

**From:** [City Clerk's Office](#)  
**To:** [Mulvey, Jennifer](#); [Rieff, Kim](#)  
**Subject:** FW: Comments re. City Council Agenda Item 5 - Council Session Sept. 27 2022  
**Date:** September 26, 2022 2:29:42 PM

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**From:** Denys Oberman <dho@obermanassociates.com>  
**Sent:** Monday, September 26, 2022 2:29:30 PM (UTC-08:00) Pacific Time (US & Canada)  
**To:** Dept - City Council <CityCouncil@newportbeachca.gov>; City Clerk's Office <CityClerk@newportbeachca.gov>; Leung, Grace <gleung@newportbeachca.gov>  
**Cc:** Laura Curran <lauracurran@me.com>; william lyon <ablyon@sbcglobal.net>; Lynette Luis <lynette\_luis@dell.com>; Erica Keane <ericaakeane@gmail.com>; Steve Fusswinkel <sfusswinkel1@gmail.com>; dho@obermanassociates.com <dho@obermanassociates.com>  
**Subject:** FW: Comments re. City Council Agenda Item 5 - Council Session Sept. 27 2022

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To City Council and City Clerk:

I am hereby Recalling my prior correspondence , and replacing it with the Comments below, which include a minor edit.

Please confirm receipt.

Thank you,

Denys Oberman

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Regards,  
Denys H. Oberman, CEO



**OBERMAN Strategy and Financial Advisors**

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**From:** Denys Oberman <[dho@obermanassociates.com](mailto:dho@obermanassociates.com)>  
**Sent:** Monday, September 26, 2022 2:23 PM  
**To:** Denys Oberman <[dho@obermanassociates.com](mailto:dho@obermanassociates.com)>  
**Subject:** RE: Comments re. City Council Agenda Item 5 - Council Session Sept. 27 2022

Regards,  
Denys H. Oberman, CEO



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**From:** Denys Oberman <[dho@obermanassociates.com](mailto:dho@obermanassociates.com)>  
**Sent:** Monday, September 26, 2022 2:17 PM  
**To:** [CityCouncil@newportbeachca.gov](mailto:CityCouncil@newportbeachca.gov); [cityclerk@newportbeachca.gov](mailto:cityclerk@newportbeachca.gov);  
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**Subject:** Comments re. City Council Agenda Item 5 - Council Session Sept. 27 2022

PLEASE DISTRIBUTE TO THE CITY COUNCIL MEMBERS AND THE PUBLIC , AND ENTER INTO THE PUBLIC RECORD.

Mayor and Members of the City Council:

I am submitting this comment in connection with the proposed Resolution No. 2022-84 Supporting Restoring Local Authority in the Regulation of Group Residential Uses, before the City Council on Sept. 27, 2022, Session Agenda Item #5.

Our comments are below:

1. We appreciate that the City Council expresses commitment to,, call on the State of California to Increase its Oversight and Enforcement of Residential Care facilities.
2. We take exception and object to the proposed position that, the City can do nothing to regulate state licensed and unlicensed residential care businesses of any size that are , Integral Facilities/Integral Uses.

The City has Ordinances on the books which provide definitions for, and ability to regulate Integral Facilities /integral Uses. These ordinances are applicable to state licensed and unlicensed facilities that are operating in an Integral manner.

There are no published Court orders which preclude the application and enforcement of Integral facilities to the City of Newport Beach . City staff and representatives persist in erroneously referred to “Judge Selna’s 2008 order “ as reason that the City cannot enforce its Ordinances pertaining to Integral Facilities. We object to these statements as inaccurate and misleading, based on the following:

In 2008, the residential care and sober living facility business operator,, Sober Living by the Sea ( SLBTS) filed a lawsuit against the City of Newport Beach. During the course of this proceeding,in 2008 the presiding Judge Selna issued a temporary order of injunction staying the City’s ability to actively enforce the provision of its 2008 05 Ordinances pertaining to,Integral facilities.

In late 2008/early 2009, Sober Living by the Sea and the City of Newport Beach negotiated settlement of this lawsuit. As part of the Settlement, SLBTS agreed to “dismiss the Action in its entirety without prejudice”, and to “dismiss or abandon without prejudice the appeal taken from the order partially granting and partially denying Sober Living’s motion for a preliminary injunction,and...affirmatively request that HUD and the U.S. Dept of Justice take no further action based upon the HUD Complaint. ( excerpt taken from Settlement and Release , List of Agreements and Related Document of April 2009 )

It was agreed that the Dismissal of the case would be completed and effective at such time as the City passed ordinance including, Zoning Implementation and Public Benefit5 Agreement memorializing specific terms of the Settlement including provisions for SLBTS’ continued business operation in the City. This Ordinance was passed by the City In April, 2009, and action was taken to dismiss the case SLBTS v. City of Newport Beach.

Stipulations were filed with the Court to dismiss the case in its entirety on October 23, 2009. Orders confirming dismissal and termination of the case in its entirety were filed by the Court and entered on October 29,2009.  
( ref, Court docs. #89. 8.08-cv-0200 JVS-RNB).

The case was dismissed and terminated in its entirety. There is no Court action any

longer which prevents the City from enforcing its Ordinances re. group residential uses, which include provisions regarding Integral facilities/integral uses.

The Agreements pertaining to the above- reference settlement and dismissal of lawsuits and Court actions are all matters of public record. Documents are readily available in the public domain and through the Court.

The City CAN regulate its residential care and sober living business uses. It CAN regulate the Integral facilities provisions as defined in its current Ordinances.  
The City has CHOSEN NOT TO REGULATE THESE USES.

It would appear, with the proposed Resolution, and the statement of City Atty in City meeting of August 23, 2022 that the City “can, but chooses not to, enforce its ordinances”( Ref. meeting video).

It would appear that the City is defaulting its duty to protect the health and safety of those seeking recovery assistance from business operators, as well as other residents in the community---is the City punting to the State, and wrongfully disclaiming responsibility and ability to act pursuant to its Ordinances... at adverse impact to the health and safety of addicts in facilities seeking recovery assistance, and the residents and community at large.

We request that the City Council direct staff to :

1. Modify the proposed Resolution to reflect its action towards the State regarding its regulatory and enforcement responsibilities; and,
2. immediately, recognize and actively enforce its current Ordinances on the book, including provisions applicable to Integral facilities/integral uses, and including Operators not complying with local or state law.

Thank you.

Denys Oberman, Resident of Newport Beach

Cc: members of Newport Beach ad hoc committee, members of Concerned Citizens of Newport Beach , various other stakeholders at interest

.....

(Note: please disregard the parties and notices, below as those are not relevant to this matter).

Regards,  
Denys H. Oberman, CEO



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