NOTICE OF SPECIAL MEETING
CITY COUNCIL OF THE CITY OF ALISO VIEJO
WEDNESDAY, MAY 24, 2017
6:30 P.M.

City Hall
Council Chambers
12 Journey
Aliso Viejo, CA

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council of the City of Aliso Viejo will take place on Wednesday, May 24, 2017, at 6:30 p.m. The business to be transacted at the special meeting will be as follows:

CALL TO ORDER: Convene Meeting and Roll Call – 6:30 p.m.

DISCUSSION ITEM:

1. ADMINISTRATIVE APPEAL FROM DENIAL OF REQUESTED ACCOMMODATION FOR ILLEGAL LODGING USE AT 16 GOLF DRIVE

   RECOMMENDED ACTION: Staff recommends that the City Council:
   1. Consider the applicant's request that its transitory-lodging use at 16 Golf Drive be treated as a "single family use" as an accommodation under fair-housing law; and
   2. Deny the requested accommodation because the applicant has not provided sufficient evidence to demonstrate the that the accommodation is reasonable and necessary.

CLOSED SESSION:

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
   Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
   Number of Potential Cases: 1

ADJOURNMENT

It is the City's intention to comply with the Americans with Disabilities Act (ADA). If you need special assistance to participate in the meeting, the City will make reasonable arrangements to ensure accessibility and/or accommodations. [28 CFR 35.102-35.104 ADA Title II] Please contact the City Clerk's Office at (949) 425-2505 prior to the meeting.

Supplemental documents relating to specific agenda items are available for review in the City Clerk's office, 12 Journey, Aliso Viejo. For more information, please contact City Hall at (949) 425-2505.

Mitzi Ortiz, City Clerk

City of Aliso Viejo

CITY COUNCIL
AGENDA ITEM

DATE: May 24, 2017

TO: Mayor and City Council

FROM: City Attorney
Planning Director

SUBJECT: **Administrative Appeal from Denial of Requested Accommodation for Illegal Lodging Use at 16 Golf Drive**

RECOMMENDED ACTION

Staff recommends that the City Council (1) consider the applicant's request that its transitory-lodging use at 16 Golf Drive to be treated as a "single family use" as an accommodation under fair-housing law and (2) deny the requested accommodation because the applicant has not provided sufficient evidence to demonstrate that the accommodation is reasonable and necessary.

FISCAL IMPACT

Potential legal costs if applicant seeks judicial review.

ENVIRONMENTAL

The proposed action is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. It is also not subject to CEQA under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly, and so is not a project. The proposed action ensures that the status quo is maintained. Furthermore, even if the proposed action were subject to CEQA, the action would be exempt under Section 15061(b)(3), because there is no possibility that the action in question may have a significant effect on the environment, as well as under Sections 15061(b)(4) and 15270(b) because the proposed action is to deny a proposed accommodation barring a more sufficient showing.

INTRODUCTION

The City prohibits transitory-lodging uses, such as short-term rentals (STRs) and boarding houses, and other primarily-business uses in the RL residential zone because such uses are generally incompatible with the City's legitimate interest in fostering and maintaining the long-term residential character of the area. The City applies this restriction regardless of a lodging business's clientele, whether guests are of a particular race, religion, orientation, disability or some other class of persons.

The federal Fair Housing Act requires a city to "make … accommodations in rules, policies, practices, or services" for a person's disability — but only when the requested accommodation is both (1) reasonable and (2) "necessary to afford [the disabled person] equal opportunity to use and enjoy a dwelling."[1] If a person is recovering from drug or alcohol addiction, the person is legally disabled under the FHA.

Based on neighbor complaints, City observations, and statements by the operator outlined below, the City has learned that Sober Network Properties (SNP) operates 16 Golf Drive in the RL zone as what amounts to a short-term rental or boarding house under the City's code. SNP provides housing to lodgers at 16 Golf Drive for compensation under multiple contracts; the lodgers do not lease the property together as a group. SNP or another third party places lodgers in the home; the lodgers do not choose each other as roommates. The lodgers do not have free access to the property; SNP controls their comings and goings. While it is unclear exactly how long the lodgers stay at the property, it is apparent that SNP uses the property as either a short-term rental or a boarding house, and each is prohibited here. Evidence and observations suggest that some lodgers stay for fewer than 30 days, which constitutes a short-term occupancy under the municipal code and makes SNP's use an short-term rental. Apparently, at least some of SNP's guests stay for longer,[2] each with his or her own contractual relationship that includes lodging — which constitutes a boarding house under the code.[3] In short, SNP is running a lodging business, whether a short-term rental or boarding house, or both, at 16 Golf Drive in violation of the City's zoning code.

When the City took steps to enforce its restrictions on transitory-lodging uses, SNP and its owners, Joe and Becky Scolari, requested that the City treat their Golf Drive operation as "a single family use" as an accommodation under the FHA based on their

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[1] 42 USCS § 3604(f)(3)(B).

[2] On 2/2/16, Joe Scolari told a fire inspector from OCFA that the people staying at 16 Golf Drive stay "for approximately 90 days." Mr. Scolari referred to himself as a "property manager." (See Code Enforcement Case File for 16 Golf Drive, included herewith as Exhibit "E.")

[3] AVMC 15.94.020.

assertion that SNP's lodgers are all in recovery and so are disabled, leaving the home exempt from the code restrictions outlined above.

Staff, with the help of the City Attorney's office, considered the request and denied it because SNP and the Scolaris failed to show how the requested accommodation is actually necessary to afford SNP's disabled lodgers an equal opportunity to use and enjoy a dwelling. The City requested that SNP and the Scolaris provide evidence of necessity, but the requests went unheeded. Instead, SNP appealed the denial of its request to the City Council, arguing essentially that City zoning cannot apply to disabled occupants at any level. Before scheduling the hearing, staff, through counsel, again explained that a showing of necessity is required by federal law and City ordinance, and staff again invited SNP to provide the necessary support and indicated that the accommodation could not be granted on appeal without it. SNP has provided no additional support. Instead, it reiterates its unsupported, conclusory statements about necessity, arguing that the City may not ask for more.

This hearing follows.

THE QUESTIONS TO BE DECIDED

The Council must decide, based on the evidence presented, two related, narrow questions:

1. Is treating SNP's lodging business at 16 Golf Drive "as a single family use" actually necessary to afford SNP's disabled lodgers an equal opportunity to use and enjoy a dwelling? If yes, then:

2. Would doing so be reasonable here, given the potential effect of that lodging-restriction waiver on the City's zoning scheme?

If the answer to either of these questions is "no," then the Council should deny SNP's request for accommodation. To aid the Council in answering these questions, the municipal code requires the Council to consider six findings, each of which is required for an approval. They are discussed on pages 18 through 21.

STANDARD OF REVIEW

This appeal is a hearing de novo under AVMC 15.66.080 and 15.70.080(E), so the Council considers SNP's request for accommodation as if for the first time. The Council may consider information in the record of the hearing from which the appeal or review is taken, as well as testimony and evidence presented at the appeal hearing. The Council may take any action that might legally have been taken in the first instance, and it may continue its hearing on the matter from time to time to a date certain and may refer the matter to the planning director or other staff for additional input before making its final determination.

BACKGROUND

The City has long prohibited transitory-lodging uses in residential zones because they are incompatible with the City's legitimate interest in fostering and maintaining long-term residency in residential zones.

A. Complaints and Inspections.

On January 22, 2016 the City received a complaint from a resident alleging that a "group home" was operating at 16 Golf Drive without a proper license. The City does not regulate "group homes" per se (though some long-term residential group tenancies are expressly permitted), but from the complaint it appeared that there might be a transitory-lodging use operating there in contravention of the City's ban on transitory-lodging uses in the RL zone.

Within a few days, City code-enforcement staff had learned that SNP was in possession of the property and was using the home to provide temporary lodging for seven or more guests. Staff spoke with one of SNP's owners, Joe Scolari, who asserted that he was managing the property, that seven people were staying there, and that each guest stayed for approximately 90 days, but Mr. Scolari claimed that the seven guests should be considered a "family."

Code-enforcement staff followed the City's standard procedure for investigating and taking action to abate an illegal use of land. After speaking with Mr. Scolari, the officer also reached out to the property owner in February 2016. Staff was not able to confirm that there were only seven lodgers staying at the property. A report from the fire authority indicated that there were eight. As noted below, on another occasion law enforcement observed 14 beds in the house. SNP later admitted to having up to 12 lodgers at the house. Staff has not been able to confirm the duration of the lodgers' stays. Mr. Scolari told staff that occupants each stay for approximately 90 days, but staff has not been able to verify that. Staff has received reports of different groups coming and going. It may be that the duration of the lodgers stays varies — but the duration is not dispositive here. Whether lodgers stay only short-term (which would make the use a short-term rental) or they stay longer under separate contracts (making it a boarding house), neither use is permitted in the RL zone.

On July 19, 2016, Orange County Sherriff's Department (OCSD) deputies responded to a call and observed 14 beds in the house.

Shortly afterward, the City learned that the property at 16 Golf Drive had, by all appearances, gone dark and was no longer being used to provide lodging or even as a residence. Consequently, the case was put on hold, and the City received no communication from SNP. On October 4, 2016, the City received a new report that someone was moving 10 beds into the house at 16 Golf Drive, an indication that the property might again be operated as an illegal boarding house or short-term rental.

About two weeks later, staff spoke with a witness who reported that he observed eight beds (not ten) being moved in, followed by a van delivering five or six males, apparent lodgers.

On or about October 18, code enforcement visited the property and received no answer. Nor was staff able to observe any active lodging operations.

On December 13, 2016, staff spoke with a witness who had observed ten women coming and going from the house together, apparently taking lodging there.

On December 29, 2016, the City issued an administrative citation for illegally operating a short-term rental or boarding house, or both, as well as operating a business in the RL zone. The City continued to receive complaints indicating that the property was still being operated as a transitory-lodging use. The City issued a second citation on February 8, 2017, but the use continued unabated. The City issued a third citation on February 22, 2017, and the use continues.

B. Request for Accommodation.

SNP hired counsel, who contacted the City on March 28, 2016.

Through counsel, SNP submitted its request for accommodation on March 31, 2016. A copy of the request letter is included here as Exhibit “A”. At that point, code enforcement paused its enforcement efforts.

On the Planning Director’s behalf, the City Attorney communicated the City’s response directly to opposing counsel on May 18, 2016. The request was denied, mostly for failing to support its claim of necessity, but the City invited SNP to provide more information and gave SNP about a month to do so. A copy of this City response letter is included here as Exhibit “B”.

On June 15, 2016, SNP wrote to appeal the denial and ask for a hearing before the City Council. SNP did not provide any additional information, as it was invited to do, but instead repeated some of its conclusory statements about necessity and claimed that the City had proceeded improperly in: providing notice of the availability of accommodation, having the City Attorney respond to opposing counsel, and in not addressing all the accommodation findings listed in the code when the City denied SNP’s accommodation. A copy of SNP’s appeal letter is included here as Exhibit “C”.

The City, again through counsel, replied on July 19, 2016, reiterating the need to provide more information before the City may grant any accommodation and again inviting SNP to provide information to support its assertion of necessity. A copy of this City response letter is included here as Exhibit “D”.

In March, opposing counsel contacted the City Attorney, asking what the outcome was of SNP’s appeal from the denial of accommodation. The City Attorney reminded counsel

about the July 19, 2016 response. When no additional information was forthcoming from SNP, the City Attorney recommended that the City schedule the appeal hearing before the Council. The hearing is a requirement of the City's current code, and staff view this as a possible incentive for SNP to provide the additional information that the City has been asking for to better evaluate SNP's request.

LEGAL AUTHORITY

A. The City has broad police power to regulate for the general welfare and may maintain separations between incompatible uses through zoning.

The City's "authority to enact and enforce land use laws is the police power. The police power is the well-established, broad, and evolving right of cities to protect public health, safety, and welfare…. The police power of cities to enact comprehensive land use and zoning laws has been established by a long line of United States Supreme Court cases dating to the 1926 decision *Village of Euclid v Ambler Realty Co.* … in which the court held that … a zoning ordinance" will be upheld unless its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

"Cities may regulate a broad array of subjects under the police power. For example:

"'The police power is not confined to the elimination of filth, stench, and unhealthy places. *It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.*'

"'The concept of the public welfare is broad and inclusive…. The values it represents are spiritual as well as physical, aesthetic as well as monetary. 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.'"[4]

Nearly 100 years ago, California's high court put it this way: "It is now settled in this state, in so far as the general principle of comprehensive zoning is concerned, that the *segregation of residences, industries, commercial, and mercantile businesses* of divers kinds to particular localities, is a proper and legitimate exercise of the police power as bearing a rational relation to the health, safety and general welfare of the community. [¶] … [¶] [A]s a part of a general comprehensive zoning plan *strictly private residential districts may be established*. The basis of the rule there announced is the reasonable

[4] CEB, Cal. Land Use Practice (2017) § 1.1, citing or quoting *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 605, citing *Village of Belle Terre v Boraas* (1974) 416 US 1, 9; *Berman v Parker* (1954) 348 US 26, 33. Emphasis added.

and necessary *protection of the general uniform home districts from the encroachment of foreign and discordant uses*, which would ultimately destroy such districts."[5]

B. The City has a legitimate interest in restricting transitory-lodgings to foster long-term residency and preserve the residential character of residential neighborhoods.

The City has a legitimate interest in maintaining and fostering community involvement. It has a legitimate interest in attracting long-term residents. Transient tenants are different from long-term residents. As the California Court of Appeal said in its oft-quoted decision in *Ewing v. City of Carmel-by-the-Sea*, "Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow — without engaging in the sort of activities that weld and strengthen a community."[6] The City has a well-established policy of directing residential uses to particular neighborhoods while directing hotel and other short-term lodging uses to others.

Specifically, the City has established residential zoning districts, such as the RL zone, where businesses and business activities are generally prohibited unless they are merely incidental to the primarily residential use and are approved as a home occupation.[7] The City expressly prohibits short-term rental uses in all residential zones, and it prohibits boarding or rooming houses in the RL zone, while allowing them in each of the higher-density zones with a CUP.[8] The STR restriction in all zones reflects the City's determination that short-term lodgings are inherently incompatible with the City's goals of fostering long-term residency and preserving the residential character of residential neighborhoods. The boarding-house restriction similarly reflects the City's determination that even long-term lodgings can be transitory and present the same problems when the lodgers contract independently on a room-by-room or per-bed basis. They come and go with little sense of permanence or community investment. Boarding houses are more like small extended-stay hotels than single-family uses. The City has a record of seeking abatement of these uses in zones where they are not permitted (e.g., the 2014 code enforcement regarding 12 Crimson Canyon).

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[5] *Fourcade v. San Francisco* (1925) 196 Cal. 655, 664. Emphasis added.

[6] (1991) 234 Cal.App.3d 1579, 1591.

[7] AVMC 15.10.010(A), (B)(1); 15.14.150(A).

[8] AVMC 15.10.020, Table, under Residential Uses, entries for "Boarding or rooming houses" and "Short-term rentals." Cp. entries for "Single-family dwellings, detached" and "Single-family dwellings, attached."

In short, the City's residential districts are intended to promote long-term residency by people who dwell there as part of a single "family" or single housekeeping unit, and the City may — as the City has — restrict transitory-lodgings in residential districts to carry out that intent.

APPLICATION TO SNP

The City must grant SNP an exception from the City's lodging restrictions if — but only if — SNP shows that it is a reasonable and necessary accommodation.

A. The law requires the City to make a special exception for certain state-licensed uses and, in some cases, as a "reasonable accommodation" of a person's disability.

In some situations, state or federal law requires the City to accept the legal fiction that a lodging or other business use in a residential district is a single-family use and single housekeeping unit for purposes of zoning or business regulation. For example, California law requires this as a blanket accommodation of certain small state-licensed facilities that provide care and supervision for disabled persons or other vulnerable populations.[9]

Notably, federal and state fair-housing laws law impose no such blanket accommodation, but the FHA does require a city to — on a case-by-case basis — accommodate a person's bona fide disability when a requested accommodation is both reasonable and necessary to afford the disabled person equal opportunity to use and enjoy a dwelling.

Here, California's statutory blanket accommodation is not applicable because SNP does not have a state license, small or otherwise, for its lodging business at 16 Golf Drive (though, if it did, the small state license would completely preempt the City's regulations for lodgings and other businesses). Instead, SNP asks for a special exception to the City's lodging restrictions as a "reasonable accommodation" under the FHA.

B. Reasonable accommodation is not a blanket exemption from all zoning restrictions or zoning processes.

A reasonable accommodation is not a free pass from all zoning and other regulation. "In requiring reasonable accommodation … Congress did not intend to give handicapped

[9] See, e.g., Health & Saf. Code §§ 1566, 1566.2, 1566.3, 1566.5 [community care facility], 11834.23 [alcoholism or drug abuse recovery or treatment (AOD) facility]; Wel. & Inst. Code §§ 5115–16 ["group home serving … persons with … disabilities"].

persons carte blanche to determine where and how they would live regardless of zoning ordinances to contrary."[10]

C. Grounds for denying a requested accommodation.

In evaluating the reasonableness of requested accommodations, the City must evaluate each request separately.[11] What might be reasonable in one case might not be reasonable at another time or place or with other people involved. A request for accommodation is not reasonable "if [1] it would impose an undue financial and administrative burden on the local government or [2] it would fundamentally alter the local government's zoning scheme."[12] The Council must make a finding as to each of these two elements before it may approve or grant any requested accommodation.[13]

1. The City must deny SNP's request if SNP fails to show "necessity."

Both the FHA itself and the City's code require SNP to explain why the requested accommodation may actually be necessary for the disabled person to use and enjoy the dwelling in question.[14] SNP's specific request is that the City treat SNP's lodging use at 16 Golf Drive for "up to 12 unrelated persons and staff in recovery" "as a functional equivalent of a family," but SNP has not provided any evidence that such an accommodation is actually "necessary to afford [a disabled] person equal opportunity to use and enjoy the dwelling."[15]

All that SNP has provided is an unsupported assertion that people are more successful in recovering from addiction "when living in a household with at least eight other persons in recovery."[16] Conclusory statements do not satisfy the legal standard for "necessity" under the FHA's reasonable-accommodation requirement.[17]

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[10] *Thornton v. City of Allegan* (W.D. Mich. 1993) 863 F. Supp. 504, 510.

[11] See HUD–DOJ Jt. Stmt. (Nov. 10, 2016) at 9.

[12] HUD–DOJ Jt. Stmt. (Nov. 10, 2016) at 15; see also *Giebeler v. M&B Assocs.* (9th Cir. 2003) 343 F.3d 1143, 1157, citing *Howard v. City of Beavercreek* (6th Cir. 2002) 276 F.3d 802, 806; *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 410, 412; *PGA Tour, Inc. v. Martin* (1999) 532 U.S. 661, 689.

[13] AVMC 15.66.070(A)(4) and (5).

[14] 42 U.S.C.S. § 3604(f)(3)(B); AVMC 15.66.050(A)(5)

[15] 42 U.S.C.S. § 3604(f)(3)(B).

[16] March 31, 2016 SNP letter, p. 4.

[17] *Advocacy & Resource Ctr. v. Town of Chazy* (N.D.N.Y. 1999) 62 F.Supp.2d 686, 690 [conclusory allegations in affidavit and deposition testimony without any substantiation or evidence of the need for residents to live in a community environment are not sufficient to show a need for reasonable accommodation].

Even if SNP were to provide evidence to demonstrate that people in recovery are more successful when living with at least eight other people in recovery, it does not follow that treating SNP's 12-bed boarding-house business the same as a single-family use is actually necessary to afford disabled people that particular benefit at 16 Golf Drive. SNP's boarding house is not the only way for people in recovery to live in a household with others who are also in recovery. There is nothing keeping people in recovery from renting 16 Golf Drive, or another similar property, and using and enjoying the dwelling as an actual single-family use and single housekeeping unit. They have the same opportunity to use the property in the same way as do non-disabled persons. The FHA requires accommodations that are *necessary* to ensure that the disabled receive the *same* housing opportunities as everybody else, it does not require *more* or *better* opportunities.[18]

SNP has not shown that the accommodation that it requests — to be allowed to run a boarding house in a residential zone — is *actually necessary* to afford disabled persons an *equal* opportunity to use and enjoy a dwelling.

2. The City must deny SNP's requested accommodation if the accommodation would fundamentally alter the city's zoning scheme.

A central goal of the City's zoning scheme is to foster long-term residency and to maintain the residential character of its residential districts. This is a legitimate City interest, and the City has restricted transitory-lodging uses in the RL zone accordingly.

The accommodation that SNP requests — for its 12-bed lodging business to be treated "as a single family use" and single housekeeping unit instead of as the short-term rental or boarding house that it is — threatens to fundamentally alter this zoning scheme. The accommodation would allow a large lodging business to operate in a quiet, low-density residential neighborhood. It would allow SNP to operate a small short-term or extended-stay hotel, because of SNP's focus on disabled lodgers, where other hotels may not and should not operate. Even the state Legislature's blanket accommodation for state-licensed recovery facilities acknowledges that there is real risk of upending a legitimate local zoning scheme if the size of the accommodated use is not checked: The statutory accommodation for state-licensed facilities is only available to those serving six or fewer persons. Larger licensed facilities remain subject to local zoning and business regulations that otherwise apply, such as lodging restrictions.

Unless SNP shows that its requested accommodation would not work a fundamental alteration in the City's zoning scheme, the Council must deny the request.[19] The Council

[18] *Cinnamon Hills Youth Crisis Ctr., Inc. v St. George City* (10th Cir. Utah 2012) 685 F.3d 917.

[19] AVMC 15.66.070(A)(5).

must make a specific finding along those lines before it may approve or grant any accommodation.[20]

SNP'S CONTENTIONS AND STAFF RESPONSES

A. SNP claims, but has not demonstrated, that its lodgers reside together as the functional equivalent of a family or single housekeeping unit.

SNP claims that it uses 16 Golf Drive to "provide housing for up to 12 unrelated persons and staff … residing together as the functional equivalent of a family" and that "[t]his household function[s] as the equivalent of a family and a single housekeeping unit …."[21]

1. SNP's lodging use does not constitute a *family* as the City has defined that term.

The City has long had a definition of *family* in its land use code and recently amended the definition to clarify its existing meaning, interpretation, and application, but SNP's lodging use does not fit either the past or present definition.

In its request, SNP quotes from the City's then-current definition of *family*, which read as follows:

> "'Family" means one or more related or unrelated persons occupying one dwelling unit. "Family" includes the occupants of community care facilities, as defined in this chapter, serving six or fewer persons which are permitted or licensed by the state. "Family" does not include occupants of a fraternity, sorority, boarding house, lodging house, club, or motel.

SNP's lodging use does not fit this old definition. By its terms, the definition extends to "occupants of community care facilities" that "are … *licensed by the state*,"[22] and SNP does not have a state license for its operations at 16 Golf Drive. Nor does the general reference to "unrelated persons occupying one dwelling unit" describe SNP's lodgers because this phrase is qualified by the more-specific exclusion in the last sentence, which expressly omits "occupants of a … boarding house" or of other transitory-lodging uses. Thus, this definition of "family" could not apply to SNP's lodging use.

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[20] *Ibid.*

[21] March 31, 2016 SNP letter, p. 2.

[22] Emphasis added.

After SNP submitted its request for accommodation, the City made changes to the *family* definition to clarify the existing meaning and interpretation of the term, but SNP's use still does not constitute a family. The recent changes are shown below:

> "Family" means one or more related or unrelated persons occupying ~~one~~a dwelling unit~~. "Family" includes the occupants of community care facilities, as defined in this chapter, serving six or fewer persons which are permitted or licensed by the state~~ and operating as a single housekeeping unit. "Family" does not include occupants of a fraternity, sorority, boarding house, short-term rental, lodging house, club, ~~or~~ motel, or any other type of transitory lodging.

As SNP acknowledges in its accommodation request, the City's definition and interpretation of *family* prior to these recent amendments already included persons occupying a dwelling unit as "a family and a single housekeeping unit."[23] The City made this meaning more plain, without changing the meaning or scope of *family*, in its September 2016 ordinance. Regardless, under either definition, past or present, SNP's lodging use has not and does not constitute a family and single housekeeping unit.

Here, SNP claims that its use comes close, that it is the "functional equivalent" of a bona fide family, but the evidence does not support this claim.

2. SNP's boarding house use differs significantly from "a family and a single housekeeping unit"

SNP insists that its operations at 16 Golf Drive "function as the equivalent of a family and a single housekeeping unit" based on the following claims:

- "The residents have access to the entire house."
- "The residents … participate equally in the housekeeping functions of the house."
- "The quality and nature of the relationship among the residents are akin to that of a family."
- "The emotional and mutual support and bonding given each resident … is the equivalent of the type of love and support received in a traditional family."[24]

SNP has not supported these claims. The City still has no evidence that the residents really do have access to the entire house (e.g., that they each have their own key, that they may come and go as they wish, that they all have physical access to all the

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[23] March 31, 2016 SNP letter, p. 2.

[24] *Ibid.*

common areas of the house, etc.); that they really do share meals and household chores and expenses; or that they relate to each other as a traditional family might, with established long-term relationships.

More to the point, SNP fails to address several other important aspects of what it means to actually function and use a residential property as a family and single housekeeping unit. Specifically, SNP fails to allege, must less show, that

- membership in its household is fairly stable as opposed to transient or temporary;
- all the occupants lease the property together through a single written lease that gives each resident joint use and responsibility for the leased property;
- the occupants choose each other, that membership in the household is determined by the residents themselves instead of by a landlord, property manager, or other third party; and
- the household activities are conducted on a nonprofit basis.

Without a showing of these important aspects of a single-family use and single housekeeping unit, SNP cannot claim that its use is the functional equivalent.

B. SNP claims that the City may not consider the availability of other housing for the disabled, but that is not at issue here.

The City's municipal code requires several findings before the City may grant an accommodation. SNP takes issues with the third one listed in the code, which reads "There are no alternatives which may provide an equivalent level of benefit."[25]

SNP misconstrues this as a requirement that the person seeking accommodation must demonstrate that the disabled person in question has no other place to dwell in the City, and so SNP argues that this finding "cannot be considered" by the City because the FHA "does [not] require the location of alternative housing."[26] Rather, SNP insists that "SNP and its residents are entitled to the housing of their choice" and disabled individuals may "live in the residence of their choice in the community."[27]

Staff disagrees with SNP's interpretation. The required finding is not specific to location. It does not require the City to conclude that there is no suitable alternative location within its borders, nor does it require the City to even consider the existence of another

[25] AVMC 15.66.070(A)(3).

[26] June 15, 2016 SNP letter, p. 4.

[27] *Ibid.*

location. Rather, the finding reflects the FHA's policy of encouraging entities, such as governments, housing providers, and employers, that are asked to make accommodation for the disabled to consider alternative ways of accommodating the disability when presented with a request that might be unreasonable or unnecessary as requested.[28]

Here, SNP asks to operate an STR or boarding house where none is permitted, asserting that its disabled lodgers need to live with other disabled persons as an aid to their recovery — but allowing STR and boarding-house businesses in a residential zone works a fundamental alteration in the City's zoning scheme, regardless of whom the businesses serve and who the transitory lodgers are. The City may consider alternative ways to accommodate the disabled. Here specifically, the City may consider alternative ways to help facilitate an opportunity for persons in recovery to live together in a mutually supportive environment. For example, persons in recovery may join together to rent a dwelling and choose to live there and use the property as a bona fide single housekeeping unit.

SNP claims that many people in recovery — though certainly not all — are incapable of "maintain[ing] the traditional family organization that the City's ordinance dictates,"[29] implying that they need assistance of someone like SNP to use and enjoy a dwelling. Exactly why they need SNP and what assistance SNP provides to them is important to the accommodation analysis. If recovering addicts just need help finding roommates to share rent and encourage each other, then SNP or someone else can provide a roommate-referral or match-making service. If they need help finding landlords willing to rent to people that might present a credit risk, then someone may provide a similar match-making service, connecting willing landlords with potential renters. If people in recovery need financial help to tender a deposit and first and last month's rent, then someone may provide financial assistance or otherwise help them to secure it (the state has a program set up to do just that[30]). If they are not yet capable of living as a resident-run single housekeeping unit but rather need some kind of care or supervision from SNP or a similar service provider, then the service provider arguably needs to license the dwelling as an alcoholism or drug abuse recovery or treatment facility and cannot legally operate without one. In short, allowing SNP to operate a lodging business at 16 Golf Drive is not necessary because it is not the only or even the best option. SNP could

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[28] See, e.g., 24 C.F.R. 8.24(b) ("A [housing provider] is not required to make structural changes in existing housing facilities *where other methods are effective* in achieving compliance with this section or to provide supportive services that are not part of the program. *In choosing among available methods* for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate." Emphasis added.).

[29] March 31, 2016 SNP letter, p. 2.

[30] See Cal. Code Regs., title 9, div. 4, ch. 7 "Resident Run Housing Program (RRHP)."

meet the same needs of the disabled (providing referral services and financial aid; obtaining a state license to provide care and supervision) without operating a transitory-lodging business in a strictly residential area. Again, SNP has not articulated any need particular to its tenants' disability that requires special variance from the Code.

In short, operating an STR or boarding house at 16 Golf Drive is not the only way or even the best way to accommodate persons in recovery who might want the opportunity to use and enjoy a dwelling.

C. SNP insists that the City may not consider the commercial nature of a use when deciding whether to grant a requested accommodation, but it's not just the commercial nature itself that makes it unreasonable — it's the distinct adverse impacts of running a transitory-lodging business.

SNP admits that "there is a 'commercial nature' to SNP's use of [16 Golf Drive]," but argues that "this is not a basis for denying its request for … accommodation."[31] SNP relies on a statement from a district court in Louisiana that "The fact that the [group] home is a business should not be the basis for denying an accommodation"[32] — but SNP fails to note the rest of the court's sentence: "The fact that the [group] home is a business should not be the basis for denying an accommodation *when reasonable and necessary*."[33] Thus, if an accommodation is demonstrably reasonable and necessary in all other respects, the mere fact that the use to be accommodated is a business might not justify denying the accommodation.

However, if the commercial activities at the property would result in adverse impacts to surrounding properties or to the residents of 16 Golf Drive such that the use would undermine the residential character of the RL-zoned neighborhood (which harms the residents in recovery as much as it does the neighborhood), then the requested accommodation (a commercial boarding house) really does threaten to work a fundamental alteration in the zoning scheme and so is not reasonable. We note that the Council already determined that boarding houses are not a compatible use in the RL zone when it adopted Table 15.10.020 of the municipal code.

The two cases that SNP relies on did not have occasion to address this issue, as both cases dealt with group homes for elderly Alzheimer's and dementia patients.[34] Neither case considered the externalities of noise and nuisance presented here, likely because

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[31] June 15, 2016 SNP letter, p. 5 (citing *Groome Resources Ltd. v. Parish of Jefferson* (5th Cir. La. 2000) 234 F.3d 192, 206; *Avalon Residential Care Homes, Inc. v. City of Dallas* (N.D. Tex. 2000) 130 F.Supp.2d 833, 841).

[32] *Id.*, citing *Groome*, *supra*, at 206.

[33] *Groome*, *supra*, at 206, emphasis added.

[34] *Groome*, *supra*, at 195; *Avalon*, *supra*, at 835–36.

no such externalities existed in homes for five or eight Alzheimer's patients. They might well have been much quieter, low-impact businesses than the boarding house for up to 12 lodgers that SNP proposes.

Further, in contrast to SNP's use, the homes in both *Groome* and *Avalon* were staffed and provided essential services, such as full-time care and supervision, preparing and serving meals, and other supportive services for persons who are "unable to live independently due to their illness."[35] That fact underscores the courts' concerns in the two cases that the requested accommodation was necessary as well as reasonable. Here, SNP has made no such showing.

Finally, with regard to *Groome*, the Fifth Circuit's language about how disabled persons need living arrangements that are "sometimes commercial" should be read in the context of the issues presented in that case. The *Groome* court spent the vast majority of its analysis addressing the town's challenge to the constitutionality of Congress' enactment of the Fair Housing Amendments Act in which the town argued that Congress exceeded its authority under the commerce clause of the U.S. Constitution.[36] The *Groome* court was <u>not</u> asked to decide whether the town could consider the commercial nature of the use in deciding whether to grant a reasonable accommodation request.[37] Thus, SNP's reliance on *Groome* is misplaced.

D. <u>SNP claims that it only needs to state that the requested accommodation is necessary and that the City may not ask for more support or explanation — but the City has no duty to take SNP's conclusory statements at their face value</u>.

The City's code requires SNP to provide certain information with its request for accommodation, including the "[r]eason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling."[38]

SNP insists that it satisfied this requirement with statements in its letter that assert that people in recovery need to live with each other.[39] A sampling of these statements include: "recovery … is … enhanced by the mutual support and … monitoring provided by living with other recovering persons"; "it is … critical that a person in … recovery shares a bedroom with another recovering addict …."; and "recovering alcoholics and

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[35] *Groome*, *supra*, at 195; *Avalon, supra*, at 835.

[36] *Groome, supra,* at 200–16.

[37] Indeed, the court simply held that the reasonable accommodation provision of the Act "was enacted pursuant to Congress's legitimate authority under the *Commerce Clause* and affirm the district court's grant of an injunction against the Parish of Jefferson." *Id.* at 216.

[38] AVMC 15.66.050(A)(5).

[39] See June 15, 2016 SNP letter, pp. 2–3, quoting from its earlier March 31 letter.

substance abusers [need] to live in a structured, safe and therapeutic environment …"[40] None of these was supported with evidence in the initial request. Nor did SNP provide any support after being asked by staff. Instead, SNP simply repeated its earlier conclusory statements, insisting — in effect — that it has no obligation to support its statements and the City is bound to take SNP at its word. This is not the law.

As staff noted in its July 2016 letter to SNP, case law supports the City's decision to deny the requested accommodation for SNP's failure to provide meaningful support for its assertions of necessity. For example, in one case, the plaintiffs asked for a special exception to an occupancy restriction, claiming that their operation would not be economically viable if they could not have more disabled people in the home. Plaintiffs failed to support their claim, and the court soundly rejected it:

> Plaintiffs offer only *conclusory allegations … without any substantiation* in the form of financial records demonstrating that the residence would not be economically viable without a larger residential community than permitted under the zoning code or evidence of the need for ... residents to live in a community environment. Given the *lack of proof* that the handicaps of the ... residents require more than five people in the house, plaintiffs have failed to establish that a reasonable accommodation is required.[41]

Prominent among SNP's conclusory statements are those in its initial request insisting that the disabled need to live with more than eight and up to 12 other people in recovery.[42] The State of California deems six to be enough to achieve the benefits of group living.[43] The City brought this to SNP's attention in the City's July 2016 letter, asking again for evidence to support the real necessity of having more than six persons.[44]

E. SNP also raised other claims, which the City rebutted in its July 2016 letter.

SNP opens its appeal letter claiming that the City did not provide the accommodation-request forms as required by the City's code ("Notice of the availability of …

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[40] *Ibid.*

[41] July 19, 2016 City letter, p. 3 (quoting *Advocacy*, *supra*, 62 F.Supp.2d at 690), emphasis added; see also *McKivitz v. Twp. of Stowe* (W.D. Pa. 2010) 769 F.Supp.2d 803 (also cited in the July 19 letter).

[42] March 31, 2016 SNP letter, pp. 2, 4.

[43] See Health & Saf. Code § 11834.23 (granting general accommodation to licensed residential facilities serving six or fewer disabled persons).

[44] July 19, 2016 City letter, pp. 5–6.

accommodation shall be prominently displayed on the city's public counter"). The City's reply addressed this claim and showed that it was false.[45]

SNP also claimed that the City Attorney had no authority to respond on behalf of the Director of Planning. The City's reply similarly addressed this claim and showed that it was also false.[46]

Lastly, SNP claimed that the City was bound to address each finding listed in the City's accommodation provision in its denial letter. The City's reply points out that *approvals* require the City to address each finding, but not denials. A denial only requires a statement of the cause for denial. Essentially, one unmet finding is enough for a denial. The City doesn't have to address them all.

REQUIRED FINDINGS FOR AN APPROVAL

The City's code states that "[t]he decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following findings, all of which are required for approval" (but not necessarily for denial). Each of the findings is discussed in a short section below, under headings reflecting the corresponding ultimate questions of *necessity* and *reasonableness*.

1. *Is treating SNP's lodging business at 16 Golf Drive "as a single family use" actually necessary to afford SNP's disabled lodgers an equal opportunity to use and enjoy a dwelling?*

   Finding No. 1: "The housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws."[47]

Yes. If SNP provides evidence that it serves persons in recovery from alcoholism or drug abuse, then this finding is justified.

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[45] *Id.*, p. 1. Note that granting an accommodation for SNP to operate what would otherwise amount to an STR or boarding house would be less likely to work a fundamental alteration in the City's zoning scheme, and be accepted as necessary if the use were limited to serving 6 or fewer lodgers, similar to the state's threshold for licensed facilities.

[46] *Id.*, p. 2.

[47] AVMC 15.66.070(A)(1).

> **Finding No. 2**: "The requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws."[48]

No. SNP has not shown how living together as roommates is inadequate. It has not demonstrated that its disabled clients need to live together as lodgers in a boarding house in the wrong zone or in an STR, so this finding lacks support. Similarly, SNP has not provided evidence proving that a person in recovery needs to live with more than five other people in recovery so the City can find that the requested accommodation (to operate a transitory-lodging use for up to 12 lodgers) is necessary.

> **Finding No. 3**: "There are no alternatives which may provide an equivalent level of benefit."[49]

No. SNP has not provided support showing that people in recovery need to live in a boarding house in the wrong zone or in an STR and that the alternative of living as roommates as a single housekeeping unit would not provide an equivalent level of benefit.

2. Would treating this use as a single family use in order to provide this opportunity be reasonable here?

> **Finding No. 4**: "The requested accommodation would not impose an undue financial or administrative burden on the city."[50]

In theory, yes. SNP has asked the City to treat its 12-guest transitory-lodging business as a "single housekeeping unit" for all purposes, which, if granted, would arguably impose no more financial or administrative burden on the City than would any other single-family household use in the City.

But the reality might be very different. If SNP's accommodation is granted as requested, its lodging-turned-"single housekeeping unit" use would involve three or four times more adults than a typical single housekeeping unit and so might well result in significantly more noise, smoking, trash, parking and traffic congestion, and unruly gatherings than the bona fide single housekeeping unit households in neighboring homes. Of course, the City would continue to enforce its nuisance and parking ordinances and other regulations, the same as with other single housekeeping units, so allowing the 12-guest lodging business to operate here "as a single housekeeping unit" might actually result in more complaints, more investigations, and more enforcement activity, with a

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[48] AVMC 15.66.070(A)(2).

[49] AVMC 15.66.070(A)(3).

[50] AVMC 15.66.070(A)(4).

correspondingly higher financial and administrative burden, than do typical single housekeeping units.

According to HUD and DOJ "The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home."[51] The Council might determine, based on the evidence in this case, that the particular accommodation that SNP has requested *would* in fact impose an undue financial or administrative burden on the City because of the nuisance problems that may be generated by that many adults living there in such close quarters on a transitory basis.

> **Finding No. 5**: "The requested accommodation would not require a fundamental alteration in the nature of the city's land use, zoning or building policies, practices or procedures."[52]

No, as discussed above, the requested accommodation (again: permission to operate a boarding house or STR for up to 12 lodgers) will result in an incompatible lodging use, in other words a "use variance" characterized by operating a commercial lodging establishment in the RL zone in close proximity to other dwellings intended for use as a single housekeeping unit. This threatens the residential character of the neighborhood, which is the very benefit that persons in recovery need to aid them in their recovery effort (and which they can still enjoy by using 16 Golf Drive and other residential properties on an equal basis with other residents of the RL zone, namely, as a single housekeeping unit).

> **Finding No. 6**: "The requested accommodation will not result in a direct and significant threat to the health or safety of other individuals or substantial physical damage to the property of others."[53]

The City does not have enough information about the specific individuals who are or will be taking lodging at 16 Golf Drive to here to answer this finding in the negative, so it must answer, Yes, based on the information available at this time.

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[51] Nov. 10, 2016 Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act," p. 15.

[52] AVMC 15.66.070(A)(5).

[53] AVMC 15.66.070(A)(6).

This finding goes to more than just the reasonableness of the requested accommodation. It determines whether the FHA even applies in the first place. "Nothing in [the FHA] requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."[54] Courts have called it a "safe harbor" from the FHA's accommodation requirement.[55]

This safe harbor is available only if:

1. The specific people who will take lodging with SNP at 16 Golf Drive are a direct threat to others (this is next to impossible to determine here, since we don't know who the specific individuals are and the membership of the household is transitory, and we can't make blanket assumptions based on their disability); and

2. No other reasonable accommodation would eliminate or acceptably minimize the risk.[56]

Even if there is evidence that a particular disabled person has verbally abused or punched other tenants or neighbors, this safe harbor doesn't apply unless there are no other reasonable accommodations.[57]

CONCLUSION

The applicant has requested an accommodation, which staff denied after the applicant failed to demonstrate that the requested accommodation was necessary and reasonable. Staff repeatedly identified the problems with the request, the ways in which it lacked the necessary support, and invited the applicant to return with additional support, but the applicant failed to do so. Instead, the applicant merely repeated its conclusory assertions and asked to appeal staff's decision to the City Council.

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[54] 42 U.S.C. § 3604(f)(9).

[55] *Lee v. Retail Store Emple. Bldg. Corp.*, 2017 U.S. Dist. LEXIS 9946 at p. 38 (N.D. Cal. Jan. 24, 2017).

[56] *Ibid*.

[57] *Ibid.*

The Council should find that required Finding Nos. 2, 3, and 5 have not been met and on that basis, deny the requested accommodation.

Prepared by:

/S/
Scott C. Smith
City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

/S/
Omar Dadabhoy
Director of Planning Services

Attachments:

Exhibit "A" – SNP's March 31, 2016 letter requesting accommodation
Exhibit "B" – City's May 18, 2016 response denying the request
Exhibit "C" – SNP's June 15, 2016 letter appealing the denial
Exhibit "D" – City's July 19, 2016 response requesting additional information
Exhibit "E" – Code Enforcement Case File for 16 Golf Drive

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March 31, 2016

SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL

Omar Dadabhoy
Director of Planning Services
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA. 92656-5335

Re: Sober Network Properties
16 Golf Drive
Citation# CE16-013
Reasonable Accommodation Request

Dear Mr. Dadabhoy:

Isaac Zfaty of Irvine, California and I have been retained by Joseph and Becky Scolari and Sober Network Properties ("SNP") concerning the administrative citation issued to the owner of the aforementioned property which alleges that it is either a boarding house, short-term rental and a business being operated in a residential zone all in violation of the City of Aliso Viejo's zoning code.

The Scolaris and Sober Network Properties ("SNP") are providers of housing for persons in recovery from alcoholism and substance abuse. On behalf of the Scolaris, SNP and the residents of16 Golf Drive I am making a reasonable accommodation request pursuant to the Federal Fair Housing Act, 42 U.S.C. 3604(f)(3)(B), that the City of Aliso Viejo treat the residents of16 Golf Drive as a single housekeeping unit, and treat the use of dwelling as a single family use. This request is also being made pursuant to Chapter 15.66 of the City's zoning code.

I am writing this letter to explain the SNP concept, and to request pursuant to the Federal Fair Housing Act that the City of Aliso Viejo make a reasonable accommodation in the application of its land use ordinances for SNP.

The use of 16 Golf Drive has been erroneously classified by the staff of the City as transient and commercial housing The City alleges that based on these uses, it constitutes a commercial use, which is prohibited in a residential zone. The Courts have consistently treated the use of a single family residence by groups of recovering alcoholics and substance abusers as the functional equivalent of a family. It is requested, as a reasonable accommodation that the City treat the use of16 Golf Drive by SNP as a single family use, and the residents as the functional equivalent of a family under the City's definition of family The City's zoning code defines family as follows:

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> ***"Family" means one or more related or unrelated persons occupying one dwelling unit. "Family" includes the occupants of community care facilities, as defined in this chapter, serving six or fewer persons which are permitted or licensed by the state. "Family" does not include occupants of a fraternity, sorority, boarding house, lodging house, club, or motel.***

I. THE SOBER LIVING CONCEPT

The Scolaris and SNP are housing providers for recovering alcoholics and drug addicts. The dwelling located at 16 Golf Drive presently can provide housing for up to 12 unrelated persons and staff in recovery from alcoholism and substance abuse, residing together as the functional equivalent of a family. The City does not impose any numerical limitation on the number of persons who have reside together who are related by blood or marriage or groups of unrelated, non disabled persons occupying a dwelling unit. This household function as the equivalent of a family and a single housekeeping unit and allows the recovering persons to provide one another with continual mutual support as well as mutual monitoring to prevent relapse.

Many persons in recovery cannot maintain the traditional family organization that the City's ordinance dictates. Treating the use of 16 Golf Drive as something other than a single family use, therefore, discriminates against this group of disabled persons. In addition to the actual discrimination against the residents of 16 Golf Drive by the proposed enforcement of the City's zoning code, the ordinance also has a disparate impact on them by preventing them from living together in drug and alcohol free housing units. The potential recovery of people who are handicapped or disabled by reason of alcoholism or drug abuse is greatly enhanced by the mutual support and mutual monitoring provided by living with other recovering persons. Further, it is often critical that a person in the early and middle stages of recovery shares a bedroom with another recovering addict for mutual support and monitoring. The City's restrictions on groups of disabled persons that do not meet its definition of family effectively prohibit this type of living arrangement in single family dwellings, even though no similar restrictions apply to other groups of unrelated, non disabled persons, or to persons related by biology.

The residents of 16 Golf Drive are considered to be the "functional equivalent" of a family for several reasons. The residents have access to the entire house. The residents also participate equally in the housekeeping functions of the house. The quality and nature of the relationship among the residents are akin to that of a family. The emotional and mutual support and bonding given each resident in support of his recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. The need of groups of unrelated recovering alcoholics and substance abusers to live in a structured, safe and therapeutic environment is necessary to the recovery process. It has been found that individuals who decide to live in sober housing programs, such as that offered by Yellowstone Recovery, are allowed to engage in the process of recovery from alcoholism and substance abuse, at their own pace. By living with other

persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation.

In addition, the residents live in at 16 Golf Drive by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has bottomed out, i.e., lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which the conduct their affairs, and the need to become a responsible, productive member of society.

II. REASONABLE ACCOMMODATION REQUEST TO BE TREATED AS A SINGLE HOUSEKEEPING UNIT

The residents of 16 Golf Drive are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act, unlike those other groups of unrelated, non-disabled persons. See 42 U.S.C. 3600 et seq. Recovering addicts and alcoholics are specifically included within the definition of "handicapped individual." *See,* 42 U.S.C. 3602(h) and 24 C.F.R. 100.201(a)(2).

As members of a protected class under the Federal Fair Housing Act, the issue of whether the use of 16 Golf Drive as a "sober living home" is in violation of the City's zoning ordinances is not relevant to the question of there is a violation of the Federal Fair Housing Act.[1] *United States v. Borough of Audubon*, 797 F. Supp. 353 (D. N.J.), *aff'd* 968 F.2d 14 (3d Cir. 1992). Thus, any allegation that the use of 16 Golf Drive as a "sober living home" constitutes a violation of a local zoning ordinance does not abrogate its rights in claiming discrimination under the Federal Fair Housing Act. It is well established that the Federal Fair Housing Act prohibits discriminatory land use decision by municipalities, when such decisions are ostensibly authorized by local ordinance. *Association of Relative and Friends of AIDS patients v. Regulation and Permits Administration*, 740 F.Supp. 95 (D.P.R. 1990)(government agency's denial of land use permit to open AIDS hospice violated Fair Housing Act); *Baxter v. City of Belleville*, 720 F.Supp. 720 (S.D. Ill 1989)(on motion for preliminary injunction: city's refusal to issue special use permit under zoning law to develop to remodel building into residence for persons with AIDS violated Fair Housing Act). *See also* 42 U.S.C. Section 3615 ("any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]").

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[1]The language of the FHAA itself manifests a clear congressional intent to vitiate the application of any state law that would permit discrimination based on physical handicap. See 42 U.S.C. § 3615 (expressly commanding that "any law of a State . . . that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid") *Astralis Condo. Ass'n v. Sec'y, United States Dep't of Hous. & Urban Dev.*, 620 F.3d 62, 70 (1st Cir. 2010)

In addition, for purposes of this letter, 42 U.S.C. 3604(f)(3)(B) defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling."

The legislative history to the Fair Housing Amendments Act of 1988 ("House Judiciary Report") is explicit as to the effect of the amendments on state and local land use practices, regulations or decisions which would have the effect of discriminating against individuals with handicaps. The amendments prohibit the discriminatory enforcement of land use law to congregate living arrangements among non-related persons with disabilities when these requirements are not imposed on families.

> [Section 804(f)] would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been sued to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of unrelated people, these requirements have the effect of discriminating against persons with disabilities.

House Report, p. 24 (footnote omitted). Based on this clear expression of legislative intent, the courts have enjoined the application and enforcement of zoning and health and safety regulations which have a discriminatory impact on group homes for persons with disabilities. *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 462 (D.N.J. 1992); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp 1179 (E.D.N.Y. 1993); *Marbrunak, Inc. v. City of Stowe*, 974 F.2d 43 (6th Cir. 1992).

The mutual support that the residents receive from each other is critical to addiction recovery. Persons recovering from addiction are far more often successful when living in a household with at least eight other persons in recovery, particularly in the early stages of recovery. Barring more than three unrelated individuals from residing together, without regard to the size of the residential unit, interferes with the critical mass of individuals supporting each other in recovery.

The reasonable accommodation requirement of the Fair Housing Act draws no distinction between "rules," "policies," and "practices" that are embodied in zoning ordinances and those than emanate from other sources. All are subject to the "reasonable accommodation" requirement. Thus, when a municipality refuses to make a reasonable accommodation in its zoning "rules," "policies," or "practices," and such an accommodation may be necessary to afford handicapped persons an equal opportunity to use and enjoy a dwelling, it violates the reasonable accommodation provision of the

act, 42 U.S.C. 3604(f)(3)(B). *See United States v. Village of Marshall*, 787 F. Supp. 872, 877 (W.D. Wisc. 1991)(Congress in enacting the Fair Housing Amendments Act "anticipated that there were rules and regulations encompassing zoning regulations and governmental decision about land use").

Even if there is a "commercial nature" to the operation of 16 Golf Drive, this is not a basis for denying its request for a reasonable accommodation. (The nature of group home living for the handicapped often requires alternative living arrangements to effectuate the purpose of the FHA. The disabled are not able to live safely and independently without organized, and sometimes commercial group homes. *Groome Resources Ltd. v. Parish of Jefferson*[2], 234 F.3d 192, 206 (5th Cir. 2000). (The fact that the Glendora home is a business should not be the basis for denying an accommodation when reasonable and necessary. *Avalon Residential Care Homes, Inc. v. City of Dallas*, 130 F. Supp. 2d 833, 841 (N.D. Tex. 2000))[3].

Thus, even if there is a commercial aspect to the use of 16 Golf Drive as a sober house, it is not a basis for finding a zoning code violation. In any event, it is subject to waiver as a reasonable accommodation.

III. THE CITY'S CODE PROVISIONS ARE SUBJECT TO THE FAIR HOUSING ACT

Courts have uniformly held that municipal services include the application and enforcement of zoning, building, housing and fire codes. This was made clear by the legislative history to the Fair Housing Act:

> [Section 804(f)] would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps.

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[2]The *Groome* Court also held: "In addition to the commercial aspect of purchasing the home, it must be noted that the granting of reasonable accommodations to Alzheimer's group homes and other homes for disabled individuals also affects the commercial viability of care organizations like Groome Resources. The district court found that the zoning ordinance, with its limitation on four unrelated persons, "will make it economically unfeasible for plaintiff to operate the proposed home." The court recognized that the economic viability of this care facility was impeded by the refusal to grant an accommodation" *Groome Resources, Ltd. v. Parish of Jefferson*, 234 F.3d 192, 206 (5th Cir. La. 2000)

[3]Other circuits have also recognized that commercial group homes may be the only way for disabled individuals to live in a residential community. See *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996); *Smith & Lee Assocs., Inc. v City of Taylor, Mich.*, 13 F.3d 920, 931 (6th Cir. 1993).

Omar Dadabhoy
March 31, 2016

> While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been sued to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of unrelated people, these requirements have the effect of discriminating against persons with disabilities.

House Report, p. 24.

In *Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo*, 752 F. Supp. 1152, 1171 (D.P.R. 1990) it was noted that

> This brief review of the legislative history convinces us that Congress' intention in enacting and amending the Fair Housing Act was to provide broad and far-reaching relief against discrimination in housing similar to the broad remedial scheme of other Civil Rights statutes... [I]tis obvious that state courts could be used to apply facially-neutral zoning laws, building codes, restrictive covenants, and other state statutory law related to the regulating housing. Housing is an area replete with state law rules and regulations and private contracts.

Application of zoning, building, housing and fire codes that affect housing for persons with disabilities and that may be utilized to impose terms, conditions and requirements that may result in the denial of housing are subject to challenge under the Fair Housing. These code requirements are also subjects to the reasonable accommodation provision of the Act. *See, Gallagher v. Magner, 619 F.3d 823, 829 (8th Cir. 2010)*(application of property maintenance and housing codes are subject to disparate impact analysis under the Fair Housing Act); *New Jersey Coalition of Rooming & Boarding House Owners v. Mayor of Asbury Park*, 152 F.3d 217, 221 (3d Cir.1998)(compliance with building, housing, health and safety code regulations for licensing purposes in determining intentional discrimination against housing for disabled persons); *Wis. Cmty. Servs. v. City of Milwaukee*, 413 F.3d 642, 646 (7th Cir. 2005)(If a zoning or building-code rule bears more heavily on disabled than on other persons, the city must change the rules to the extent necessary to redress the adverse effect); *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 571 (2d Cir. 2003)(The Fair Housing Act and the Americans with Disabilities act apply to zoning regulations, property maintenance codes, state building code, and the state fire code); *Marbrunak, Inc. v. City of Stowe,* 974 F.2d 43,47 (6th Cir. 1992)(safety requirements for groups of disabled persons contained in City's zoning code subject to review under the Fair Housing Act); *Alliance for the Mentally Ill v. City of Naperville,* 923 F. Supp. 1057. 1074 (N.D. Ill1996)(under the Federal Fair Housing Act, a municipality may impose special requirements on a Residential Board and Care Occupancy only if such requirements are 'warranted by the unique and specific needs and abilities of those handicapped persons'"; *Provisio Ass'n v. Village of Westchester,* 914 F. Supp. 1555, 1562 (N.D. Ill1995)

(municipality refusal to waive sprinkler requirement as a reasonable accommodation which was required by the Life Safety Code found to have violated the Federal Fair Housing Act).

IV. THE RESIDENTS OF SNP ARE NOT TRANSIENT IN NATURE

Any assertion that the SNP residents are "transient in nature" thus requiring classification of 16 Golf Drive as something other than a single family use will not survive scrutiny under the Federal Fair Housing Act.

This issue was first raised in the case of *Oxford House, Inc. v. Babylon*, 819 F. Supp. 1179, 1183 (E.D.N.Y. 1993). The Town of Babylon sought to evict the Oxford House because it considered the residents to be transient, and therefore, could not qualify as a family under its zoning code. Although the Town asserted in Resolution No. 716 that plaintiffs were not a "family" as defined by the Multiple Dwelling Code, in the action to evict, the Town alleges that plaintiffs are not a "family" or "functional and factual equivalent of a natural family" as defined by the Single Dwelling Code. Under § 213-1 of the Town's Single Family Dwelling Code, a "family" is defined as "a single person or collection of persons related by kinship, adoption, blood or marriage. . . ." The "functional and factual equivalent of a natural family" is defined in the same section as "a single housekeeping unit bearing the generic character of a family unit as a relatively permanent household, not a framework for transients or transient living. . . ." This argument was rejected by the Court:

> Applying § 213-1 of the Town Code to evict plaintiffs would discriminate against them because of their handicap. Recovering alcoholics or drug addicts require a group living arrangement in a residential neighborhood for psychological and emotional support during the recovery process. As a result, residents of an Oxford House are more likely than those without handicaps to live with unrelated individuals. Moreover, because residents of an Oxford House may leave at any time due to relapse or any other reason, they cannot predict the length of their stay. Therefore, a finding of a violation of the Town Code leading to the town's eviction of plaintiffs from a dwelling due to the size or transient nature of plaintiffs' group living arrangement actually or predictably results in discrimination.

In *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003), an Oxford House case, the court rejected the rationale that the residents were "transient." The Court stated:

> We also affirm the district court's finding that plaintiffs requested a reasonable accommodation and the City failed to grant it. The City is not required to grant an exception for a group of people to live as a single family, but it cannot deny the variance request based solely on plaintiffs' handicap where the requested accommodation is reasonable. The district court found that these plaintiffs operated

> much like a family. Additionally, there is evidence that these particular plaintiffs needed to live in group homes located in single-family areas. See *Tsombanidis II,* 180 F. Supp. 2d at 293. The City concedes that, from a municipal services standpoint, it would bear minimal financial cost from the proposed accommodation. While legitimate concerns of residential zoning laws include the integrity of the City's housing scheme and problems associated with large numbers of unrelated transient persons living together, such as traffic congestion and noise, see *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9, 39 L. Ed. 2d 797, 94 S. Ct. 1536 (1974); Oxford House-C, 77 F.3d at 252, the City points to no evidence that those concerns were present here.

The *Tsombanidis* rationale was adopted by the United States Court of Appeals for the 11th Circuit in *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1224 (11th Cir. Fla. 2008).

The following cases also reject the transient argument: *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514 (W.D. Pa. 2007); *Cmty. Servs. v. Heidelberg Twp.*, 439 F. Supp. 2d 380, 397 (M.D. Pa. 2006); and *Lakeside Resort Enters., LP v. Bd. of Supervisors*, 455 F.3d 154, 157-158 (3d Cir.2006).

I hope you find this information useful. I look forward to discussing ways to resolve this matter with you.

Sincerely yours,

Steven G. Polin

cc: SNP, Inc.
Isaac Zfaty

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May 18, 2016

VIA U.S. MAIL AND EMAIL

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Sober Network Properties
16 Golf Drive
Aliso Viejo, CA 92656

RE: Reasonable Accommodation Request

The City of Aliso Viejo (the "City") is in receipt of your March 31, 2016 letter seeking reasonable accommodation on behalf of Joseph and Becky Scolari and Sober Network Properties "that the City of Aliso Viejo treat the residents of 16 Golf Drive as a single housekeeping unit, and treat the use of dwelling as a single family use."[1] For the reasons stated below, your request is denied.

[1] The request also restates the same request later in the letter, "that the City treat the use of 16 Golf Drive by SNP as a single family use, and the residents as the functional equivalent of a family under the City's definition of family."

42 USCS § 3604(f), provides in relevant part:

> (3) For purposes of this subsection, discrimination includes —
>
> …(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, **when such accommodations may be *necessary* to afford such person equal opportunity to use and enjoy a dwelling.** (Emphasis added.)

SNP has requested that a reasonable accommodation be granted to allow for "up to 12 unrelated persons and staff in recovery" to be treated "as a functional equivalent of a family." However, SNP has failed to provide any evidence that proves that such an accommodation is "necessary to afford such person equal opportunity to use and enjoy a dwelling." (42 USCS § 3604(f).) Indeed, there is only one paragraph in your request letter that even resembles an explanation for why an accommodation for more than six individuals is appropriate. It reads:

> Persons recovering from addiction are far more often successful when living in a household with at least eight other persons in recovery, particularly in the early stages of recovery. Barring more than three[2] unrelated individuals from residing together, without regard to the size of the residential unit, interferes with the critical mass of individuals supporting each other in recovery.

The City does not dispute that an environment of mutual support might be helpful to some addicts in recovery. However, your proposal essentially advocates for application of the City's normal residential zoning regulations without regard to (1) whether the home's occupants are in residency on a short- or long-term basis (the former use is illegal in this zone for all owners and occupants), (2) whether the home is actually operated as a single household unit, thus providing the therapeutic benefits to aid recovery, and (3) whether the home's use is really residential (commercial home occupations are permitted on a very limited basis in the City; and hotel, motel, and boarding house uses are strictly limited). In short, your letter asserts that no zoning can apply to these occupants, wherever they live, providing only conclusory statements without citation to academic or scientific studies, economic-viability models, or even anecdotal experiences (not that any of these would suffice on their own) about why the abeyance of zoning rules on this street (rules which apply to every other single housekeeping unit in the City) is key to accommodate the home's inhabitants' disabilities.

The conclusory allegations in your request clearly do not satisfy the legal standard for a "necessity" under reasonable accommodation. (*Advocacy & Resource Ctr. v. Town of Chazy* (N.D.N.Y 1999) 62 F.Supp.2d 686, 690 [conclusory allegations in affidavit and deposition

[2] The City is unaware of where this number comes from. State and local laws protect state-licensed facilities housing six or fewer individuals in recovery, not "more than three."

testimony without any substantiation or evidence of the need for residents to live in a community environment are not sufficient to show a need for reasonable accommodation]; *McKivitz v. Twp. of Stowe* (W.D. Pa. 2010) 769 F.Supp.2d 803 [upheld town's refusal to make reasonable accommodation for individuals who had previously received treatment for addiction because of failure to show a nexus between the proposed accommodation and the necessity to live in a specific facility in a particular residential area of the town].)

In addition, while the Fair Housing Act requires accommodations that are *necessary* to ensure that the disabled receive the *same* housing opportunities as everybody else, it does not require *more* or *better* opportunities. (*Cinnamon Hills Youth Crisis Ctr., Inc. v St. George City* (10th Cir. Utah 2012) 685 F.3d 917.) Here, there has been no evidence presented showing how SNP's clients are being treated any differently from any other people or group in the community. Indeed, the Municipal Code sections cited in the Courtesy Notice are applied equally throughout the entire City to all boarding houses (§15.010.020), short-term rental uses (§15.14.165), and commercial uses in residential zones (§15.010.020).

The City has enforced, and will continue to enforce its Municipal Code equally and fairly throughout its entire jurisdiction, and to the extent that the City becomes of aware of any violations of its Municipal Code, it will pursue such violations with haste, regardless of the specific use of the property. Again, the City is unaware of any evidence indicating that the Municipal Code has been enforced differently with respect to sober-living or other recovery uses, and this clearly is not the policy of the City. Rather, the City has and will continue to enforce its code equally in all circumstances. Recent enforcement actions have included boarding houses and short-term rentals presenting similar non-compliance.

Therefore, the City reiterates its request for compliance with all relevant City codes (explained in more detail in the Courtesy Notice). To the extent that you wish to insist on your reasonable accommodation request, you have until June 15, 2016, to provide the evidence required to satisfy the relevant legal standards. If you have any questions, or would like to discuss further, please do not hesitate to contact my office.

Sincerely,

Scott C. Smith
of BEST BEST & KRIEGER LLP

cc: Omar Dadabhoy

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June 15, 2016

SENT VIA ELECTRONIC MEANS

Honorable Mike Munzing
Mayor
Att: City Clerk
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335

RE: Denial of Reasonable Accommodation Request
Sober Network Properties
16 Golf Drive
24 Prescott

Dear Mayor Munzing:

Pursuant to Section 15.66.080 of the Aliso Viejo Municipal Code ("AVMC"), Sober Network Properties ("SNP") hereby appeals the denial of its reasonable accommodation request for the aforementioned properties as stated in a letter dated May 18, 2016 by Scott Smith, Esq. Mr. Smith gave SNP until June 15, 2016 to file it appeal.

There are two initial matters which need to be addressed: First, §15.66.040 of the AVMC states that "Notice of the availability of reasonable accommodation shall be prominently displayed at the city's public counter advising the public of the availability of the procedure for individuals with disabilities." Forms for requesting reasonable accommodation shall be available to the public at the counter." No such forms are available. In addition, the City's website has a link for the form, however, when clicked, states that "Page Cannot be Found." Second §15.66.060(A) states that "The reviewing authority for requests relating to the land use and zoning regulations of AVMC Title 15 shall be the director of planning services." The Director of Planning did not respond to SNP reasonable accommodation request. The City Attorney did. The AVMC does not allow for the delegation of reviewing reasonable accommodation requests to the City Attorney.

Section 15.66.050 itemizes the information needed to process a request for a reasonable accommodation. Requests for reasonable accommodation shall be in writing and provide the following information: It states that the following information shall be provided in writing"

1. Name and address of the individual(s) requesting reasonable accommodation;

Honorable Mike Munzing
June 15, 2016

2. Name and address of the property owner(s);

3. Address of the property for which accommodation is requested;

4. Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought; and

5. Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.

SNP made a separate written request for each of the properties which included the above listed information. Each property requested that the City of Aliso Viejo treat the residents of SNP as a single housekeeping unit, and treat the use of dwelling as a single family use. This request is also being made pursuant to Chapter 15.66 of the City's zoning code.

Each property provided the information required by Item No. 5. The letters stated:

The potential recovery of people who are handicapped or disabled by reason of alcoholism or drug abuse is greatly enhanced by the mutual support and mutual monitoring provided by living with other recovering persons. Further, it is often critical that a person in the early and middle stages of recovery shares a bedroom with another recovering addict for mutual support and monitoring. The City's restrictions on groups of disabled persons that do not meet its definition of family effectively prohibit this type of living arrangement in single family dwellings, even though no similar restrictions apply to other groups of unrelated, non disabled persons, or to persons related by biology.

The residents of each dwelling are considered to be the "functional equivalent" of a family for several reasons. The residents have access to the entire house. The residents also participate equally in the housekeeping functions of the house. The quality and nature of the relationship among the residents are akin to that of a family. The emotional and mutual support and bonding given each resident in support of his recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. The need of groups of unrelated recovering alcoholics and substance abusers to live in a structured, safe and therapeutic environment is necessary to the recovery process. It has been found that individuals who decide to live in sober housing programs, such as that offered by SNP, are allowed to engage in the process of recovery from alcoholism and substance abuse, at their own pace. By living with other persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation.

In addition, the residents live in at SNP by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has bottomed out, i.e., lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which the conduct their affairs, and the need to become a responsible, productive member of society.

SNP's request were denied by Mr. Smith on the following basis:

However, your proposal essentially advocates for application of the City's normal residential zoning regulations without regard to (1) whether the home's occupants are in residency on a short- or long-term basis (the former use is illegal in this zone for all owners and occupants), (2) whether the home is actually operated as a single household unit, thus providing the therapeutic benefits to aid recovery, and (3) whether the home's use is really residential (commercial home occupations are permitted on a very limited basis in the City; and hotel, motel, and boarding house uses are strictly limited). In short, your letter asserts that no zoning can apply to these occupants, wherever they live, providing only conclusory statements without citation to academic or scientific studies, economic-viability models, or even anecdotal experiences (not that any of these would suffice on their own) about why the abeyance of zoning rules on this street (rules which apply to every other single housekeeping unit in the City) is key to accommodate the home's inhabitants' disabilities

His denial did not comport with the requirements of §15.66.070 AVMC, as he failed to make the required findings.

15.66.070 Required findings

A. Findings for Decision. The decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following findings, all of which are required for approval:

1. The housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws.

2. The requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws.

3. There are no alternatives which may provide an equivalent level of benefit.

4. The requested accommodation would not impose an undue financial or administrative burden on the city.

5. The requested accommodation would not require a fundamental alteration in the nature of the city's land use, zoning or building policies, practices or procedures.

6. The requested accommodation will not result in a direct and significant threat to the health or safety of other individuals or substantial physical damage to the property of others.

It should be noted that No. 3 cannot be considered as a required finding as the reasonable accommodation provision of the federal Fair Housing Act, 42 U.S.C. §3601, *et. seq.* ("FHA") does require the location of alternative housing. SNP and its residents are entitled to the housing of their choice. This is noted in the legislative history to the 1988 amendments to the FHA:

The Fair Housing Act, 42 U.S.C. § 3601-3631, was originally enacted to prohibit discrimination in housing practices on the basis of race, color, religion, or national origin. *Elliott v. Sherwood Manor Mobile Home Park*, 947 F. Supp. 1574, 1576 (M.D. Fla. 1996). In 1988, Congress extended coverage to people with disabilities. *See* Fair Housing Amendments Act of 1988 (FHAA), Pub. L. No. 100-430, 102 Stat. 1620, 1622, 1623 & 1636 (1988), codified at 42 U.S.C. § 3601 *et seq.* Courts have recognized this expansion as "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream." *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996) (quoting *Helen L. v. DiDario*, 46 F.3d at 333 n. 14). The FHA is to be broadly construed to effectuate the goal of eradicating housing discrimination. Id. at 1105 (citing *Trafficante v. Met. Life Ins.* Co., 409 U.S. 205, 209 (1972)). Congress intended the FHA to "apply to state or local land-use . . . laws, regulations, practices or decisions which discriminate against individuals with handicaps." H.R. Rep. No. 100-711, at 25, 1988 U.S.C.C.A.N. at 2185.

This law "is intended to prohibit the application of special requirements through land-use regulations . . . that have the effect of limiting the ability of such individuals to live ***in the residence of their choice in the community***." H.R. Rep. No. 711, 100th Cong. 2d Sess. 18, reprinted in 1988 U.S.C.C.A.N. 2173, 2185 (emphasis added). *See also, Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1149 (9th Cir. 2003)(we interpret the FHAA's accommodation provisions with the specific goals of the FHAA in mind: "to protect the right of handicapped persons to live in the residence of their choice in the community," and "to end the unnecessary exclusion of persons with handicaps from the American mainstream.") *City of Edmonds v. Wash. State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994)(internal quotations omitted); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1498 (10th Cir. 1995)(FHA is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of [the handicapped] to live in the residence of their choice in the community.);*Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1225-26 (11th Cir. 2008)(We conclude that the availability of another dwelling somewhere within the City's boundaries is irrelevant to whether local officials must accommodate recovering substance abusers in the housing of their choice.); *Howard v. City of Beavercreek*, 276 F.3d 802, 806-07 (10th Cir. 2002) (analyzing

whether the requested accommodation was necessary to afford the plaintiff an "equal opportunity to enjoy the housing . . . of his choice"); *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1103 (3d Cir. 1996)(rejecting argument that township reasonably accommodated plaintiff by allowing construction of a nursing home in another area of town).

Mr. Smith implies that the SNP residents are "short term" and therefore do not meet the criteria for being granted a reasonable accommodation. For the reasons submitted in the requests for each property as to why the SNP residents are not transient, that argument is adopted for the purpose of this appeal.

The denial letter also raises another reason for rejection: it is a commercial operation and as such is not permitted in this residential zoning district. The FHA does not make any such distinction. Even if there is a "commercial nature" to SNP's use of the properties, this is not a basis for denying its request for a reasonable accommodation. *Groome Resources Ltd. v. Parish of Jefferson*[1], 234 F.3d 192, 206 (5th Cir. 2000)(The nature of group home living for the handicapped often requires alternative living arrangements to effectuate the purpose of the FHA. The disabled are not able to live safely and independently without organized, and sometimes commercial group homes.). *Avalon Residential Care Homes, Inc. v. City of Dallas*, 130 F. Supp. 2d 833, 841 (N.D. Tex. 2000)(The fact that the Glendora home is a business should not be the basis for denying an accommodation when reasonable and necessary[2].

Mr. Smith's denial states that SNP failed to provide "citation to academic or scientific studies, economic-viability models, or even anecdotal experiences (not that any of these would suffice on their own) about why the abeyance of zoning rules on this street (rules which apply to every other single housekeeping unit in the City) is key to accommodate the home's inhabitants' disabilities." Section 15.66.050 does not require this information, and if the City needed additional information to properly and legally evaluate SNP's reasonable accommodation request, then it

---

[1]The *Groome* Court also held: "In addition to the commercial aspect of purchasing the home, it must be noted that the granting of reasonable accommodations to Alzheimer's group homes and other homes for disabled individuals also affects the commercial viability of care organizations like Groome Resources. The district court found that the zoning ordinance, with its limitation on four unrelated persons, "will make it economically unfeasible for plaintiff to operate the proposed home." The court recognized that the economic viability of this care facility was impeded by the refusal to grant an accommodation" *Groome Resources, Ltd. v. Parish of Jefferson*, 234 F.3d 192, 206 (5th Cir. La. 2000)

[2]Other circuits have also recognized that commercial group homes may be the only way for disabled individuals to live in a residential community. See *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996); *Smith & Lee Assocs., Inc v City of Taylor, Mich.*, 13 F.3d 920, 931 (6th Cir. 1993).

should have requested such information. It is not fair to SNP or other applicants that the established rules are modified on an *ad hoc* basis without notice of the changes.

Mr. Smith implies that SNP has accused the City of applying its rules differently to it than other residents. This is simply not true. The reasonable accommodation provision imposes a duty on a municipality to waive, charge or modify an existing neutral policy to afford groups of handicapped persons the equal opportunity to use and enjoy the dwelling of their choice. This means that SNP can seek a modification or waiver or the City's zoning rules. The request cites several cases where groups of unrelated alcoholics and substance abusers have sought and were granted the right to be considered the functional equivalent of a family or single housekeeping unit.

For the reasons stated above, it is requested that the decision of Mr. Smith be reversed. Please note that SNP reserves the right to supplement this appeal with additional documentation or information.

Sincerely yours,

Steven G. Polin

cc: Sober Network Properties
Isaac Zfaty, Esq.

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July 19, 2016

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Re: Reasonable Accommodation Request
16 Golf Drive, Aliso Viejo, CA
24 Prescott, Aliso Viejo, CA

Dear Mr. Polin,

The City of Aliso Viejo (the "City") is in receipt of your June 15, 2016 letter appealing the City's denial of reasonable accommodation relating to the above properties.

First, I address your two initial matters: 1) availability of reasonable accommodation must be publicly displayed, and 2) the City Attorney responding to the reasonable accommodation request instead of the Director of Planning. The remainder of the letter addresses the findings of City relating to the "necessity" of the requested reasonable accommodation.

1. Availability of Reasonable Accommodation Publicly Displayed

As you note, the AVMC requires that the "Notice of the availability of reasonable accommodation shall be prominently displayed at the city's public counter..." You then go on to claim that "no such forms are available." This allegation is demonstrably false. The City displays a Notice of Availability sign for Housing and Reasonable Accommodation application requests in its front lobby at City Hall. The actual application for a reasonable accommodation

is kept behind the public counter with other Planning Department forms and is made available upon request. City staff confirms that they have been displayed and made available to the public for years. See attachment 1 for details.

2. The Director of Planning Relies on the City Attorney for Advice on Legal Issues

Your next claim is that because the AVMC designates the Director of Planning as the "reviewing authority" for reasonable accommodation requests, somehow the City Attorney is not allowed to get involved in the legal analysis. All relevant legal authority, however, points to the contrary. (Govt. Code § 41803 ["The city attorney shall perform other legal services required from time to time by the legislative body."]; Govt. Code § 41801 ["The city attorney shall advise the city officials in all legal matters pertaining to city business."]; *Montgomery v Solano County Superior Court* (1975) 46 Cal. App. 3d 657, 670 ["we interpret controlling law as vesting wide latitude in city councils to define and control the duties of their city attorneys. This result is consistent with the general principle that an attorney's duties are ordinarily defined and controlled by his client."].)

Here, in addition to the statutory authority to act, the City's engagement letter specifically requires the City Attorney to provide advice and representation on all matters relating to anti-discrimination laws. (City of Aliso Viejo Professional Services Agreement for City Attorney Services, Exhibit A, "Scope of Services," Section 3, "Specialized Services.") Because the reasonable accommodation scheme is part and parcel of the larger anti-discrimination law context, these duties fall squarely upon the office of the City Attorney.

The City determines the issues for which it will seek counsel from its City Attorney. In this situation, the City sought counsel from the City Attorney regarding the response to your reasonable accommodation requests. The City Attorney appropriately responded the first time, and does so again here.

3. The Reasonable Accommodation Request Failed (and the Appeal Similarly Fails) to Show "Necessity"

As you note, one of the five requirements of AVMC section 16.66.050 is that the application must explain why "the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling."

The findings required by AVMC section 15.66.070 were addressed in the denial letter. Note that, contrary to your claim, all findings must be addressed only in the event of an approval. If there is a denial, only the reason for the denial must be explained.[1] In order to approve a

[1] The language of the code is that "all [findings] are required for approval." (AVMC 15.66.070.A.) By implication, when there is a denial, the denial letter must only address the findings that caused the application to fail.

reasonable accommodation request, the City is required to make a finding that the "requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws." (15.66.070.A.2.) The City made a contrary finding in its denial:

> SNP has failed to provide evidence that proves that such an accommodation is "necessary to afford such person equal opportunity to use and enjoy a dwelling." (42 USCS § 3604(f).)

Indeed, the City cited two analogous cases which support the City's decision the deny this reasonable accommodation request. When a similar situation was presented to a federal court in New York, the court soundly rejected it:

> Plaintiffs offer only conclusory allegations in ... affidavit and deposition testimony without any substantiation in the form of financial records demonstrating that the residence would not be economically viable without a larger residential community than permitted under the zoning code or evidence of the need for ... residents to live in a community environment. Given the lack of proof that the handicaps of the ... residents require more than five people in the house, plaintiffs have failed to establish that a reasonable accommodation is required.

(*Advocacy & Resource Ctr. v. Town of Chazy* (N.D.N.Y 1999) 62 F.Supp.2d 686, 690.) Another federal court, in Pennsylvania, also rejected a similar argument. The court in *McKivitz v. Twp. of Stowe* (W.D. Pa. 2010) 769 F.Supp.2d 803 upheld a town's refusal to make reasonable accommodation from the enforcement of a town ordinance that prohibited the operation of a residence for individuals who had previously received treatment for drug or alcohol addiction because plaintiff making the request failed to show a nexus between the proposed accommodation and the necessity of providing handicapped individuals with an equal opportunity to live in a specific facility in a particular residential area of the town.

Here, the reasonable accommodation request fails for the same reasons cited in the cases above. First, no reasoning or evidence was provided as to why there is a need for "up to 12 unrelated persons and staff in recovery" to be treated "as a functional equivalent of a family." The City was presented with no facts, evidence, or records showing why the aggregate number of 12 is necessary, as opposed to a lesser number. The conclusory allegations provided in the reasonable accommodation letter are legally insufficient. (*Advocacy & Resource Ctr., supra.*) As you know, the law throughout the state of California currently allows for state-licensed residential facilities that serve six or fewer residents in recovery to be treated as a family or

single housekeeping unit. (Cal. Health & Saf. Code § 11834.01 et. seq.)[2] The reasonable accommodation request stated no basis upon which the City could make a finding that any number beyond six people were "necessary." Second, no nexus has been shown between the particular accommodation requested and the specific homes or neighborhoods at issue. (*McKivitz, supra.*)

Therefore, the City reiterates its request for compliance with all relevant City codes (explained in more detail in the Courtesy Notice). If you have any questions, or would like to discuss further, please do not hesitate to contact my office.

Sincerely,

Scott C. Smith
of BEST BEST & KRIEGER LLP
City Attorney
City of Aliso Viejo

cc: Omar Dadabhoy

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[2] Section 11834.23 provides: "Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility that serves *six* or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this article." (Emphasis added.)

CONFIDENTIAL COMPLAINT FORM – CASE LOG

ADDRESS OF VIOLATION: 16 Golf Drive **CASE N0. 16-01-22-5**

Date/Time	**Inspector Peterson**
1/22/16	I was directed to initiate an investigation of an alleged "sober living" group home at the above address by the City Manager, David Doyle, based on a complaint he received via AVCA, the community master association and the Glenwood Maintenance Corporation.. The complaint/inquiry from Mr. JB Agahi, 20 Golf Drive is attached to the complaint form. His message dated 12/2/15 stated, "I counted 8 people got off the van parked in front of 16 Golf Drive, and they all went inside this house." He is requesting an investigation to determine the legality of maintain the type of group home.
1/25/16 1005	Inspection with exterior photos, no one home.
1/27/15 1045	Drive-by, no activity.
2/1/16 1020	Phone message to Melia Novak of Department of Health Care Services (916) 379-5315 to check for license status or any information on Sober Network Properties and Joe Scolari.
2/2/16 1000	I received a call back from Fire Inspector Darren Johnson, OCFA. He learned that "Sober Living Network" was the tenant at 16 Golf Drive. They are operating an unlicensed "sober living" home for 7 adults who are transported daily to work or therapy. The residents stay at this address for 90 days during their off-site treatment.
2/2/16 1240	Darren Johnson OCFA, Fire Inspector, made contact with Joey Scolari who advised him he has 7 clients living at the home for approximately 90 days. They are transported off-site for treatment and/or work. Fire Insp. Johnson provided me with Scolari's contact information and I was able to speak with him by phone at 12:30 pm. Mr. Scolari stated he is a "property manager" who assists clients in staying at this private residence. He would not characterize the home as a "Sober Living Facility." When I stated he was running a business, he said he was only a property manager. He said the tenants should be considered a "family." Scolari said he would work with the City to resolve any complaints that may arise. NOTE: The phone call was dropped at 1245 due poor connection. I could not understand the last 30 seconds to one minute of conversation. I will contact the **Department of Health Care Services Substance Use Disorder Compliance Division,** Joanne Howard to confirm that this type of operation is not required to be licensed.
2/4/16	Phone message left for Joanne Howard – DHCS
2/4/16 1005	Phone call to Todd Leishman, BBK 949-263-6576, I briefly explained the complaint and the information I obtained by Darren Johnson, OCFA, as well as brief my phone call to Joe Scolari on 2/2/16. Atty. Leishman said he will follow-up with suggestions for additional investigation.
2/5/16 0900	P/call from Bldg. Official Ted Halsey requesting and update for the City Manager.

CONFIDENTIAL COMPLAINT FORM – CASE LOG

ADDRESS OF VIOLATION: 16 Golf Drive **CASE N0. 16-01-22-5**

Date/Time	Inspector Peterson
2/8/16 0905	Phone call from Darren Johnson, OCFA. He states he would contact DHCS to expedite my request for information.
2/8/16 1615	Meeting with City Manager Doyle, City Attorney Scott Smith. I was advised to identify the property owner and make notification of possible code violation.
2/11/16	I reviewed a prior Code Enforcement File #14-3-31-15 (closed 10/29/15) which has similar issues to the alleged zoning code violations described by the complaining party.
2/11/16	I began my research to locate the property owner. I located a single female age twenty years with the same name as the owner of record living in Irvine and attending UCI. Several more person(s) with similar last names were also found in California.
2/11/16 1005	Drive-by of 16 Golf. The white Chev Van CA. Lic. 6DZD719 registered the Sober Living Network, LLC of San Juan Capistrano was parked in the Community Center parking lot near the intersection of Golf Drive and Santa Barbara Drive. No one appeared to be home at the residence.
2/16/16	I spoke briefly to City Manager Doyle who advised me he was provided information that the property owner was indeed Ms. Azadeh Hemati of Irvine.
2/16/16	I spoke with Todd Leishman at BBK regarding proposed questions for various parties involved with the home.
2/18/16	I sent a letter to the home of the property owner HEMATI with an attached copy to her public e-mail address at UCI. A copy of the letter and e-mail are attached to this file.
2/22/16 0800	I received an e-mail from a Mr. Paul Oshideri in response to my letter to Ms. Azadeh Hemati. He states he is "kind of responsible for 16 Golf AV and can answer your question and concern." He was aware I have spoken with Joe Scolari asked me to talk to Joe. I researched Mr. Oshideri and found he is a licensed realtor in California and is associated with at least two other businesses. He does not represent himself as an attorney, part owner of the property or a family member. I did not respond to Mr. Oshideri. Ms. Hemati was asked to contact me on or before 2/25/16.
2/23/16 1330	I received a telephone call from Mr. Barrie Fitchett Department of Health Care Services Substance Use Disorder Compliance (barri.fitchett@dhcs.ca.gov) in response to several prior e-mail requests for contact. Mr. Fitchett told me he has researched Mr. Joseph Scolari and the business name "Sober Network Properties, LLC." There are no prior contacts, nor are there any licensed facilities under those names. He indicates he will be in Orange County at the end of March and requests update on our investigation.
2/14/16 1330	Meeting with CM and City Attorney regarding case status. I discussed a telephone message I received 2/24/16 at 12:20 PM from Joe Scolari. He made statement about the City contacting his landlord and possible harassment. He also made mention of his contact with City Attorney Smith representing San Clemente. This case will be classified as PENDING until further advise from the City Attorney.

CONFIDENTIAL COMPLAINT FORM – CASE LOG

ADDRESS OF VIOLATION: 16 Golf Drive **CASE N0. 16-01-22-5**

Date/Time	Inspector Peterson
3/3/16 1215	I contacted Mr. JB Agahi in the Pasadera neighborhood. He is a local realtor residing at 20 Golf Drive. He provided some background information he has become aware of over the past three months. • There are two passenger vans that transport residents at approximately 0730 and return after 1730 or later. **He will forward photos.** They take residents to AA meetings and local out-patient treatment. The house manager is an individual with the first name of "Chad." • Mr. Agahi sold the property to Ms. Hemati iin 2013. Her father paid cash for the property. • He states that to his knowledge Joe Scolari is involved with the property. • Mr. Agahi states that Paul Oshideri is heavily involved in leasing this property to Scolari for placement of persons needing off-site treatment. • The property owner's (Ashedeh Hemati) has recently purchased a second home in San Clemente that he believes is being handled by Paul Oshideri and rented to Joe Scolari as a group home of some kind.
3/28/16 1300	Letter from Attorney Garrett M. Prybylo, Zeaty and Burns, Irvine representing Sober Network Properties. Copy to file. WCP
4/4/16 0800	Letter from attorney Steven Police to Planning Director Omar Dadabloy. Copy to file.
6/16/16 1600	Meeting with City Attorney, City Manager regarding short term rental cases already being investigated. The decision was mad to continue with Administrative Cites for those cases applicable.
6/21/16 1000	Spoke with Todd Leischman via phone. This case is to be placed on HOLD per the City Attorney.
7/19/16 0845	Return phone call to witness J.D. Agahi (949) 300-0240 from 20 Golf Drive. He informed me he found the front door of 16 Golf Drive wide open. He was concerned that homeless persons would be living inside. He had not seen anyone at the home in the last three to four weeks. He entered the and found no one inside; no personal items or indications that the home was not occupied. There were fourteen beds inside the home. Mr. Agahi spoke with the neighbors at 18 Golf Drive and they assisted him by calling OCSD. Copy of call for serice attached indicating the door was but not locked. WCP
7/19/16 1010	Drive-by 16 Golf Drive to check residence for continued operation as a sober living facility. When I arrived I found Sgt. Duda, OCSD and two deputies at the home. They were inside and I waited outside to speak with them. Sgt. Duda advised me the door was unlocked on arrival and they met with Ray Ramos (949) 910-6301 who allowed them to check the interior. No problems were noted. Sgt. Duda confirmed at leaset 14 beds were available. I spoke briefly with Mr. Ramos who referred to Sober Network Properties attorney (Pasquale?-(630) 306-9000). Mr. Ramos said the home would continue to operate, and declined to answer any further questions.
10/17/16 1415	I contacted Agahi via telephone to get an update on his observations. He told me that approximately two weeks ago he observed a large U-Haul truck to the rear of 16 Golf Drive. He saw 8 beds being moved into the residence, along with furniture. Three days ago, he saw a van (unknown color) parked in front of 35 Golf Drive for a few hours. He then saw 5-6 males walk from the van and enter the residence at 16 Golf Drive via the front door. This occurred in the late afternoon. He told me he has decided to move based on the issues surrounding 16 Golf Drive. He said his wife was recently called a "bitch" by a male resident of 16 Golf Drive as he walked past her.

CONFIDENTIAL COMPLAINT FORM – CASE LOG

ADDRESS OF VIOLATION: 16 Golf Drive **CASE N0. 16-01-22-5**

Date/Time	Inspector Peterson
10/18/16 0645-0800	I went to the location and waited to determine if any of the residents would be leaving in the morning. There was no activity at the house. At 0800 I went to the front door and knocked. There was no answer. I observed a notice on the front door from Southern California Gas indicating the gas would be turned on temporarily. I could not see any other information on the notice as it was wedged in the door blocking portions of the notice.
12/13/16 1445	Contacted via phone by Agahi, who told me that on Sunday, 12/11/16, he observed 2 separate Vans bring at least 10 women to the location and drop them off. They walked into the house. Agahi described the vans as being dark colored. He said he would take a picture of the license plate the next time he sees one of them.
12/14/16 0915	I opened an email sent by Agahi of a picture of the van and license plate (Cal lic#75734X1). The van is registered to Sober Network Prop in San Juan Capistrano. Later in the morning I received a phone call from Wendy Ohlmeyer (818)585-7493 who told me that she began to see people coming and going from the house beginning about 2 weeks ago. She said she believes there are 10 women living in the house at this time.
12/15/16 1545-1615	I drove to 16 Golf Drive and waited for arrival of the van to attempt contact. No one arrived.
12/23/16	I received not and 10/28 of van. It was the same van that was described in note from D. Doyle.
12/27/16	I drove to Golf Drive. Just as I was arriving, I observed a female enter the van via the driver door parked in front of the location and begin to drive away. I followed the van to a commercial building at ..... Columbia Drive and park in the parking lot. Several minutes later, approximately 6-7 male and female subjects exited the building and entered the van. A few were quite loud and boisterous. The van left the parking lot, and I followed it to 24 Prescott, where one female exited the van and entered the residence. It then drove into a residential neighborhood in Laguna Niguel (unknown location) then through Laguna Hills and entered onto the S/B 5 Freeway. I discontinued following the van at that point.
12/29/16	Administrative Citation #16-070 were issued to the owner of Golf Drive and SNP via registered return mail.
1/6/17	Received registered mail return from SNP signed by Ron Girskis.
2/1/17	Contacted complainant Agahi via telephone for update of activity at the residence. He told me he believes they purchased a new van (silver in color). He said the van is usually parked near the intersection of Golf Drive and Santa Barbara Drive. He said that 3-4 days ago, he saw "10 to 11" women exit the van and walk into the Golf Drive location.
2/8/17	Administrative Citation #CE17-03 was issued to the owner of Golf Drive and SNP via registered return mail.
2/15/17	Received registered mail return notice to SNP signed by Ron Girkis
2/22/17	Third Administrative Citation (CE17-04) was sent to owner Hemati and SNP owner Scolari via Registered Return mail.
3/7/17	Registered letter to Hemati returned unopened. Marked on envelope as "Return to sender Attempted – Not Known Unable to Forward".

7/19/2016 | Orange County Sheriff Department | 9:04:59AM

Call Detail Information Report

Call Number: 16-179318

Call Number 16-179318

Call Detail Information

Call Number	Class	Taker	Pos	Call Owner	Date - Time Received	Cat
16-179318	G	HUTCHINSONEB	10		07/18/2016 13:40:20	0

Complaint	Ten Code	Priority	Disp Zone	IRA	How Received
932 OPEN DOOR		2	SW	AV02	

Incident Location	Apt/Suite	Floor/Bldg	Incident City	Grid
16 GOLF DR			AV	921E2

Caller Name	Patrol Zone	Telephone	Tower ID	Jurisdiction	Tract
JB AGAHI	83	949-300-0240	- -	OCSD	AV

☐ Images ☐ Medical ☐ Hazard ☒ Previous ☐ DR Issued in Error

ALI Time	Call Rec'd	Xmit	Dispatch	Enroute	OnScene	Departed	Arrived	Comp	Unit
	13:40:20	13:43:07	13:43:35	13:43:35	13:53:29			14:06:56	183

Narrative

[07/18/2016 14:05:19 : MOB : 183]
I walked up to the 932 front door and did not notice anything 925 inside and the home appeared vacant. I shut the door and was unable to lock it. Due to no further other than 932, I did not make entry into the residence.

[07/18/2016 14:04:33 : MOB : 183]
RP stated he is aware #16 Golf is owned by Azdeh Hamati but has no further contact information.

[07/18/2016 14:00:12 : pos3 : SHITTESDORF]
Unit : 183
NOTHING 925 C4 10-6

[07/18/2016 13:59:45 : pos3 : SHITTESDORF]
UTL PHO# FOR 16 GOLD DR

[07/18/2016 13:57:39 : pos3 : SHITTESDORF]
Cross streets: GLENWOOD DR//SANTA BARBARA DR
NBH: 921E2 92656 33.5982,-117.7256

[07/18/2016 13:57:32 : pos3 : SHITTESDORF]
Unit : 183
932 WILL BE 16 GOLF CHANGING IN CAD FROM 18 TO 16

[07/18/2016 13:48:16 : pos3 : SHITTESDORF]
UTL PHO# UNDER CALL HISTORY OR XX TO 18 GOLD DR

[07/18/2016 13:43:07 : pos10 : HUTCHINSONEB]
Cross streets: GLENWOOD DR//SANTA BARBARA DR
NBH: 921E2 92656 33.5982,-117.7256
INF LIVES AT 20 GOLF DR AND HE SAYS AT 18 GOLF DR THE FRONT DOOR IS WIDE OPEN AND INF SEES NO ONE INSIDE . THE HOME WAS A SOBER LIVING FACILITY AND APPEARS VACANT. 930 INF IN FRONT OF 18 GOLD DR INF M PERSIAN 58 YRS WHITE HAIR STRIPED WHITE SHIRT BLK PANTS

Location Comment

NBH: 921E2 92656 33.5982,-117.7256

Call Dispositions

Date - Time	Disposition	Unit

7/19/2016 | Orange County Sheriff Department | 9:04:59AM

Call Detail Information Report

Call Number: 16-179318

07/18/2016 14:06:56 No Report Needed

Department

Department	OCA Number

Call Complaints

Date-Time	Complaint	Action By

Call Locations

Date-Time	Location	City

Call Log

Unit	Status	Date-Time	Dept	Comments	Deputy ID	Deputy	Odometer
183	ENR	07/18/2016 13:43:35	OCAV	18 GOLF DR, AV	.JOHNSONMJ	Johnson,Michael J	0.0
282	ENR	07/18/2016 13:43:35	OCAV	18 GOLF DR, AV	8804	KEY,TRISTAN JAMES	0.0
183	ONS	07/18/2016 13:53:29	OCAV	18 GOLF DR, AV	.JOHNSONMJ	Johnson,Michael J	0.0
282	ONS	07/18/2016 13:53:29	OCAV	18 GOLF DR, AV	8804	KEY,TRISTAN JAMES	0.0
183	COM	07/18/2016 14:06:56	OCAV	COM	.JOHNSONMJ	Johnson,Michael J	0.0
282	COM	07/18/2016 14:06:56	OCAV	COM	8804	KEY,TRISTAN JAMES	0.0

Unit	Department	DIS	ENR	ONS	LEF	ARR	BUS	REM	COM
183	OCAV		13:43:35	13:53:29					14:06:56
282	OCAV		13:43:35	13:53:29					14:06:56

Unit Log

Date Time	Dept	Unit	Deputy	Action	Comments
07/18/2016 13:43:37	OCAV	183	.JOHNSONMJ		
07/18/2016 13:43:37	OCAV	183	.JOHNSONMJ		
07/18/2016 13:43:37	OCAV	183	.JOHNSONMJ		
07/18/2016 13:43:37	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:12	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:12	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:12	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:12	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:38	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:38	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:38	OCAV	183	.JOHNSONMJ		
07/18/2016 13:44:38	OCAV	183	.JOHNSONMJ		
07/18/2016 13:53:21	OCAV	183	.JOHNSONMJ		
07/18/2016 13:53:21	OCAV	183	.JOHNSONMJ		
07/18/2016 13:53:21	OCAV	183	.JOHNSONMJ		

7/19/2016 | Orange County Sheriff Department | 9:04:59AM

Call Detail Information Report

Call Number: 16-179318

07/18/2016	13:53:21	OCAV	183	JOHNSONMJ		
07/18/2016	13:57:07	OCAV	183	JOHNSONMJ		
07/18/2016	13:57:07	OCAV	183	JOHNSONMJ		
07/18/2016	13:57:07	OCAV	183	JOHNSONMJ		
07/18/2016	13:57:07	OCAV	183	JOHNSONMJ		
07/18/2016	13:57:32	OCAV	183	JOHNSONMJ	Note	932 WILL BE 16 GOLF CHANGING IN CAD FROM 18 TO 16, 18 GOLF DR, AV
07/18/2016	14:00:03	OCAV	183	JOHNSONMJ		
07/18/2016	14:00:03	OCAV	183	JOHNSONMJ		
07/18/2016	14:00:03	OCAV	183	JOHNSONMJ		
07/18/2016	14:00:03	OCAV	183	JOHNSONMJ		
07/18/2016	14:00:12	OCAV	183	JOHNSONMJ	Note	NOTHING 925 C4 10-6, 16 GOLF DR, AV
07/18/2016	14:06:46	OCAV	183	JOHNSONMJ		
07/18/2016	14:06:46	OCAV	183	JOHNSONMJ		
07/18/2016	14:06:46	OCAV	183	JOHNSONMJ		
07/18/2016	14:06:46	OCAV	183	JOHNSONMJ		
07/18/2016	13:44:20	OCAV	282	8804		
07/18/2016	13:44:21	OCAV	282	8804		
07/18/2016	13:44:21	OCAV	282	8804		
07/18/2016	13:44:21	OCAV	282	8804		
07/18/2016	13:44:27	OCAV	282	8804		
07/18/2016	13:44:27	OCAV	282	8804		
07/18/2016	13:44:27	OCAV	282	8804		
07/18/2016	13:44:28	OCAV	282	8804		

Call Vehicles

Year	Make	Model	VIN	Plate	Color	Towed	BOLO

Comments	Owner

Subject

Category	Last Name	First Name	Middle Name	Suffix	Race	Ethnic

Height	Weight	Age	DOB	SSN	OL-State	OLN	Description

Call Reference Information

Reference Type	Reference	Related Calls