



# City Council Memorandum

*City of Arts & Innovation*

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**TO: HONORABLE MAYOR AND CITY COUNCIL**      **DATE: APRIL 10, 2018**

**FROM: COUNCILMEMBER SOUBIROUS**      **WARDS: ALL**

**SUBJECT: RESOLUTIONS IN SUPPORT OF ASSEMBLY BILL 2214 (RODRIGUEZ AND MELENDEZ, 2018) – RECOVERY RESIDENCES; AND ASSEMBLY BILL 3162 (FRIEDMAN, 2018) – ALOCOHOLISM OR DRUG ABUSE RECOVERY OR TREATMENT FACILITIES**

**ISSUE:**

Adopt resolutions in support of Assembly Bill 2214 and Assembly Bill 3162.

**RECOMMENDATIONS:**

That the City Council adopt resolutions in support of Assembly Bill 2214 and Assembly Bill 3162 and direct staff to submit a copy of the adopted resolution to the authors of the bills and to other appropriate elected state representatives.

**BACKGROUND:**

*City Council Workshop*

On March 13, 2018 the City Council held a workshop on residential recovery facilities and group homes. The City Attorney's Office provided an overview of all applicable legal regulations that govern the prevalent types of group housing in California.

As was discussed, a local jurisdiction's ability to regulate some of these types of facilities is limited. Local jurisdictions are prevented from enacting ordinances directed at state licensed residential care and living facilities, including sober living homes, serving six or fewer residents. This includes a prohibition against any conditional use permit, zoning variance, or other discretionary action that is not required of a single-family residence in the same zone. Federal and state fair housing laws further restrict the ability of local jurisdictions with regard to group homes and supportive housing.

Local jurisdictions have greater authority to regulate quasi-commercial living arrangements in residential zones where no services are being provided and where such regulations are enacted without regard to or discriminating against the protected class of the residential occupants. This would include non-licensed group homes and illegal boarding houses attempting to operate as

sober living homes. In the event of quality of life issues, as with violations at any other single-family residence, the City may use its code enforcement tools to require corrections, prosecute violations, and obtain injunctions.

*Assembly Bill 2214 (Rodriguez and Melendez, 2018)*

Assemblymembers Freddie Rodriguez and Melissa Melendez introduced Assembly Bill 2214 during the current (2017-2018) Regular Session of the Legislature. This bill establishes a voluntary certification process for recovery residences. As defined, a recovery residence is a residential property that is operated as a cooperative living arrangement to provide an alcohol and drug free environment for persons recovering from alcoholism or drug abuse, or both, who seek a living environment that supports personal recovery. A recovery residence would be authorized to demonstrate its commitment to providing a supportive recovery environment by applying and becoming certified for operation by a national certification organization approved by the State's Department of Health Care Services (DHCS).

A certified recovery residence would be required to satisfy the following requirements:

- Owners, managers, operators, and residents observe and promote a zero tolerance policy regarding the consumption or possession of alcohol or controlled substances or marijuana being used in any manner not consistent with a documented prescription;
- Residents actively participate in community or individual programs of recovery from a substance use disorder, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous programs; and,
- Within the recovery residence, a resident who has been referred to, and has access to, ongoing outpatient treatment, aftercare, or other recovery maintenance services commits to continue to use these services in accordance with a clinically managed system of care, if one exists for the resident.

Approved certifying organizations would be required to establish and use procedures to administer the application, certification, renewal and disciplinary processes for recovery residences, including investigating and enforcing violations of the certifying organization's code of conduct. The code of conduct would be required to include, but not be limited to, the following:

- Document that the organization actively develops and confers professional, residential, or organizational quality designations according to applicable nationally recognized standards;
- Demonstrate that it has and uses established recovery residence certification requirements;
- Inspect, at least annually, a recovery residence to ensure compliance with certification requirements;
- Conduct, at the discretion of the approved certifying organization, periodic reviews of a residence to determine whether the residence is in compliance with all applicable laws;
- Respond to and investigate suspected violations of the organization's code of conduct;
- Revoke the certification of a residence if the residence is not operating in compliance with certification requirements or applicable laws, and notify DHCS of the revocation; and
- Require a recovery residence operator to submit various documents (i.e. good neighbor policy to address neighborhood concerns and complaints; procedures and requirements

for verifying that residents remain drug and alcohol free; inform local jurisdictions and neighbors of the complaint procedures and provide contact information).

On or after January 1, 2020, several specified state and county entities, including judges and parole officials, would be required to first refer individuals seeking assistance to recovery residences that are listed as certified by an approved certifying organization.

Local jurisdictions would be able to petition the State DHCS to investigate recovery residences that are believed to be operating outside the code of conduct established by an approved certifying organization. The State DHCS would be permitted to impose sanctions, commence disciplinary actions, and revoke the certification of a recovery residence based on the results of its investigation.

This bill was approved by the Assembly Committee on Health on March 20, 2018 with bipartisan support (13 ayes, 0 noes; 2 votes were not registered). The bill has now been referred to the Assembly Committee on Appropriations for consideration.

#### *Assembly Bill 3162 (Friedman, 2018)*

Assemblymember Laura Friedman introduced Assembly Bill 3162 during the current (2017-2018) Regular Session of the Legislature. This bill establishes new provisions for the licensure and operation of alcoholism or drug abuse recovery or treatment facilities, and increases the penalties for violations of these regulations. These new regulations include:

- Beginning on or after January 1, 2019 the State DHCS would be authorized to deny any application for a new facility license if the proposed location is in proximity to an existing facility that would result in an overconcentration, as defined. Overconcentration would be defined as when two or more alcoholism or drug abuse recovery or treatment facilities are within a distance of 300 feet or less of each other.
- The expansion or intensification of licensed existing facilities, as defined, would be prohibited. Licensed existing facilities are defined as a facility that is operating in compliance with all state laws on or before December 1, 2018, located within 300 feet or less of another licensed facility, as long as they are in continuous operation with no lapse in licensure.
- At least 45 days prior to approving any application for any new facility, the State DHCS would be required to post on its website the address of the proposed new facility.
- Initial licenses issued by the State DHCS would be provisional for the first year.
- All programs and medical services offered or provided by a licensed alcoholism or drug abuse recovery or treatment facility must be specified in the license application and be provided within the licensed facility, onsite, for the benefit of the residents of the facility.
- Penalties for violations of licensing and regulatory provisions would be increased to not less than \$1,000 or more than \$15,000 per day for each violation (current penalties range \$25-\$50).
- Any person or entity found to be in violation of these licensing provisions would be prohibited from applying for a new license for a two-year period.

The bill directs the State DHCS to adopt the necessary regulations to implement these new provisions on or before July 1, 2022.

The Assembly Committee on Health is tentatively scheduled to consider this bill on April 17, 2018.

**DISCUSSION:**

As currently proposed, both Assembly Bill 2214 and Assembly Bill 3162 provide the state as well as local jurisdictions with additional tools to ensure these types of facilities operate in compliance with all applicable regulations. This is important given that these types of facilities are located throughout the City, including within or adjacent to established residential areas. Through the implementation of common certification requirements, by establishing an overconcentration standard and by limiting the expansion or intensification of existing facilities, these bills help promote greater compatibility by protecting the character of the surrounding neighborhood. Local jurisdictions would also now be empowered to work with the state not only to address bad operators, but also on those facilities that are not currently required to secure a license from the state or a permit from the City. Strong financial incentives have also been incorporated as state and county agencies would be required to first refer individuals to certified facilities and by substantially increasing the monetary penalties that could be assessed to bad operators. While not perfect, these bills provide a prudent approach to oversight given the complicated legal framework for regulating these types of facilities.

**FISCAL IMPACT:**

There is no fiscal impact associated with adoption of these resolutions.

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Mike Soubirous, Councilmember Ward 3  
Approved as to form: Gary G. Geuss, City Attorney



Mike Soubirous  
Councilmember Ward 3

**Attachments:**

1. Resolution in Support of Assembly Bill 2214
2. Resolution in Support of Assembly Bill 3162
3. Assembly Bill 2214 – Recovery Residences
4. Assembly Bill 3162 – Alcoholism or Drug Abuse Recovery or Treatment Facilities
5. Presentation