

ORDINANCE NO. 2016-182

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA,
IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR
ESTABLISHMENT IN RESIDENTIAL ZONES OF CONGREGATE LIVING
FACILITIES, SUBJECT TO REASONABLE ACCOMMODATION,
TO ALLOW TIME FOR CONSIDERATION OF APPROPRIATE
AMENDMENTS TO THE CITY MUNICIPAL CODE**

The City Council of the City of Laguna Niguel hereby ordains as follows:

SECTION 1. Recitals.

1. Over the last few months, the City has received a steadily increasing number of complaints relating to neighborhood nuisances such as unauthorized construction, invasion of privacy, excessive noise, and second-hand tobacco smoke; and

2. City investigation and follow-up on these complaints has revealed that a large portion of these impacts coincide with a proliferation of congregate living arrangements; and

3. City investigation has also revealed discrepancies in information submitted to state regulatory agencies relating to construction and occupancy of some of these facilities; and

4. City investigations have also raised concern over the welfare and safety of the residents of these facilities; and

5. Existing zoning regulations do not adequately address the establishment of congregate living facilities; and

6. This interim urgency ordinance is necessary to provide City staff time to study and assess various approaches to regulating the subject land uses and to present recommendations to the Planning Commission and City Council. Recommendations may include amendments to the City's Municipal Code addressing establishment of congregate living facilities and complying with State law and including appropriate review procedures; and

7. Without this moratorium ordinance, such transitory residential uses could possibly locate in close proximity to each other, so as to create an overconcentration of such uses and further threaten the health, safety, and welfare of facility residents of the facilities and their neighbors; and

8. As a consequence, there is a current and immediate threat to the public health, safety and welfare if permits or entitlements for congregate living facilities are issued, and such permits or entitlements could result in land uses and developments that conflict with amendments to the Municipal Code that may be adopted as a result of the study that the City intends to undertake; and

9. The adoption and immediate enactment of this ordinance is necessary for the preservation of the public health, safety, and welfare to prevent establishment of new uses and the expansion or modification of existing uses at locations that might conflict with and be inconsistent with the intended amendment to the Municipal Code; and

10. Minimizing incompatibility of land uses promotes orderly development, which is necessary to encourage quality neighborhoods; and

11. This is a matter of importance to the entire City of Laguna Niguel and is not directed at any particular property.

SECTION 2. California Environmental Quality Act.

The City Council finds that this ordinance 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 nor 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.

SECTION 3. Definitions.

For purposes of this ordinance, the following terms and definitions are used:

- (a) *Congregate living facility* means a residence or dwelling wherein two (2) or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence. Such facilities do not include hotels, motels or state licensed residential care facilities when such residential care facilities are serving six (6) or fewer residents. Further, such facilities do not include a residence or dwelling that is operated as a single housekeeping unit.
- (b) *Single housekeeping unit* means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient, members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. Additional indications that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property, members of the household have separate, private entrances from other members, members of the household have locks on their bedroom doors, members of the household have separate food storage facilities such as separate refrigerators.

SECTION 4. Authority.

The City Council hereby enacts this interim urgency ordinance pursuant to section 65858, subdivision (a), of the California Government Code, which allows the City to adopt an interim urgency ordinance by not less than a four-fifths vote, to protect the public safety, health, and welfare by prohibiting any use that may be in conflict with a zoning proposal that the City Council, Planning Commission, or Planning Department of the City is considering or studying or intends to study within a reasonable time.

SECTION 5. Moratorium Established.

Notwithstanding anything to the contrary in existing City law, including but not limited to the Municipal Code and the City General Plan, this ordinance establishes a 45 day moratorium on: the establishment or the approval, issuance, or transfer of any use permit, variance, building permit, or other applicable entitlement for the establishment or operation of a new congregate living facility in the City, as well as the expansion or modification of existing establishments.

Nevertheless, the City may continue to accept and process applications for uses prohibited by this moratorium if so required by State law. Any application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for a congregate living facility may be issued while this moratorium or any extension of it is in effect.

SECTION 6. Reasonable Accommodations.

In compliance with fair housing laws, it is the City's policy to provide reasonable accommodation in the application of this interim urgency ordinance to any disabled person who seeks access to fair housing. The purpose of this Section is to provide disabled individuals with reasonable accommodation in the application of this urgency ordinance, as necessary to ensure equal access to housing and comply with applicable fair housing laws. The words used in this Section 6 shall have the meanings ascribed to them in the federal Fair Housing Act and Americans with Disabilities Act.

- (a) Requesting Reasonable Accommodation.
 - (1) To make specific housing available to a disabled individual, a disabled person or representative may request reasonable accommodation under this Section, relating to the application of this urgency ordinance.
 - (2) If an individual or representative needs assistance in making a request for reasonable accommodation, or in appealing a determination regarding reasonable accommodation, the Planning Division will assist as necessary to ensure that the process is accessible to the applicant or representative. The applicant may be represented at all stages of the proceeding by a person designated by the applicant as his or her representative.

- (3) A request for reasonable accommodation in the application of this urgency ordinance must be filed on an application form provided by the Planning Division. It must be signed by the owner of the property and must describe exactly what is being requested and why the requested accommodation is necessary. All documentation that supports the request must be submitted with the application. The housing unit for which accommodation is requested must be the primary residence of the person for whom the request is made.
- (b) Decision on Application for Reasonable Accommodation.
 - (1) The Community Development Director shall have the authority to consider and act on any application for a reasonable accommodation. The Director shall issue a written determination within 30 days of the date of receipt of a completed application and may:
 - (i) grant the accommodation request,
 - (ii) grant the accommodation request subject to specified nondiscriminatory conditions,
 - (iii) deny the request, or
 - (iv) in the alternative, refer the application to the Planning Commission, who shall render a decision on the application.
 - (2) If necessary to reach a determination on any request for reasonable accommodation, the Director or Planning Commission may request additional information from the applicant consistent with this urgency ordinance. If such a request is made, the time period to issue a written determination is stayed until the applicant reasonably responds to the request.
 - (3) If, based on all of the evidence presented to the Director or the Planning Commission, the findings required in this urgency ordinance may reasonably be made, the Director or the Planning Commission, as applicable, must grant the request for reasonable accommodation.
 - (4) A reasonable accommodation that is provided according to this urgency ordinance does not require the approval of any variance as to the reasonable accommodation.
 - (5) The reasonable accommodation is subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this urgency ordinance to further fair housing. Such conditions may generally include, but are not limited to, the following restrictions:

- (i) That the reasonable accommodation only applies to a particular disabled individual or individuals;
 - (ii) That the reasonable accommodation only applies to the specific use for which application is made; or
 - (iii) That any change in use or circumstances that negates the basis for the granting of the request renders the reasonable accommodation null and void.
- (c) Required Findings. The following findings must be made to approve a request for reasonable accommodation:
 - (1) The housing that is the subject of the request for reasonable accommodation will be occupied as the primary residence by an individual protected under the fair housing laws.
 - (2) The request for reasonable accommodation is necessary to make specific housing available to one or more individuals protected under the fair housing laws.
 - (3) The requested reasonable accommodation will not impose an undue financial or administrative burden on the City.
 - (4) The requested accommodation will not result in a fundamental alteration of the City's zoning or building laws and/or procedures.
- (d) Waiver of Time Periods. The applicant may request additional time beyond that provided for in this Section or may request a continuance regarding the time for any decision or appeal to be made under this urgency ordinance. Any extension of time sought by the applicant shall not be considered delay on the part of the City, shall not constitute failure by the City to provide for prompt decisions on applications, and shall not be a violation of any required time period set forth in this Section.
- (e) Appeal of a Land Use Decision. The decision by the Community Development Director to approve or deny any request for reasonable accommodation may be appealed by an interested party to the Planning Commission in accordance with Section 9-1-112.2 of the City's Municipal Code.

SECTION 7. Severability.

If any section, subsection, subdivision, clause, phrase, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of

this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 8. Effective Date.

This ordinance is declared an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated in Section 1 above, and it shall take effect immediately on adoption if adopted by at least a four-fifths vote of the City Council, and it remains in effect for 45 days from the date of adoption unless the City Council extends it under Government Code section 65858. Ten days before this interim urgency ordinance or an extension of it expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this ordinance.

SECTION 9. City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 2nd day of August, 2016.



Laurie Davies, Mayor

ATTEST:



Eileen C. Gomez, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE)SS
CITY OF LAGUNA NIGUEL)

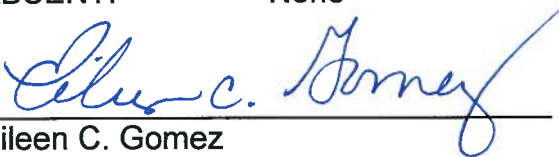
I, Eileen C. Gomez, City Clerk of the City of Laguna Niguel, California, do hereby certify that the foregoing is Ordinance No. 2016-182 which was adopted at a regular meeting of the City Council of the City of Laguna Niguel, California, held August 2, 2016 by the following vote:

AYES: Council Members Capata, Gennaway, Minagar, Mayor
 Pro Tem Slusiewicz, and Mayor Davies

NOES: None

ABSTENTIONS: None

ABSENT: None



Eileen C. Gomez
City Clerk