

ORDINANCE NO. 1607

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
FOUNTAIN VALLEY ADDING CHAPTERS 4.35 GROUP HOMES
AND 21.29 GROUP HOMES AND AMENDING SECTION
21.08.030 RESIDENTIAL ZONING DISTRICT LAND USES AND
PERMIT REQUIREMENTS TO THE FOUNTAIN VALLEY
MUNICIPAL CODE**

WHEREAS, under the California Constitution, Article XI, Section 7, the City has been granted broad police powers to preserve the residential characteristics of its R1, GH, R2, R3, and R4 zones, which powers have been recognized by both the California Supreme Court and United States Supreme Court, the latter of which has stated that, "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled;"

WHEREAS, the Federal Fair Housing Act Amendments ("FHAA") and the California Fair Employment Housing Act ("FEHA") prohibit enforcement of zoning ordinances which on their face discriminate, or have the effect of discriminating, against equal housing opportunities for persons with disabilities;

WHEREAS, a core purpose of the FHAA, FEHA and California's Lanterman Act is to provide a broader range of housing opportunities to persons with disabilities; to free persons with disabilities, to the extent possible, from institutional style living; and to ensure that persons with disabilities 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 others;

WHEREAS, to fulfill this purpose the FHAA and FEHA also require that the City provide reasonable accommodations to its zoning ordinances if such accommodation is necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling;

WHEREAS, the Lanterman Act fulfills this purpose in part by requiring cities to treat state licensed residential care facilities serving six or fewer as a residential use;

WHEREAS, in enacting this Ordinance the City Council of the City of Fountain Valley is attempting to strike a balance between the City's and residents' interests of preserving the characteristics of residential neighborhoods and to provide opportunities for persons with disabilities to reside in such neighborhoods that are enjoyed by others;

WHEREAS, over the past several years the City, County and State have seen a significant increase in the number of single- and multi-family homes being utilized as alcohol and drug recovery facilities for large numbers of individuals (hereafter, "sober living homes");

WHEREAS, the increase appears to be driven in part by the Substance Abuse and Crime Prevention Act of 2000 (hereafter, "the Act") adopted by California voters which provides that specified first-time drug and alcohol offenders are to be afforded the opportunity to receive substance abuse treatment rather than incarceration;

WHEREAS, the Affordable Care Act has significantly expanded the availability of health care coverage for substance abuse treatment;

WHEREAS, the City of Fountain Valley has seen a sharp increase in the number of sober living homes, which has generated secondary impacts including, but not limited to neighborhood parking shortfalls, overcrowding, inordinate amounts of second-hand smoke, and noise; and the clustering of sober living facilities in close proximity to each other creating near neighborhoods of sober living homes;

WHEREAS, over the last decade the number of sober living homes in the City of Fountain Valley is rapidly increasing, leading to an overconcentration of sober living homes in certain of the City's residential neighborhoods, which is both deleterious to the residential character of these neighborhoods and may also lead to the institutionalization of such neighborhoods;

WHEREAS, the purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment, and so that they have the opportunity to reside in the residential neighborhood of their choice;

WHEREAS, recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered persons with disabilities under both the FHAA and FEHA;

WHEREAS, based on the City's experience it has become clear that at least some operators of sober living homes are driven more by a motivation to profit rather than to provide a comfortable living environment in which recovering addicts have a realistic potential of recovery, or to provide a living environment which remotely resembles the manner in which the non-disabled use and enjoy a dwelling;

WHEREAS, persons with drug and/or alcohol addictions are an extremely vulnerable population and City desires to protect these persons from, based on City's experience, sober living home operators, who are interested solely in profit and have been exploiting persons in recovery for insurance money and financial gain to the disadvantage of the person as well as the surrounding neighborhood;

WHEREAS, establishing distance requirements for sober living homes is reasonable and non-discriminatory and not only helps preserve the residential character of the R1, GH, R2, R3, and R4 zones; as well as the planned development residential neighborhoods, but also furthers the interest of ensuring that persons with disabilities are

not living in overcrowded environments that are counterproductive to their well-being and recovery;

WHEREAS, sober living homes do not function as a single housekeeping unit for the following reasons: (1) they house extremely transient populations (programs are generally about 90 days and a 2008 UCLA study found that 65-70% of recovering addicts don't finish their recovery programs); (2) the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; (3) neighbors generally do not know who or who does not reside in the home; (4) the residents have little to no say about who lives or doesn't live in the home; (5) the residents do not generally share expenses; (6) the residents are often responsible for their own food, laundry and phone; (7) when residents disobey house rules they are often just kicked out of the house; (8) the residents generally do not share the same acquaintances; and (9) residents often pay significantly above market rate rents;

WHEREAS, because of their extremely transient populations, above-normal numbers of individuals/adults residing in a single dwelling and the lack of regulations, sober living facilities present problems not typically associated with more traditional residential uses, including but not limited to: the housing of large numbers of unrelated adults who may or may not be supervised; disproportionate numbers of cars associated with a single housing unit, which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' use of their property; neighbors who have little to no idea who does and does not reside in the home; little to no participation in community activities that form and strengthen neighborhood cohesion; a history of opening facilities in complete disregard of the Fountain Valley Municipal Code and with little regard for impacts to the neighborhood; disproportional impacts from the average dwelling unit to nearly all public services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of congregating in the same general area; and the potential influx of individuals with a criminal record;

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

WHEREAS, housing inordinately large numbers of unrelated adults in a single dwelling or congregating sober living homes in close proximity to each other does not provide persons with disabilities 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 persons with disabilities, and which no reasonable person could contend provides a life in a normal residential surrounding;

WHEREAS, notwithstanding the above, the City Council recognizes that while not in character with residential neighborhoods, when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing persons with disabilities the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions, and that therefore providing greater access to residential zones to group homes, including sober living homes, than to boardinghouses or any other type of group living provides a benefit to the City and its residents;

WHEREAS, without some regulation there is no way of ensuring that the individuals entering into a group home are persons with disabilities and entitled to reasonable accommodation under local and state law; that a group home is operated professionally to minimize impacts to the surrounding neighborhood; and that the secondary impacts from over concentration of both group homes in a neighborhood and large numbers of unrelated adults residing in a single facility in an individual home are lessened;

WHEREAS, in addition to group homes locating in residential neighborhoods other state-licensed residential care facilities for six or fewer persons who are mentally disabled or otherwise disabled or supervised, are also taking up residence in these neighborhoods;

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

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of Fountain Valley does hereby **ORDAIN** as follows:

Section 1:

Fountain Valley Municipal Code Chapter 4.35 "Group Homes" is hereby added to read as follows:

4.35.010 Definitions.

The following definitions shall apply to this Chapter. To the extent these definitions conflict with any other provision in the Municipal Code, these definitions shall control:

"Alcoholism or drug abuse recovery or treatment facility" means adult alcoholism or drug abuse recovery or treatment facilities that are licensed pursuant to Section

11834.01 of the California Health & Safety Code. Alcoholism or drug abuse recovery or treatment facilities are a subset of residential care facilities.

"Boardinghouse" means a dwelling unit, other than a hotel, wherein rooms are rented under two (2) or more separate written or oral rental agreements, leases or subleases or combination thereof, whether or not the owner, agent or rental manager resides within the dwelling unit. Boardinghouse, small means two (2) or fewer rooms being rented to a maximum of three (3) occupants per dwelling unit. Boardinghouse, large means three (3) to six (6) rooms being rented to a maximum of six (6) occupants per dwelling unit. Boardinghouses renting two (2) or fewer rooms and having more than three (3) occupants or renting more than six (6) rooms and/or having more than six (6) occupants, per dwelling unit are prohibited.

"Disabled" shall have the same meaning as handicapped.

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

"Group home" means a facility that is being used as a supportive living environment for persons who are considered disabled under state or federal law. A group home operated by a single operator or service provider (whether licensed or unlicensed) constitutes a single facility, whether the facility occupies one (1) or more dwelling units. Group homes shall not include the following: (1) 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 (1) 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 and includes people who live in different units governed by the same operator.

"Integral facilities" means any combination of two (2) 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.

"Planning Department" means the Planning Department of the City of Fountain Valley.

"Property" means any single development lot that has been subdivided bearing its own assessor's parcel number or with an approved subdivision map or condominium map.

"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 licensed by the state where care, services, or treatment is provided to 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 (Health & Saf. Code §§ 1267.8, 1267.9); community care facilities (Health & Saf. Code §§ 1500 et seq.); residential care facilities for the elderly (Health & Saf. Code §§ 1569 et seq.); residential care facilities for the chronically ill (22 C.C.R. § 87801(a)(5); Health & Saf. § 1568.02); alcoholism and drug abuse facilities (Health & Saf. Code §§ 11834.02-11834.30); pediatric day health and respite care facilities (Health & Saf. Code §§ 1760 et seq.); residential health care facilities, including congregate living health facilities (Health & Saf. Code §§ 1265 – 1271.1, 1250(i), 1250(e), (h)); family care home, foster home, group home for the mentally disordered or otherwise handicapped persons or dependent and neglected children (Wel. & Inst. Code §§ 5115-5120).

"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 indicia 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) residential care facilities; (2) any sober living home that operates as a single housekeeping unit.

4.35.020 Zoning requirements.

In addition to the requirements of this article, all group homes subject to this article shall comply with the requirements set forth in Chapter 21.29 of Title 21 of this Code.

4.35.025 Operator's permit required.

It is unlawful for any person to operate, or to permit any person to operate, a group home on any property located within the GH, R2, R3, and R4 zone, without a valid permit issued for that group home pursuant to the provisions of this article.

4.35.030 Exceptions.

The requirements of this article shall not apply to:

- (a) A group home that has six (6) or fewer occupants, not counting a house manager, and that is in compliance with the applicable provisions of Chapter 21.29; or
- (b) A state licensed alcoholism or drug abuse recovery or treatment facility; or
- (c) A state licensed residential care facility.

4.35.035 Requirements for issuance of operator's permit.

(a) The owner/operator shall submit an application to the director of the Planning Department, or his or her designee that provides the following information:

(1) The name, address, phone number and driver's license number of the owner/operator;

(2) If the applicant and/or operator is a partnership, corporation, firm or association, then the applicant/operator shall provide the additional names and addresses as follows and such persons shall also sign the application:

- i. Every general partner of the partnership;
- ii. Every owner with a controlling interest in the corporation; and

iii. The person designated by the officers of a corporation as set forth in a resolution of the corporation that is to be designated as the permit holder.

(3) The license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit, has had such license and/or permit revoked or suspended, and the reason therefor;

(4) The name, address, phone number and driver's license number of the house manager;

(5) A copy of the group home rules and regulations;

(6) Written intake procedures;

(7) The relapse policy;

(8) An affirmation by the owner/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;

(9) Blank copies of all forms that all residents and potential residents are required to complete; and

(10) A fee for the cost of processing of the application as set by resolution of the city council.

(b) Requirements for operation of group homes.

(1) The group home has a house manager who resides at the group home or any multiple of persons acting as a house manager who are present at the group home on a twenty-four (24) hour basis and who are responsible for the day-to-day operation of the group home.

(2) All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Residents and the house manager may each only store or park a single vehicle at the dwelling unit or on any street within five hundred (500) feet of the dwelling unit. The vehicle must be operable and currently used as a primary form of transportation for a resident of the group home.

(3) Occupants must not require, and operators must not provide, "care and supervision" as those terms are defined by Health and Safety Code section 1503.5 and section 80001(c)(3) of Title 22, California Code of Regulations.

(4) Integral group home facilities are not permitted. Applicants shall declare, under penalty of perjury, that the group home does not operate as an integral use/facility.

(5) If the group home operator is not the property owner, written approval from the property owner to operate a group home at the property.

(6) At least forty-eight (48) hours prior to eviction from or involuntary termination of residency in a group home, the operator thereof shall:

i. Notify the person designated as the occupant's emergency contact or contact of record that the occupant will no longer be a resident at the home;

ii. Contact the Orange County Health Care Agency OC Links Referral Line or other entity designated by the City to determine the services available to the occupant, including, but not limited to, alcohol and drug inpatient and outpatient treatment;

iii. Notify the Fountain Valley Police Department that an occupant is no longer a resident at the home, determine the services available therefrom; and

iv. Provide the information obtained from paragraphs ii and iii of this subsection (b)(6) and any other treatment provider or service to the occupant prior to his or her release on a form provided by the city and obtain the occupant's signed acknowledgement thereon;

v. Provided, however, that if the occupant's behavior results in immediate termination of residency pursuant to rules approved by the city as part of the conditional use permit for that facility, the operator shall comply with paragraphs i through iv of this subsection (b)(6) as soon as possible.

(7) Prior to an occupant's eviction from or involuntary termination of residency in a group home, the operator thereof shall also:

i. Make available to the occupant transportation to the address listed on the occupant's driver license, state issued identification card, or the permanent address identified in the occupant's application or referral to the group home;

ii. Provided, however, that should the occupant decline transportation to his or her permanent address or otherwise has no permanent address, then the operator shall make available to the occupant transportation to another group home or residential care facility that has agreed to accept the occupant.

(8) The group home operator shall maintain records for a period of one year following eviction from or involuntary termination of residency of an occupant that document compliance with subsections (a)(6) and (a)(7) of this section; provided, however, that nothing herein shall require an operator of a group home to violate any provision of state or federal law regarding confidentiality of health care information. The group home operator may not satisfy the obligations set forth in subsection (a)(7) by providing remuneration to the occupant for the cost of transportation.

(9) All drivers of vehicles picking up or dropping off persons at a group home shall comply with all applicable provisions of this Code and the Vehicle Code, including, but not limited to, those provisions regulating licensure and parking, standing and stopping.

(10) The property must be in full compliance with all building codes, municipal code and zoning.

(11) In addition to the regulations outlined above, the following shall also apply to sober living homes:

i. All occupants, other than the house manager, must be actively participating in legitimate recovery programs, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous and the sober living home must maintain current records of meeting attendance. Under the sober living home's rules and regulations, refusal to actively participate in such a program shall be cause for eviction.

ii. The sober living home's rules and regulations must prohibit the use of any alcohol or any non-prescription drugs at the sober living home or by any recovering addict either on or off site. The sober living home must also have a written policy regarding the possession, use and storage of prescription medications. The facility cannot dispense medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least ninety (90) days. Any second violation of this rule shall result in permanent eviction. Alternatively, the sober living home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.

iii. The number of occupants subject to the sex offender registration requirements of Penal Code section 290 does not exceed the limit set forth in Penal Code section 3003.5 and does not violate the distance provisions set forth in Penal Code section 3003.

iv. The sober living home shall have a written visitation policy that shall preclude any visitors who are under the influence of any drug or alcohol.

v. The sober living home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. The good neighbor policy shall establish a written protocol for the house manager/operator to follow when a neighbor complaint is received.

vi. The sober living home shall not provide any of the following services as they are defined by section 10501(a)(6) of Title 9, California Code of Regulations: detoxification; educational counseling; individual or group counseling sessions; and treatment or recovery planning.

(c) An applicant may seek relief from the strict application of this section by submitting an application to the director of the Planning Department setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to Section 21.08.060 of Chapter 21.08 of Title 21 of this Code.

(d) The operator's permit shall be issued by the director of the Planning Department if the applicant is in compliance, or, where applicable, has agreed to comply, with the requirements of subsections (a) and (b) above.

(e) In addition to denying an application for failing to comply, or failing to agree to comply, with subsections (a) and/or (b) of this section, an operator's permit shall also be denied, and if already issued shall be revoked upon a hearing by the director of the Planning Department, 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; or selling or furnishing illegal drugs or alcohol.

(3) Any owner/operator or staff person has been convicted of or pleaded nolo contendere, within the last seven (7) to ten (10) years, to any of the following offenses:

i. Any sex offense for which the person is required to register as a sex offender under California Penal Code section 290 (last ten (10) years);

ii. Arson offenses—Violations of Penal Code Sections 451—455 (last seven (7) years); or

iii. Violent felonies, as defined in Penal Code section 667.5, which involve doing bodily harm to another person (last ten (10) years).

iv. The unlawful sale or furnishing of any controlled substances (last seven (7) years).

(4) Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.

(5) The owner/operator accepts residents, other than a house manager, who are not disabled or handicapped as defined by the FHAA and FEHA.

(6) An operator's permit for a sober living home shall also be denied, and if already issued shall be revoked upon a hearing by the director of the Planning Department, under any of the following additional circumstances:

i. 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.

ii. For any other significant and/or repeated violations of this section and/or any other applicable laws and/or regulations.

4.35.040 Transfer of operator's permit.

(a) An operator's permit shall not be valid for a location other than the property for which it is issued, unless and until the transfer of the permit is approved by the Community Development Director pursuant to the requirements of section 4.35.035.

(b) An operator's permit may not be transferred to any other person or entity. No operator's permit issued pursuant to this article shall be transferred or assigned or authorize any person or entity other than the person or entity named in the permit to operate the group home named therein.

4.35.045 Revocation of operator's permit.

An operator's permit may be revoked upon a hearing by the Community Development Director pursuant to section 4.35.035 for failing to comply with the terms of the permit and/or for failing to comply with the applicable provisions of section 4.35.035.

4.35.050. Reapplication after denial or revocation.

(a) An applicant for an operator's permit whose application for such an operator's permit has been denied may not reapply for such an operator's permit for a period of six months from the date such notice of denial was issued.

(b) A holder of an operator's permit that has been cancelled, revoked, or otherwise invalidated may not reapply for an operator's or a user's permit for a period of six months from the date that such revocation, cancellation, or invalidation became final.

4.35.055 Compliance.

A group home that is subject to the provisions of this Chapter that is in existence as of the effective date of this ordinance shall have one hundred twenty (120) days to comply with the provisions of this Chapter.

Section 2:

Fountain Valley Municipal Code Chapter 21.29 Group Homes is hereby added to read as follows:

21.29.010 Purpose.

This chapter is intended 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 actually entitled to the special accommodation and/or additional accommodation provided under the Fountain Valley Municipal Code and not simply skirting the city's boarding house regulations; (2) limiting the secondary impacts of group homes by reducing noise and traffic, preserving safety and providing adequate on street parking; (3) providing an accommodation for persons with disabilities that is reasonable and actually bears some resemblance to the opportunities afforded non-handicapped 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 persons with disabilities and for recovering addicts to be successful in their programs.

21.29.020 Definitions

The definitions in Chapter 4.35 shall apply to this Chapter. To the extent those definitions conflict with any other provision in the Municipal Code, the definitions in Chapter 4.35 shall control for purposes of this Chapter.

21.29.030 Special use permit required for R1 zone.

(a) A group home that may otherwise be considered an unpermitted use may locate in an R1 zone with a special use permit provided:

(1) An application for a group home is submitted to the Community Development Director, or his or her designee, by the owner/operator of the group home. The application shall provide the following:

i. The name, address, phone number and driver's license number of the owner/operator;

ii. If the applicant and/or operator is a partnership, corporation, firm or association, then the applicant/operator shall provide the additional names and addresses as follows and such persons shall also sign the application:

a. Every general partner of the partnership,

b. Every owner with a controlling interest in the corporation,

c. The person designated by the officers of a corporation as set forth in a resolution of the corporation that is to be designated as the permit holder;

iii. The license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit, has had such license and/or permit revoked or suspended, and the reason therefor;

iv. The name, address, phone number and driver's license number of the house manager;

v. A copy of the group home rules and regulations;

vi. Written intake procedures;

vii. The relapse policy;

viii. An affirmation by the owner/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;

ix. Blank copies of all forms that all residents and potential residents are required to complete; and

x. A fee for the cost of processing of the application as set by resolution of the city council.

(b) 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 for updating any of this information to keep it current.

(2) The group home has six (6) or fewer occupants, not counting a house manager, but in no event shall have more than seven (7) occupants. If the dwelling unit has an accessory dwelling unit (ADU), occupants of both units will be combined to determine whether or not the limit of six (6) occupants has been exceeded.

(3) The group home shall not be located in an ADU unless the primary dwelling unit is used for the same purpose.

(4) The group home has a house manager who resides at the group home or any multiple of persons acting as a house manager who are present at the group home on a twenty-four hour basis and who are responsible for the day-to-day operation of the group home.

(5) All garage and driveway spaces associated with the dwelling unit shall, at all times, be available for the parking of vehicles. Residents and the house manager may each only store or park a single vehicle at the dwelling unit or on any street within five hundred feet of the dwelling unit. The vehicle must be operable and currently used as a primary form of transportation for a resident of the group home.

(6) 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.

(7) 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.

(8) If the group home operator is not the property owner, the application must include written approval from the property owner to operate a group home at the property.

(9) The property must be in full compliance with all building codes, municipal codes, and zoning.

(10) At least forty-eight hours prior to an occupant's eviction from or involuntary termination of residency in a group home, the operator thereof shall:

i. Notify the person designated as the occupant's emergency contact or contact of record that the occupant will no longer be a resident at the home;

ii. Contact the Orange County Health Care Agency OC Links Referral Line and/or another entity designated by the City to determine the services available to the occupant, including, but not limited to, alcohol and drug inpatient and outpatient treatment;

iii. Notify the Fountain Valley Police Department that an occupant is no longer a resident at the home, and determine the services available therefrom;

iv. Provide the information obtained from paragraphs ii and iii of this subsection (a)(10) and any other treatment provider or service to the occupant prior to his or her release on a form provided by the City and obtain the occupant's signed acknowledgement thereon;

v. Provided, however, that if the occupant's behavior results in immediate termination of residency pursuant to rules approved by the City of Fountain Valley as part of the special use permit for that facility, the operator shall comply with paragraphs i through iv of this subsection (a)(10) as soon as possible.

(11) Prior to an occupant's eviction from or involuntary termination of residency in a group home, the operator thereof shall also:

i. Make available to the occupant transportation to the address listed on the occupant's driver license, state-issued identification card, or the permanent address identified in the occupant's application or referral to the group home;

ii. Provided, however, that should the occupant decline transportation to his or her permanent address, or otherwise has no permanent address, then the operator shall make available to the occupant transportation to another group home or residential care facility that has agreed to accept the occupant.

(12) The group home operator shall maintain records for a period of one year following eviction from, or involuntary termination of, residency of an occupant that document compliance with subsections (a)(10) and (a)(11) of this section; provided, however, that nothing herein shall require an operator of a group home to violate any provision of state or federal law regarding confidentiality of health care information. The group home operator may not satisfy the obligations set forth in subsection (a)(11) of this section by providing remuneration to the occupant for the cost of transportation.

(13) All drivers of vehicles picking up or dropping off persons at a group home shall comply with all applicable provisions of this Code and the Vehicle Code, including, but not limited to, those provisions regulating licensure and parking, standing, and stopping.

(14) In addition to the regulations outlined above, the following shall also apply to sober living homes:

i. The sober living home is not located within six hundred fifty (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.

ii. All occupants, other than the house manager, must be actively participating in legitimate recovery programs, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous and the sober living home must maintain current records of meeting attendance. Under the sober living home's rules and regulations, refusal to actively participate in such a program shall be cause for eviction.

iii. The sober living home's rules and regulations must prohibit the use of any alcohol or any non-prescription drugs at the sober living home, or by any recovering addict, either on or off site. The sober living home must also have a written policy regarding the possession, use, and storage of prescription medications. The facility cannot dispense medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed. These rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the sober living home's rules for residency and the violator cannot be re-admitted for at least ninety days. Any second violation of this rule shall result in permanent eviction. Alternatively, the sober living home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.

iv. The number of occupants subject to the sex offender registration requirements of Penal Code section 290 does not exceed the limit set forth in Penal Code section 3003.5 and does not violate the distance provisions set forth in Penal Code section 3003.

v. 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.

vi. The sober living home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in excessively loud, profane, or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. The good neighbor policy shall establish a written protocol for the house manager/operator to follow when a neighbor complaint is received.

vii. 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 setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to Section 21.08.060 of Chapter 21.08 of Title 21 of this Code.

(b) The special use permit shall be issued by the Community Development Director as a ministerial matter if the applicant is in compliance, or has agreed to comply, with subsections (a)(1) through (a)(14) of this section. At least ten (10) days prior to issuing a special use permit, the Community Development Director, or his or her designee, shall cause written notice to be mailed to the owner of record and occupants of all properties within five hundred feet of the location of the group home. Prior to issuance of the special use permit, the Community Development Director, or his or her designee, shall hold a public hearing for the purpose of receiving information regarding compliance with the applicable provisions of subsections (a) and (b) of this section. The issuance of the special use permit shall be denied upon a determination, and if already issued shall be denied or revoked upon a hearing, by the Community Development Director that any of the following circumstances exist:

(1) Any owner/operator or staff person has provided materially false or misleading information on the application or omitted any pertinent information;

(2) Any owner/operator or staff person has an employment history in which he or she was terminated during the past two (2) years because of physical assault, sexual harassment, embezzlement or theft; failing a drug test; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.

(3) Any owner/operator or staff person has been convicted of or pleaded nolo contendere, within the last seven (7) to ten (10) years, to any of the following offenses:

i. Any sex offense for which the person is required to register as a sex offender under California Penal Code section 290 (last ten (10) years);

ii. Arson offenses—Violations of Penal Code Sections 451—455 (last seven (7) years); or

iii. Violent felonies, as defined in Penal Code section 667.5, which involve doing bodily harm to another person (last ten (10) years).

iv. The unlawful sale or furnishing of any controlled substances (last seven (7) years).

(4) Any owner/operator or staff person is on parole or formal probation supervision on the date of the submittal of the application or at any time thereafter.

(5) The owner/operator accepts residents, other than a house manager, who are not disabled as defined by the FHAA and FEHA.

(6) A special use permit for a sober living home shall also be denied upon a determination, and if already issued, shall be revoked, and any transfer shall be denied or revoked, upon a hearing by the Community Development Director, or his or her designee, that any of the following circumstances exist:

i. Any owner/operator or staff person of a sober living home is a recovering drug or alcohol abuser and upon the date of application or employment has had less than one full year of sobriety.

ii. The owner/operator of a sober living home fails to immediately take measures to remove any resident who uses alcohol or illegally uses prescription or non-prescription drugs, or who is not actively participating in a legitimate recovery program from contact with all other sober residents.

iii. The sober living home, as measured by the closest property lines, is located within six hundred fifty feet of any other sober living home or state licensed alcoholism or drug abuse recovery or treatment facility. If a state-licensed alcoholism or drug abuse recovery or treatment facility moves within six hundred fifty 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 and/or repeated violations of this section and/or any other applicable laws and/or regulations, including, but not limited to, failure to comply with the provisions of subsections (a)(10) through (13).

(8) Revocation shall not apply to any group home, which otherwise would cause it to be in violation of this section, that has obtained a reasonable accommodation pursuant to Section 21.08.060.

21.29.035 Compliance for group homes in R1 Zone.

(a) Existing group homes in the R1 zone must apply for a special use permit within ninety (90) days of the effective date of this chapter.

(b) Group homes that are in existence upon the effective date of this chapter shall have one (1) year from the effective date of this chapter to comply with its provisions, provided that, any existing group home serving more than six (6) residents, must first comply with the six-resident maximum.

(c) Existing group homes obligated by a written lease exceeding one (1) year from the effective date of this chapter, or whose activity involves investment of money in leasehold or improvements such that a longer period is necessary to prevent undue financial hardship, are eligible for up to one (1) additional years grace period pursuant to approval of the Community Development Director or his or her designee.

21.29.040 Group homes in the GH, R2, R3 and R4 residential zones with six (6) or fewer occupants.

(a) A special use permit shall be required for the operation of a group home, including a sober living home, with six (6) or fewer occupants in the GH, R2, R3 and R4 zones subject to the following requirements:

(1) The application for, and operation of, the group home complies with subsections (a)(1), (a)(2) and (a)(4) through (a)(14) of section 21.29.030.

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

(3) The group home or sober living home is at least six hundred fifty (650) feet from any other property, as defined in section 4.35.010, that contains a group home, sober living home or state-licensed drug and alcohol treatment facility, as measured from the property line.

(b) The Community Development Director may issue, revoke, or deny a special use permit for a group home, including a sober living home subject to this chapter, pursuant to the procedures and requirements of section 21.29.030.

(c) An applicant may seek relief from the strict application of this section by submitting an application to the Planning Commission setting forth specific reasons as to why accommodation over and above this section is necessary under state and federal laws, pursuant to section 21.08.060.

21.29.050. Conditional use permit required for group homes, residential care facilities and drug and alcohol treatment facilities in the GH, R2, R3, and R4 zones with seven (7) or more occupants.

A conditional use permit shall be required for the operation of a group home, state-licensed residential care facility or state-licensed drug and alcohol treatment facility with seven (7) or more occupants in the GH, R2, R3, and R4 zones subject to the following conditions:

(a) The requirements of Chapter 21.36, Conditional Use Permits, of this title have been met, including but not limited to the findings required by section 21.36.050.

(b) The group home, residential care facility or state-licensed drug and alcohol treatment facility is at least six-hundred fifty feet from any property, as defined in section 13-321, that contains a group home, sober living home or state-licensed drug and alcohol treatment facility, as measured from the property line, unless the reviewing authority determines that such location will not result in an over-concentration of similar uses.

(c) The applicant obtains an operator's permit as required by 4.35.025 except that this requirement shall not apply to any state-licensed residential care facility or state licensed drug and alcohol treatment facility.

21.29.060 Compliance

(a) Group homes in the GH, R2, R3, and R4 zones with six (6) or fewer occupants that are in existence upon the effective date of this section may continue to operate subject to the following:

(1) A complete application for a special use permit is filed within 90 days of the effective date of this chapter; and

(2) The group home is in full compliance with all of the conditions of this chapter within one (1) year of its effective date. Notwithstanding the foregoing, existing group homes obligated by a written lease exceeding one (1) year from the effective date of the chapter, 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 year grace period pursuant to approval from the Community Development Director or his or her designee.

(b) Group homes, state licensed residential care facilities and state licensed drug and alcohol treatment facilities in the GH, R2, R3, and R4 with seven (7) or more occupants that are in existence upon the effective date of this chapter may continue to operate subject to the following:

(1) The operator of a group home obtains an operator's permit pursuant to Chapter 4.35 within one hundred twenty days from the effective date of this chapter; and

(2) The group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility is in full compliance with all conditions of this chapter, including obtaining a conditional use permit, within one (1) year from the effective date of this chapter. Notwithstanding the foregoing, an existing group home, state licensed residential care facility and/or state licensed drug and alcohol treatment facility obligated by a written lease exceeding one (1) year from the effective date of the chapter, 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 year grace period pursuant to approval from the Community Development Director or his or her designee.

Section 3:

Fountain Valley Municipal Code Section 21.08.030 Residential zoning district land uses and permit requirements is hereby amended to read as follows:

Table 2-2 identifies the uses of land allowed by this title in each residential zoning district, and the land use permit required to establish each use, in compliance with Section 21.06.030 (Allowable land uses and permit requirements) of this title.

Note: where the last column in the tables ("Specific Use Regulations") includes a section number, the regulations in the referenced section apply to the use; however, provisions in other sections of this title may also apply.

**TABLE 2-2
PERMIT REQUIRED BY DISTRICT**

Allowed Uses and Permit Requirements				P	Permitted Use		
for Residential Zoning Districts				CUP	Conditional	Use	Permit
					Required		
				SUP	Special	Use	Permit
				—	Required		
					Use Not Allowed		
LAND USE (1)	R1	GH	R2	R3	R4	Specific Use Regulations	
RECREATION, EDUCATION, PUBLIC ASSEMBLY USES							
Private residential recreational facilities	CUP	CUP	CUP	CUP	CUP		
Assembly uses	CUP	CUP	CUP	CUP	CUP		
Schools - private	CUP	CUP	CUP	CUP	CUP		
RESIDENTIAL USES							
Accessory dwelling units	P	P	P	P	P	21.08.055	
Affordable housing	P	P	P	P	P		

Allowed Uses and Permit Requirements for Residential Zoning Districts			P	CUP	SUP	—	Permitted Use Conditional Use Permit Required Special Use Permit Required Use Not Allowed
LAND USE ⁽¹⁾	R1	GH	R2	R3	R4	Specific Use Regulations	
Cottage food operations	P	P	P	P	P	<u>21.42.065</u>	
Duplexes	—	P	P	P	P		
Home businesses	P	P	P	P	P		
Mobile home parks	—	—	—	CUP	CUP		
Multi-family dwellings	—	—	CUP	CUP	CUP		
Group Home ⁽³⁾ 6 or less residents	SUP	SUP	SUP	SUP	SUP	21.29.030 & 21.29.040	
Group Home ⁽³⁾⁽⁴⁾ 7 or more	—	CUP	CUP	CUP	CUP		
Residential accessory uses and structures	P	P	P	P	P		
Residential care home - large	CUP	CUP	CUP	CUP	CUP		
Residential care home - small	P	P	P	P	P		
Single-family dwellings	P	CUP	P	—	—		
Supportive housing	P	P	P	P	P		
Transitional housing	P	P	P	P	P		

SERVICES

Adult day care — large	(2)	(2)	(2)	(2)	(2)	<u>21.30.020</u>
Adult day care - small	P	P	P	P	P	<u>21.30.020</u>
Day care - large family day care homes	P (2)	P (2)	P (2)	P (2)	P (2)	<u>21.30.020</u>
Day care - small family day care homes	P	P	P	P	P	<u>21.30.020</u>
Child day care centers	CUP	CUP	CUP	CUP	CUP	<u>21.30.020</u>
Wireless telecommunications facilities ⁽²⁾	Administrative wireless facilities permit ⁽²⁾	—	—	—	—	21.28

Notes:

(1) See Chapter 21.90 for land use definitions. See Section 21.02.020 regarding uses not listed.

(2) Wireless telecommunication facilities are only allowed on church properties in the R1 zone subject to the requirements of Chapter 21.28. Wireless telecommunications

facilities may also be permitted by a conditional use when the planning/building director determines that the project's complexity or the public interest warrants the referral.

(3) Definition of group home in 4.35.010.

(4) Per Chapter 4.35 "Group Homes" an Operator's Permit is also required

Section 3:

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

Section 4:

The City Clerk shall certify to the adoption of this ordinance and cause it to be published as required by law. This ordinance shall become effective thirty (30) days after the date of its adoption.

PASSED AND ADOPTED by the City Council of the City of Fountain Valley at a regular meeting this 30th day of January 2024.

Ayes: Constantine, Cunneen, Harper, Bui, Grandis

Nays: None

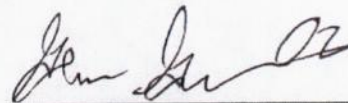
Absent: None

Abstain: None

ATTEST:



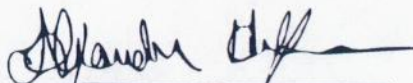
Rick Miller, City Clerk



Glenn Grandis, Mayor

Approved as to Form:

HARPER & BURNS LLP



Alexandra Halfman
Attorneys for the City