

## Unlicensed Treatment Facility Operating in Violation of Local Zoning Code Not Eligible for Safe Harbor Provisions of Health and Safety Code

Operators of an unlicensed alcohol and drug treatment facility in violation of a city's zoning ordinance could not avail themselves of the California Health and Safety Code's safe harbor provisions. *City of Dana Point v. New Method Wellness*, 39 Cal. App. 5th 985 (2019). New Methods Wellness is licensed to offer mental health and substance abuse services and residential treatment centers. New Methods housed patients in homes in residential zones in the City of Dana Point. The properties were owned and operated by a different corporate entity, NMW Wellness, which imposed 24-hour supervision and provided patients with transportation to New Methods treatment center. The City zoning ordinance allows only residential uses at each of the properties. The City filed a complaint against New Methods, seeking to abate a nuisance on the grounds that the properties were being operated as unlicensed drug treatment centers in violation of the City zoning ordinance.

Section

9.09.020 of the City's zoning ordinance declares any non-permitted use in a residential zone a nuisance *per se*. This means that no proof is required, beyond the fact of the existence of the use, to establish a nuisance. The zoning ordinance enumerates the permitted uses in a residential zone and "any use not expressly allowed is prohibited." A drug treatment facility is not listed as a permitted use. Thus, the only issue for the appellate court was whether substantial evidence supported the trial court's finding that the properties were being operated as a part of a drug treatment facility. However, New Methods attempted to find safe harbor under California Health & Safety Code section 11834.23, which preempts local zoning regulations. Section 11834.23 permits operators

of licensed alcohol or drug abuse recovery or treatment facilities that service six or fewer persons to qualify as a residential use of the property. The court did not find this argument compelling. There was no evidence the properties housed six or fewer people. More importantly, while NMW Beds was licensed to operate in other locations in Orange County, it was not licensed to operate on the Dana Point properties. New Methods also argued that the properties constituted "recovery houses," which do not require a license. A recovery house is defined as "group living arrangements for adults recovering from alcoholism or drug addiction where the facility provides no care or supervision." The court also rejected this argument because residents' lives were highly regulated and subject to a code of conduct. Also, New Methods' website advertised that patients would receive treatment at the properties. New Methods also claimed that the zoning ordinance provisions violated its patients' rights under the ADA and that the City's abatement action constituted a taking. The court summarily rejected both arguments and concluded there was sufficient evidence to find that New Methods operation of the property was a nuisance *per se* and subject to an injunction.

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