

CITY OF LAGUNA NIGUEL

AGENDA ITEM CITY COUNCIL

JUNE 5, 2018

TO: Honorable Mayor and Council Members

FROM: Debbie Bell, Interim Assistant City Manager/Management Services Director

SUBJECT: Support for Sober Living Home Legislation

SUMMARY: Two bills are currently being proposed in the State Assembly and U.S. Congress that would provide additional regulations and licensing requirements for Sober Living Homes and drug and alcohol treatment facilities. It is recommended that the City Council send letters in support of such legislation.

BACKGROUND/ANALYSIS

Sober living homes are intended to help those recovering from alcohol and substance abuse. Usually, they are owned and operated by private companies. These facilities provide an alcohol and drug-free environment where residents can transition from rehabilitation to independent living without addiction. While the goal of these facilities is well intended, they sometimes raise concerns among residents when tenants do not follow the rules and engage in behavior that is disruptive to the neighborhood.

Two bills are currently proposed in the State Assembly and U.S Congress that would provide additional regulations and state licensing requirements for these types of facilities which are summarized below:

AB 3162 (Friedman)

The proposed bill requires sober living homes to be licensed by the state similar to residential drug and alcohol treatment facilities.

H.R. 5724 (Rohrabacher)

The proposed bill amends the Fair Housing Act to exclude sober living homes from protection under federal disabilities laws and restore zoning authority back to cities.

While these proposed bills do not address all of the concerns that the City has with these types of residential facilities, it is a positive step in addressing part of the problem. It is also recommended that the City Council authorize the Mayor to send additional letters of support for

these bills as they move through the legislative process, and any additional proposed legislation regarding this subject.

FISCAL IMPACT

None.

RECOMMENDATION

That the City Council:

- a. Send a letter supporting AB 3162 (Friedman) and H.R. 5724 (Rohrabacher), as submitted or revised; and,
- b. Authorize the Mayor to send additional support letters related to these and other proposed legislation related to this subject.

SUBMITTED

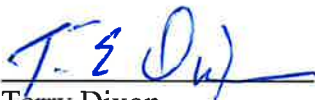
BY:



Debbie Bell
Interim Assistant City Manager/
Management Services Director

REVIEWED

BY:



Terry Dixon
City Attorney

REVIEWED

BY:



Kristine Ridge
City Manager

Attachments:

- A. Draft Support Letters
- B. Proposed AB 3162 and H.R. 5724

ATTACHMENT A



June 6, 2018

The Honorable Dana Rohrabacher
United States Congress
2300 RHOB
Washington, DC 20515
VIA FAX: 202-225-0145

**Re: H.R. 5724 (Rohrabacher) – Restoring Community Oversight of Sober Living Homes Act of 2018.
Notice of Support**

Dear Congressman Rohrabacher:

The City of Laguna Niguel supports H.R. 5724, the Restoring Community Oversight of Sober Living Homes Act of 2018. This bill would amend the Fair Housing Act (FHA) to clarify the Act's applicability to recovery facilities, also known as sober living homes, in residential communities.

Local communities and their elected officials are currently unable to address effectively the proliferation of recovery facilities in residential neighborhoods due to FHA constraints. They are businesses in all but name, and in many cases, occupancy of these recovery facilities is transient, the surrounding community experiences increases in police activity, operators of the homes are committing fraud, and the area residents and their elected officials are powerless to address concerns about the changing character of their neighborhoods.

In Laguna Niguel, one of our highest priorities is to preserve the high quality of life our residents enjoy. Residential drug and alcohol treatment facilities provide valuable rehabilitation and supportive services in a therapeutic environment, which can benefit both individual patients and the greater community. However, the single licensed rehabilitation facility nestled into the fabric of a community has been taken over by companies that have created multi-structure, campus-style facilities within a residentially zoned neighborhood. Many of these facility operators continue to operate multistructure facilities and pay minimal fines because of the existing penalty structure.

We want to preserve the neighborhoods in our community for families. At least once a month, we hear from residents who live near a residential drug and alcohol treatment house being run by an out-of-state company with no ties to the neighborhood. We listen to instances of loud music at all hours of the day and night, constant exposure to cigarette smoke, trash left on nearby lawns, loud talking and shouting (even fist-fights) between housemates, and the congregation of men and women in the driveway, waiting for a van to take them to their educational sessions. In general, our residents are concerned about the degradation and loss of neighborliness that they used to enjoy in their neighborhood, and we are concerned, too. A strong and vibrant community is based on the cohesiveness and strength of its neighborhoods. Sending our deputies to address these issues takes them away from the patrol duties and enforcement efforts our residents support through their taxes.

We agree that local governments should have the ability to regulate, limit, or ban the operation of these businesses in residential areas, but the FHA's protection of recovering alcoholics and drug addicts from discrimination in housing bars the implementation of laws and ordinances that specifically apply to the facilities. This shields a large number of unscrupulous owners, operators, and inhabitants from accountability when they disregard the wishes of the surrounding neighborhood. H.R. 5724 would narrowly amend the FHA to exclude these facilities in residential neighborhoods from protection under federal disabilities laws to restore zoning authority back to its proper jurisdiction: states, counties, and cities.

For these reasons, the City of Laguna Niguel supports H.R. 5724.

Sincerely,

Elaine Gennawey
Mayor

John Mark Jennings
Mayor Pro Tem

Laurie Davies
Council Member

Linda Lindholm
Council Member

Fred Minagar
Council Member

cc: U.S. Senator Dianne Feinstein
U.S. Senator Kamala Harris



CITY of LAGUNA NIGUEL

30111 Crown Valley Parkway / Laguna Niguel, California, 92677
Phone / 949-362-4300 Fax / 949-362-4340

CITY COUNCIL

Mayor Elaine Gennawey
Mayor Pro Tem John Mark Jennings
Council Member Laurie Davies
Council Member Linda Lindholm
Council Member Fred Minagar

June 6, 2018

The Honorable Laura Friedman
California State Assembly
State Capitol Building, Room 2137
Sacramento, CA 95814
VIA FAX: 916-319-2143

**Re: AB 3162 (Friedman) – Alcoholism or drug abuse recovery or treatment facilities.
Notice of Support**

Dear Assembly Member Friedman:

The City of Laguna Niguel supports AB 3162 (Friedman), which would help maintain residential neighborhoods as a therapeutic environment for the social integration of disabled persons, including recovering alcoholics and addicts. This bill would do so by reforming outdated regulations for the licensing of residential drug and alcohol treatment facilities to enable authority for the Department of Health Care Services (DHCS) to ensure compliance with existing licensing laws.

In Laguna Niguel, one of our highest priorities is to preserve the high quality of life our residents enjoy. Residential drug and alcohol treatment facilities provide valuable rehabilitation and supportive services in a therapeutic environment, which can benefit both individual patients and the greater community. However, the single licensed rehabilitation facility nestled into the fabric of a community has been taken over by companies that have created multi-structure, campus-style facilities within a residentially zoned neighborhood. Many of these facility operators continue to operate multistructure facilities and pay minimal fines because of the existing penalty structure.

We want to preserve the neighborhoods in our community for families. At least once a month, we hear from residents who live near a residential drug and alcohol treatment house being run by an out-of-state company with no ties to the neighborhood. We listen to instances of loud music at all hours of the day and night, constant exposure to cigarette smoke, trash left on nearby lawns, loud talking and shouting (even fist-fights) between housemates, and the congregation of men and women in the driveway, waiting for a van to take them to their educational sessions. In general, our residents are concerned about the degradation and loss of neighborliness that they used to enjoy in their neighborhood, and we are concerned, too. A strong and vibrant community is based on the cohesiveness and strength of its neighborhoods. Sending our deputies to address these issues takes them away from the patrol duties and enforcement efforts our residents support through their taxes.

AB 3162 updates fines for non-compliance to be more commensurate with similar licensing fines. Increasing the fines and penalties to be more commensurate with similar licensing fines will help provide an additional incentive for companies to comply with the law and provide the needed care for the patients.

This bill also clarifies existing law and enables DHCS to enforce its policies by specifying that all services under a license must be carried out at the specific physical location of the license and allows DHCS to deny a new license application if a facility is located within 300 feet of an existing facility. In addition, it establishes a one-year provisional license to serve as a probationary period for new licenses so that DHCS has time to analyze and determine compliance with regulations.

For these reasons, the City of Laguna Niguel supports AB 3162.

Sincerely,

Elaine Gennawey
Mayor

John Mark Jennings
Mayor Pro Tem

Laurie Davies
Council Member

Linda Lindholm
Council Member

Fred Minagar
Council Member

cc: Senator Patricia Bates
Assembly Member Bill Brough
Kelsey Brewer, ACC-OC Legislative Affairs Manager, kbrewer@accoc.org
Tony Cardenas, League Regional Public Affairs Manager, tcardenas@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

ATTACHMENT B

.....
(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To amend the Fair Housing Act to clarify the applicability of that Act to recovery facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROHRABACIER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Fair Housing Act to clarify the applicability of that Act to recovery facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Community
5 Oversight of Sober Living Homes Act of 2018”.

6 **SEC. 2. ZONING AND LICENSING OF RECOVERY FACILITIES.**

7 Section 807 of the Fair Housing Act (42 U.S.C.
8 3607) is amended by adding at the end the following:

1 “(c) Nothing in this title or any other Federal law
2 relating to protections for those with disabilities prohibits
3 any State or local government from implementing laws,
4 regulations, or ordinances that apply specifically to recov-
5 ery facilities located in residentially zoned areas, including
6 a law, regulation, or ordinance which prohibits recovery
7 facilities in residentially zoned areas.”.

8 **SEC. 3. FAIR HOUSING ACT DEFINITIONS.**

9 Section 802 of the Fair Housing Act (42 U.S.C.
10 3602) is amended—

11 (1) in subsection (b), by inserting before the pe-
12 riod at the end the following: “‘, except that such
13 term does not include any building, structure, or
14 portion thereof that is located in a residentially
15 zoned area and is used as a recovery facility’”; and

16 (2) by adding at the end the following:

17 “(p) ‘Recovery facility’ means a building, structure,
18 or portion thereof that is occupied by a person who is
19 handicapped due to drug addiction or alcoholism, and for
20 which a condition of such occupancy of such building,
21 structure, or portion thereof is that it remains free of con-
22 trolled substances and alcohol.”.

1 **SEC. 4. REQUIREMENTS FOR RECOVERY FACILITIES AS A**
2 **CONDITION FOR CERTAIN FEDERAL FUND-**
3 **ING.**

4 (a) **IN GENERAL.**—A recovery facility in a residential
5 zone may not receive direct or indirect payments or reim-
6 bursements or other remunerations from a Federal health
7 care program unless—

8 (1) the recovery facility is in compliance with
9 State and local laws, regulations, or ordinances that
10 apply within the zone where the recovery facility is
11 located; and

12 (2) the local government with jurisdiction over
13 the zone in which the recovery facility is located cer-
14 tifies to the Secretary of Health and Human Serv-
15 ices that the recovery facility is in compliance with
16 State and local laws, regulations, or ordinances that
17 apply within the zone where the recovery facility is
18 located.

19 (b) **DEFINITIONS.**—In this section:

20 (1) **FEDERAL HEALTH CARE PROGRAM.**—The
21 term “Federal health care program” has the mean-
22 ing given such term in section 1128B(f) of the So-
23 cial Security Act (42 U.S.C. 1320a7b(f)).

24 (2) **RECOVERY FACILITY.**—The term “recovery
25 facility” has the meaning given such term in section

1 802 of the Fair Housing Act (42 U.S.C. 3602), as
2 amended by section 3.

3 **SEC. 5. REMOVING SUBSTANCE USE DISORDER SERVICES**
4 **AS AN ESSENTIAL HEALTH BENEFIT.**

5 Section 1302(b)(1)(E) of the Patient Protection and
6 Affordable Care Act (42 U.S.C. 18022(b)(1)(E)) is
7 amended by striking “and substance use disorder”.

8 **SEC. 6. EFFECTIVE DATE.**

9 This Act, and the amendments made by this Act,
10 shall take effect on the date that is 90 days after the date
11 of the enactment of this Act.



California

LEGISLATIVE INFORMATION

[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

AB-3162 Alcoholism or drug abuse treatment facilities. (2017-2018)

SHARE THIS:



Date Published: 05/14/2018 09:00 PM

AMENDED IN ASSEMBLY MAY 14, 2018

AMENDED IN ASSEMBLY APRIL 19, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 3162

Introduced by Assembly Member Friedman
(Coauthor: Assembly Member Quirk-Silva)
(Coauthors: Senators Allen and Stern)

February 16, 2018

An act to amend Sections 11834.31 and 11834.34 of, and to repeal and add Sections 11834.09 and 11834.10 of, the Health and Safety Code, relating to alcoholism or drug abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 3162, as amended, Friedman. Alcoholism or drug abuse treatment facilities.

Existing law provides for the licensure and regulation of alcoholism or drug abuse recovery or treatment facilities serving adults by the State Department of Health Care Services, as prescribed. Existing law makes a violation of these provisions punishable by a civil penalty of not less than \$25 or more than \$50 per day for each violation, with additional penalties for repeat violations, as specified.

This bill would require the department, at least 45 days prior to approving any application for any new facility, to post on its Internet Web site the address of the proposed new facility. The bill would additionally make initial licenses issued to providers provisional for one year and ~~revokable~~ *revocable* for good cause, as defined. The bill would require all programs and medical services offered or provided by a licensed alcoholism or drug abuse recovery or treatment facility to be specified in the license application and provided exclusively within the licensed facility on the licensed property and for the benefit of the residents. The bill would increase the penalties for a violation of the licensing and regulatory provisions to not less than ~~\$1,000~~ *\$250* or more than ~~\$15,000~~ *\$500* per day for each violation, *except as specified*, and increase the additional penalties for repeat violations, as specified. The bill would prohibit a person or entity found to be in violation of the licensing provisions described above from applying for initial licensure for 2 years, as specified. The bill would require the department to adopt regulations to implement these provisions on or before July 1, 2022, and would authorize the department to issue provider bulletins, written guidelines, or similar instructions until regulations are adopted, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11834.09 of the Health and Safety Code is repealed.

SEC. 2. Section 11834.09 is added to the Health and Safety Code, to read:

11834.09. (a) Pending the department's review and determination that the prospective licensee can comply with this chapter and regulations adopted pursuant to this chapter, the department shall post notice on its Internet Web site of the address of the proposed facility at least 45 days prior to the department's issuance of a license or denial of the ~~applications~~ application.

(b) The department may issue a single license to operate an alcoholism or drug abuse recovery or treatment facility upon receipt of a completed written application, fire clearance, and licensing fee subject to the department's review and determination that the applicant can comply with this chapter and regulations adopted pursuant to this chapter.

(c) Failure to submit a completed written application, fire clearance, and payment of the required licensing fee in a timely manner shall result in termination of the department's licensure review and shall require submission of a new application by the applicant.

(d) Failure of the applicant to demonstrate the ability to comply with this chapter or the regulations adopted pursuant to this chapter shall result in departmental denial of the application for licensure.

(e) Initial licenses for new facilities shall be provisional for one year. During the term of the provisional license, the department may revoke the license for good cause. For the purposes of this section, "good cause" means failure to operate in compliance with this chapter or the regulations adopted pursuant to this chapter. A licensee may not reapply for an initial license for two years following a revocation of a provisional license.

(f) On or before July 1, 2022, the department shall adopt regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, the department may, if it deems appropriate, implement, interpret, or make specific this section by means of provider bulletins, written guidelines, or similar instructions from the department, until regulations are adopted.

SEC. 3. Section 11834.10 of the Health and Safety Code is repealed.

SEC. 4. Section 11834.10 is added to the Health and Safety Code, to read:

11834.10. (a) A licensee shall not operate an alcoholism or drug abuse recovery or treatment facility beyond the conditions and limitations specified on the license. All programs and services offered or provided by a licensed alcoholism or drug abuse recovery or treatment facility, including, but not limited to, incidental medical services pursuant to Section 11834.025, shall be specified in the license application and provided exclusively within the licensed facility on the licensed property and for the benefit of the residents.

(b) On or before July 1, 2022, the department shall adopt regulations to implement this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, the department may, if it deems appropriate, implement, interpret, or make specific this section by means of provider bulletins, written guidelines, or similar instructions from the department, until regulations are adopted.

SEC. 5. Section 11834.31 of the Health and Safety Code is amended to read:

11834.31. If a facility is alleged to be in violation of Section 11834.30, the department shall conduct a site visit to investigate the allegation. If the department's employee or agent finds evidence that the facility is providing alcoholism or drug abuse recovery, treatment, or detoxification services without a license, the employee or agent shall take the following actions:

- (a) Submit the findings of the investigation to the department.
- (b) Upon departmental authorization, issue a written notice to the facility stating that the facility is operating in violation of Section 11834.30. The notice shall include all of the following:
 - (1) The date by which the facility shall cease providing services.
 - (2) Notice that the department will assess against the facility a civil penalty, as determined by the department, not to exceed two thousand dollars (\$2,000) per day for every day the facility continues to provide services beyond the date specified in the notice.
 - (3) Notice that the case will be referred for civil proceedings pursuant to Section 11834.32 in the event the facility continues to provide services beyond the date specified in the notice.
- (c) Inform the facility of the licensing requirements of this chapter.
- (d) A person or entity found to be in violation of Section 11834.30 shall be prohibited from applying for initial licensure for a period of two years from the date of the notice specified in subdivision (b).

SEC. 6. Section 11834.34 of the Health and Safety Code is amended to read:

11834.34. (a) In addition to the penalties of suspension or revocation of a license issued under this chapter, the department may also levy a civil penalty for violation of this chapter or the regulations adopted pursuant to this chapter.

(1) The amount of the civil penalty, as determined by the department, shall not be less than ~~one thousand dollars (\$1,000)~~ *two hundred fifty dollars (\$250)* or more than ~~fifteen thousand dollars (\$15,000)~~ *five hundred dollars (\$500)* per day for each violation, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed ~~fifteen thousand dollars (\$15,000)~~ *one thousand dollars (\$1,000)* per day.

(2) A licensee that is cited for repeating the same violation within 24 months of the first violation is subject to an immediate civil penalty, as determined by the department, not to exceed ~~one thousand five hundred dollars (\$1,500) and one thousand dollars (\$1,000)~~ *five hundred dollars (\$500) and seven hundred fifty dollars (\$750)* for each day the violation continues until the deficiency is corrected.

(3) A licensee that has been assessed a civil penalty pursuant to paragraph (2) that repeats the same violation within 24 months of the violation subject to paragraph (2) is subject to an immediate civil ~~penalty, as determined by the department, not to exceed two thousand dollars (\$2,000)~~ *penalty of five hundred dollars (\$500) and one thousand dollars (\$1,000)* for each day the violation continues until the deficiency is corrected.

(b) Prior to the assessment of any civil penalty, the department shall provide the licensee with notice requiring the licensee to correct the deficiency within the period of time specified in the notice.