



City of Arts & Innovation

# Safety, Wellness, and Youth Committee Memorandum

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**TO: THE SAFETY, WELLNESS, AND YOUTH COMMITTEE**      **DATE: June 18, 2025**

**FROM: CITY ATTORNEY'S OFFICE**      **WARDS: ALL**

**SUBJECT: UPDATE ON SOBER LIVING HOME LITIGATION**

**ISSUE:**

A presentation regarding Costa Mesa's sober living home ordinance, which requires a 650-foot separation from other sober living homes and state-licensed residential facilities. This ordinance was recently upheld by the Ninth Circuit Court of Appeals in the December 2024 case, *Ohio House LLC v. City of Costa Mesa*, 122 F.4th 1097.

**RECOMMENDATION:**

That the Safety, Wellness and Youth Commission receive staff's presentation and decide if the City should impose distance requirements on sober living homes.

**RELEVANT DEFINITIONS:**

**Multiple-rental home** – Rooms can be rented out under more than one rental agreement.

**Boardinghouses** – Rooms can be rented to anyone.

**Group Homes** – Supportive living environment for persons considered handicapped under state or federal law.

**Sober Living Home** - Group home for persons recovering from alcohol and/or drug addiction and who are considered handicapped under state or federal law. Residents live together in a communal environment and support each other in maintaining their sobriety. Not licensed by the state.

**State Licensed Facility** - "Rehab" or "Detox" facilities provide services and are licensed by the Department of Health Care Services. (DHCS). A licensed facility serving 6 or fewer patients is considered a residential use of the property and must be treated the same as any other single-family residence.

*"No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery"*

*or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone." (CA. Health and Safety Code section 11834.23)*

## **BACKGROUND:**

### **COSTA MESA**

In 2014, Costa Mesa had an “overconcentration” of group homes, with approximately 80 sober living homes and 41 state licensed facilities. Costa Mesa is a geographically smaller city, with an area of 16 square miles and a population of 112,780. (In comparison, Riverside is 81 square miles with a population of 317,558). Costa Mesa residents complained some neighborhoods had 5-6 sober living homes on a single block, creating an “institutionalized” environment with secondary effects of noise, crowding, parking issues and second-hand smoke. This was changing the quiet, residential character of the neighborhoods.

To remedy the overconcentration, Costa Mesa passed a Sober Living Home Ordinance for the R1 zone (single-family residential) requiring, among other things:

- Special Use Permit
- 6 or fewer patients per house.
- 650-foot separation from other sober living or detox facilities.

Costa Mesa justified the 650-foot separation as follows:

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

WHEREAS, housing inordinately large numbers of unrelated adults in a single-family home or congregating sober living homes in close proximity to each other does not provide the handicapped with an opportunity to “live in normal residential surroundings,” but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the handicapped, and which no reasonable person could contend provides a life in a normal residential surrounding;”

The ordinance was retroactive, giving existing sober living homes up to one year to obtain a permit, and one additional year to comply with all the terms. The ordinance has a reasonable accommodation clause for special circumstances and further gives the City Council authority to permit an otherwise ineligible group home that would not result in an “overconcentration” in the area.

### **Trial Court Decision**

In 2017, Costa Mesa amended the ordinance to include the Multi-Family Residential Zone. This

affected Ohio House, which had a large facility in that zone. Ohio House applied for a permit; however, the permit was denied because there were four other sober living homes within 650 feet. Ohio House asked for a reasonable accommodation, which was also denied. In 2019, Ohio House sued in federal court, alleging the 650-foot restriction violated: (1) The federal Fair Housing Act (FHA); (2) the state Fair Employment Housing Act (FEHA); and (3) the state Planning and Zoning Code (Govt Code 65000 et. seq.).

In September of 2022, Costa Mesa prevailed in the lawsuit, *Ohio House LLC v. City of Costa Mesa*, with the jury upholding the 650-foot separation. Ohio House appealed to the Ninth Circuit Court of Appeals, requesting a new trial or judgment as a matter of law (i.e. opposite of the jury verdicts, meaning “no reasonable jury” could have come to that conclusion.)

### State Opposition

On June 29, 2023, the California Attorney General, on behalf of the state Civil Rights Department (CRD) and the state department of Housing and Community Development (HCD) filed an amicus brief with the Ninth Circuit Court of Appeals. The brief was in support of Ohio House and against Costa Mesa. The Attorney General wrote:

“In short, restrictive zoning codes, such as those at issue here in Costa Mesa, constrain housing opportunities and choice for people with disabilities. This expressly contravenes FEHA, the State’s housing and planning laws, the mission of CRD and HCD, and the policy of the State of California. The judgment of the district court should be reversed.”

On November 29, 2023, HCD sent a detailed letter, entitled “RE: Group Home Ordinances – Letter of Technical Assistance” to the Costa Mesa City Manager, warning that:

“To comply with state law, the City must, among other things, immediately stop enforcing its group home ordinances, repeal them, and revise its reasonable accommodations policies.”

As to the 650-foot separation, HCD referred to pages 27-29 of its 2022 Group Home Technical Advisory, concluding:

“Local governments should be very wary about imposing spacing requirements beyond the limited requirements the Legislature has deemed necessary to prevent the overconcentration of certain *licensed* facilities to ensure their residents are integrated into their communities.”

(Pages 27-29 of the Group Home Technical Advisory are attached as Exhibit A to this staff report.)

### Appellate Court Decision

The Ninth Circuit reviewed the case, and on December 4, 2024, released its decision upholding the trial court jury verdicts that:

1. The 650-foot separation did not violate the federal Fair Housing Act (FHA).

2. The 650-foot separation did not violate the state Fair Housing and Employment Act (FEHA).
3. The 650-foot separation did not violate the state Zoning law. (Gov't Code 65000 et. seq.)<sup>1</sup>

This Ninth Circuit decision is mandatory authority on the federal claim (Fair Housing Act), and persuasive authority on the state claims (FEHA and Planning and Zoning Code.) That means it is *possible* that a state court, hearing the same evidence, could rule differently than the federal court as to the state law claims.

### **Analysis**

Costa Mesa won by showing that the protected class of disabled people was treated better by the ordinance than non-disabled people. The disabled were treated better because they could live together in a group home in the R1 Zone (single family housing) whereas non-disabled people could not. The reason is that under Costa Mesa's ordinance, a non-disabled, multiple-rental house is a boardinghouse, and boardinghouses are not permitted in the R1 Zone. As a result, the disabled had more housing opportunities than the non-disabled. Since the disabled were better off than the non-disabled, there was no illegal discrimination. Although Ohio House (and the state) argued the disabled would be better off still if there were no regulations whatsoever, the court ruled there is no legal requirement that the challenged policy provide the protected class with the *maximum* possible benefit.

### **Riverside could impose a separation requirement**

The *Ohio House* logic would apply to the City of Riverside, since the disabled have more housing opportunities than the non-disabled. The reason is that sober living homes are permitted in all residential and mixed-use zones, while boardinghouses are restricted to the R-3 zone. (RMC 19.910.030 defines boardinghouses as rentals to five or more individuals with separate rental agreements.) Since the disabled have all the housing opportunities of the non-disabled, and more, there would be no illegal discrimination if the City were to impose a separation requirement between sober living homes.

Furthermore, the density of the R-1 zones of Costa Mesa and Riverside are roughly similar, such that a 650-foot separation would permit a comparable density of sober living homes. In Costa Mesa, planners analyzed a map of a typical R-1 neighborhood and drew a 650-foot radius circle around a sober living house. They discovered the circle encompassed 171 parcels. Therefore, the 650-foot separation allowed for one sober living home per 171 parcels. In Riverside, a 650-foot radius circle imposed over a typical R-1 neighborhood encompassed 166 parcels. Other distances also provided similar densities between Costa Mesa and Riverside: A 1000-foot radius circle would encompass 396 parcels in Costa Mesa, and 368 parcels in Riverside; a 500-foot radius would encompass 116 parcels in Costa Mesa, and 112 parcels in Riverside. When the Costa Mesa City Attorney presented this data to the Costa Mesa Planning Commission on September 22, 2014, the Commissioners decided the 650-foot separation achieved the proper density.

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<sup>1</sup> In post-trial motions, the district court held the Gov't Code 65008 claim was time-barred, since Ohio House had not challenged the ordinance within 90-days of its adoption, as required by 65009. The Ninth Circuit affirmed and found that submitting the matter to the jury was harmless error.

Unlike Costa Mesa, Riverside does not have an extensive sober living ordinance. Instead, these homes are addressed in the Definitions section (Article X) of the Zoning Code (Title 19) as follows:

### **RMC 19.910.020 "A" Definitions**

*Alcohol and drug free residential recovery home (sober living home)* means the use of a residential, dwelling structure or unit for a cooperative living arrangement to provide an alcohol and drug free environment for persons recovering from alcoholism or alcohol and/or drug abuse who seek a living environment in which to remain clean and sober; and which demonstrates each of the following identifying characteristics that shall serve to distinguish the alcohol and drug free residential recovery home and sober living home, as a use of residential property, from similar land uses such as drug treatment facilities or community case facilities that are subject to state licensing requirements and from all other uses of residential property:

1. All residents, including live-in managers, operators, or owners, are recovering from alcohol and/or drug abuse;
2. All residents actively participate in legitimate programs, including, but not limited to, Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) programs, and maintain current records of meeting attendance;
3. All owners, managers, operators, and residents observe and promote a "zero tolerance" policy regarding the consumption or possession of alcohol and controlled substances, except for prescription medications obtained and used under direct medical supervision;
4. There is a written policy dealing with the use of drugs or alcohol;
5. Owners, operators, managers and residents do not provide on-site any of the following services as they are defined by Section 10501(a)(6) of Title 9, California Code of Regulations:
  - a. Detoxification;
  - b. Educational counseling;
  - c. Individual or group counseling sessions;
  - d. Treatment or recovery planning;
  - e. Treatment or recovery planning;
6. The number of residents 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;
7. Residents do not require non-medical care and/or supervision as those terms are defined at Health and Safety Code Section 1503.5 and Section 80001(c)(3) of Title 22 of the California Code of Regulations;
8. The operators and/or residents maintain current membership in a recognized nonprofit organization of sober living homes that provide a credible quality assurance

service for applicants or members or have received a sober living home certification from the State of California Department of Alcohol and Drug Programs; and

9. Owners, managers, operators, and residents ensure that the property and its use comply with all applicable state and local laws.”

The City could amend the definition by adding a section 10 and specify that no new sober living home may open with a specific distance (650') of an existing sober living home or state-licensed facility as follows:

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

### **CALIFORNIA SOBER LIVING AND RECOVERY TASK FORCE (CASLAR)**

CASLAR is an Orange County organization of governments sponsoring legislation for more regulation of drug and alcohol treatment facilities and sober living homes. CASLAR has a model sober living ordinance it is advocating other Orange County cities adopt, the goal being to unite as NATO-like organization and provide “mutual aid” against legal challenges from HCD. The CASLAR ordinance was adopted by Mission Viejo on May 25, 2025, and contains a 1,000-foot separation between sober living homes. Neither Mission Viejo nor CASLAR explain why they chose the 1,000-foot separation as opposed to the 650-foot separation used by Costa Mesa. (The Mission Viejo Ordinance is attached as Exhibit B.)

#### **City of Fountain Valley**

The City of Fountain Valley adopted the Costa Mesa ordinance on March 1, 2024, and gave existing sober living homes one year to comply. A Fountain Valley councilmember appeared at the 4/24/25 CASLAR meeting and reported the City was beginning to “crack down” on the non-complying sober living homes. Sixteen homes had applied for licenses; the City approved 12 of them. The councilmember did not mention receiving any warning letters from HCD.

#### **SUMMARY:**

The City of Costa Mesa’s ordinance requirement for a 650-foot separation between sober living homes survived judicial review at the Ninth Circuit Court of Appeals, because the legally “disabled” residents of the sober living homes were able to live together in a group home in the Single Family Residential Zone (R1), while the non-disabled residents of other multiple-rental homes (boardinghouses) could not live in the R1 zone. There was no discrimination against the disabled, since they had all the housing opportunities available to the non-disabled, and additional opportunities not available to the non-disabled. The same currently holds true in the City of Riverside, and would continue to hold true even if the City were to impose a separation requirement for sober living homes. However, taking such action might be looked upon unfavorably by HCD.

#### **STRATEGIC PLAN ALIGNMENT:**

The activity within the staff report aligns with **Strategic Priority 2 – Community Well-Being,**

**Goal 2.4** to support programs and innovations that address housing supply and attainability needs.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – This presentation provides City Boards & Commissions timely and reliable legal updates to serve the public interest.
2. **Equity** – The presentation emphasizes the City’s desire to treat the disabled and non-disabled fairly.
3. **Fiscal Responsibility** – No additional funding is required.
4. **Innovation** – The City continually analyzes timely and reliable information in order to develop informed policies and implement new programs in order to meet the community’s changing needs.
5. **Sustainability & Resiliency** – This presentation will enhance the City’s preparedness for the future.

**FISCAL IMPACT:**

There is no fiscal impact anticipated.

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Approved as to form: Rebecca McKee-Reimbold, Interim City Attorney

Attachments:

1. Exhibit “A” – HCD Group Home Technical Advisory, pgs. 27-29.
2. Exhibit “B” – City of Mission Viejo Agenda Report and Ordinance
3. Presentation