



## *Planning Commission Staff Report*

Date: July 11, 2012  
Case No.: 5.1265 ZTA  
Type: Zone Text Amendment  
Location: Citywide  
Applicant: City of Palm Springs  
To: Planning Commission  
From: Craig A. Ewing, AICP, Director of Planning Services  
Planner: Ken Lyon, RA, Associate Planner

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### **PROJECT DESCRIPTION**

The City Council, during a recent public hearing, directed staff to develop a draft amendment to the Zoning Code, establishing a definition and development standards for regulating substance abuse recovery centers. Based on direction provided, a draft ordinance will be prepared for the Planning Commission and a public hearing will be scheduled.

### **RECOMMENDATION**

That the Planning Commission discusses the parameters of the proposed zone text amendment and gives staff direction.

### **PRIOR ACTIONS**

On May 18, 2011, the City Council held a public hearing on Case 5.1249 PDD 358 to consider approval of "Michaels House", a substance abuse recovery center at 1910 South Camino Real (the former "Tiki Spa Hotel"). At that hearing the council requested staff to review the definition and regulatory standards for substance abuse recovery centers.

## BACKGROUND

Zoning Ordinance Text Amendments (ZTA's) may be initiated by City Council or Planning Commission pursuant to procedures outlined in Zoning Code Section 94.07.01. A public hearing is required.

It may be helpful for the Commission to consider the following in initiating discussion on this ZTA:

- Definitions
- State Law limits on local zoning.
- Problems needing to be solved.
- What other cities are doing.

### *Definitions: Substance Abuse Recovery Center or Assisted Living Facility?*

The Palm Springs zoning code does not currently provide a specific definition, (or development or performance standards) for substance abuse recovery centers. Historically, applications for substance abuse recovery center uses have been evaluated and processed using the definition and development standards for "assisted living facility" ("ALF's"). This approach has thus far provided an adequate legal and zoning basis for regulating these businesses. The current definition for assisted living facilities is as follows:

*"Assisted living facility" means a special combination of housing, supportive services, personalized assistance and health care licensed and designed to respond to the individual needs of those who need help with activities of daily living and instrumental activities of daily living. Supportive services are available twenty-four (24) hours a day to meet scheduled and unscheduled needs in a way that promotes maximum dignity and independence for each resident and involves the resident's family, neighbors and friends, and professional caretakers.*

### *State Law: Limits on Local Zoning.*

Several years ago, the State of California legislature established policies to encourage the development of "sufficient numbers and types" of alcoholism or drug abuse recovery or treatment facilities "commensurate with local need"<sup>1</sup>. This initiative was aimed at persons with mental and/or physical disabilities, persons with chronic disease or illness and the elderly. The effort was to provide a "non-institutional environment" where individuals could be integrated into society and the community while receiving assistance and treatment.

The State of California Health & Safety Code Section 11834 established regulations to

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<sup>1</sup> The Lanterman Developmental Disabilities Act of 1977

encourage the establishment of such treatment centers with six (6) beds or less in residential neighborhoods. State law requires that residential care facilities that serve six or fewer residents be considered a residential use of property. These facilities must be treated the same as a single-family home and the residents (clients) and operators are considered a family for zoning purposes. Furthermore, it goes on to state "*...an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees or regulations to which any other single-family dwellings are not likewise subject.*" Furthermore,

Thus Cities are essentially left with the ability to regulate substance abuse recovery centers with seven beds or more and extremely little ability to regulate such facilities with six beds or less.

#### *What are the Problems that Need to be Solved?*

The overarching public policy issue seems to be how to best balance the rights of individuals with special needs with other individuals and members of the community. Neighbors of substance abuse recovery centers sometimes fear these facilities threaten the safety and value of their families and property. Advocates and facility licensees point out that care and treatment facilities have to be put in *someone's* neighborhood. They argue that neighbors' fears are largely unfounded and they point to examples of facilities peacefully coexisting with neighbors. They also note that studies conclude that residential care facilities do not have a negative affect on neighborhood safety and property values. In addition, advocates find that neighbors are often uninformed about the facility program and residents, which leads to misconceptions and fears. In speaking with Dennis Graham from the Palm Springs Police Department, it is reported that there are a variety of incident calls made to the Police Department involving clients from the existing treatment centers and sober living homes. Dennis notes that the number of incident calls vary widely from facility to facility.

While the City may choose to establish specific regulations and development standards for substance abuse recovery centers when there are greater than six (6) beds, it is questionable whether sites with six patient beds can be regulated at all at the City level (other than life safety, maintenance and building code related issues). It is also these smaller facilities in single family zones that seem to generate the greatest number of complaints from adjacent residents and businesses: notably, noise, smoking, loitering, littering, and increased amount of vehicular traffic and parked vehicles. Some residents have expressed concerns about the lack of information about the character and/or possible criminal backgrounds of clients and residents<sup>2</sup>.

Recently, the City has received complaints from residents in multi-family zones where multiple recovery and treatment "centers" of six beds or less were being operated from

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<sup>2</sup> Clients may be parolees, sex offenders, or individuals with other sorts of social challenges; however staff is not aware of serious crimes or other incidents occurring involving parolees, criminals or sex offenders who may also have been residents or clients of a substance abuse recovery center.

multiple dwelling units within a single apartment complex (this may be an issue of over-concentration of such facilities).

Generally, the City has received few complaints from residents near the larger "CUP-based" substance abuse recovery centers. Public comment at public hearings for possible award of CUP's for these uses has brought neighbors out to express concerns about noise, clients gathering in the street, and vehicular (van) traffic, but the management of these centers has responded to the concerns by changing procedures, drop off points, and creating rules of conduct for clients. Clearly, when substance abuse recovery centers are well managed, they are an asset both for the City, the community, as well as the clients whom they serve.

Thus, most complaints (noise, smoking, loitering, littering, increased amount of vehicular traffic and lack of knowledge about the criminal history of clients) seem to stem from inadequate management oversight, lack of adequate communication with the neighbors, or overconcentration of the six beds or less group homes that treat substance abuse – the same ones that the State prohibits the City from regulating.

#### *What other Cities are doing.*

Other California cities have wrestled with the challenge of regulating and balancing the concerns and interests of treatment centers and neighbors, especially the "six beds or less" facilities.

- Costa Mesa, Laguna Beach and Newport Beach have developed aggressive ordinances to regulate treatment centers (excerpts of various codes and reports are attached).
- Cathedral City does not list substance abuse recovery centers or assisted living facilities as permitted uses. Aside from the state mandate on facilities with six beds or less, this use is simply prohibited in Cathedral City.
- Palm Desert: Handles substance abuse treatment use requests under "mental sanitarium" or "social institution" uses and utilizes conditional use permits to impose site-specific controls.
- La Quinta: Allows them under the definition of "congregate care facility".
- Riverside County: Currently working to re-write their ordinance on these uses.

#### **ANALYSIS:**

In drafting a zone text amendment for substance abuse recovery centers, the Planning Commission may want to consider and incorporate the following factors:

1. Definition(s) for substance abuse recovery centers.
2. Zone in which it is a permitted use.
3. Type of approval (by right, by Land Use Permit (LUP), or by Conditional Use Permit (CUP)).

4. Development standards.
5. Special conditions of approval (COA's)
6. Performance and maintenance standards.
7. Licensing, inspection and enforcement actions and regulations.
8. Mechanisms for filing complaints.

Discussion and recommendations for each of the above items are outlined below.

1. Definitions.

As noted above, applications for substance abuse recovery centers are currently evaluated as Assisted Living Facilities ("ALF's"). To build a zoning code section on substance abuse recovery centers, staff considered the various types of recovery centers, or "community-based residential facilities" that are recognized by the State and what distinguishes one from the other.

Types of community-based residential facilities. The State Department of Social Services recognizes several different types of residential community facilities:

1. *Group Home.* Generally, a term used for both large and small facilities that provide supervision and services in a structured environment primarily for children and youth including those in the foster care system. (This type of facility is licensed by the Department of Social Services and does not include substance abuse recovery centers or sober living homes.)
2. *Community Care Facilities.* These may be community-based residential care facilities for the elderly or "Adult Residential Facilities". Residents of these facilities are typically unable to care for themselves or provide for their own daily needs. (Licensed by the Department of Social Services and does not include substance abuse recovery centers.) These are generally the type of facilities that fall under the City's present definition of "assisted living facilities".
3. *Alcohol and Drug Abuse Recovery or Treatment Facilities.* Typically licensed by the Department of Alcohol and Drug Programs (DAPD) in addition to clients who may enroll in these facilities from the general public, the state Department of Corrections uses DAPD licensed facilities to provide community-based drug treatment and recovery services to offenders, (however all residents in these types of facilities are not necessarily within the State Correctional system.) The offender population in community residential facilities typically includes inmate mothers and their young children, and homeless parolees who need multiple services.<sup>3</sup>

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<sup>3</sup> Pursuant to State Governmental Code 1522.01, any person required to be registered as a sex offender under Section 290 of the Penal Code shall disclose this fact to the licensee of a community care facility before becoming a client of that facility.

4. *Sober Living Homes.* These facilities provide a supportive environment in which persons with substance abuse issues can live. Residents typically are enrolled in licensed treatment programs, however treatment programs are not typically offered on the premises of Sober Living Homes and they are not considered *Residential Care Facilities* and because they do not provide on-site treatment, they are different from substance abuse recovery centers. (These facilities are also not required to be licensed by the State.)
5. *Community Residential Health Care Facilities.* Licensed by the Department of Health Services, these facilities provide skilled nursing care on a continuous or intermittent basis. Residents of these types of facilities could include those with severe physical or mental developmental disabilities, terminally ill, and the elderly and do not include substance abuse recovery centers. (Also referred to as “congregate care facilities”)

*Staff recommendation: In establishing the definition of a “Substance Abuse Recovery Center, seven beds or more”, incorporate some of the criteria, (definition, etc.) that the State uses for Alcohol and Drug Abuse Recovery or Treatment Facilities. Furthermore, it may be useful to also establish a definition for “Community Residential Care Facilities, six beds or less” for purposes of addressing issues related to those facilities over which the City has limited regulatory jurisdiction.*

*Staff recommendation: Establish a distinct definition for “Sober Living Facilities” which are not subject to licensing and at six beds or less, that CAN be located in single family zones. The definition should note that within sober living homes treatment programs and detoxification or recovery programs are NOT permitted in these types of uses. (this is because these facilities are unlicensed and by State definition, may provide accommodation, but not provide treatment.)*

*Here is a proposed definition for substance abuse recovery centers (from the State of California Health and Safety Code Section 11834.02):*

*Any premises, place or building that provides 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.*

*Here is a proposed definition for sober living homes and facilities:*

*Any residential premises, place, or building that allow residents to live in a drug-free, alcohol-free supportive environment. Sober living homes by definition, are not eligible to be licensed by the State and while residents may participate in substance abuse recovery treatment services from an off-site treatment facility, such treatment programs are NOT provided on site.*

## 2. Suggested Zones.

Currently, the zoning code allows ALF's (assumed greater than six patient beds) with approval of a Conditional Use Permit (CUP) in the following zones: RGA6 and 8, R-2, R-3, R-4, and R-4-VP. They are not generally permitted in single family residential zones, mobile home parks, commercial, professional, or industrial zones. The State's requirement that jurisdictions treat community care facilities, substance abuse recovery centers, sober living homes, and group homes with six (6) beds or less no differently than a single family residential unit, effectively opens single family residential zones to these uses as well.

*Staff recommendation: Establish that "Substance Abuse Recovery Centers, seven or more beds", are permitted with a Conditional Use Permit in the following zones: RGA8, R-2, R-3, R-4 and R-4-VP. (We will work with the Tribe regarding the equivalent "zones" for the Section 14 Specific Plan, which would presently be MR (Medium Density Residential; similar to R-2), MBR (Medium Density Residential Buffer; similar to RGA8), and HR (High Density Residential; similar to R-3, R-4).*

Although sober living homes are different than substance abuse recovery centers, Staff recommends that the Commission determine whether the same zones might apply in which sober living homes may be permitted.

## 3. Type of Approval required.

There are three types of approvals presently used in the Zoning Code:

- "permitted by right of zone",
- permitted with a land use permit, (LUP), and
- permitted with a conditional use permit, (CUP).

"By Right" does not allow any conditions to be imposed beyond what is outlined in the development standards for the zone (also referred to as a "ministerial action"). "LUP's" require the application be approved in the zones in which it is permitted, but conditions may be imposed (also a "ministerial action"). "CUP's are "discretionary actions". They allow an application to be denied based on environmental or other factors in which the stated "CUP findings" in the zoning code (Section 94.02.00) cannot be met. As its name implies conditions may also be imposed upon the approval.

### *Staff Recommendation:*

- a. *Permit the "seven beds or more" type of uses and facilities, subject to a CUP, in all residential zones except R-1, in which they would be prohibited.*
- b. *Permit the six beds or less residential care facilities (including substance abuse recovery centers and sober living homes) in residential zones no differently than a single family home. Note that in all residential zones except R-1, single family residences are permitted "by right" subject to the R-1-A development standards.*

#### 4. Development Standards

Development standards are organized in the Zoning Code by zone and are applicable to all projects within a particular zone. Here is a typical list of factors or headings for which development standards can be found for most zones listed in Chapter 92 of the zoning code:

- Section A. Lot area
- Section B. Lot dimensions
- Section C. Density
- Section D. Building height
- Section E. Yards
- Section F. Distance between buildings
- Section G. Lot coverage
- Section H. Walls, Fences, Landscaping
- Section I. Access
- Section J. Off-street parking
- Section K. Loading and trash
- Section L. Signs
- Section M. Other factors such as Antennas, Public Art, etc.

A brief discussion and recommendations for each development standard heading are provided below:

##### Section A., and B. Lot Area and Lot Dimensions.

*Staff Recommendation: Keep lot area and lot dimensions as is for each zone, regardless of type of use.*

##### Section C. Density

Currently, the zoning code limits density for assisted living facilities based on average household size in the City:

*(PSZC 93.23.06 (A): The number of beds permitted in a facility shall be determined by multiplying the number of units permitted under the applicable zoning/general plan standards by the average household size for the city of Palm Springs according to the latest census figures.*

Tying allowable density to the latest census figures can lead to fluctuations in allowable density from one facility to another depending on changes in demographics in the City over time. A possible alternative method of determining density for substance abuse recovery centers and other types of community residential care facilities is to simply establish a fixed number of beds based on the density of the zone.

*Staff Recommendation: Suggested maximum density for substance abuse recovery centers:*



- R-1 - maximum six beds. *(In addition State law notes that staff members, owners or operators of the facility may reside in the home in addition to those being served)*
- RGA-6 – 6 du/ac times 2 = 12 beds/acre
- RGA-8 – 8 du/ac times 2 = 16 beds/acre
- R-2 – 15 du/ac times 2 = 30 beds/acre.
- R-3 – 30 du/ac times 2 = 60 beds/acre
- R-4 – 45 du/ac (for hotels) times 2 = 90 beds/ac

Section D. Building height:

Section E. Yards.

Section F: Distance between buildings.

Section G: Lot coverage.

Section H: Walls, Fences, Landscaping.

Section I: Access (this means access from a parcel to a public street)

*Staff Recommendation: Keep these development standards as is for each zone, regardless of type of use.*

Section J: Off-street parking

Currently the zoning code has two different methods for calculating parking for assisted living facilities as noted below. Many local operators of substance abuse recovery centers prohibit clients from using their cars during treatment. Also, many clients come from out of town and do not bring cars. Staff believes requiring a lower amount of off-street parking that is presently required for assisted living facilities may be possible without causing adverse impacts to others in the zone.

*(PSZC 93.06.00 (D)(14). Homes for the Aged, Sanitariums, Children's Homes, Asylums, Nursing and Convalescent Homes. See Section 94.02.00(H)(7) (now 93.23.06). One (1) space for each two (2) beds or one (1) space for each one thousand (1,000) square feet of gross floor area, whichever provided the greater number, plus one (1) for each three (3) employees.*

*(PSZC 93.23.06(B). Parking. The number of off-street parking spaces shall be no less than the following, unless otherwise permitted by the planning commission:*

1. *Independent Living Facilities. Three-quarter (3/4) primary space per unit, plus one (1) designated guest space for each five (5) units.*
2. *Congregate Care, Assisted Living and Board and Care Facilities. One-half (1/2) primary space per bedroom, plus one (1) space for each three (3) employees.*
3. *Intermediate Care and Skilled Nursing Facilities: One-quarter (1/4) primary space per bedroom, plus one (1) space for each*

*three (3) employees.*

*Staff Recommendation: Establish off-street parking requirements for substance abuse recovery centers at a rate of one (1) space per every three beds plus one (1) space for each three employees.*

Section K; Loading and Trash, L; Signs, M; Antenna, Public Art, etc.

*Staff Recommendation: Keep these development standards as is for each zone, regardless of type of use.*

#### 5. Conditions of Approval.

If the Commission believes substance abuse recovery center uses should be conditioned upon approval, the following discussion on "standard conditions for substance abuse recovery centers" could be considered applicable to ALL substance abuse recovery center approvals, regardless of the zone in which it is proposed, in addition to any site-specific conditions that may be imposed by the Commission:

##### Overconcentration of Facilities

State law requires that new health and community care facilities – group homes, adult residential care, and social rehabilitation facilities – be sited at least 300 feet from another residential health or community care facility. Congregate living health facilities are to be sited at least 1,000 feet from any other facility. Residential care facilities for the elderly and alcoholism or drug abuse recovery or treatment facilities are excluded from overconcentration provisions.

*Staff recommendation: Distance between facilities should be consistent with the state limit of 300 foot limit for both "Substance Abuse Recovery Centers, seven or more beds", group homes, adult residential care facilities, and social rehabilitation facilities, and 1,000 feet for congregate living health facilities. (note: for clarity, the commission may want to include definitions for these terms "group homes", "adult residential care facilities", and "congregate living health facilities". The code should also identify that pursuant to State law, distance restrictions do not apply to residential care facilities for the elderly and "substance abuse recovery or treatment facilities, six beds or less".*

*Staff recommendation: On lots in single family zones on which there are two legal dwelling units, a maximum of one (1) community residential care facility, six beds or less, is permitted.*

*Staff recommendation: Consider adapting the Costa Mesa definition of integral uses and integral facilities to avoid the over-concentration of six bed or less treatment facilities operated by the same entity in single family neighborhoods. (see "Ordinance 2008" attached)*

Professional management is an important component to successful integration

Successful integration of substance abuse recovery centers into residential neighborhoods is a function of good management and constant outreach and relationship-building with neighbors and local interest groups. The Department of Alcohol and Drug Programs (DADP) publishes a "Good Neighbor Guidelines" manual to establish minimum "common sense" management standards for treatment facilities (copy attached).

*Staff Recommendation: Require the inclusion of a written copy of the DADP's latest edition of "Good Neighbor Guidelines" in any conditions of approval for CUP's for "Substance Abuse Recovery Centers, seven beds or more". Make the Good Neighbor Guidelines available at the Planning Counter for all others.*

The Planning Commission may wish to consider incorporating some of the following conditions of approval for all substance abuse recovery center uses:

*Staff Recommendation:*

*For facilities of seven beds or more, carry over the current requirement from Zoning Code Section 93.23.06 (Conditions for Specific Uses – Assisted Living Facilities), requiring annual review of the state license (this might be a requirement that can be coupled with, and reviewed at the time they renew their Palm Springs Business License).*

*PSZX Section 93.23.06 (C). Annual Review.*

*The operator of the facility shall submit to the city of Palm Springs, on an annual basis, a copy of the facility's current state license at the time of renewal of the annual Palm Springs business license. The city may require review of the CUP at the time of such review to determine continued compliance with the conditions.*

## 6. Performance and Maintenance Standards.

The zoning code sets performance standards for each zone, such as minimum area requirements for usable open space and landscaping on the lot.

*Staff Recommendation: Keep these performance and maintenance standards as is for each zone, regardless of type of use.*

Other performance and maintenance standards that the Commission may wish to consider are as follows:

*Staff Recommendation: Establish performance and/or maintenance standards, (e.g. No loitering or congregating in the public right-of-way, no evidence of second hand smoke from cigarettes and other smoking material in the public way, or immediately adjacent parcels), conformance with the City's Noise Ordinance, and so on. The City's Municipal Code Chapter 11 "Peace, Morals, and Safety already provides ordinances on noise, public*

*gathering, disorderly conduct, civil disputes, abuse language, and so on, which could also be referenced in conditions of approval.*

*Staff Recommendation: Carry over the existing reference under Property Maintenance Standards that refers to zoning code Section 93.19.00 (Property Maintenance Standards).*

## 7. Licensing, Inspection, and Enforcement Actions

State law also requires that licensed group homes with six or fewer residents have written neighborhood complaint procedures that include a method of immediate response to complaints and incidents. It also requires that the licensee must be available at a specific time each week to meet residents and learn of neighborhood problems.

*Staff Recommendation: For facilities that are licensed by the State, require that these neighborhood compliant procedures and practices be delineated in writing at the time of application or annual renewal of a City Business License.*

## 8. State Oversight and Handling of Complaints

As noted above, there are various State agencies that provide oversight and licensing of various types of community residential care facilities - the Department of Health Services (DHSS) and the Department of Alcohol and Drug Programs (DADP). These same agencies are responsible for investigating complaints and addressing concerns of neighbors and the community. For those facilities that have distance requirements to limit over-concentration, the State must notify the local jurisdiction when considering granting a license to a community residential care facility. The local government can request that an application for licensure be denied on the basis of overconcentration. Prior to approving a license the agency must notify the city about the new facility's location to allow it the opportunity to object or dispute the overconcentration determination.

*Staff Recommendation: For facilities that are licensed by the State and are permitted to be licensed by the City, require that evidence of current state licensing be provided to the City by the applicant along with their application or annual renewal of their City Business license.*

*Furthermore, it is recommended that the City provide written notice to the DHSS and DADP, demanding written notice be sent to the City Planning Director when new license applications are received.*

## CONCLUSIONS

- State law limits the City's ability to regulate substance abuse recovery centers with six beds or less (and certain other types of community residential care

facilities).

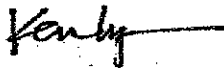
- It may be useful to distinguish facilities “six beds or less” and “seven beds or more” in any proposed regulatory text for purposes of differentiating which facilities are subject to City versus State regulation.
- Conditions of approval incorporating performance and maintenance standards may create a mechanism for encouraging “problem” sites to improve.
- Clarifying with the State when the City has review authority on possible new licenses for substance abuse recovery treatment may create a means for the City to address (file a complaint with the State) over possible overconcentration concerns PRIOR to the issuance by the State of the license.
- Establishing regulations for substance abuse recovery centers will provide an opportunity to define density and off-street parking requirements that are more appropriate for this type of use.

## ENVIRONMENTAL DETERMINATION

Staff has evaluated the potential environmental impacts of the proposed Zoning Ordinance text amendment and determined that it is Categorically Exempt under Section 15305 – Minor Alterations in Land Use Limitations – of the Guidelines for the Implementation of the California Environmental Quality Act. The proposed amendment does not result in any changes in land use or density.

## NOTICE

At the time the draft ordinance is presented to the Planning Commission a notice of public hearing will be published.



Ken Lyon, Associate Planner



Craig A. Ewing AICP  
Director of Planning Services

## Attachments:

- City Council minutes from meeting of May 18, 2011
- References:
  - California Research Bureau, “Residential Care Facilities in the Neighborhood”, 2002.
  - State of California, Department of Alcohol and Drug Program “Good Neighbor Guidelines”, rev. 2/2000.
  - “Select California Laws Relating to Residential Recovery Facilities and Group Homes.” (March, 2007, Barbara Kautz, Attorney)
  - Ordinance 2008 - excerpt from Costa Mesa, regulating substance abuse recovery uses
  - Reference sheet from Cathedral City (no date or title)