



NEWPORT BEACH

City Council Staff Report

February 13, 2024
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Seimone Jurjis, Assistant City Manager/Community Development Director - 949-644-3232, sjurjis@newportbeachca.gov

PREPARED BY: Melinda Whelan, Assistant Planner - 949-644-3221, mwhelan@newportbeachca.gov

TITLE: Ordinance No. 2024-4: Termination of Development Agreement No. 2008-005 for Sober Living by the Sea, Inc. dba Sierra by the Sea, Inc. Zoning and Public Benefit Agreement (PA2008-199)

ABSTRACT:

For the City Council's consideration is a request to terminate Development Agreement No. 2008-005, a Zoning Implementation and Public Benefit Agreement (Zoning Agreement) between the City of Newport Beach and Sober Living by the Sea, Inc. dba Sierra by the Sea, Inc. The Zoning Agreement allowed the operator to utilize up to 204 residential care facility beds throughout the city for drug and alcohol recovery.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Existing Facilities of the CEQA Guidelines. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment, and it is not subject to CEQA; and
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-4, *An Ordinance of the City Council of the City of Newport Beach, California, Approving the Termination of Development Agreement No. 2008-005 (Zoning Implementation and Public Benefit Agreement Between the City of Newport Beach and Sober Living by the Sea, Inc.) (PA2008-199)*, and pass to second reading on February 27, 2024.

DISCUSSION:

Sober Living by the Sea, dba Sierra by the Sea, Inc. (SLBTS) entered into the Zoning Agreement with the City in 2009. The Zoning Agreement authorized the operation of residential care facilities in the City subject to specific limitations.

Limitations included a maximum of 204 beds (including in locations not subject to City regulation under State law), dispersal of facilities to reduce concentration in residential neighborhoods, and the placement of operational controls on each facility to reduce negative impacts. Since 2009, the operator has been subject to annual reviews pursuant to the Zoning Agreement to demonstrate a good faith effort in meeting all of the terms or conditions of the Agreement.

More specifically, the Zoning Agreement allowed SLBTS a vested right to: (i) operate 156 beds of recovery facilities within the area they are currently operating, and as more particularly defined in Exhibit D of the Zoning Agreement (Peninsula Zone); and (ii) up to an additional 48 beds outside of the Peninsula Zone and within zones accommodating multi-family residential uses. The Zoning Agreement also memorialized allowed uses and conditions agreed to by SLBTS on August 25, 2006, regarding its administrative offices at 2811 Villa Way (Exhibit C of the Zoning Agreement). The beds are allowed to be occupied in the city at any time by persons who are patients, clients or customers of SLBTS, whether contained within Licensed Facilities, General (seven or more) or Small (six or fewer), or Unlicensed sober living homes. The Zoning Agreement included location requirements to minimize over concentration and provide minimum distances to schools and parks. It also regulated operational details such as smoking, parking, deliveries, medical waste, etc. to mitigate the potential impacts to the surrounding neighborhoods.

Request for Termination

The operator, Sober Living by the Sea, Inc. DBA Sierra by the Sea, Inc. has requested to terminate the existing Zoning Agreement. During the last annual review conducted in October 2023, it was brought to the City's attention that the operator has made the decision to close all its facilities in Newport Beach effective December 10, 2023. The operator explained that the recovery care model had evolved to re-focus treatment from smaller residential facilities into larger hospital-type facilities in other areas of the United States. Pursuant to Section 12 of the Zoning Agreement, the Zoning Agreement may be amended or cancelled in whole or in part only by mutual written and executed consent of the parties in compliance with California Government Code Section 65868 and City of Newport Beach Municipal Code 15.45.070.

Although the operator chose to only use 43 of the 204 permitted beds for the past eight years, by cancelling the agreement, the vested right for SLBTS to operate the potential total 204 beds will fully terminate. Should the operator choose to re-establish operations in the city, any future facility would be subject to the current Zoning Code regulations applicable to Residential Care Facilities within Newport Beach Municipal Code (NBMC) Section 20.18.020 Table 2-1 and Section 20.48.170. In summary, small licensed residential care facilities (six beds or less) are permitted by right, pursuant to State law, within all residential zones; large, licensed facilities (seven beds or more) and any unlicensed facilities would be prohibited in single-unit and two-unit residential zoning districts and permitted only in multi-unit residential zoning districts subject to the approval of a conditional use permit.

The Planning Commission held a public hearing on December 21, 2023, and adopted Resolution No. PC2023-044, recommending termination of the Zoning Agreement to the City Council.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential to have a significant effect on the environment. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing structures and facilities involving negligible or no expansion of the exiting or former use. The termination of the Zoning Agreement will eliminate the Operator's right to utilize the existing residential dwellings as residential care facilities, and the associated offices. The residential dwellings and offices will remain; therefore, the termination does not involve an expansion of use and qualifies under Class 1 (Existing Facilities).

This action is also covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the State CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

NOTICING:

Notice of this hearing was published in the Daily Pilot, and in lieu of mailings that would exceed 1,000, the Director chose to publish a one-eighth page display advertisement, which is consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.

ATTACHMENT:

Attachment A – Ordinance No. 2024-4