor Boulevard Project, City of Costa Mesa, p. 100, September 10, 2015.

¹⁶ Housing Element For The Costa Mesa General Plan 2013-2021, City of Costa Mesa, p. 10, January 21, 2014.

¹⁷ City of Costa Mesa Urban Master Plan Developments Attachment 2, City Council/ Planning Commission Joint Study Session, Proposed Urban Plan Amendment to Amend the SOBECA and Westside Urban Plans, p. 9, September 8, 2015.



November 3, 2015

www.kennedycommission.org
17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909
Fax 949 263 0647

Mayor Stephen Mensinger and City Council Members
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

RE: General Plan Amendment/ Rezone/ Zoning Code Amendment and Master Plan for Costa Mesa Apartments at 2277 Harbor Boulevard Project

Dear Mayor Mensinger and City Council Members:

The Kennedy Commission (the Commission) is a broad based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$20,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with jurisdictions in Orange County to create effective policies that has led to the new construction of homes affordable to lower income working families.

The Commission submitting this letter in support of the Costa Mesa Affordable Housing Coalition's letter dated November 3, 2015 in regards to the General Plan Amendment/ Rezone/ Zoning Code Amendment and Master Plan for Costa Mesa Apartments at 2277 Harbor Boulevard Project. The Costa Mesa Motor Inn (CMMI) provides last resort affordable housing for many lower income households and the CMMI will displace many at-risk families and lead them to homelessness. The Commission urges the City to consider the following:

1. Incorporate and implement the recommendations outlined in the Costa Mesa Affordable Housing Coalition's letter dated October 10, 2015.
2. Allow a General Plan Amendment (to change land use designation from General Commercial to High Density Residential), Rezone (to change zoning classification from C1 (Local Business District) to PDR-HD (Planned Development Residential – High Density)) and Zoning Code Amendment (to amend the Costa Mesa Municipal code to include the proposed development's site specific height of 60 feet and site-specific density of 54 du/ac in the PDR-HD zone) **ONLY IF** at least 20 percent of the proposed development is affordable to lower income working households. By increasing the existing base density, the City is effectively circumventing the use of a density bonus (SB 1818) for proposed projects, which would have facilitated the development of new affordable homes for lower income households in the City.
3. Provide replacement housing that is readily available and affordable in the City for tenants, especially for all the long-term occupants. While the proposed development is a private development, the proposed development is seeking for development incentives

Mayor Mensinger and City Council Members
November 3, 2015
Page 2 of 2

(i.e., General Plan Amendment, Zoning Code Amendment and rezone) that developers were previously not entitled to. These development incentives should be considered as a form of a public subsidy. The development incentives that the City is approving and giving away to the developer has significant value to it that should be quantified and be accounted for. Because the developer is utilizing a public subsidy, the relocation assistance should be re-evaluated and replacement housing for displaced tenants at the CMMI should be provided.

The Commission looks forward to working in partnership with the City to create and implement effective policies and programs that will incentivize the development of homes affordable to lower income working families. Please keep us updated on the City's responses to the Costa Mesa Affordable Housing Coalition's recommendations and on any updates regarding the CMMI.

If you have any questions, please free to contact Cesar Covarrubias at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,



Cesar Covarrubias

Executive Director

PH – 2

**RELATING TO GROUP
HOMES, SOBER LIVING
HOMES, BOARDING
HOUSES, & RESIDENTIAL
CARE FACILITIES**

ADDITIONAL DOCUMENTS

MEJIA, JESSICA

Subject: FW: Group Home Map - Explanations

From: TUCKER, MIKE

Sent: Friday, October 30, 2015 3:28 PM

To: HATCH, THOMAS <THOMAS.HATCH@costamesaca.gov>

Subject: Group Home Map - Explanations

Tom,

The Group Home Map that was created to support the Multi-Family Group Home Ordinance tracks 4 different categories of facilities as follows:

- **Unlicensed Sober Living** – This classification includes residential homes providing supportive housing for individuals and are not providing services that require state licensing. This category also includes non-residential properties which are used for Group Home administrative offices and do not provide any beds.
- **City Permitted** – This classification of properties are those that have submitted applications per the City’s newly enacted Group Home Ordinance, 14-13. Properties in this category have not necessarily been granted permission to operate, it just indicates that they are currently compliant with the ordinance.
- **DHCS Licensed** – These are properties licensed by the State of California Department of Health Care Services. They are licensed to provide services such as alcohol and/or drug detox, treatment plans, counseling services and the dispensing of medications. Non-residential properties can voluntarily apply to be licensed by the DHCS.
- **Homes in Violation** – Homes on this list are homes which we have identified that are in violation of Group Home Ordinance 14-13. The homes currently identified in this category are those homes which were existing at the time the ordinance was adopted, and did not submit a application within 90 days of the Group Home applications becoming available (April 8, 2014)
- **DSS Licensed Facilities** – These are properties that are licensed by the State of California Department of Social Services (DSS). The DSS licenses such facilities as Child Care Centers, Pre-schools, Adult Residential, Elderly Assisted Living, Children Group Homes, homes for children with special needs and homes for the developmentally disabled.

The cluster of DSS Licensed Facilities in the area of East Mesa Verde Dr. and Baker St. include multiple licenses at 2985 Mesa Verde. The licenses are for Renaissance School, Montessori Harbor-Mesa and Independent Options Foster Care.

The DSS properties are tracked because many of the properties operate as Group Homes.

MEJIA, JESSICA

Subject: FW: R2/R2 Sober Living Ordinance

From: Mark-Green Core [REDACTED]

Sent: Monday, November 02, 2015 2:44 PM

To: MENSINGER, STEPHEN <STEPHEN.MENSINGER@costamesaca.gov>; RIGHEIMER, JIM <JIM.RIGHEIMER@costamesaca.gov>; GENIS, SANDRA <SANDRA.GENIS@costamesaca.gov>; MONAHAN, GARY <GARY.MONAHAN@costamesaca.gov>; FOLEY, KATRINA <KATRINA.FOLEY@costamesaca.gov>; GREEN, BRENDA <brenda.green@costamesaca.gov>; CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>

Subject: R2/R2 Sober Living Ordinance



City Council of Costa Mesa,

Please get this done right, the first time. Spend the money to do this right. It will be well spent. There has to be city PAC's that are successfully creating livable guidelines to support the backbones of our city. If there is not, then start one so that we don't always end up being the low spot and you know what we mean. These "Hotels" are of a completely different culture than the neighborhoods they've moved into. They're not city licensed nor taxed based on revenues. Good folks are moving. I myself am selling at a reduced value!!! These R2 places are generating way north of \$350,000/ MONTH at the expense of the neighbors and our city coffers. That's just the start, our fed and insurance dollars are funding these ventures, but that's another story for another time. These folks don't care. We've had the city Code enforcement and CMPD numerous times, the state etc. We have spread sheets of incidents with and with out city department history numbers. When meeting with their "C Suite" staff who are not much more than graduates of their own system, when mentioned during such a meeting that the CMPD was just out the night before for exactly what they've said over and over is fixed, or that you have Audio & Video recordings, they simply ramble on as though they didn't even hear you. After a couple of years, we finally suggested they put up signs for their hotel patients to be considerate of neighbors - they thought that was a good idea - HELLO - you know they had to have thought of that many projects before. They're arrogant owners! It's smoking, choking, coughing, belching, loud chatter, cell phone speaker phones, Doors SLAMMING at all hours, their supervisors in and out of the next door units 24/7 all through the night. We can't raise a family here In our opinion, Our City isn't turning into a waste land - it already is. We're the only city in the county that still allows the purchase of fireworks - and then of course why leave the dump to blow them off when no rules are enforced. We've gained a real reputation across the country over the last several years and none of them seem to be topics we'd want to be associated with.

These facilities are simply money printing machines. Their websites are complete marketing tools promoting - the luxury living, the yachts, the electric boats etc. Seldom discussing their protocols for recovery or rehab. Never any claims of recidivism rates. It's a different culture. Most have been checked out of a normal society, they have no idea what they're doing or the effect what they do is having.

We seek your guidance and commitment to fulfill what is in the best interest of our "permanent" and/or owner residents.

MEJIA, JESSICA

Subject: FW: Sober Living Ordinance

From: SANDRA FARWELL [mailto:████████████████████]

Sent: Tuesday, November 03, 2015 7:10 AM

To: MENSINGER, STEPHEN <STEPHEN.MENSINGER@costamesaca.gov>; RIGHEIMER, JIM <JIM.RIGHEIMER@costamesaca.gov>; FOLEY, KATRINA <KATRINA.FOLEY@costamesaca.gov>; GENIS, SANDRA <SANDRA.GENIS@costamesaca.gov>; MONAHAN, GARY <GARY.MONAHAN@costamesaca.gov>; GREEN, BRENDA <brenda.green@costamesaca.gov>; CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>

Subject: Sober Living Ordinance

Greetings Ladies and Gentlemen,

I am a long-time resident of Costa Mesa and before that grew up in Newport Beach (4th Generation!). Costa Mesa, or as it is now sadly known as “Costa Meth” has become an overly dense, parking challenged, disrespectful neighborhood in which families are trying to both protect their investments and raise their next generation of kids and being overly challenged by the multitude of disrespectful, non-tax-paying neighbors, smoking in our back yards, staying up late without any care about their affect on those around them, breaking noise ordinances regularly, and their numbers continue to grow unchecked. I live on a short block (300 block of Cabrillo Street) and have 3 properties of Sober Living facilities just on that little section alone! These are 2 R4 lots and an R5 which you can imagine adds all the more to the issues.

I thank you for addressing this out-of-controll situation and closing down all the Sober Living facilities. It’s too late to limit them in numbers, as they are in excess of 400 just in this area alone! It’s past time to take action on this, ban them from our Costa Mesa... and NOT burden my tax dollars to support their efforts. **We voted for you all to look out for our city, so please take back “Costa Meth” and return it to charming “Costa Mesa.”** Newport was successful in extricating these houses and I have every faith you will be too if you put more effort in that direction. **I beg of you to also include R3-R5 properties as well.**

On a semi-related subject, have you all considered taking the cops out of the annoyingly disruptive helicopters and putting them on bicycles where they’d get to know the people, sights and sounds of the areas they are hired to protect? Just consider this, please.

Sandra Farwell

MEJIA, JESSICA

Subject: FW: ATTENTION CITY CLERK: Please include in packet

From: Kelli [mailto: [REDACTED]]
Sent: Tuesday, November 03, 2015 2:05 PM
To: CITY COUNCIL <CITYCOUNCIL@ci.costamesa.ca.us>; GREEN, BRENDA <brenda.green@costamesaca.gov>
Subject: ATTENTION CITY CLERK: Please include in packet

Re: Sober Living Ordinance for R2/R3 CO-15-04

We are unable to attend the City Council Meeting on November 3, 2015 but would like to exercise our right to comment on the issue.

The Council needs to adopt a sober living home ordinance for the R2/R3 properties similar to the ones in the cities of Orange and Newport Beach. The R1 ordinance we have in Costa Mesa is an impotent attempt at controlling the plague of sober living homes in our city that leaves residents at the mercy of junkies and out of town profiteers. Stop hiding behind the "protected class" issue and protect the residents of Costa Mesa for a change.

Sincerely,

Todd & Kelli Weber
Costa Mesa Residents
[REDACTED]

~~[DRAFT]~~ ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 9 OF THE COSTA MESA MUNICIPAL CODE BY AMENDING SECTIONS 9-116 (ISSUING OFFICER) AND 9-125 (BUSINESSES ETC. REQUIRING PERMIT) OF ARTICLE I OF CHAPTER II OF TITLE 9 AND TO ADD SECTION 131 (BUSINESSES WHERE DEVELOPMENT SERVICES DIRECTOR MAY ISSUE PERMIT) OF ARTICLE I OF CHAPTER II OF TITLE 9 AND ARTICLE XXIII (GROUP HOMES) OF CHAPTER II OF TITLE 9

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

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 characteristics of residential neighborhoods and to provide opportunities for the handicapped to reside in such neighborhoods 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- and multi-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 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 facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, over the past 20 months from January 2014 to September 2015 the City experienced an increase of 25.4% in the number of sober living facilities and residential care facilities in the multiple-family residential zones. Those new facilities resulted in an increase of 142-beds, which is a 20.6% increase in beds since January of 2014. As of September 2015 the City had a total of 84 residential facilities, with 831-beds to treat drug and alcohol addiction located in its multiple-family residential districts; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1586 alcohol and drug recovery beds, divided as follows: 44 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 411 beds; 107 unlicensed sober living homes in residential zones, providing 600 beds; Included in those 107 homes are 41 homes who have submitted applications per the R1 Ordinance providing 252 beds; and 1 State Licensed Facility on two separate parcels, providing 76 beds in a non-residential zone; and 40 nonresidential services facilities, providing support services such as administrative offices, therapy etc.

WHEREAS, the City of Costa Mesa is currently home to almost 28.9% of the state licensed residential drug and alcohol treatment facilities in Orange County, while the City holds 3.6% of the County's population, thus it is reasonable to infer that unlicensed sober living homes are locating in the City at a higher concentration than in nearby communities; and

WHEREAS, over the last decade the number of sober living homes in the City of Costa Mesa 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

WHEREAS, the number of sober living homes has not increased to the point of overconcentration in certain Planned Development zones; 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 residential 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, in 2008, the U.S. Department of Health and Human Services projected spending on substance abuse recovery to be \$35 billion annually by 2014 (source: *Projections of National Expenditures for Mental Health Services and*

Substance Abuse Treatment 2004-2014, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Katharine R. Levit et al., 2008); 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, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2008 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 (2.68 persons per household 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 the 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, notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living 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 both the impacts to the surrounding neighborhood as well as to the residents of the group homes; 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 an individual home are lessened; and

WHEREAS, regulation of the operations of larger group homes in the multi-family zones pursuant to the business license provisions of Title 9 is necessary to protect the health, safety, and welfare of the residents of the City, including the residents or occupants of the group homes themselves; 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: Sections 9-116 and 9-125 of Article I of Chapter II of Title 9 are amended, and Section 131 of Article I of Chapter II of Title 9 and Article XXIII of Chapter II of Title 9 are hereby added, to read as follows:

Article I.

9-116. - Issuing officer.

"Issuing officer" shall mean the city council of Costa Mesa, the director of finance, the fire chief, the chief of police, or the development services director.

9-125. - Businesses, professions, trades and occupations requiring a permit under the provisions of this chapter.

(q) Group homes, as defined in section 13-6, that have seven (7) or more occupants.

9-131. - Businesses where the development services director may issue permit.

The development services director may issue permits for operation of a group home located in the in the **R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones)** Zones pursuant to the requirements of Article XXIII of this Chapter.

Article XXIII GROUP HOMES

9-370443. - Definitions

The definitions set forth in Title 13 of this Code shall apply to the provisions of this article unless otherwise provided for herein.

9-371444. - Zoning requirements.

In addition to the requirements of this article, all group homes subject to this article shall comply with the requirements set forth in Chapter XVI of Title 13 of this Code.

9-372445. – Operator’s permit required.

It shall be unlawful for any person to operate, or to permit any person to operate, a group home on any property located within the R2MD, R2HD, R3, PDRLD, PDRMD and/or PDRHD zone, without a valid permit issued for that group home pursuant to the provisions of this article.

9-373446. – Exceptions.

The requirements of this article shall not apply to:

- (a) A group home that has six (6) or fewer occupants, not counting a house manager, and that is in compliance with the applicable provisions of Chapters XV and XVI of Title 13 of this code;
- (b) A state licensed *alcoholism or drug abuse recovery or treatment facility*;
or
- (c) A state licensed *residential care facility*.

9-374447. Requirements for issuance of operator’s permit.

(a) The owner/operator shall submit an application to the director that provides the following information:

- (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.

(b) Requirements for operation of group homes.

- (1) The group home has a house manager who resides at the group home or any multiple of persons acting as a house manager who are present at the group home on a twenty-four-hour basis and who are responsible for the day-to-day operation of the group home.
- (2) All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Residents and the house manager may each only store or park a single vehicle at the dwelling unit or on any street within five hundred (500) feet of the dwelling unit. The vehicle must be operable and currently used as a primary form of transportation for a resident of the group home.
- (3) Occupants must not require and operators must not provide "care and supervision" as those terms are defined by Health and Safety Code Section 1503.5 and Section 80001(c)(3) of title 22, California Code of Regulations.
- (4) Integral group home facilities are not permitted. Applicants shall declare, under penalty of perjury, that the group home does not operate as an integral use/facility.
- (5) If the group home operator is not the property owner, written approval from the property owner to operate a group home at the property.
- (6) Upon eviction from or involuntary termination of residency in a group home, the operator of the group home shall make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home. The group home operator may not satisfy this obligation by providing remuneration to the occupant for the cost of transportation.

- (7) The property must be fully in compliance with all building codes, municipal code and zoning.
- (8) In addition to the regulations outlined above, the following shall also apply to sober living homes:
 - i. 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.
 - ii. The sober living home's rules and regulations must prohibit the use of any alcohol or any non-prescription drugs at the sober living home or by any recovering addict either on or off site. The sober living home must also have a written policy regarding the possession, use and storage of prescription medications. The facility cannot dispense medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least ninety (90) days. Any second violation of this rule shall result in permanent eviction. Alternatively, the sober living home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. The sober living home shall not provide any of the following services as they are defined by Section 10501(a)(6) of Title 9,

California Code of Regulations: detoxification; educational counseling; individual or group counseling sessions; and treatment or recovery planning.

- (c) An applicant may seek relief from the strict application of this section by submitting an application to the director setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to ~~section~~ Article 15 of Chapter IX of Title 13 of this Code.
- (d) The operator's permit shall be issued by the director if the applicant is in compliance, or, where applicable, has agreed to comply, with the requirements of subsections (a) and (b) above.
- (e) In addition to denying an application for failing to comply, or failing to agree to comply, with subsections (a) and/or (b), an application shall be denied by the director under any of the following circumstances:
 - (1) Any owner/operator or staff person has provided materially false or misleading information on the application or omitted any pertinent information.
 - (2) Any owner/operator or staff person has an employment history in which he or she was terminated during the past two (2) years because of physical assault, sexual harassment, embezzlement or theft; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.
 - (3) Any owner/operator or staff person has been convicted of or pleaded nolo contendere, within the last seven (7) to ten (10) years, to any of the following offenses:
 - i. Any sex offense for which the person is required to register as a sex offender under California Penal Code Section 290 (last ten (10) years);
 - ii. Arson offenses—Violations of Penal Code Sections 451—455 (last seven (7) years); or
 - iii. Violent felonies, as defined in Penal Code Section 667.5, which involve doing bodily harm to another person (last ten (10) years).
 - iv. The unlawful sale or furnishing of any controlled substances (last seven (7) years).
 - (4) Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.
 - (5) The owner/operator accepts residents, other than a house manager, who are not disabled or handicapped as defined by the FHAA and FEHA.
 - (6) An operator's permit for a sober living home shall also be denied, and if already issued shall be revoked upon a hearing by the director, under any of the following additional circumstances:

- 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 (1) 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. For any other significant and/or repeated violations of this section and/or any other applicable laws and/or regulations.

9-375448. – Transfer of operator’s permit.

- (a) An operator’s permit shall not be valid for a location other than the property for which it is issued, unless and until the transfer of the permit is approved by the director pursuant to the requirements of section 9-374447.
- (b) An operator’s permit may not be transferred to any other person or entity. No operator’s permit issued pursuant to this article shall be transferred or assigned or authorize any person or entity other than the person or entity named in the permit to operate the group home named therein.

9-376449. - Revocation of operator’s permit.

An operator’s permit may be revoked upon a hearing by the director pursuant to section 9-120 for failing to comply with the terms of the permit and/or for failing to comply with the applicable provisions of section 9-374447.

9-377450. – Reapplication after denial or revocation.

- (a) An applicant for an operator’s permit whose application for such an operator’s permit has been denied may not reapply for such an operator’s permit for a period of six (6) months from the date such notice of denial was issued.
- (b) A holder of an operator’s permit that has been cancelled, revoked or otherwise invalidated may not reapply for an operator’s or a user’s permit for a period of six (6) months from the date that such revocation, cancellation or invalidation became final.

9-378451. – Compliance.

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

Section 2: 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 3: 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 4: 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 _____, 2015

Stephen Mensinger, Mayor

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 _____, 2015, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2015, 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

ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA TO AMEND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE BY ADDING CHAPTER XVI (GROUP HOMES, SOBER LIVING HOMES, AND RESIDENTIAL CARE FACILITIES) IN THE R2-MD, R2-HD AND R3 RESIDENTIAL ZONES AND THE PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (PLANNED DEVELOPMENT ZONES) OF TITLE 13 AND AMENDING SECTION 13-6 (DEFINITIONS) OF ARTICLE 2 (DEFINITIONS) OF CHAPTER I (GENERAL) AND SECTION 13-30 TABLE 13-30 (LAND USE MATRIX) OF CHAPTER IV OF ARTICLE 1 OF CHAPTER V OF TITLE 13

THE CITY COUNCIL OF THE CITY OF COSTA MESA 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 R2MD, R2HD, and R3 zones; and planned development residential zones, 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, 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 accommodations 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 characteristics of residential neighborhoods and to provide opportunities for the handicapped to reside in such neighborhoods 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- and multi-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 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 facilities in close proximity to each other creating near neighborhoods of sober living homes; and

WHEREAS, over the past 20 months from January 2014 to September 2015 the City experienced an increase of 25.4% in the number of sober living facilities and residential care facilities in the multiple-family residential zones. Those new facilities resulted in an increase of 142-beds, which is a 20.6% increase in beds since January of 2014. As of September 2015 the City had a total of 84 residential facilities, with 831-beds to treat drug and alcohol addiction located in its multiple-family residential districts; and

WHEREAS, currently, in all zones, it is estimated that the City of Costa Mesa is home to 1586 alcohol and drug recovery beds, divided as follows: 44 licensed residential facilities/certified alcohol and drug programs in residential zones, providing 411 beds; 107 unlicensed sober living homes in residential zones, providing 600 beds; Included in those 107 homes are 41 homes who have submitted applications per the R1 Ordinance providing 252 beds; and 1 State Licensed Facility on two separate parcels, providing 76 beds in a non-residential zone; and 40 nonresidential services facilities, providing support services such as administrative offices, therapy etc.

WHEREAS, the City of Costa Mesa is currently home to almost 28.9% of the state licensed residential drug and alcohol treatment facilities in Orange County, while the City holds 3.6% of the County's population, thus it is reasonable to infer that unlicensed sober living homes are locating in the City at a higher concentration than in nearby communities; and

WHEREAS, over the last decade the number of sober living homes in the City of Costa Mesa 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

WHEREAS, the number of sober living homes has not increased to the point of overconcentration in certain Planned Development zones; 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 residential 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, in 2008, the U.S. Department of Health and Human Services projected spending on substance abuse recovery to be \$35 billion annually by 2014 (source: *Projections of National Expenditures for Mental Health Services and Substance Abuse Treatment 2004-2014*, U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Katharine R. Levit et al., 2008); 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, establishing distance requirements for sober living homes is reasonable and non-discriminatory and not only helps preserve the residential character of the R2MD, R2HD, and R3 zones; as well as the planned development residential neighborhoods, but also furthers the interest of ensuring that the handicapped are not living in overcrowded environments that are counterproductive to their well-being and recover; and

WHEREAS, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2008 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 (2.68 persons per household 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 the 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 and public utility providers utilize federal census data and other information relating to the characteristics of residential neighborhoods to, among other things: (1) determine the design of residential homes, residential neighborhoods, park systems, library systems, transportation systems; (2) determine parking and garage requirements of various (bedroom) sizes and density of units; (3) develop its General Plan and zoning ordinances; (4) determine police and fire staffing; (5) determine impacts to water, sewer and other services; and (5) establish 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 dwelling and the lack of regulations, sober living facilities present problems not typically associated with more traditional residential uses, including but not limited to: the housing of large numbers of unrelated adult 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; a history of

opening facilities in complete disregard of the Costa Mesa Municipal Code and with little regard for impacts to the neighborhood; 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

WHEREAS, a variable separation requirement will still allow for a reasonable market for the purchase and operation of sober living homes within the City and still result in preferential treatment for sober living homes in that non-handicapped individuals in a similar living situation (i.e., in boardinghouse-style residences) have fewer housing opportunities than the handicapped; and

WHEREAS, 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 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 residential neighborhoods, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the handicapped the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living 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 an individual home are lessened; and

WHEREAS, in addition to group homes locating in residential 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 these neighborhoods; and

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

WHEREAS, no residential developments of any kind are permitted in the I&R (Institutional and Recreation) zone, and no group homes exist in this zone at the time of the adoption of this ordinance; 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 definition in Section 13-6 (Definitions) of Article 2 (Definitions) of Chapter I (General) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

Boardinghouse. A residence or dwelling, other than a hotel, wherein rooms are rented under two (2) 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 (2) or fewer rooms being rented. Boardinghouse, large means three (3) to six (6) rooms being rented. Boardinghouses renting more than 6 rooms are prohibited.

Section 2: Chapter XVI (Group homes and residential care facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

13-320. - Purpose.

This chapter is intended to preserve the residential character the City of Costa Mesa's 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 off-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 residential neighborhood; and (4) to provide

comfortable living environments that will enhance the opportunity for the handicapped, including recovering addicts to be successful in their programs.

13-321. - Definitions.

Property. For purposes of this chapter, property is defined as any single development lot that has been subdivided bearing its own assessor's parcel number or with an approved subdivision map or condominium map.

13-322. - Group Homes in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with Six or Fewer Occupants.

(a) A special use permit shall be required for and may be granted to permit the operation of a group home including a sober living home with six or fewer occupants in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones) zones subject to the following conditions:

(1) The application complies with subsections (a)(1), (a)(2) and (a)(4) through (a)(~~109~~) of Section 13-311.

(2) The application includes a live scan of the house manager and/or operator of the group home.

(3) The group home or sober living home is at least 650 feet from any other property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(4) Upon eviction from or involuntary termination of residency in a group home, the operator of the group home shall make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home. The group home operator may not satisfy this obligation by providing remuneration to the occupant for the cost of transportation.

(b) 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.

(c) Notwithstanding any provision of section 13-3119(b) to the contrary, the Development Services Director may revoke or deny a special

use permit for a group home subject to this chapter following the director's determination that any of the circumstances set forth in Section 13-311(b)(1) through (7) exist.

13-323. - Conditional Use Permit Required for Group Homes, Residential Care Facilities and Drug and Alcohol Treatment Facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with 7 or More Occupants.

A conditional use permit shall be required for and may be granted to allow the operation of a group home, state licensed residential care facility or state licensed drug and alcohol treatment facility with seven (7) or more occupants in **the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones)** zones subject to the following conditions:

(a) The requirements of Chapter III PLANNING APPLICATIONS have been met.

(b) The group home, residential care facility or state licensed drug and alcohol treatment facility is at least six-hundred fifty feet from any property, as defined in Section 13-321, that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as measured from the property line.

(c) The applicant obtains an operator's permit as required by Article 23, Chapter 2 of Title 9 except that this requirement shall not apply to any state licensed residential care facility or state licensed drug and alcohol treatment facility.

(d) The findings for granting a conditional use permit in accordance with Section 13-29(g) are met.

13-324. - Compliance.

(a) Group homes in the in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) Zones with six (6) or fewer occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. A complete application for a special use permit is filed within 90 days of the effective date of this ordinance; and
2. The group home is in full compliance with all of the conditions of this ordinance within one (1) year of its effective date. Notwithstanding the foregoing, existing group homes obligated by a written lease exceeding one (1) 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 (1) additional years grace period pursuant to planning division approval.

(b) Group homes, state licensed residential care facilities and state licensed drug and alcohol treatment facilities in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, AND PDI (Planned Development Zones) with seven (7) or more occupants that are in existence upon the effective date of this ordinance may continue to operate subject to the following:

1. The operator of a group home obtains an operator's permit pursuant to section 9-~~372445~~ et seq. within 120 days from the effective date of this ordinance; and
2. The group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility is in full compliance with all conditions of this ordinance, including obtaining a conditional use permit, within one (1) year from the effective date of this ordinance. Notwithstanding the foregoing, an existing group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility obligated by a written lease exceeding one (1) 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 (1) additional years grace period pursuant to planning division approval.

13-325. - Severability.

Should any section, subsection, clause, or provision of this chapter 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.

Section 3: Subdivisions (4) through (10) of Section 13-30 Table 13-30 of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) are hereby repealed and replaced with the following:

See Attachment A.

~~**Section 4:** Footnote 4 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby repealed and replaced with the following:~~

~~⁴ For the purposes of this table, the symbols shall have the following meaning: C—Conditional Use Permit; MC—Minor Conditional Use Permit; P—Permitted; •—Prohibited. S—Special Use Permit.~~

Section 4: Footnote 5 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby amended to read as follows:

~~⁵ 650 foot separation required between sober living homes, or from state licensed alcohol or drug abuse recovery or treatment facilities. CMMC 13-311(a)(10)(i). For the purposes of this table, the symbols shall have the following meaning: C—Conditional Use Permit; MC—Minor Conditional Use Permit; P—Permitted; •—Prohibited. S—Special Use Permit.~~

Section 8:Section 5: Footnotes 6, ~~and~~ 7 and 8 to Table 13-30 (Land Use Matrix) of Section 13-30 (Purpose) of Chapter IV (Citywide Land Use Matrix) of Title 13 (Planning, Zoning and Development) is hereby added as follows:

⁶ Subject to the separation requirements set forth in Section 13-322(a)(3).

⁷ Small boardinghouses shall locate at least 650 feet from any other small boardinghouse. Large boardinghouses shall be located at least 1,000 feet from any other boardinghouse.

~~⁸ Uses~~ ⁸ **Uses** prohibited in the base zoning district of a Mixed-Use Overlay Zone shall also be prohibited in the Overlay Zone.

Section 9:Section 6: 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 10:Section 7: 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 11:Section 8: 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 _____, 2015

Stephen Mensinger, Mayor

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 _____, 2015, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2015, 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

MEJIA, JESSICA

Subject: FW: R2/R2 Sober Living Ordinance

From: Mark-Green Core [REDACTED]

Sent: Tuesday, November 03, 2015 3:13 PM

To: MENSINGER, STEPHEN <STEPHEN.MENSINGER@costamesaca.gov>; RIGHEIMER, JIM <JIM.RIGHEIMER@costamesaca.gov>; GENIS, SANDRA <SANDRA.GENIS@costamesaca.gov>; MONAHAN, GARY <GARY.MONAHAN@costamesaca.gov>; FOLEY, KATRINA <KATRINA.FOLEY@costamesaca.gov>; GREEN, BRENDA <brenda.green@costamesaca.gov>; CITY COUNCIL <CITYCOUNCIL@ci.costa-mesa.ca.us>

Subject: Re: R2/R2 Sober Living Ordinance

Honored council persons,

Please indulge me as I append to my previous message. Most issues are noise such as additionally - with the doors and windows wide open and at all hours; the TV, Stereo or Video games blaring. To the point that yelling up at them to please just close the doors and windows they cannot hear and we've had to call the CMPD multiple times. The parking on the street is already at a premium and some streets have no restrictions for street sweeping. If there were penalties for parking for everyone (having to move their cars at least once a week) this could curb some of the appeal for our areas. These homes although equipped with 2 car garages + 2 car driveways generally only use 1-2 places so we have their staff shift changes going on 24/7/365 with the constant car doors slamming, beep-beep of the key fob (instead of being courteous and manually key locking and unlocking of cars. Cigarette butts are prolifically in the gutters, in our yards over the fences into our yards and pools etc. It's just simply not a fit for the neighborhoods whose dynamics they are looking for they adversely change. The money they make seems to be a real open invitation for the same types of folks who run Las Vegas, and this is local tax exempt etc. and hugely profitable. Certainly this isn't rocket science for a city team that really wants to properly manage it. A hotel tax of some sort for all residences that have less than 30 day leases. Many CID's are impacted this way.

Thanks for listening.

On Mon, Nov 2, 2015 at 2:43 PM, Mark-Green Core [REDACTED] > wrote:

[REDACTED]

City Council of Costa Mesa,

Please get this done right, the first time. Spend the money to do this right. It will be well spent. There has to be city PAC's that are successfully creating livable guidelines to support the backbones of our city. If there is not, then start one so that we don't always end up being the low spot and you know what we mean. These "Hotels" are of a completely different culture than the neighborhoods they've moved into. They're not city licensed nor taxed based on revenues. Good folks are moving. I myself am selling at a reduced value!!! These R2 places are generating way north of \$350,000/ MONTH at the expense of the neighbors and our city coffers. That's just the start, our fed and insurance dollars are funding these ventures, but that's another story for another time. These folks don't care. We've had the city Code enforcement and CMPD numerous times, the state etc. We have spread sheets of incidents with and with out city department history numbers. When meeting with their "C Suite" staff who are not much more than graduates of their own system, when mentioned during such a meeting that the CMPD was just out the night before for exactly what they've said over and over is fixed, or that you have Audio & Video recordings, they simply ramble on as though they didn't even hear you. After a couple of years, we finally suggested they put up signs for their hotel patients to be considerate of neighbors - they thought that was a good idea

- HELLO - you know they had to have thought of that many projects before. They're arrogant owners! It's smoking, choking, coughing, belching, loud chatter, cell phone speaker phones, Doors SLAMMING at all hours, their supervisors in and out of the next door units 24/7 all through the night. We can't raise a family here In our opinion, Our City isn't turning into a waste land - it already is. We're the only city in the county that still allows the purchase of fireworks - and then of course why leave the dump to blow them off when no rules are enforced. We've gained a real reputation across the country over the last several years and none of them seem to be topics we'd want to be associated with.

These facilities are simply money printing machines. Their websites are complete marketing tools promoting - the luxury living, the yachts, the electric boats etc. Seldom discussing their protocols for recovery or rehab. Never any claims of recidivism rates. It's a different culture. Most have been checked out of a normal society, they have no idea what they're doing or the effect what they do is having.

We seek your guidance and commitment to fulfill what is in the best interest of our "permanent" and/or owner residents.

MEJIA, JESSICA

Subject: FW: Sober living ordinance

From: Valerie Fletcher [mailto: [REDACTED]]
Sent: Tuesday, November 03, 2015 4:10 PM
To: Mayor <Mayor@costamesaca.gov>
Subject: Sober living ordinance

City of Costa Mesa Council
Mayor and Council Members

As a 5 1/2 year Costa Mesa homeowner, resident and voter and 40 year Orange Co resident, I strongly support the sober living ordinance that is on the agenda for tonights meeting for the new regulations. .

. I agree the 2014 ordinance should be expanded to nearly the entire city including Eastside Costa Mesa and in my area of many townhomes, condos, small apartments, and single family homes, as this area is also subject to some of the issues and problems associated with group homes..

Thank you, Mrs. Valerie Fletcher

PH – 3

**PRIVATE HELISTOP
AT 3132 AIRWAY
AVENUE**

ADDITIONAL DOCUMENTS

MEJIA, JESSICA

Subject: FW: [BULK] TONIGHT'S CITY COUNCIL MTG RE PUBLIC HEARING & CONDITIONAL USE PERMIT RE PA-11-03

Importance: Low

From: Denis LaBonge [mailto: [REDACTED]]
Sent: Tuesday, November 03, 2015 2:05 PM
To: CITY CLERK <CITYCLERK@ci.costamesa.ca.us>
Subject: [BULK] TONIGHT'S CITY COUNCIL MTG RE PUBLIC HEARING & CONDITIONAL USE PERMIT RE PA-11-03
Importance: Low

Dear City Clerk,
Please distribute this email communication to all City Council members.
Thank you,
Denis LaBonge
Owner, 3136 Airway Ave, CM 92626 CA

RE : PA - 11 - 03, a proposed helipad at 3132 Airway.

Dear Council Members,

I request that the Costa Mesa City Council postpone for 90 days any vote re the proposed Helipad and its conditional use permit proposed to be constructed at 3132 Airway, for the following reasons:

- 1. I am the owner of 3136 Airway, which is part of a building that was condominiumized into a 6 unit individually owned commercial building. The applicant, Kevin Coleman, finally met with 50 % of the fellow building owners on Oct 9th, after several attempts to meet with him previously, to discuss our concerns as common walled owners, living under a roof and a helipad that he and Mr Manclark wish to develop. [NDC/Manclark]**
- 2. NDC/Manclark did agree in writing to several minor financial HOA matters to 100% cover extraneous costs to the HOA due to potential wind damage to the roof & the structure and tenants that their helicopter operations inevitably might cause.**
- 3. Mr Coleman advised at that meeting his atty would draw up language for all the owners to review with their counsel. But ... WE WON'T SEE THE PROPOSED DOCS until February 2016 !!!**
- 4. Of greater impact, I think you all will agree, is the personal financial threat and concerns that were discussed on that Oct 9th meeting re a document to be developed by NDC/Manclark, addressing Financial Indemnifications to be provided and paid for by NDC/Manclark to all owners, protecting us from potential personal**

liability due to structural damage and/ or personal /physical injuries caused by NDC/MancClark helicopter operations.

5. Mr Coleman's 10/09/15 letter to the Airway owners does not address this indemnification matter nor allow sufficient time for the owners to consult with OUR legal counsel to see if these protections have been correctly addressed.

For these reasons I ask the City Council to act - in the interest of fairness to all - by postponing any vote for at least 90 days, thus allowing Mr Coleman time to produce such a document addressing these indemnification matters to his fellow common walled/roofed neighbors and owners, who will be most impacted by this development which seemingly serves one man & one business.

**Thank you for your consideration,
Denis LaBonge**