

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

August 23, 2007 Meeting  
Agenda Item 2

**SUBJECT:** Residential Uses Code Amendment (PA 2007-112)  
▪ Code Amendment No. 2007-005

**APPLICANT:** City of Newport Beach

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**PROJECT SUMMARY**

The code amendment is to Title 20 (Zoning Code) of the Newport Beach Municipal Code. The code amendment would revise definitions, land use classifications, and regulations relating to group occupancies and relating to use permits and amortization provisions for all uses in residential zones.

**RECOMMENDATION**

Adopt the attached resolution recommending approval of Code Amendment No. 2007-005 to the City Council.

**INTRODUCTION**

**History and Overview:**

Newport Beach's early development occurred on the Balboa Peninsula, West Newport, and Balboa Island along the City's many miles of beach and harbor frontage. Residential development consisted mainly of weekend and summer beach houses and duplexes used as second or vacation homes to escape the heat of Los Angeles, Pasadena, and other inland areas. A large number of these beach properties were developed in a dense pattern. Most properties are narrow, not more than 30' in width and often 80' to 100' long. Much of the area authorizes duplexes built on a single lot with each building setback only three feet from the property line, resulting in neighbors with windows less than six feet away from each other. Balboa Boulevard is the only arterial roadway, stretching from the Pacific Coast Highway to the tip of the Peninsula. Other roads in the area are only 30 feet wide, with alleys as narrow as 10 feet across. This creates a living pattern that requires a certain amount of mutual consideration under the best of circumstances.

Many owners retain their properties as income-producing investments. Some properties are rented monthly, others annually and many on a short-term basis for less than 30 days during the summer months. Summer rental properties are generally rented for monthly and longer terms during the less busy winter months. The year-round as well as nine-month rentals provide affordable rentals for college-age students and young families. Over the years, however, more and more property owners have purchased these properties and moved in to make Newport Beach their permanent home. Often a duplex will be torn down and one single-family home built in its place, or a duplex will be used as a permanent home with the secondary unit used as a rental to help support those that wish to live in Newport Beach.

The City Council has periodically responded to the differing interests of permanent residents and renters, many of whom who lived in the community for the proximity to the beach and relaxed atmosphere of a beach town. In 1992, the City Council adopted Ordinance No. 92-13 to respond to the ever-increasing complaints of permanent residents about the impacts of the vacation or short-term rentals. Many of these properties were rented out to groups of young people, students, or other visitors that were coming to the area on vacation without intent to make the Peninsula area their permanent homes. Often these renters created many adverse impacts on the surrounding residential neighborhoods. The short-term lodging permitting requirement was enacted to create responsibility on the part of landlords and property owners for the conduct of their renters, and to impose transient occupancy tax on those properties that were rented for less than 30 days.

In the 1990's, the City Council also adopted changes to the City Condominium Conversion Ordinance to encourage more home ownership and permanent residents who would have more interest in maintaining the residential character of their neighborhood.

Illegal units have historically been a problem in Newport Beach, and have been created most often in the older beach-oriented areas of West Newport, Balboa Peninsula, Balboa Island and Corona del Mar. The City has always enforced its zoning code to prevent illegal or bootleg dwelling units. Illegal units are found in two typical forms. First, the splitting of a single dwelling unit into two separate occupancies and second, the conversion of garages to a living space. These units usually have a higher number of building & safety code violations than legal units due to the conversion without proper building permits and inspections. Illegal units add intensification to an area already impacted by high-density dwelling units and the approximately eight to nine million visitors, vacationers and beachgoers that come to the City annually.

When landlords, began renting out individual rooms or portions of a structure to create illegal boarding houses or dwelling units in two-family duplexes, the City made changes to its zoning code to prevent these types of uses within the City. The City adopted detailed definitions of "family" and "dwelling units" to aide in enforcement against illegal dwelling units and to prevent creation of boarding houses, fraternities and other types of

transient residential patterns of use. The City sought to promote a balance between residential community needs and accommodation of vacationers without adverse impacts on the peace, safety and welfare of the long-term residents through these changes to the municipal code.

In the late 1990's, a new form of transient residential use began to operate in these already intense neighborhoods. Drug and alcohol recovery and sober living businesses armed with various fair housing laws protecting the residents of those homes have established the equivalent of transient boarding house businesses to provide recovery and sober living setting in residential areas. This has resulted in transforming a small area of the City into an intense institutional boarding house setting, a result the City had long sought to prevent. Numerous blocks of the City are now filled with multiple businesses offering recovery and sober living services to 12 or more persons in the neighborhoods duplexes and triplexes. The residents often move from one building to another depending upon the services offered over different periods of 28 to 45 days. Residents, up in arms over the institutional operations, began to complain that the City's regulations did not adequately address the impacts of these businesses.

Questionnaires distributed to residents in areas with a high concentration of recovery and sober living homes received responses that indicated that most or all of the 12 residents in a duplex used for residential recovery or sober living would gather outside and smoke frequently. This generated large amounts of secondhand cigarette smoke which blows into open neighboring windows as little as three feet away. In these situations, neighbors have been forced to either keep their windows closed or breathe the secondhand smoke themselves. Some properties are used for assembly purposes and bring in residents from other homes for meetings and services. Some operate at an intensity that requires commercial trash pick up on a more than weekly basis. The high turnover of residents in these facilities creates a problem for neighborhood residents who are continually forced to remind management to enforce rules for behavior when new residents arrive, since facility residents often do not concern themselves with the impact that swearing, smoking, fighting and similar behaviors have on their neighbors.

In short-term rental situations, the transient occupancy is by single families or groups of families or individuals living together in the rental as a single housekeeping unit during the rental period. However, nuisance behaviors and neighborhood impacts are also common in many short-term rentals. The same questionnaires identified some continuing problems with short-term rentals.. The proposed ordinances also clarify and address the requirements for short-term rentals within the zoning code, and the City intends to update the regulations contained in the permitting scheme contained in Title 5 of the City's municipal code.

In 2006 the City Council adopted, and citizens widely supported, a new General Plan that identified Newport Beach as primarily a residential community. The General Plan envisions a range of housing opportunities that allows people to live and work in the City and emphasizes residents' quality of life. The residents of many parts of the City have

insisted, and evidence suggests, that the City's current regulations regarding group residential recovery facilities have been circumvented to create more intense use of property in the name of recovery or sober living residential uses. Since 2006 the number of residential recovery facilities has grown from 10 licensed to 22 licensed residential facilities occupying approximately 44 dwelling units. In addition, although it is not clear exactly how many unreported boarding houses are in the city, it appears that businesses have opened at least 18 boarding houses and are operating them as sober living residential occupancies. All of the new facilities, regardless of whether they are located in a duplex or in a single family home, have identified themselves as facilities operating under state protections, claiming to be facilities with six or fewer residents, even though as a single duplex or a multiple development of units the businesses generally operate with 12 or more residents per building. By doing this, the businesses have avoided the permitting process adopted to address and mitigate the impacts of larger facilities. It appears that a number of property owners and business owners are using the federal and state protection for persons with disabilities to set up alleged sober living facilities to avoid complying with City prohibitions against using residential property as a boarding house or other prohibited group residential use.

The proposed regulations are intended to address the adverse impacts of the problems the City has encountered with short-term rentals, boarding houses, unauthorized group residential uses, and some residential recovery facilities. The proposed amendments are not intended to prohibit or prevent opportunities for persons with a disability to live and work in the City of Newport Beach.

### **2007 Issues and Impacts:**

As stated above, the City has received evidence of increasing numbers of group homes that do not house permanent residents and operate more like institutional and boarding housing uses rather than as single housekeeping units. Uses such as parolee/probationer homes, group residential uses, non-residential uses, and other uses are operating as businesses in residentially zoned areas of the City.

In response to the abovementioned questionnaire, residents have expressed concerns regarding the impacts of recovery facilities on residential communities, including, but not limited to, impacts on traffic and parking, conversion of garages to other uses, more frequent trash collection, smoking in the vicinity, exposing residents to secondhand smoke and creating litter from cigarette butts, and excessive noise and loud offensive language.

Residents have also reported an increasing number of unlicensed alcohol and drug recovery facilities located in the City provide recovery (sometimes called "clean and sober") services to recovering drug and alcohol users. However, because no state statutes regulate "clean and sober" homes, the actual nature and number of these facilities is not known. The Department of Alcohol and Drug Programs (ADP) has

reported to the State Legislature that it receives on average 125 complaints a year regarding sober living homes, with many complaints indicating that unlicensed facilities are offering addiction treatment services without the required license.

The City has the highest concentration of licensed and unlicensed residential group uses serving the disabled in Orange County. According to information available from ADP, as of April, 2007, the City has 2.63 licensed alcohol and drug treatment beds per 1,000 City residents, the highest ratio of any city in Orange County. By contrast, the Orange County average is 0.52 licensed beds per 1,000 residents. While the City represents less than 2.8 percent of the County's population, it has over 14 percent of all licensed residential beds in the County.

Most of these facilities are concentrated in the R-1.5, R-2, and MFR Districts in West Newport and on the Balboa Peninsula. The concentration of these facilities may conflict with General Plan Land Use Element policies that call for maintaining the City's unique character and the City's residential neighborhoods (LU 1.1 and LU 5.1.1). Policy LU 6.2.7 calls for the regulation of residential care facilities to the maximum extent allowed by federal and state law to minimize impacts on residential neighborhoods.

On April 24, 2007, the City Council adopted Ordinance No. 2007-8, an interim urgency ordinance that imposed a moratorium on the establishment and operation of new residential uses that are transitory in nature. Ordinance No. 2007-8 also included a moratorium on the issuance of short-term lodging permits. The moratorium was necessary to prevent the expansion of uses that may be harming the residential character of the City's neighborhoods, to provide an opportunity to compile substantial evidence of the impacts of these uses, and to determine whether the current regulations adequately addressed these impacts.

On May 22, 2007, the City Council received a written report describing the measures taken to alleviate the conditions that led to the adoption of the moratorium. This report included an analysis of the responses to questionnaires that were distributed to residents to determine the impacts of transitory residential and short-term lodging uses.

On May 30, 2007, the City Council extended the temporary moratorium on the establishment and operation of transitory residential uses for five (5) months and allowed the moratorium on the issuance of new short-term lodging permits to expire on June 8, 2007. The City Council also adopted a resolution initiating this code amendment.

On June 21, 2007, the Planning Commission held a public hearing on the proposed amendment. The Planning Commission directed staff and outside legal counsel to prepare a point-by-point response (Exhibit 1) to the requests made by the Concerned Citizens of Newport Beach (CCNB; Attachment B) and incorporate them into the code amendment, whenever legally possible. The City later received additional comments from the West Newport Beach Association (WNBA; Attachments C and D), and

requested that outside legal counsel also respond to these requests for revisions to the ordinance.

### Current Use Regulations

Group occupancies are prohibited in all residential districts, with the exception of *Residential Care, Limited* (facilities with 6 or fewer persons) and *Residential Care, General* (facilities with 7 or more persons). *Residential Care, Limited* facilities, both licensed and unlicensed, are permitted by right in residential districts. State law requires that licensed facilities serving six or fewer persons be permitted by right. *Residential Care, General* facilities are permitted in R-1.5, R-2, and MFR Districts with a "Federal Exception Permit" (FEP). The FEP is a permit and application process required to obtain a "reasonable accommodation" as that term is used in the Federal Fair Housing Act Amendments (FHAA) and the case law implementing the FHAA. The ordinance establishes several specific criteria for facilities that apply for a FEP. The City has not received any applications for a FEP since the provision was adopted in 2004.

The City's current zoning ordinance treats applications for use permits in residential districts identically to applications in commercial and other nonresidential districts. In most cases, the City does not require uses that do not conform to the current zoning ordinance, but were legal when they were established ("nonconforming uses"), to conform to the current ordinance unless the nonconforming uses are a nuisance or impair public health or safety.

## **DISCUSSION**

### Analysis

The proposed amendment continues the general prohibition of group occupancies in residential areas, but also continues to permit group occupancy homes for the disabled in these areas to ensure that disabled persons have an equal opportunity to live in residential areas. The proposed amendment also provides stronger protections for preserving the character of residential neighborhoods, by establishing specific criteria for all use permits in residential districts and by requiring the amortization of all nonconforming uses in residential districts.

The proposed amendment contains the following revisions to the Zoning Code:

- More specific and detailed land use classifications for group occupancies.
- Eliminates the federal exemption permit procedures and replaces them with a use permit requirement. *Residential Care Facilities, General* are limited to the MFR zone.

- Requires a use permit for all residential care facilities, except for licensed facilities with 6 or fewer persons.
- Adds provisions for "integral facilities," residential care facilities that are jointly operated as larger facilities.
- Establishes new abatement procedures for all nonconforming uses in residential districts and shortens the maximum time period for abatement, after the use has been found to be nonconforming, from 5 to 2 years.
- Adds new criteria for all use permit applications in residential areas to protect neighborhood character.
- Establishes procedures for granting requests for reasonable accommodations for persons with disabilities.
- Limits certain types of medical uses in commercial districts.

A more detailed analysis of the various components of the proposed amendment is provided below.

### *Residential Land Use Regulations*

Residential Care Facilities. Under the proposed amendment, residential care facilities serving the disabled will continue to be permitted in certain residential districts to provide an equal opportunity for disabled persons to live in residential neighborhoods, as required by State and federal law. The City's zoning ordinance is designed to benefit group residential uses housing persons with disabilities, since no other group residential uses are permitted in the City's residential zones.

The *Residential Care, Limited* (6 or fewer persons with disabilities) land use classification will be replaced with two new classifications: *Residential Care Facilities, Small Licensed*, and *Residential Care Facilities, Small Unlicensed*. *Residential Care Facilities, Small Licensed*, includes only state licensed facilities that are required by state law to be treated as a single housekeeping unit for zoning purposes. *Residential Care Facilities, Small Licensed* must be permitted by right in residential districts pursuant to state law, which requires that licensed facilities serving six (6) or fewer persons be treated as a single-family use. No zoning requirement may be applied to these facilities that is not applied to other single-family residences in the same zoning district.

*Residential Care Facilities, Small Unlicensed*, will require a use permit to be allowed in R-1.5, R-2, and MFR Districts and their equivalents in Specific Plan Districts. This is consistent with the City's strict limitation on most uses which are not single housekeeping units in R-1 zones. For instance, short-term lodging permits are not permitted in R-1 zones.

The amendments clarify that if a small licensed or unlicensed facility is part of an "integral facility" (see below for description of integral facility) that serves seven (7) or more persons, it is classified as a *Residential Care Facility, General*.

*Residential Care Facilities, General* (7 or more persons with disabilities) will be limited to the MFR zone and its equivalent in Specific Plan Districts. The current federal exception permit and special conditions applicable only to these uses will be eliminated and replaced with a use permit requirement. Limiting *General Residential Care Facilities, General*, to multi-family residential districts presents the issue of whether the City has provided adequate land area to accommodate the need for such facilities. The City currently has 188 acres of land in the MFR District. There are 828 additional acres designated Multiple Residential (RM) in the General Plan in other districts. The RM designation is intended to provide primarily for multi-family residential development containing attached or detached dwelling units. Therefore, there are a total 1,016 acres that can accommodate multi-family residential districts. Staff believes that this is sufficient to meet the local need for such facilities, especially since these facilities are usually located in existing structures.

All residents of residential care facilities must be disabled persons who have agreed to reside in the facility for 31 days or more, except for licensees, the licensee's family, and employed staff. The requirement for 31 days' residence is intended to be consistent with the City's requirements for short-term lodging, with occupancy intended for 30 days or less treated as short-term lodging and required to pay transient occupancy tax. Numerous State laws also recognize a distinction between occupancies of 30 days or less and 31 days or more.

Other Group Residential Uses. *Group Residential* uses are land uses that may be transient in nature and operate more like institutional uses and boarding houses than conventional residential uses. *Group Residential* uses include boarding houses, dormitories, fraternities and sororities, and other groups sharing living quarters. A *Group Residential* use is different from a group of unrelated persons living as a family (or a "single housekeeping unit"). Residents living as a single housekeeping unit (whether related or unrelated) jointly occupy a single dwelling, have no more than one rental agreement (if they are leasing the home), are jointly responsible for payment of rent, use common facilities such as the kitchen, and share usual household activities such as meal preparation – in other words, they operate in ways typical of a traditional family. By contrast, persons in group residential uses do not live together as a single housekeeping unit. In particular, rooms are rented under two or more separate rental agreements. A single housekeeping unit (defined as a "family") may reside in any residence in the City.

*Group Residential* uses (boarding houses, dormitories, fraternities and sororities, and other sharing living quarters) will continue to be prohibited in all residential districts, except for group residential uses serving the disabled.

Parolee-Probationer Homes. The California Department of Corrections has reported that approximately 70 percent of persons on parole will be returned to prison each year because they have either been convicted of new crimes or have violated the conditions of their parole. Given this high recidivism and parole violation rate, residences housing two or more parolees may pose a danger to the safety of the community and adjacent residents (see Attachment E).

The proposed amendment adds a new land use classification for parolee-probationer homes, which includes a residential structure that houses two or more parolee-probationers unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration and excludes licensed facilities for disabled persons. The definition of parolee-probationer has been expanded to include all persons under supervision after a felony conviction. These facilities are prohibited in all districts.

Other Land Uses. Convalescent homes and hospitals were deleted from the base residential districts land use schedule. This provision appears to be a carry over from a time when the City had no institutional districts. No such uses currently exist in residential districts in the City, and such uses are not appropriate for residential districts.

Single-room occupancy (SRO) residential hotels will also be prohibited in all residential districts. SRO hotels are buildings with 6 or more guest rooms without kitchen facilities that serve as the primary residences of the hotel guests. Currently, SRO hotels are permitted in MFR Districts with a use permit. This use is essentially a commercial boarding house. Therefore, this use should be prohibited from residential districts, like other group residential uses. However, the Housing Element identifies SRO hotels as a needed form of transitional housing. Therefore, SRO hotels will continue to be permitted in commercial districts with a use permit.

#### *Integral Facilities*

The proposed amendment adds a new definition of "Integral Facilities" to the Zoning Code, which reads as follows:

Two or more Residential Care Facilities (Small Licensed, Small Unlicensed, or General), as defined in Section 20.05.030, which may or may not be on contiguous parcels of land, that are under the control and management of the same owner, operator, management company or licensee, including affiliates of such entities, and are integral components of the same residential facility, such as by providing housing in one facility and recovery, treatment, meals or other services in another residential facility; by designating one residential facility to provide recovery, treatment, meals or other services for several residences; or by assigning staff to serve more than one facility located on the same site or within the same building. As defined by State law, all alcohol or drug abuse recovery or treatment services within any one place or building shall be considered to be one facility. Residential care facilities that are eligible to be licensed as a single facility under State law shall be considered to be integral facilities, regardless of the number of licenses actually held.

The new integral facilities definition is intended to address the problem of operators claiming to operate small residential care facilities, which are permitted by right in all residential districts, but who in reality are operating larger facilities because of integrated operations. An example might be a 3-unit building which houses what is claimed to be three separate small facilities of 6 persons each, but in reality is operated as a large facility serving 18 persons. A related change in Section 20.010.20 and the Specific Plan Districts also prohibits a residential use from providing services to persons not residing on the site, unless the City has approved a use permit allowing such use, or unless it is in compliance with the City's home occupation regulations.

#### *Use Permits in Residential Districts*

New Chapter 20.91A (Use Permits in Residential Districts) applies special requirements to use permits in residential zones to preserve the character of residential neighborhoods. These special requirements are designed to respond to the concerns of residents that conditional uses are resulting in residential districts having a non-residential character. The added requirements include application requirements, development and operation regulations, and extended findings.

Application Requirements. In addition to the standard application requirements, an application for a use permit in a residential district will need to provide the following information and materials:

- Number and types of users of the facility (including staff, clients, visitors, students, etc.).
- The hours of operation, types of activities, and typical attendance at activities.
- The availability of public transportation and the expected parking demand and vehicular use.
- An operations and management plan to ensure compliance with state and local law, and rules of conduct for all users of the site.
- A list of other uses of the same type in Newport Beach and the licensed or authorized capacity of those uses, and evidence of the need for the facility by residents of Newport Beach.
- The number of residents per room, maximum number of occupants, typical length of stay, and any guest or client rules of conduct.

Over Concentration and Separation. If the City determines that the City contains adequate facilities of that use type to serve the needs of Newport Beach residents, then

no more than one use of that type may be permitted on any block. Furthermore, no uses of the same type shall be located within 75 feet of each other.

These over-concentration provisions do not apply to existing uses that are nonconforming only because they lack use permits. Applying these provisions to existing uses would require the City to choose which existing facility, of several existing ones, could remain in the City. It would be very difficult to determine a rational, consistently applied basis for choosing one facility and not the others. However, all of the other provisions of this section would apply to existing uses that request use permits.

Other Operational Regulations. Conditional uses in residential districts will be required to comply with the following regulations:

- Maximum occupancy will be limited to no more than 2 residents per bedroom, plus one additional resident.
- Outdoor smoking will be prohibited within 15 feet of the property lines of the site.
- The property must be operated in compliance with applicable state and local law and in conformance with the management and operating plan and rules of conduct submitted as part of the application.
- Operators must obtain all business licenses required by the City.

Residential Care Facilities. Unlicensed residential care facilities serving individuals with disabilities will be required to comply with the following standards. These are designed to be of benefit to the disabled by ensuring that these facilities are operating in a manner that is consistent with state and federal law and with established standards, and that the operators do not have a pattern or practice of operating similar facilities in violation of state or local law:

- Owners, managers, operators, and residents cannot provide onsite any services which would require licensure of the facility under California law.
- Certification is required, if available, from a governmental agency or qualified nonprofit organization.
- The names of all persons and entities with an ownership or leasehold interest in the facility, or who will participate in operation of the facility, must be disclosed in writing to the City, and such persons and entities do not have a pattern or practice of operating similar facilities in violation of state or local law.

- The operator must provide a list of the addresses of all similar facilities in the State of California owned or operated by the operator. The operator must certify that none of such facilities are operating in violation of state or local law.

Staff believes that these amendments will respond to the community's concern about over-concentration and changes to the residential character of neighborhoods by examining these issues for *all* conditional uses in residential districts, including schools, churches, and bed and breakfast inns.

#### *Reasonable Accommodation*

The proposed amendment adds a reasonable accommodation chapter that is needed to assist the City in complying with federal and state fair housing laws. The new Chapter 20.98 sets forth the City's policy to provide reasonable accommodation in its zoning regulations when needed to provide an individual with a disability an equal opportunity to use and enjoy a residence or avoid discrimination on the basis of disability.

The amendment establishes a procedure where requests for reasonable accommodation may be reviewed in two ways. If the project requires a discretionary planning approval, the request for reasonable accommodation will be subject to the same notice, hearing, and appeal procedures as the planning approval, will be heard with the discretionary planning approval, and may be approved, conditionally approved, or denied by the entity that is considering the other discretionary permit. For instance, if a project requesting a use permit also desires a reasonable accommodation, the request for a reasonable accommodation would be heard along with the use permit. This is intended to ensure that the procedure meets due process requirements for notice to neighbors regarding changes in planning requirements.

For projects that require no discretionary permit (for instance, projects that would require only a building permit), the request for reasonable accommodation may be approved, conditionally approved or denied by the Zoning Administrator. In order to balance the privacy and equal opportunity rights of persons with disabilities with the due process rights of neighbors to receive notice, the reasonable accommodation process for these projects provides for limited notice of a reasonable accommodation determination to the abutting property owners (including those across the street and/or alley) only after the initial decision is made. The applicant, the abutting neighbors, or a member of the Planning Commission or City Council may then appeal the initial decision to grant or deny a reasonable accommodation, and a hearing will be held.

#### *Commercial Land Uses*

Staff was directed to investigate prohibiting residential care facilities from operating counseling facilities in retail storefronts. Such facilities are seen as particularly incompatible with the Peninsula's commercial areas, which are intended to serve as

pedestrian-oriented villages with a mixture of retail, visitor-serving, and marine-oriented commercial uses.

Counseling facilities are typically classified as either medical offices or public assembly uses. Because the City must apply its land use regulations in a non-discriminatory fashion, any new controls would have to apply to all uses of these types. The City can not discriminate against certain types of medical treatment. Therefore, all medical office uses would have to be restricted. Likewise, all types of public assembly uses would have to be restricted, including places of worship, clubs, lodges, youth and senior centers, and similar facilities.

The land use regulation schedules of the SP-4 (Newport Shores), SP-6 (Cannery Village/McFadden Square), and SP-8 (Central Balboa) Districts have been revised to prohibit clubs and lodges, religious assembly, and medical office uses. As an alternative, the Planning Commission may wish to consider prohibiting these uses on the ground floor.

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) protects individuals, houses of worship, and other religious institutions from discrimination in zoning and land use regulations. RLUIPA prohibits the City from adopting regulations that substantially burden the religious exercise, religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. Therefore, no changes to the land use regulations for religious assembly are proposed.

There are a few other commercial areas in West Newport and the Peninsula. These areas are in the Retail and Service Commercial (RSC) District. Since the RSC District is used on commercial properties citywide, staff believes that changes to the land use regulations would be better addressed through the Zoning Code rewrite.

#### *Vacation Home Rentals*

A new residential use classification for *Vacation Home Rental* is provided for dwelling units that are rented or leased for a period of 30 days or less. The *Vacation Home Rental* use classification is consistent with and recognizes the use of vacation rentals in the R-1.5, R-2 and MFR Districts and their equivalents in Specific Plan Districts. No changes to the permitting requirements and regulations are proposed as part of this code amendment. However, a separate code amendment (CA 2005-006) amending Chapter 5.95 (Short Term Lodging) is being prepared to address the impacts to residential neighborhoods identified by residents.

Since 2004, the City has prohibited the issuance of new short-term lodging permits in single-family districts, but allowed existing permits to remain valid. Since the proposed code amendment will require all nonconforming uses in residential zones to conform within two years of being found nonconforming, these nonconforming short-term lodging units will also have to be amortized. Of the 801 valid short-term lodging permits in the City, 88 are

located in single family districts. It is estimated that 30 of these 88 permits are currently active.

#### *Amortization and Abatement*

Within 120 days of the effective date of this code amendment, the City will have to begin to identify and inventory all nonconforming uses in residential districts. The City will then send written notice to the owners of all properties identified by the inventory as nonconforming uses and subject to abatement. The property owner will have 45 days to submit an application to the Planning Department demonstrating that the use conforms to the use regulations and required conditions for the district in which it is located. The Planning Director will be required to make a determination regarding the use's nonconforming status no more than 90 days after receiving a complete application.

The Planning Commission will be required to hold public hearings to consider whether abatement will be required for the nonconforming uses identified in the inventory. Within 14 days following approval of an inventory, the City shall send written notice to the owners of all properties subject to abatement.

The abatement period for nonconforming uses in residential districts is two years from the date of approval of the inventory. The property owner may request an extension of the abatement period to amortize the property owner's investment in cases of economic hardship and to avoid a taking. Requests for extensions will be considered by the Planning Commission at a public hearing.

All decisions of the Planning Director may be appealed to the Planning Commission, and all Planning Commission decisions may be appealed to the City Council.

#### *Enforcement*

The identification and inventory of all nonconforming residential uses will involve considerable use of City resources. This will have to be conducted Citywide. However, it will most likely be divided into smaller geographic areas and prioritized.

The major types of nonconformities that will need to be identified and inventoried are:

- Nonconforming commercial operations (except for legal home occupations).
- Nonconforming short-term lodging permits.
- Nonconforming dwelling unit types, such as a three-unit dwelling in a two-unit district.
- Group residential uses made nonconforming by the proposed code amendment.

In many cases, evidence of nonconformities will not be reflected in official records or visibly apparent. Investigations will involve review of building permits, utility records, advertising and rental listings, field inspections, and interviews. Code and Water Quality Enforcement will be the lead division conducting these investigations, with assistance from the Planning, Building, Fire, and Police Departments and the City Attorney's Office.

Public hearings on the inventory, abatement period time extension requests, and appeals will also require a considerable amount of time and resources of the Planning Department, Planning Commission, and City Council.

### Environmental Review

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA) because it involves general policy and procedure-making activities not associated with a project or a physical change in the environment (Section 15378 of the CEQA Guidelines).

### Public Notice

Notice of this hearing was published in the Daily Pilot a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Submitted by:

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David Lepo, Planning Director

### **EXHIBITS** (in the order they are referenced within the report)

1. Goldfarb & Lipman memorandum w/1996 Legislative Counsel opinion
2. Draft resolution
3. Exhibit A (Revisions to Chapters 20.03 – 20.45)
4. Exhibit B (Revisions to Chapter 20.91 – Use Permit and Variances)
5. Exhibit C (New Chapter 20.98 - Reasonable Accommodation)
6. Exhibit D (Revisions to Chapter 20.62 – Nonconforming Uses and Structures)
7. Exhibit E (New Chapter 20.91A – Use Permits in Residential Districts)

### **ATTACHMENTS**

- A. Analysis of Responses to Questionnaires Regarding Transitory Uses

- B. Requested Revisions to the Proposed Residential Care Facilities Ordinance (Concerned Citizens of Newport Beach; June 21, 2007)
- C. Letter Requesting Revisions to City Ordinances Concerning Drug/Alcohol/Etc. Homes (West Newport Beach Association; July 5, 2007)
- D. E-Mail Adding to Comments from West Newport Beach Association (Robert Rush; July 6, 2007)
- E. Department of Corrections, *Total Felon Parolees Returned to California Prisons*
- F. March 8, 2007 letter to ADP
- G. *Alcohol and Drug Treatment Needs: Has Newport Beach Addressed Its "Share"?*
- H. *APA Policy Guide on Community Residences*
- I. Joint Statement of the Dept. of Justice and Dept. of HUD: *Group Homes, Local Land Use, and the Fair Housing Act*
- J. *Residential Care Facilities in the Neighborhood: Federal, State, and Local Requirements'* (California Research Bureau)
- K. Correspondence receive since Aug. 13, 2007