

ORDINANCE NO. 2018-194

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA
ADOPTING ZONING CODE AMENDMENT ZCA 16-03**

AMENDING LAGUNA NIGUEL MUNICIPAL CODE SECTIONS 9-1-32 (RESIDENTIAL DISTRICTS), 9-1-42 (NONRESIDENTIAL DISTRICTS), 9-1-111 (DISCRETIONARY REVIEW AUTHORITY), 9-1-142 (DEFINITIONS), AND LAGUNA NIGUEL GATEWAY SPECIFIC PLAN SECTION 4.3 (ALLOWABLE USES) AND ADDING SECTIONS 9-1-38 (GROUP HOMES) AND 9-1-39 (REASONABLE ACCOMMODATIONS), TO CLARIFY AND ESTABLISH REGULATIONS FOR CONGREGATE LIVING FACILITIES IN ALL ZONING DISTRICTS

The City Council of the City of Laguna Niguel does ordain as follows:

SECTION 1. RECITALS

1. Under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the single-family characteristics of its single-family neighborhoods, which powers have been recognized by both the California Supreme Court and United States Supreme Court, the latter of which has stated that, "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."
2. Both the California Supreme Court and United States Supreme Court have held that cities have the right to regulate both the number of people who may reside in a single-family home and the manner in which the single-family home is used as long as such regulations do not unfairly discriminate or impair an individual's rights of privacy and association.
3. Individuals and families often purchase homes in single-family neighborhoods for the relative tranquility and safety that often accompanies such neighborhoods and with the expectation of establishing close and longstanding ties with their neighbors.
4. With these expectations, individuals and families commit to making what will be, for most of them, the single-largest financial investment of their lives, as well as one of the most significant emotional investments.
5. The Federal Fair Housing Act Amendments ("FHA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of zoning ordinances which discriminate against equal housing opportunities for the disabled.

Ordinance No. 2018-194

6. A core purpose of the FHAA, FEHA and California's Lanterman Act is to provide a broader range of housing opportunities to the disabled; to free the disabled, to the extent possible, from institutional style living; and to ensure that disabled 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-disabled.
7. To fulfill this purpose the FHAA and FEHA also require that the City provide reasonable accommodation to its zoning ordinances if such accommodation is necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling.
8. 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.
9. In enacting this Ordinance the City Council of the City of Laguna Niguel is attempting to strike a balance between the City's and residents' interests of preserving the single-family characteristics of single-family neighborhoods and to provide opportunities for the disabled to reside in single-family zones (RS-1, RS-2, RS-3, RS-4, RP and RA) that are enjoyed by the non-disabled.
10. Over the past several years the City, county and state have seen a significant increase in the number of single-family homes being utilized as group homes including unlicensed alcohol and drug recovery facilities (hereafter, "sober living homes").
11. 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.
12. The Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment.
13. This significant increase has generated community outcry and complaints concerning secondary impacts including, but not limited to: overcrowding, inordinate amounts of second-hand smoke, noise, loitering, drug related activity including an apparent drug overdose by a facility tenant and an in-neighborhood arrest of an associate of a facility tenant for drug possession, and discovery of discarded drug paraphernalia in surrounding neighborhoods.
14. This significant increase has become a rising concern for cities statewide as local officials are in some cases being inundated with complaints from residents about the proliferation of such facilities; conferences drawing local officials from around the State are being held discussing what to do about the problems associated with these facilities; it has been the topic of several League of California Cities meetings;

there have been numerous city-sponsored attempts at legislative fixes that have failed in committee; and litigation is spreading across the State as cities attempt to address the problem.

15. The number of group homes, specifically sober living homes, in the City of Laguna Niguel is increasing, with the potential for overconcentration of congregate living facilities (residential facilities or portions thereof where guest rooms not including cooking facilities are being rented to multiple occupants under separate lease agreements that may or may not cater to the needs of the disabled community and may or may not operate under a state license) in the City's single-family neighborhoods, which is both deleterious to the single-family character of these neighborhoods and could lead to the institutionalization of such neighborhoods.
16. The purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the single-family neighborhood of their choice.
17. Recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered disabled under both the FHAA and FEHA.
18. Concentrations of sober living homes and/or the placement of inordinately large numbers of recovering addicts in a single-dwelling can undermine the benefits of home ownership in single-family neighborhoods for those residing nearby and undermine the single-family characteristics of neighborhoods.
19. Regionally, operators of sober living homes have attempted to house inordinately large numbers of recovering addicts, including up to 15 persons in a single dwelling unit, and there has been a tendency for sober living homes to congregate in close proximity.
20. The City is aware of instances in which single-family homes are remodeled to convert common areas such as family rooms and dressing rooms into bedrooms or to add multiple bedrooms for the sole purpose of housing large numbers of recovering addicts in a single-dwelling.
21. It has been the City's experience that most, if not all, operators of sober living homes have taken the stance that the FHAA and FEHA prohibit the City from regulating them in any fashion, that they are free to house as many recovering addicts in a single home as they desire, and that they are not required to make any showing to obtain an accommodation from the City zoning ordinances.

22. 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.
23. This Ordinance and the balance of the City's zoning scheme have built in an accommodation for group homes, including sober living homes, to locate in single-family neighborhoods as long as they are serving six or fewer tenants, whereas a similarly situated and functioning home with non-disabled tenants would be defined as a large boarding house and therefore prohibited in all but the Public/Institutional (PI) Zoning District.
24. This Ordinance will provide a mechanism for group homes, including sober living homes, to seek additional accommodation above the six residents upon making a showing, as required by state and federal law, that such additional accommodation is reasonably necessary to afford the disabled the right to use and enjoy a dwelling in a manner similar to that enjoyed by the non-disabled.
25. Permitting six or fewer residents in a group home, and sober living home specifically, and establishing distance requirements is reasonable and non-discriminatory and not only helps preserve the single-family characteristic of single-family neighborhoods, but also furthers the purpose for which such facilities are established: (1) the State legislature in establishing licensed residential care facilities as a residential use, including those serving recovering addicts, found that six residents was a sufficient number to provide the supportive living environment that experts agree is beneficial to recovery; (2) residential care facilities serving six or fewer have existed in the State for decades and there has been no significant efforts or suggestions to increase the number; (3) cities have received expert testimony stating that six is a reasonable number for a sober living home and is sufficient to provide the supportive living environment that is beneficial to recovery and that larger numbers can actually reduce the chances of recovery; (4) a 2005 UCLA study found that 65-70% of recovering addicts do not finish the recovery programs into which they are placed and a comfortable living environment is a factor in whether recovering addicts will finish their programs; (5) there is no evidence in the record that individuals residing in sober living homes are financially unable to pay market rate rents; (6) receiving such rent from up to six individuals will provide sufficient income for operators of sober living homes and result in collective revenue which is well above market rate for a single-family rental; (7) the evidence in the record indicates that in general operators of sober living homes do not incur significant costs over and above what landlords of other similarly-situated homes may incur; and (8) limiting the number of recovering addicts that can be placed in a single-family home enhances the potential for their recovery.

26. Sober living homes do not function as a single-family nor do they fit the City's zoning definition of a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and as noted, the 2005 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs), (2) the residents generally have no established ties to each other when they move in; (3) neighbors generally do not know who does or does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home and have limited visitation rights; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) the residents are not generally employed outside the home or permitted to drive; (8) when residents disobey house rules they are often expelled from the home; (9) the residents generally do not share the same acquaintances; and (10) residents often pay significantly above-market rate rents.
27. The size and makeup of the households in sober living homes, even those allowed pursuant to this Ordinance, 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 2.9 (2.6 in Laguna Niguel), while a sober living home allowed pursuant to this Ordinance could house six, which is in the top 5% of households in Orange County according to the most recent U.S. federal census data.
28. All individuals residing in a sober living home are generally over the age of 18, resulting in up to seven individuals (six tenants and one house manager) over the age of 18 residing within a single home, while the average household has just 2.2 individuals over the age of 18 according to the most recent federal census data.
29. The City utilizes federal census data and other information relating to the characteristics of single-family neighborhoods for among other things: (1) determining the design of residential homes, residential neighborhoods, park systems, library systems, transportation systems; (2) determining parking and garage requirements of single-family homes; (3) developing its General Plan and zoning ordinances; (4) determining police and fire staffing; (5) determining impacts to water, sewer and other services; and (5) in establishing impacts fees that fairly and proportionally fund facilities for traffic, parks, libraries, police and fire.
30. Because of their extremely transient populations, above normal numbers of individuals/adults residing in a single home and the lack of regulations, sober living facilities present problems not typically associated with more traditional single-family uses, including: the housing of large numbers of unrelated adults who may or may not be supervised; disproportionate numbers of cars associated with a single-family home which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' use of their property; neighbors who have little to no idea who does and does not reside in the home; a history of opening facilities in complete

disregard of the Laguna Niguel Municipal Code (LNMC) and with little regard for impacts to the neighborhood; disproportional impacts from the average dwelling unit to nearly all City services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of congregating in the same general area; and the potential influx of individuals with a criminal record.

31. A 1000-foot distance requirement provides a reasonable market for the purchase and operation of a group home within the City and still results in preferential treatment for group homes in that non-disabled individuals in a similar living situation (i.e., in large boarding house-style residences) cannot reside in residential zones.
32. Housing inordinately large numbers of unrelated adults in a single-family home or congregating group homes in close proximity to each other does not provide the disabled 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 disabled, and which no reasonable person could contend provides a life in a normal residential surrounding.
33. Notwithstanding the above, the City Council recognizes that while not in character with a single-family neighborhood, that when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing the disabled the opportunity to live in single-family neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to single-family zones to group homes, including sober living homes, than to boarding houses may provide a benefit to the City and its residents to the extent that the number and type of homes established does not significantly exceed that necessary to address the needs of Laguna Niguel residents, does not result in a fundamental shift in the composition of the City's population, and does not contribute to an increase in the City's homeless population.
34. Without some regulation there is no way of ensuring that the individuals entering into a group home are disabled 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 home are lessened.
35. In addition to group homes locating in single-family neighborhoods, state-licensed residential care facilities for six or fewer persons who are mentally disordered or otherwise disabled or supervised, are also taking up residence in single-family neighborhoods.

Ordinance No. 2018-194

36. The purpose of group homes for the disabled is to provide the disabled an equal opportunity to comfortably reside in the single-family neighborhood of their choice.
37. This Ordinance and the balance of the City's zoning scheme provide a form of oversight that is intended to benefit residents of group homes by ensuring provision of a healthy, structured, and safe environment.
38. On August 2, 2016, the City Council adopted a 45-day moratorium on the establishment of congregate living facilities in residential zoning districts (later extended to two years) and initiated Zoning Code Amendment (ZCA) 16-03 to clarify and establish regulations for congregate living facilities in all zoning districts.
39. The Planning Commission held a duly noticed public hearing on this Ordinance on May 9, 2017, at which time it considered all evidence presented, both written and oral.
40. After the close of the public hearing, the Planning Commission adopted Resolution No. 17-05, recommending that the City Council adopt this Ordinance.
41. The City Council finds that Zoning Code Amendment ZCA 16-03 is consistent with the goals, objectives and policies of the Laguna Niguel General Plan in that it "encourage[s] the development of land uses that contribute to the goal of a well-balanced community (General Plan Policy 1.1)" by creating new housing opportunities for the disabled and working to ensure provision of a healthy, structured and safe living environment both for the disabled and neighbors of the residential facilities in which they chose to reside. The amendment would prohibit uses of a quasi-commercial (non-residential) nature in residential zones to the extent permitted by state and federal law, ensuring that "effective buffers exist between residential and non-residential uses (General Plan Policy 3.1)." To the extent that reasonable accommodation to City zoning ordinances is necessary, the amendment would provide oversight to minimize potential use conflicts that could otherwise arise.
42. This Ordinance is consistent with the Laguna Niguel General Plan, Laguna Niguel Zoning Code (LNZC), and Laguna Niguel Gateway Specific Plan (LNGSP).
43. This Ordinance is not detrimental to, and in fact protects, the public convenience, health, interest, safety, and welfare of the City for the reasons set forth above.
44. The City Council held a duly noticed public hearing on this Ordinance on May 15, 2018, at which time it considered all evidence presented, both written and oral.

45. The City Council's approval of Zoning Code Amendment ZCA 16-03 by this Ordinance is based on the evidence and findings of the Planning Commission and the evidence presented at the hearings held thereon by the Planning Commission and City Council.

The City Council finds that the above-listed Recitals are true and correct.

SECTION 2. AMENDMENT OF PLANNING AND ZONING

The City Council hereby adopts Zoning Code Amendment ZCA 16-03 to amend Article 2, entitled "Comprehensive Zoning Code," of Division 1, entitled "Planning," of Title 9, entitled "Planning and Zoning," of the LNMC (deleted text in strike-out).

Sec. 9-1-32. Permitted Uses.

Table 3.1 of Section 9-1-32(c) is hereby amended to add four additional land use categories as follows:

| TABLE 3.1: PERMITTED RESIDENTIAL USES | | | | | | |
|--|----------------------------------|-----------------------------------|--|----------------------------------|-----------------------------------|---------------------------|
| LAND USE | DISTRICT | | | | | |
| | RS-1 Rural Residential | RS-2 Residential Estate | RS-3/ RS-4 Single Family | RP Planned Residential | RA Attached Residential | RM Multi-Family |
| Boarding houses, small (2 or fewer tenants/rented rooms) | A | A | A | A | A | A |
| Boarding houses, large (3 or more tenants or rented rooms) | X | X | X | X | X | X |
| Group homes, 6 or fewer persons (excluding house manager) | G | G | G | G | G | X |
| Group homes, 7 or more persons (excluding house manager) | X | X | X | X | X | X |

Sec. 9-1-38. Group Homes.

Section 9-1-38 is hereby added as follows:

(a) *Purpose.* The purpose of this Section is to preserve the residential character of single-family residential neighborhoods and to further the purposes of the FEHA, the FHAA and the Lanterman Act by, among other things: (1) ensuring that group homes are granted special accommodation and/or additional accommodation as appropriate; (2) limiting the secondary impacts of group homes by reducing noise and traffic, preserving safety and providing adequate on-street parking; (3) providing an accommodation for the

disabled that is reasonable and bears some resemblance to the opportunities afforded non-disabled individuals to use and enjoy a dwelling unit in a single-family neighborhood; and (4) to provide comfortable living environments that will enhance the opportunity for the disabled and for recovering addicts to be successful in their programs.

(b) *Standards for Group Homes.* Group home that would otherwise constitute a large boarding house is prohibited in single-family zones (RS-1, RS-2, RS-3, RS-4, RP, and RA) unless approval of a group home permit is obtained, subject to compliance with the following:

- (1) An application for a group home permit is submitted to the Community Development Director or designee by the property owner and operator of the group home (if not the property owner). The application shall provide the following:
 - a. The name, address, phone number and driver's license number of the property owner, operator, and house manager.
 - b. A copy of the group home rules and regulations, intake procedures, and relapse policy.
 - c. A signed and notarized copy of the City's resident verification form, including affirmation by the operator that only residents (other than the house manager) who are disabled as defined by state and federal law shall reside at the group home.
 - d. If the operator is not the property owner, a signed and notarized copy of the City's property owner consent form for operation of a group home at the property.
 - e. Blank copies of all forms that all residents and potential residents are required to complete.
 - f. A fee for the cost of processing of the application as set by Resolution of the City Council.
 - g. No person shall open a group home or begin employment with a group home until this information has been provided and such persons shall be responsible to for updating any of this information to keep it current.

- (2) The group home has six or fewer occupants, not counting a house manager, but in no event shall have more than seven occupants. If the dwelling unit has an accessory second residential unit, occupants of both units will be combined to determine whether or not the limit of six occupants has been exceeded.
- (3) Occupant rental agreements shall be no less than 30 days. Agreements of less than 30 days shall constitute short term rental, a prohibited use in all residential zones that has been determined to be contrary to the purpose and intent of such zones and detrimental to the character of single-family residential neighborhoods specifically.
- (4) The group home shall not be located in an accessory second residential unit unless the primary dwelling unit is used for the same purpose.
- (5) The group home has a house manager who resides at the group home and who is responsible for the day-to-day operation of the group home.
- (6) The operator shall provide to the City a 24-hour emergency contact that will respond, on-site if requested, to complaints about the condition, operation, or conduct of residents or their guests. Prior to any change to the 24-hour emergency contact, a revised group home permit application shall be submitted to the Community Development Director, or designee, for approval.
- (7) All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Vehicles associated with the facility, shall be operable, parked off-street, and currently used as a primary form of transportation for a resident of the group home.
- (8) 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.
- (9) 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.

- (10) The home shall comply with all applicable codes regarding fire, building construction and safety, and all other relevant laws, regulations and ordinances. The City's failure to inspect the home does not constitute a waiver of its right to perform future inspections.
- (11) The group home shall not locate within 1000 feet, as measured from the closest property lines, of any other group home or state licensed residential care facility.
- (12) In instances of occupant eviction or involuntary termination of residency in a group home, the operator shall:
 - a. At the time of occupant departure from the home, make available transportation to the address listed on the occupant's driver's license, state issued identification card, or permanent address provided on the occupant's application or referral to the group home. This obligation shall not be satisfied by providing payment to the occupant for the cost of transportation.
 - b. At least 24 hours prior to eviction or involuntary termination, notify the occupant's emergency contact or contact of record that the occupant is no longer a resident of the home; contact the Orange County Health Care Agency's *OC Links Referral Line* to determine what services, if any, might be available to the resident; any information obtained shall be shared with the occupant prior to their release.
 - c. To the extent permitted by state and federal law regarding confidentiality of health care information, maintain records for a period of one year following eviction or involuntary termination to document compliance with these notice provisions.
- (13) For the purpose of inspection or audit to determine that the objectives and conditions of this Section are being fulfilled, upon request of the Community Development Director or designee, the operator shall provide access to the group home or to records related to the use and occupancy of the home.
- (14) In addition to the regulations outlined above, the following shall also apply to sober living homes
 - a. All occupants, other than the house manager, shall 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.

- b. The sober living home's rules and regulations shall 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. Regular drug testing or some equivalent alternative shall be conducted to ensure that tenants are not currently using drugs or alcohol. The sober living home shall 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 these rules shall be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least 90 days. Any second violation of these rules 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.
- c. The number of occupants subject to the sex offender registration requirements of Penal Code Section 290 shall not exceed the limit set forth in Penal Code Section 3003.5 and shall not violate the distance provisions set forth in Penal Code Section 3003.
- d. 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, are probationers, or parolees. No visitors shall be permitted to spend the night or stay past 10:00 p.m. and a house manager shall be present during visitations.
- e. The sober living home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in smoking outdoors and 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.

f. 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.

(15) An applicant may seek relief from the strict application of this Section by submitting an application to the Community Development Director or designee setting forth specific reasons as to why accommodation over and above this Section is necessary under state and federal laws, pursuant to Section 9-1-39.

(c) The group home permit shall be issued by the Community Development Director or designee as a ministerial matter if the applicant is in compliance or has agreed to comply with the provisions of this Section. The group home permit shall be denied, and if already issued, shall be revoked, upon a hearing by the Director under any of the following circumstances:

- (1) Any owner/operator or staff person has provided materially false or misleading information on the application or omitted any pertinent information.
- (2) Any owner/operator or staff person has an employment history in which he or she was terminated during the past two years because of physical assault, sexual harassment, embezzlement or theft; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.
- (3) Any owner/operator or staff person has been convicted of or pleaded no contest, within the last seven to ten years, to any of the following offenses:
 - a. Any sex offense for which the person is required to register as a sex offender under California Penal Code Section 290 (last 10 years).
 - b. Arson offenses - violations of Penal Code Sections 451-455 (last seven years); or
 - c. Violent felonies, as defined in Penal Code Section 667.5, which involve doing bodily harm to another person (last 10 years).
 - d. The unlawful sale or furnishing of any controlled substances

(last seven years).

- (4) Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.
- (5) The owner/operator accepts residents, other than a house manager, who are not disabled as defined by the FHAA and FEHA.
- (6) A group home 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:
 - a. Any owner/operator or staff person of a sober living home is a recovering drug or alcohol abuser and upon the date of application or employment has had less than one full year of sobriety.
 - b. 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.
 - c. The sober living home, as measured by the closest property lines, is located within 1000 feet of any other sober living home or state licensed residential care facility. If a state licensed facility moves within 1000 feet of an existing sober living home this shall not cause the revocation of the sober living home's permit or be grounds for denying a transfer of such permit.
- (7) For any other significant or repeated violations of this Section or any other applicable laws or regulations.
- (8) Revocation shall not apply to any group home, which otherwise would cause it to be in violation of this Ordinance, that has obtained a reasonable accommodation pursuant to Section 9-1-139.

Sec. 9-1-39. Reasonable Accommodation.

Section 9-1-39 is hereby added as follows:

- (a) *Purpose.* It is the City's policy to provide reasonable accommodation in accordance with federal and state fair housing laws (42 USC § 3600 et seq. and Government Code § 12900 et seq.) for persons with disabilities seeking fair access to

housing in the application of the city's zoning laws. The term "disability" as used in this article shall have the same meaning as the terms "disability" and "handicapped" as defined in the federal and state fair housing laws. The purpose of this article is to establish the procedure by which a person may request reasonable accommodation, and how the request is to be processed.

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

(c) *Application Required.* An application for a reasonable accommodation shall be filed and processed with the Planning Division. The application shall be made in writing and shall include the following information and be subject to the determinant factors required by this Section.

- (1) The zoning code provision, regulation, policy, or condition from which accommodation is being requested.
- (2) The basis for the claim that the individuals are considered disabled under state or federal law, and why the accommodation is necessary to provide equal opportunity for housing and to make the specific housing available to the individuals.
- (3) Any other information that the director reasonably determines is necessary for evaluating the request for reasonable accommodation.
- (4) Documentation that the applicant is an individual with a disability; applying on behalf of one or more individuals with a disability; or a developer or provider of housing for one or more individuals with a disability.
- (5) The specific exception or modification to the zoning code provision, regulation, policy, or condition requested by the applicant.
- (6) Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.
- (7) Any other information that the Hearing Officer reasonably concludes is necessary to determine whether the findings required by Section (g) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected.

(d) *Fees.* No application fee is required.

(e) *Director Action.* Within 60 days of receipt of a completed application, the Community Development Director shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with this Section. Any appeal to reasonable accommodation request denial or conditional approval shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for any other discretionary permit.

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

- (1) Is the requested accommodation necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling? To determine whether the accommodation is necessary, the Director may consider, among other things: The nature of the disability including the special needs created by the disability, the physical attributes and setting of the property and structures, the potential benefit that can be accomplished by the requested accommodation, and alternative accommodations that may provide a comparable level of benefit.
- (2) Is the requested accommodation reasonable? A requested accommodation is not reasonable if it would impose an undue financial or administrative burden on the City. It is also not reasonable if it would fundamentally alter a City program, such as the City's zoning scheme. In considering the financial or administrative burden on the City, the Director may consider, among other things, the extent to which the City would have to dedicate resources, such as staff time and funds, to grant the request and other requests like it. In considering the potential alteration to a City program, such as the City's zoning scheme, the Director may consider, among other things, whether granting the request would be consistent with the City's General Plan, with the purpose and nature of the particular zoning district, and with nearby uses. The Director may also consider whether the requested accommodation would potentially have adverse external impacts on properties in the vicinity.

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

- (1) The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.
- (2) The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
- (3) The requested accommodation will not impose an undue financial or administrative burden on the City, as "undue financial or administrative burden" is defined in fair housing laws and interpretive case law.
- (4) The requested accommodation is consistent with whether or not the residents would constitute a single housekeeping unit.
- (5) The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
- (6) The requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.
- (7) The existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.
- (8) The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program.

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

- (1) Whether the requested accommodation would fundamentally alter the character of the neighborhood.
- (2) Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
- (3) Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.

- (4) Whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.
- (5) Any other factors that would cause a fundamental alteration in the City's zoning program, as may be defined in the Fair Housing Law.

Sec. 9-1-42. Permitted Uses.

Table 4.1 of Section 9-1-42(c) is hereby amended to delete one land use category and add five land use categories as follows:

| TABLE 4.1: PERMITTED NONRESIDENTIAL USES | | | | | |
|--|--------------------------------------|-----------------------------------|--------------------------------|----------------------------|-----------------------------------|
| | | DISTRICT | | | |
| LAND USE | CN Neighborhood Commercial | CC Community Commercial | CO Office Commercial | BP Business Park | PI Public Institutional |
| Rooming and boarding houses | X | X | X | X | U |
| Boarding houses, small (2 or fewer tenants/rented rooms) | X | X | X | X | X |
| Boarding houses, large (3 or more tenants or rented rooms) | X | X | X | X | U |
| Group homes, 6 or fewer persons (excluding house manager) | X | X | X | X | X |
| Group homes, 7 or more persons (excluding house manager) | X | X | X | X | U |
| Referral Facilities | X | X | X | X | U |

Sec. 9-1-111. Discretionary Review Authority.

Table 11.1 of Section 9-1-111(d) is hereby amended to add two application types as follows:

| TABLE 11.1: DISCRETIONARY REVIEW AUTHORITY | | | |
|---|--------------------------------------|--------------------------------|---------------------|
| DECISION MAKING AUTHORITY | | | |
| TYPE OF APPLICATION | Community Devel. Director | Planning Commission | City Council |
| Group Home Permit | M | | |
| Reasonable Accommodation | A | | |

Sec. 9-1-142. Definition of Terms.

Section 9-1-142 (Definitions) is hereby amended to delete six terms and add 15 terms as follows:

Boarding house means any building or portion thereof with access typically provided through a common entrance to guest rooms having no cooking facilities. Guest rooms are rented on a monthly basis or longer and meals are provided.

Boarding house, small means any dwelling or portion thereof with access typically provided through a common entrance to guest room(s) having no cooking facilities and accommodating a total of two or fewer tenants. Guest rooms are rented for a period of 30 consecutive calendar days or more under separate written or oral rental agreements, leases or subleases or a combination thereof, whether or not the owner, agent or rental manager resides on site.

Boarding house, large means any building or portion thereof with access typically provided through a common entrance to guest room(s) having no cooking facilities and accommodating three or more tenants. Guest rooms are rented for a period of 30 consecutive calendar days or more under separate written or oral rental agreements, leases or subleases or a combination thereof, whether or not the owner, agent or rental manager resides on site.

Disabled shall have the same meaning as handicapped.

~~Dwelling unit~~ means one or more rooms, including a bathroom and kitchen, designed and used for occupancy by one family for living and sleeping purposes.

Dwelling unit means one or more rooms, including a bathroom and kitchen, designed and used for occupancy by a single housekeeping unit for living and sleeping purposes.

Fair housing laws means the Federal Fair Housing Act (FFHA), the Americans with Disabilities Act (ADA), and the California Fair Employment and Housing Act (FEHA), as each statute may be amended from time to time, and each statute's implementing regulations.

~~Fraternity house or Sorority house~~ means a building or portion of a building occupied by a chapter of a regularly organized college fraternity or sorority officially recognized by an educational institution.

~~Family~~ means one or more related or unrelated persons occupying one dwelling unit. The word "family" includes the occupants of residential care facilities, as defined herein, serving six or fewer persons which are permitted or licensed by the state. The word "family" does not include occupants of a fraternity, sorority, boardinghouse, lodging house, club or motel.

Group home means a dwelling or portion thereof that is being used as a supportive living environment for persons who are considered disabled under state or federal law. Group homes shall not include the following: (1) state licensed residential care facilities; (2) any group home that operates as a single housekeeping unit.

Handicapped means, as more specifically defined under the fair housing laws, a person who has a physical or mental impairment that limits one or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment, not including current, illegal use of a controlled substance.

Household means all the people occupying a dwelling unit.

Integral facilities means any combination of two or more group homes which may or may not be located on the same or contiguous parcels of land, that are under the control

and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one operation shall be referred to as integral facilities and shall be considered one facility for purposes of applying federal, state and local laws to its operation. Examples of such integral facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

Integral uses means any two or more residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such integral use shall be considered one use for purposes of applying federal, state and local laws to its operation.

Operator means a company, business or individual who provides residential services, i.e., the placement of individuals in a residence, setting of house rules, and governing behavior of the residents as residents. Operator does not include a property owner or property manager that exclusively handles real estate contracting, property management and leasing of the property and that does not otherwise meet the definition of operator.

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

Residential care facility means a residential facility which is licensed by the state to provide living and treatment facilities on a monthly or longer basis for six or fewer of the following: wards of the juvenile court, elderly persons, mentally disordered persons, developmentally disabled persons, persons undergoing treatment for alcohol or drug abuse, disabled persons, or dependent and neglected children. Such a facility is permitted in all types of residences by operation of state law. (see also *managed care facility*)

Residential care facility means a residential facility licensed by the State where care, services, or treatment is provided to six or fewer persons living in a supportive community residential setting. Residential care facilities include but may not be limited to the following: intermediate care facilities for the developmentally disabled; community care facilities; residential care facilities for the elderly; residential care facilities for the chronically ill;

alcoholism and drug abuse facilities; pediatric day health and respite care facilities; residential health care facilities, including congregate living health facilities; family care home, foster home, group home for the mentally disordered or otherwise disabled persons or dependent and neglected children. (see also *managed care facility*)

Rooming house. See *Boarding house.*

Single housekeeping unit means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities; membership in the single housekeeping unit is fairly stable as opposed to transient, members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities do not constitute single housekeeping units. Additional indications that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food storage facilities, such as separate refrigerators.

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

Laguna Niguel Gateway Specific Plan

4.3 ALLOWABLE USES

Table 4.1 of Section 4.3.1 (Establishment of Allowable Use) of the LNGSP is hereby amended to add four land use categories as follows:

| TABLE 4-1 Allowable Land Uses and Permitting Requirements, Laguna Niguel Gateway Zones | | | | | |
|---|--------------------------------|-----------|-----------|-----------|-----------|
| <i>Land Use Type</i> | <i>Permit Required by Zone</i> | | | | |
| | <i>RC</i> | <i>BP</i> | <i>CS</i> | <i>MU</i> | <i>OS</i> |
| Boarding houses, small (2 or fewer tenants/rented rooms) | | | | A | |
| Boarding houses, large (3 or more tenants or rented rooms) | | | | | |
| Group homes, 6 or fewer persons (excluding house manager) | | | | | |
| Group homes, 7 or more persons (excluding house manager) | | | | | |

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to Section 15060(c)(2) of the California CEQA Guidelines, the City Council finds that the proposed amendments to the LNZC and LNGSP will not result in a direct or reasonably foreseeable indirect physical change in the environment and therefore are not subject to CEQA. Furthermore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment per Section 15061(b)(3). Additionally, pursuant to Section 15060(c)(3) the activity is not a "project" as defined in Section 15378 because it has no potential for resulting in physical change to the environment, directly or indirectly. Therefore, the City Council directs that a Notice of Exemption be filed with the County Clerk in the County of Orange in accordance with CEQA Guidelines.

SECTION 4. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance 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 portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

Existing group homes must apply for a group home permit within 90 days of the effective date of this Ordinance.

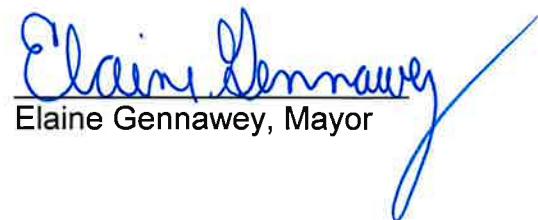
Group homes in existence upon the effective date of this ordinance shall have until January 1, 2019 to comply with its provisions, with the exception that any existing group home found to be located within 1000 feet of any other group home or state licensed residential care facility shall be permitted to continue operation until such time as the use is discontinued for a period of one year.

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

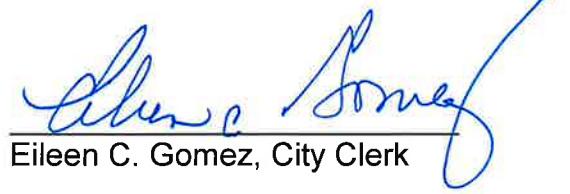
SECTION 6. CITY CLERK'S CERTIFICATION

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and post a certified copy of the text of this Ordinance 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 a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this 5th day of June, 2018.


Elaine Gennawey, Mayor

ATTEST:


Eileen C. Gomez, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF LAGUNA NIGUEL)

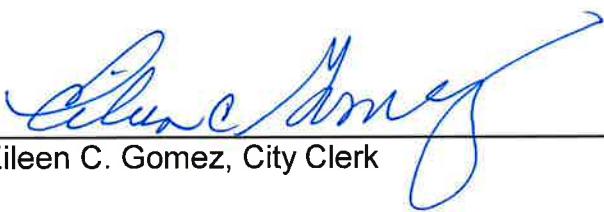
I, Eileen C. Gomez, City Clerk of the City of Laguna Niguel, California, do hereby certify that the foregoing is Ordinance No. 2018-194, which was adopted at a regular meeting of the City Council of the City of Laguna Niguel, California, held on June 5, 2018, by the following vote:

AYES: Council Members Davies, Lindholm, Minagar, Mayor Pro Tem Jennings, and Mayor Gennawey

NOES:

ABSTENTIONS:

ABSENT:



Eileen C. Gomez, City Clerk