#12

Disability Rights California

California's protection and advocacy system

LOS ANGELES REGIONAL OFFICE
3580 Wilshire Boulevard, Suite 902
Los Angeles, CA 90010
Tel: (213) 427-8747
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (213) 427-8767
www.disabilityrightsca.org

May 31, 2011

Council President Eric Garcetti and Councilmembers Ed Reyes, Paul Krekorian, Dennis P. Zine, Tom LaBonge, Paul Koretz, Tony Cardenas, Richard Alarcon, Bernard Parks, Jan Perry, Herb J. Wesson, Bill Rosendahl, Greig Smith, Eric Garcetti, Jose Huizar, and Janice Hahn
Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Re: Proposed Ordinance on Community Care Facilities, et al.
Case No. CPC-2009-800-CA
Council File No. 11-0262

Dear Council President Garcetti and Councilmembers:

We write on behalf of Disability Rights California and the people with disabilities whom it is our mandate to represent, including Lawanna Arnold, Chris Kidd, Lawrence Lazon, Nicole Dollison, Vickie Bennett, Barbara Morales, and Bibiana Luna, all of whom are people with disabilities who live jointly with other individuals in a single household, reside in a low-density residential area (R1 or R2), and have a separate lease and are therefore directly impacted by the proposed ordinance. We also represent the interests of Fair Housing Council of the San Fernando Valley, a nonprofit civil rights organization whose mission is to eliminate housing discrimination. We urge the City to reject or amend this ordinance, as it is unlawful as written.

We write to reiterate and expand upon our concerns about the proposed ordinance as addressed initially in our letters to the City Planning Commission on the same matter, dated October 14, 2010, November 4, 2010, February 10, 2011, and March 28, 2011. We also concur with and

adopt by reference the conclusions drawn in the February 3, 2011 letter submitted to the City Planning Commission by the Law Office of Kim Savage. We also agree with and adopt by reference the letters submitted to the City by Disability Rights Legal Center and by Western Center on Law and Poverty.

As noted previously, we support several positive portions of the proposal, including providing a simplified ministerial process for facilities of over six people and eliminating illegal spacing requirements. We support language making it explicit that Community Care Facilities and other similar facilities of six or fewer can operate in all residential zones as of right, conforming provisions regarding those facilities to state law. We urge the City to restore the earlier version of this latter provision and expand it to incorporate several other categories of housing that are entitled to operate in all residential zones as of right under state law, and which are overlooked in the current version of the ordinance.

Furthermore, there are a number of provisions of the proposed ordinance, including the definitions of "family" and "single housekeeping unit, " that violate state and federal fair housing laws, the Americans with Disabilities Act and similar state law provisions, state land use and zoning ordinances, and the state and federal constitutions. The ordinance is also inconsistent with the City's Housing Element and General Plan, and the City's Analysis of Impediments submitted to HUD. In addition a negative declaration under CEQA is not appropriate, because the ordinance will have a significant environmental impact that requires an EIR. We continue to urge the City Council to reject this ordinance as written, because it is unlawful for all of these reasons.

A. The Ordinance Fails to Directly Acknowledge The Rights of Community Care Facilities and Other Facilities With Six or Fewer Residents.

Initially, the proposed ordinance acknowledged that licensed Community Care Facilities, as defined in §1502 of the Health and Safety Code, may operate in all residential zones as of right when serving six or fewer residents. The same right was recognized for licensed alcoholism or

drug abuse recovery or treatment facilities, and for licensed residential care facilities for the elderly.[1] As amended, the proposed ordinance fails to acknowledge the exemption; it merely imposes requirements on facilities of seven or more individuals. We encourage the council to reintroduce language that specifically acknowledges the rights of licensed facilities with six or fewer residents.

B. The Ordinance Overlooks Several Other Categories of Homes Protected Under State Law

In addition to omitting language explicitly acknowledging the rights of certain licensed facilities with six or fewer residents, the ordinance misses several other categories of homes which, if serving six or fewer residents, are explicitly granted the same protections under separate chapters of the Health and Safety Code.

1) Residential Care Facility for Persons with Chronic Life Threatening Illness (Health & Safety Code § 1568.0831, defined at § 1568.01).

2) Intermediate Care Facility/Developmentally Disabled Habilitative, Intermediate Care Facility / Developmentally Disabled – Nursing, and Congregate Living Health Facility (Health & Safety Code § 1267.8 and 1267.16, defined at § 1250).

3) Pediatric Day Health and Respite Care Facility (Health & Safety Code § 1761.4, defined at § 1760.2).

4) Employee Housing (Health & Safety Code § 17021.5, defined at § 17008).

The ordinance further fails to note clearly that under Health and Safety Code § 1566 (Community Care Facilities) and the corresponding statute for each other type of home, "six or fewer persons" does not include the licensee, members of the licensee's family, or persons employed as

[1] Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act. 24 C.F.R. § 100.201.

facility staff. The operators of the home *and* as many as six residents served are treated as a family for zoning purposes.

California law provides specific statutory protections for an even broader range of homes designed to provide care for individuals with disabilities. In the Lanterman-Petris-Short Act, the California Legislature found that "mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability." As such, the Legislature declared that "the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning." (Lanterman-Petris-Short Act, Welfare and Institutions Code § 5115, emphasis added) Pursuant to that finding, the Legislature further declared that "a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential property for the purposes of zoning if such homes provide care on a 24-hour-a-day basis. Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings." (Welfare and Institutions Code § 5116, emphasis added). *See also* Health & Safety Code §§ 1265-1271.1, 1250(i), 1250(e), 1250(h), and 1760-1761.8.The proposed ordinance fails to address this statute, and improperly excludes homes that may be exempt from licensure as a Community Care Facility but may otherwise be state-authorized or certified, e.g. a family care home, foster home or group home which is certified by a foster family agency.

C. The Ordinance Violates State and Federal Fair Housing Laws

State and federal law prohibit housing discrimination against individuals with disabilities. Fair housing laws apply both to licensed and unlicensed homes, including those exempt from licensing, and they apply regardless of number of residents. A good summary of these laws can be found at "Working Together to Ensure Housing Opportunities for People with Disabilities and Children." Assembly Committee on Human Services, February 18, 2009 (attached).

1) Federal Law

The Fair Housing Amendments Act of 1988 (FHAA) prohibits intentional discrimination, in which disability is a factor in the negative action, as well as unintentional discrimination, in which a neutral action discriminates via a disparate impact on individuals within a protected group.[2] Under the FHAA, people with disabilities are also protected from discrimination arising out of 1) a failure to make reasonable accommodations in rules, policies, or practices in order to enable them to live in the community, and 2) a refusal to permit a tenant with disabilities to make reasonable modifications to the premises at the tenant's expense.

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 further prohibit local government entities from discriminating on the basis of disability, including discrimination in land-use and zoning ordinances.[3]

The proposed ordinance violates all of these provisions.

Courts have explicitly found that the right to "establish a home" is a fundamental liberty. For a number of adults with disabilities, the exercise of this right translates to the establishment of a group home in the community, and each factor that makes group homes harder to establish "operates to exclude" individuals with disabilities from the community. (*City of Cleburne v. Cleburne Living Center, Inc.*, recognizing that group homes for adults with mental disabilities are "an essential ingredient of normal living patterns" for such individuals[4]; *Olmstead v. L.C.,* holding that institutionalization of individuals with disabilities whose needs could be met

---

[2] "Working Together to Ensure Housing Opportunities for People with Disabilities and Children." Assembly Committee on Human Services, Information Hearing, Background Briefing Paper, February 18, 2009. http://www.assembly.ca.gov/acs/committee/c13/BackgroundBriefingPaper_Prehearing_021809.pdf

[3] Ibid.

[4] *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (U.S. 1985)

in a more integrated community setting constituted disability discrimination in violation of the ADA.[5])

The City's proposed ordinance is squarely within the type of discrimination prohibited by the Fair Housing Act as it applies both to small unlicensed group homes and shared living arrangements housing individuals with disabilities and to larger homes, whether licensed or unlicensed. In *City of Edmonds v. Oxford House*, involving a 10-12 resident group home for individuals recovering from alcohol and drug addiction, the United States Supreme Court stated: "[R]ules that cap the total number of occupants in order to prevent overcrowding of a dwelling 'plainly and unmistakably,' ... fall within § 3607(b)(1)'s absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not."[6] If a family of seven individuals could lawfully reside in a single-family home, then to prohibit seven individuals with disabilities from residing in the same home would constitute discrimination under the FHAA – via disparate impact at the very least – if that prohibition is based solely on factors relating to the logistics of their living arrangement.

For a further discussion of this issue under federal law, see the Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development on Group Homes, Local Land Use, and The Fair Housing Act, attached.

The ordinance also fails to provide any opportunities for people with disabilities to request a change or modification to the ordinance as a reasonable accommodation, as required by state and federal law. *See* May 15, 2001 Letter from California Attorney General, attached.

2) State Law

---

[5] *Olmstead v. L C. by Zimring*. 527 U.S. 581 (U.S. 1999)
[6] *City of Edmonds v. Oxford House*, 514 U.S. 725, 735 (U.S. 1995)

In addition to the California statutes cited above, California's Fair Employment and Housing Act (FEHA) protects from discrimination individuals with disabilities and children who may be more likely than others to live with unrelated individuals in group housing.[7] FEHA provides protections at least as extensive as those recognized under the federal FHAA. *See also* Cal. Gov't Code § 65008.

The history of the ordinance emphasizes that it is aimed at regulating people with disabilities who share living arrangements. And, as explained below in Part E, regardless of the City Council's intent, the proposed ordinance would have a harmful, disproportionate, and discriminatory impact on people with disabilities.

D. The Ordinance Violates State and Federal Constitutional Privacy Rights By Attempting to Redefine "Family"

The ordinance's definitions of "family" and "single housekeeping" unit are overbroad, ambiguous, and intended to limit housing opportunities for people in protected categories. Furthermore, they violate constitutional privacy protections by attempting to define "family" in a narrow and exclusionary manner. *See City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 134 (1980); California Constitution art. I, § 1,; United States Consitution, Equal Protection Clause of the 14th Amendment.

Practically, many people with disabilities choose to live as families in households with other individuals, and the City cannot interfere with that choice by making arbitrary distinctions among families based on the nature and number of the rental agreements in existence or the type of living arrangements that such families make among themselves. For reasons unrelated to the nature of a household unit as a social and psychological family unit, but related instead to physical or mental health needs, individuals with disabilities may require separate leases with a landlord, or may require the keeping of separate finances, separate meal hours, and/or

---

[7] "Working Together to Ensure Housing Opportunities for People with Disabilities and Children." Assembly Committee on Human Services, Information Hearing, Background Briefing Paper, February 18, 2009.

separate performance of maintenance and repairs. Similarly, individuals with severe disabilities may not have physical access to or make personal use of certain kitchen, living and eating areas, even if they have legal access and access is available to care providers, if they are present. Through its overbroad definition, the ordinance appears to exclude from the definition of "single housekeeping unit" any home where a household member physically cannot utilize a particular common area or share in chores or maintenance.

Further, a single lease requirement would adversely impact individuals who need individualized reasonable accommodations, and would jeopardize the residency of all household members if one individual came into conflict with the landlord or posed a problem necessitating lease termination. It would also foreclose the possibility of household formation by individuals who receive supportive housing services, as these arrangements are exempt from licensure but also require individual leases. Supportive housing is considered a residential use of property and is "subject only to those restrictions that apply to other residential dwellings of the same type in the same zone." (CA Gov Code § 65583).

Overall, the proposed definitions and requirements in the ordinance create a high risk of discriminatory application of the proposed ordinance against individuals with disabilities.

The definitions, as written, would also apply to families who rent to two other family members, and to single adults who, due to economic or other reasons, choose to live in housing as a family with shared privileges and responsibilities but still may include a number of people with different subleases or rental arrangements at any given time. Enforcement of the ordinance against individuals with disabilities and not others who have similar arrangements would violate federal and state fair housing laws.

E. The Ordinance Would Have Significant Harmful Consequences, With a Disparate Impact On Individuals With Disabilities

The proposed ordinance is likely to have a disparate and discriminatory impact in violation of federal and state law, both by requiring

additional procedures for all facilities with over seven residents and by threatening unlicensed households of six or fewer.

While state law makes it explicit that certain small facilities can site as of right in all residential zones, it does not supersede federal and state law non-discrimination provisions for larger housing units. Furthermore, specific state siting statutes do not eliminate the obligation of the City to avoid discrimination against other living arrangements simply because they are not licensed or do not fall within a specific statutory exemption. The City cannot enact ordinances that discriminate against housing for people with disabilities, either intentionally or through a discriminatory impact, regardless of the number of residents or their licensing or certification status. Also, the use of an occupancy standard of two people per bedroom violates fair housing law and state law occupancy standards.

The proposed portions of the ordinance defining "family" and "single housekeeping" units discriminate against people with disabilities and violate federal and state fair housing laws, the ADA, and federal and state constitutions, and potentially undercut California landlord-tenant law and other legal protections for people with disabilities. These restrictions disproportionally impact people with disabilities, large families, and people from ethnic communities, all of whom are protected classes under federal and state law and covered by constitutional privacy guarantees.

Arbitrary distinctions on the basis of licensing status not only make no practical sense, but they violate the fair housing laws and constitutional equal protection protections. *See North-Shore Chicago Rehabilitation Inc. v. Village of Skokie*, 827 F.Supp. 497 (1993).

The proposed ordinance would have a significant and harmful impact on individuals with disabilities by significantly limiting their already narrow housing options. The ordinance is at odds with *Olmstead v. L C. by Zimring, 527 U.S. 581 (1999)* in that it limits community housing options for people with disabilities whose needs could be met in the community and directs them instead toward institutionalization. The ways in which this ordinance would limit community housing options for people with disabilities include but are not limited to the following:

1) The Proposed Ordinance Will Disproportionately Affect People with a Disability-related Need to Live in a Shared Living Arrangement

The proposed ordinance will have a disparate impact on people with a disability-related need to live in shared housing. For example, clients of Regional Centers are people with severe disabilities arising from diagnoses of mental retardation, cerebral palsy, autism, seizure disorder and other related conditions that arose before the age of 18. They have been determined to need life-long case management and care coordination. One of the alternatives for institutional care is supported living in one's own apartment. Under that program, usually two or more regional center clients are paired into an apartment with the support of services to assist them to move toward increasingly independent living. The regional center case managers and supportive living services providers assist in the process of matching compatible roommates. Each of the regional center residents generally has his or her own apartment rental agreement. The supported living program is one way California seeks to bring itself into compliance with the integration mandate of the Lanterman Act and The Americans with Disabilities Act as interpreted by *Olmstead*. Removing or limiting this option would violate the rights of affected regional center consumers under Title II of the Americans with Disabilities Act.

In addition to people with developmental disabilities, a significant number of people with other disabilities have a disability-related need for a shared living situation. According to the 2009 California Health Interview Survey, an estimated 1,045,000 Los Angeles County residents needed professional help for self-reported mental/emotional and/or alcohol-drug issues (of these, over half fell below 300% of the federal poverty level). Http://www.chis.ucla.edu. Many of these individuals are able to avoid institutionalization or homelessness, as well as manage the symptoms of their disability, by living in shared housing.

To give some concrete examples, one woman was homeless for eight years; although she participated in a number of "programs" during the time she was homeless, none of them were able to keep her stable and healthy until she entered a shared home, where she has lived for nearly a

decade. At the home, she receives supportive services, is able to take her medication consistently, and is able to reassure her children that she is safe and well. Another woman, who has bipolar disorder and autism, was able to leave the restrictive environment of a board and care institution by entering the same shared home, where she has lived in the community for approximately twenty years. She works for eight hours per week doing filing at a local community college. A third woman, who has a developmental disability, left an abusive living situation nearly two years ago to live in a shared home. She receives supportive services that assist her with paying rent and other household tasks.

For these individuals, their living situation is a critical aspect of the treatment of their disability, and they benefit from the ability to live in low-density residential areas where they assist in the upkeep of their home and take pride in being a part of the neighborhood. All three of these people live in low density (R1 or R2) residential zones and have individual, separate leases. As a result, the proposed ordinance would prohibit their living situation. The ordinance would affect not only these women but many others in similar situations throughout Los Angeles. It would also prohibit other people with disabilities from benefitting from such a living arrangement in the future.

There are many indications that this ordinance will affect a large number of people with disabilities directly, and will limit the ability of many more to have a shared living arrangement in Los Angeles. The Westside Regional Center, which is only one of five Regional Centers serving people with developmental disabilities in the City of Los Angeles,[8] reported to us that 750 of their clients live in a non-institutional setting and estimate that one-third of those are in the City of Los Angeles. H.O.M.E., an organization dedicating to providing housing for people with developmental disabilities, reports that they have well over one hundred tenants in Los Angeles County, many of whom live in the City of Los Angeles and many of whom are required by HUD funding to have separate leases. SHARE! is only one of the organizations receiving Mental Health Services Act funding

[8] The other regional centers whose clients include Los Angeles residents are: North Los Angeles Regional Center, Lanterman Regional Center, South Central Los Angeles Regional Center, and East Los Angeles Regional Center.

from the Los Angeles County Department of Mental Health; they have identified fifteen houses where residents with disabilities share housing with separate leases in low density R1 and R2 neighborhoods. This housing would be illegal under the proposed ordinance, and another 28 shared homes would be regulated as "boarding houses" under the ordinance. The Sober Living Network reports that there are about 200 homes in its network in the City of Los Angeles; about three quarters of the homes are in R1 and R2 low-density residential neighborhoods. A May 24, 2011 letter addressed to Councilmember Alarcon from Victory Outreach identifies 34 homes in the City of Los Angeles that provide housing and require each occupant to have their own lease. In a May 15, 2011 letter to Councilmember Alarcon, the organization New Directions has identified $2 million in lost Mental Health Services Act funds that it would be unable to utilize to provide housing for American veterans with disabilities. These numbers are only a portion of the people who would be directly and indirectly affected by the proposed ordinance.

2) Limited Income Seniors and Persons with Disabilities Will Be Excluded From Living in the City of Los Angeles Under the Proposed Ordinance.

In addition to the people described above, many seniors and people who live on a limited income because of a disability are only able to live in the community through shared housing.[9] The single-lease requirement of the proposed ordinance substantially restricts housing options for these populations.

As explained above in Part D of this letter, many people with disabilities may need individual leases due to physical and mental health needs. In addition, many of the programs that fund shared housing for people with disabilities, such as state Mental Health Service Act funds or federal Department of Housing and Urban Development (HUD) funds,

---

[9] See generally "Priced Out in 2008: The Housing Crisis for People with Disabilities" at http://www.tacinc.org/downloads/Priced%20Out%202008.pdf. According to the report, an SSI recipient would have to pay 103.9% of their income in 2008 just to cover the rent on an efficiency apartment in the Los Angeles/Long Beach area. The income of SSI recipients in California has since been reduced due to state budget cuts, making housing even more unaffordable than at the time the report was written.

require that program beneficiaries be on individual leases even if those individuals live in a household that functions like a family.

In the private rental market, limited-income recipients of SSI/SSP and/or Social Security benefits are generally financially unable to guarantee the entire rent as most renters usually do through the "jointly and severally liable" clause on standard lease agreements. Separate rental agreements are a way to address that barrier, and many landlords accommodate to the needs of seniors and persons with disabilities in shared living arrangements by entering into separate agreements with multiple roommates. The proposed ordinance would limit or prohibit these accommodations.

Moreover, many SSI/SSP recipients need to establish a separate rental agreement in order to preserve full access to their benefit. SSI recipients must be able to demonstrate rent liability to a landlord at fair market value (this includes a landlord who resides in the same dwelling) or able to establish that the recipient is paying at least his/her pro-rata share of household expenses. 20 CFR § 416.1132. If they cannot, the Social Security Administration will assume they are receiving free room and board and will reduce the SSI benefit accordingly. 20 CFR § 416.1130. In any home where more than one SSI recipient resides, there would be more than one rental agreement between the recipient and the homeowner. Where the principal resident of the home is a renter herself, she would be prohibited from renting a room to even one family member who receives SSI because otherwise there would be two rental agreements. This is a stark example of the ordinance's far reach: even a blood-related family would not be considered a "family" under the proposed ordinance based wholly on the number of oral or written rent agreements in place.

3) The proposed ordinance prevents seniors and persons with disabilities from being able to remain living in their own home.

"Empty nesters," widows and widowers, and other persons trying to live on reduced income frequently are able to remain in their own home only by finding roommates. The ordinance is overreaching and violative of privacy rights by the limitation to only one roommate and additionally by

defining the scope of the relationship between the homeowner/renter and a roommate or roommates. For instance, a resident owner may want to define as off limits to a roommate a room or living space beyond the bedroom, and may want to assure the roommate privacy in his own bedroom by agreeing not to enter except under exigent circumstances.

The proposed ordinance prevents elderly or disabled homeowners, renters, or roommates from keeping their food and meal preparation separate from others in their household in order receive the full food stamp benefit they are entitled to. Further, a roommate or the homeowner/primary renter may have dietary needs that require that meals and food preparation be handled separately. The separation would conflict with the proposed definition of a "single housekeeping unit."

The proposed ordinance also interferes with the right of a resident to choose his or her own IHSS attendant and handle meals, laundry, cleaning of own space separately. This arrangement would also conflict with the definition of a "single housekeeping unit."

4) The proposed ordinance impacts a broad range of persons in need of shared housing.

The proposed ordinance has an extremely broad reach. If taken solely at face value, the single-lease requirement literally mandates that every rental tenant in every low-density residential neighborhood in Los Angeles be listed on the lease with the landlord, because wherever a tenant does not appear on the lease, a second rental agreement (whether oral or written) necessarily exists between that tenant and the tenant(s) on the lease.

The proposed ordinance also reaches oral agreements and agreements made without consideration. As a result it would penalize good Samaritan homeowners/primary renter taking in friends or relatives who have fallen on hard times. The proposed ordinance means the City will need to ensure many more shelter beds for individuals and families. The need for shared living also includes current college students, recent college graduates burdened with enormous education debt, people with income in the entry level range, and many others.

The ordinance undermines a critically important source of affordable housing. While one only need look at Craigslist for evidence of the number of Los Angeles residents looking for shared living arrangements, in 2003, about 76,500 occupied units in Los Angeles County housed lodgers (as opposed to "co-owners" or "co-renters"). Http://www.census.gov/prod/2004pubs/h170-03-7.pdf. In 31,100 of these units, the owner was the primary occupant, while in 45,400, the primary occupant was a renter. *Id.* Additionally, about 181,700 homes were occupied by two unrelated individuals, and 141,900 of these were rented units. *Id.* An additional 26,200 homes housed three to eight non-relatives. *Id.* In the city of Los Angeles specifically, approximately 29,000 units housed lodgers. About 69,000 units were occupied by two unrelated individuals, and 12,800 units were occupied by 3 to 8 unrelated individuals. Moreover, the 2000 Census reported that 29,264 residents lived in "other noninstitutional group quarters" (out of a total of 52,151 people in the City of Los Angeles residing in non-institutional group quarters such as college dormitories or military quarters). Http://www.laalmanac.com/LA/la08.htm.

F. The Ordinance Violates the City's Obligations under State Housing Element Law and CEQA and under its Federal Obligations to "Affirmatively Further Fair Housing."

California's housing element law requires that every city's housing element of their general plan must analyze potential and actual constraints upon the development, maintenance and improvement of housing for persons with disabilities and demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for housing for persons with disabilities (Section 65583(a)(4)). Furthermore, as part of the required constraints program, the element must include programs that remove constraints or provide reasonable accommodations for housing designed for persons with disabilities (Section 65583(c)(3)). These proposed provisions will unlawfully interfere with the city's obligations under these statutes, as they impose additional constraints rather than removing constraints for housing for people with disabilities.

Additionally, the proposed ordinance is inconsistent with the City of Los Angeles's General Plan and Housing Element in violation of Cal. Gov't

Code § 65860. For example, the City must "assure that no City procedures or development standards pose obstacles to the production or preservation of housing for people with disabilities." City of Los Angeles Housing Element at p. 2-27. The Housing Element likewise acknowledges that there is demonstrated "need to revise regulations and change practices that impede housing siting, development, and access for persons with disabilities." *Id.* The proposed ordinance is further inconsistent with the statements in the Housing Element that the "City does not include a definition of group home in the Zoning Code, and does not regulate or restrict the siting of group homes. Group homes are allowed by-right in single family zones"; and that the "definition of 'family,' which had previously posed a regulatory impediment due to its effect of discriminating against individuals with disabilities residing together in a congregate or group living arrangement. The definition of family now complies with fair housing laws." *Id.* at p. 2-29.

The City has also failed to make required findings related to the proposed ordinance pursuant to California law, including the California Environmental Quality Act (CEQA), Cal. Gov't Code § 65302.8, and Cal. Gov't Code § 65863.6. The proposed ordinance will have a significant effect on the environment and on the housing needs of the region. Among other necessary findings, the City must study the impact the proposed ordinance will have on the City's housing supply and its ability to meet the housing needs of the region.

The City's determination to issue a Negative Declaration, and its determination that no Environmental Impact Report is required, is contrary to the statutory terms of the California Environmental Quality Act (CEQA) and its related regulations and guidelines. The proposed ordinance will have a significant effect on the environment, including but not limited to:

- the displacement of large numbers of individuals (including many with disabilities) thus necessitating the construction of replacement housing elsewhere;
- creating an increase in homelessness;
- causing substantial adverse effects on human beings, directly and indirectly;

- causing the loss of affordable housing units, resulting in a need to develop additional affordable and supportive housing units in a fewer number of land use zones;
- reducing the availability of sites for affordable and supportive housing, increasing demands for additional housing in higher densities in other parts of the City;
- increasing demands for transportation and/or public services in some parts of the city as a result of forcing supported and shared housing into fewer zones;
- and conflicting with other land use and zoning laws including the Housing Element, the General Plan, the Analysis of Impediments, and the coastal plan/program and ordinances (for housing in the coastal zone).

See, e.g., 14 C.C.R. Sec. 15000 *et seq.,* Guidelines for Implementation of the California Environmental Quality Act, including Appendix G, Environmental Checklist Form, Sections X, XIII, XIV, XVI, and XVIII;, Public Resources Code Sections 21000 *et seq.*, including 21083 and 21087 21083.05 65088.4; 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.05, 21083.3, 21093, 21094, 21095, and 21151; Gov. Code 65088.4

Moreover, federal law requires the City of Los Angeles, like all public entities subject to Community Development Block Grant (CDBG) regulations, to affirmatively further fair housing choice or risk losing federal grant money. 42 U.S.C. § 5304(b)(2). The proposed ordinance is in violation of that obligation, as well as any certification the City has made that it is in compliance, because it increases the barriers to free housing choice for people with disabilities. The Housing Element itself references the City of Los Angeles's Analysis of Impediments to Fair Housing as recommending the removal of barriers to siting treatment programs for people with disabilities at p. 2-28.

There are additional unlawful components of the proposed ordinance, but we wished to highlight some of the major concerns. Please contact us with any questions or for further analysis or legal citations. We urge the Committee not to adopt the ordinance as currently written.

Sincerely,

Dara L. Schur
Director of Litigation

Autumn M. Elliott
Associate Managing Attorney

Lisa Concoff Kronbeck
Senior Advocate

Attachments

Attachments

1. "Working Together to Ensure Housing Opportunities for People with Disabilities and Children." Assembly Committee on Human Services, Information Hearing, Background Briefing Paper, February 18, 2009.

2. Joint Statement of The Department Of Justice and The Department Of Housing And Urban Development on Group Homes, Local Land Use, and The Fair Housing Act

3. Letter from California Attorney General, May 15, 2001

ASSEMBLY COMMITTEE ON HUMAN SERVICES

JIM BEALL, JR., CHAIR

INFORMATIONAL HEARING:

WORKING TOGETHER TO ENSURE HOUSING OPPORTUNITIES FOR PEOPLE WITH DISABILITIES AND CHILDREN

FEBRUARY 18, 2009

PRE-HEARING BACKGROUND BRIEFING PAPER

Table of Contents

WORKING TOGETHER TO ENSURE HOUSING OPPORTUNITIES FOR PEOPLE WITH DISABILITIES AND CHILDREN

WORKING TOGETHER TO ENSURE HOUSING OPPORTUNITIES FOR PEOPLE WITH DISABILITIES AND CHILDREN

I. INTRODUCTION

There are approximately 17,000 residential care and treatment programs in California providing community-based housing for over 260,000 people with disabilities, including seniors with disabilities, and at-risk children. (*See* Appendix A: California Statewide Residential Care Facilities (10/08).)[1] As the need for housing opportunities for these populations grows, so too do the concerns expressed by current residents of neighborhoods. Local governments frequently find themselves confronted with sometimes conflicting interests: the state and local community interests in ensuring the availability of safe and healthy housing to meet the needs of people with disabilities, seniors and at-risk children and supporting their successful integration into the community; the rights of individuals who rely on group living arrangements to the housing and supports they need and choose to be included as members of the community; and concerns of some current residents over the anticipated impact of homes for people with disabilities and children on their neighborhoods.

The intended outcomes of this informational hearing are:

- To increase understanding and awareness of state and federal law, including fair housing laws, that apply to community housing for people with disabilities and children.

- To identify strategies and promising practices for ensuring equal housing opportunity for people with disabilities and at-risk children. This includes approaches to addressing local concerns that are consistent with the governmental and broader societal interests in ensuring the health and safety of communities, removing governmental constraints to the maintenance, improvement and development of housing for people with disabilities, and protecting the civil rights of individuals to choose where and with whom they live and to be part of neighborhoods and communities.

California has been a pioneer in supporting the right of people with disabilities to live and receive services and supports in non-institutional, community-based settings. Examples include the following:

- The Lanterman Petris Short Act (LPS), enacted in 1969, mandates due process safeguards to protect the liberty interests of people with psychiatric disabilities ("mental disorders") in the establishment of conservatorships. Once a conservatorship is established, LPS requires the conservator to place the individual "in the least restrictive placement, as designated by the court."[2] If the conservatee is not to be placed in his or her own home or the home of a relative, first priority must be given to placement in a suitable facility as close as possible to his or her home or the home of a relative. A suitable home is defined

under LPS as the least restrictive alternative placement available and necessary to achieve the purpose of treatment.[3]

- The Lanterman Developmental Disabilities Services Act (Lanterman Act),[4] enacted in 1977, grants to each person in the state with a developmental disability a right to services and supports in the "least restrictive environment." The purpose of the Lanterman Act is: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."[5] Each person with a developmental disability is entitled to treatment, services and supports which, to the maximum extent possible, are provided in natural community settings, and assist them to achieve the most independent, productive and normal lives possible.[6] Under the Lanterman Act, the Department of Developmental Services, through contracts with 21 private non-profit regional centers, provides services to over 230,000 individuals, approximately 33,000 of whom live in homes licensed as community care facilities or intermediate care facilities.[7]

- Proposition 36—the Substance Abuse and Crime Prevention Act of 2000 (SACPA)—was approved by voters and requires probation and drug treatment instead of incarceration for individuals convicted of certain nonviolent drug offenses. The SACPA has led to a dramatic increase in demand for residential treatment programs. The Department of Drug and Alcohol Programs reported an increase of 179 licensed residential programs (a 27% increase) in the first three years of implementation—to a total at that time of 842 licensed residential facilities with a bed capacity of 20,156.[8] There are now approximately 929 facilities with a capacity of 21,751. (Appendix A.)

Resolution of the policy issues surrounding the siting of housing for people with disabilities and children is not easy. Many of the bills introduced in the state Legislature since state and federal fair housing laws were amended to apply to housing for people with disabilities and children have failed because they would create unjustified obstacles to equal housing opportunity and/or would violate fair housing rights. (*See* Appendix B for a list of recent legislation related to siting of residential care facilities.) A useful background document, which includes a discussion of policy issues, was produced in 2002 by the California State Library, California Research Bureau (referred to in this background document as the CRB Report; Appendix C).[9]

II. LAWS AFFECTING SITING OF HOUSING FOR PEOPLE WITH DISABILITIES AND CHILDREN

The discussion that follows addresses some, but not all, of the statutes that affect or are relevant to the siting of group living arrangements for people with disabilities and at-risk children.

A. Laws Prohibiting Discrimination

State and federal law prohibits discrimination in housing against protected classes, including people with disabilities and families with children. These laws prohibit state and local government entities from utilizing land-use or zoning requirements that have the effect of making housing opportunities unavailable to people with disabilities and children. Fair housing

laws apply to licensed and to unlicensed homes, including living arrangements that are exempt from licensing. They apply to homes for six or fewer individuals and to homes for more than six.

Disabilities covered by state and federal anti-discrimination laws.

The definition of a person with a disability is substantially the same under state and federal law. California law defines a person with a disability as someone who has a physical or mental disorder or condition that limits a major life activity; has a record of such impairment; or is regarded as having such impairment.[10]

The definition does not include disabilities resulting from the *current* unlawful use of controlled substances or other drugs. Therefore, current users of illegal controlled substances are not protected by fair housing laws—unless they have a separate disability. However, people with disabilities related to *former* illegal use of controlled substances and who are in drug treatment programs are protected by state and federal anti-discrimination laws, including fair housing laws. In the case of alcoholism, on the other hand, persons with disabilities related either to *former or current* alcohol abuse are protected by state and federal anti-discrimination and fair housing laws. Fair housing laws do not protect persons who have been convicted of the illegal manufacture or distribution of controlled substances or individuals, with or without disabilities, who present a direct threat to the person or property of others.

1. Federal Law

The Fair Housing Amendments Act of 1988

In 1988, Congress added both disability and familial status (primarily households with children) to the categories protected against discrimination in housing under the Fair Housing Act (FHA), in passing the Fair Housing Amendments Act of 1988 (FHAA).[11] Under the FHAA, actions that would constitute discrimination on the basis of race, color religion, sex (gender) or national origin under the FHA are also unlawful when based on disability or familial status.[12]

Three years before enactment of the FHAA, U.S. Supreme Court Justice Thurgood Marshall, in the landmark case, *City of Cleburne v. Cleburne Living Center, Inc.*, recognized that "[t]he right to 'establish a home' has long been cherished as one of the fundamental liberties embraced by the Due Process Clause. . . . For retarded adults,[13] this right means living together in group homes, for as deinstitutionalization has progressed, group homes have become the primary means by which retarded adults can enter life in the community."[14]

Although *Cleburne* specifically concerned a group home for people with mental retardation, Justice Marshall's words apply with equal force to group living arrangements for others with disabilities. He reiterated the lower court's finding that the availability of such homes in communities "'is an essential ingredient of normal living patterns for persons who are mentally retarded, and each factor that makes such group homes harder to establish operates to exclude persons who are mentally retarded from the community.'" Excluding group homes, Marshall

noted, "deprives the retarded of much of what makes for human freedom and fulfillment—the ability to form bonds and take part in the life of a community."[15]

Reflecting Justice Marshall's reasoning in *Cleburne*, land use and zoning was a major focus of the FHAA. The legislative history of the FHAA clarifies that, while the act does not preempt local land use and zoning laws, it was intended to reach a wide array of discriminatory housing practices, including licensing laws and land use and zoning laws affecting congregate living arrangements for people with disabilities that purport to advance the health and safety of communities:

> While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means 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 other unrelated people, these requirements have the effect of discriminating against persons with disabilities.[16]

Thus, the FHAA applies to local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including group housing for individuals with disabilities.[17]

In 1999, the U.S. Department of Justice and the Department of Housing and Urban Development jointly issued a statement on group homes, local land use, and the FHA.[18] The Joint Statement notes that the FHAA makes it unlawful:

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

    - What constitutes a reasonable accommodation is a case-by-case determination.

    - Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local

government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Discrimination under the FHAA can be intentional—that is, based on a conscious decision to treat people differently. Intentional discrimination includes land use decisions by local officials that are motivated by stereotypes, prejudices, unfounded fears or misperceptions about people with disabilities. To show discriminatory intent in such circumstances, an individual need only show that disability was one of the factors considered by the local governmental body in making its decision.

Discrimination under the FHAA can also be unintentional, as when a neutral rule or practice has an unintended discriminatory effect, regardless of motivation—referred to as disparate impact discrimination. A frequently cited example is an ordinance with a restrictive definition of "family," limiting the number of unrelated persons who may reside in a single family residential zone. Even though no particular group is singled out, the ordinance would have a disparate impact on people with disabilities who more often live together in group housing so that they are able to live in the community.

Reasonable Accommodations

Discrimination based on disability includes two bases for discrimination that are not applicable to other protected groups: (1) Refusal to provide a "reasonable accommodation"—i.e., a change in a rule, policy or practice to enable a person with a disability to live in the community; or (2) refusal to permit a tenant, at the tenant's expense, to make a "reasonable modification" to the structure of a unit.

The reasonable accommodation requirement is a means for requesting flexibility in the application of land use and zoning requirements or, on occasion, waiving of certain requirements when necessary to achieve equal housing opportunity.[19] Cities and counties must consider requests for reasonable accommodations and provide accommodations when "reasonable." In considering an accommodation request, the factors considered are:

- Whether the housing that is the subject of the request is to be occupied by people with disabilities; and,

- Whether the requested accommodation is necessary to make the housing in question available to people with disabilities.

If these factors are met, the accommodation may be denied only if it is established that it is not "reasonable" because either:

- The requested accommodation would impose an undue financial or administrative burden on the city or county; or,

- The requested accommodation would result in a fundamental alteration of the local zoning code.

Adoption of Reasonable Accommodations Procedures

Some local jurisdictions have adopted reasonable accommodation procedures applicable to land use regulations and practices. Other jurisdictions require developers and housing providers to go through a conditional use permit or variance process to obtain a waiver of zoning or land use regulations. Housing advocates argue, however, that the conditional use permit or variance processes themselves are often a barrier to housing. For example: Public notice and hearing processes often generate neighborhood opposition that may unduly influence decision-making; the process can stigmatize the prospective residents; and the process is often lengthy, costly and burdensome.

Another problem noted in applying a conditional use permit or variance process to obtain an exception to local land use and zoning requirements is that the standard is more stringent than the standard for obtaining a reasonable accommodation. A reasonable accommodation requires only that the exception is necessary to enable people with disabilities to have equal access to and to use and enjoy housing. A reasonable accommodation may be denied only if the local government can demonstrate that it would result in an undue financial or administrative burden or in a fundamental alteration of the local zoning code. To obtain a variance, on the other hand, the applicant must establish hardship.

Neither state nor federal fair housing laws explicitly require that local governments have written reasonable accommodation procedures. California's housing element law, however, requires that, in addition to the needs analysis for persons with disabilities, the housing element must analyze potential governmental constraints to the development, improvement and maintenance of housing for persons with disabilities.[20] The housing element must also include a program that "shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or, with supportive services for, persons with disabilities."[21] The state Department of Housing and Community Development's review of housing elements for compliance with these provisions includes a review for reasonable accommodation provisions to identify and analyze whether the locality has an established reasonable accommodation procedure.[22]

Responding to these issues, in 2001, then Attorney General, Bill Lockyer, sent a letter to all California cities and counties encouraging them to amend their zoning ordinances to add procedures for handling reasonable accommodation requests. (Attached as Appendix D.) In counseling against the use of conditional use permit and variance procedures instead of a reasonable accommodation process, the Attorney General noted:

- The risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties; and,

- The public process for conditional use permits and variances, with its health, safety and welfare criteria, often invites and encourages community opposition to desperately needed housing for people with disabilities based on stereotypes and unfounded fears (e.g., about the impact on surrounding property values).

For these reasons, the Attorney General urged jurisdictions to amend their zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to fair housing laws.

The Americans with Disabilities Act

Title II of the Americans with Disabilities Act (ADA)[23] and Section 504 of the Rehabilitation Act of 1973 (Section 504)[24] also prohibit discrimination on the basis of disability by local government entities and apply to land-use and zoning ordinances and practices. The ADA and Section 504 likewise require reasonable accommodations in appropriate circumstances.[25]

In addition, in the landmark United States Supreme Court case, *Olmstead v. L.C.,*[26] the Court held that the unnecessary institutionalization of people with disabilities whose needs could be met in more integrated, community-based settings is a form of discrimination based on disability in violation of Title II of the ADA. Responding to the *Olmstead* decision, in 2003 the state released its California Olmstead Plan. The Plan reflected the state's "desire to continue to ensure that persons with disabilities have appropriate access and choice regarding community based services and placement options" and a commitment "to adopting and adhering to policies and practices that will provide a full array of services and programs that make it possible for persons with disabilities to remain in their communities and avoid unnecessary institutionalization." In an Executive Order dated September 24, 2008, Governor Schwarzenegger reaffirmed the state's "commitment to provide services to people with disabilities in the most integrated setting, and to adopt and adhere to policies and practices that make it possible for persons with disabilities to remain in their communities and avoid unnecessary institutionalization." Barriers and obstacles to establishing housing for people with disabilities undermine the state's efforts to comply with the ADA's integration mandate as articulated by the Supreme Court in *Olmstead.*

2. State Law

The California Fair Employment and Housing Act

State law similarly addresses local land use practices that impact housing for people with disabilities and children. In 1992 and 1993 the Legislature amended the California Fair Employment and Housing Act (FEHA)[27] to conform to the federal FHAA.[28] The 1993 legislation, in legislative findings and declarations concerning unlawful housing practices prohibited under FEHA, stated:

> (a) That public and private land use practices, decisions, and authorizations have restricted, in residentially zoned areas, the establishment and operation of group housing, and other uses.
>
> (b) That persons with disabilities and children who are in need of specialized care and included within the definition of familial status are significantly more likely than other persons to live with unrelated persons in group housing.
>
> (c) That this act covers unlawful discriminatory restrictions against group housing for these persons.[29]

FEHA explicitly says that it provides protections against discrimination in housing that are at least as extensive as those under the federal Fair Housing Act and its implementing regulations.[30] Therefore, any violation of the federal FHAA and its implementing regulations would also constitute of violation of California's FEHA.

Welfare & Institutions Code Section 5120

Section 5120 of the Welfare and Institutions Code prohibits cities and counties from discriminating through land-use and zoning laws, ordinances, or rules and regulations between the use of property for inpatient and outpatient psychiatric care and treatment facilities and use of property for hospitals and nursing homes. This means that if an area is zoned for hospitals, nursing homes, convalescent homes or rest homes, or these uses are permitted by conditional use permit, then inpatient and outpatient mental health facilities, including housing for people with psychiatric disabilities, must also be permitted, regardless of the number of residents or patients. Section 5120 was enacted to further the state's policy that care and treatment of individuals with psychiatric disabilities be provided in the local community.

Planning and Zoning Law

California's Planning and Zoning Law[31] prohibits discrimination by local governments in land-use and zoning actions based on specified categories, including familial status, disability, or occupancy by low or middle income persons.[32] It also prohibits local governments from imposing different requirements on single-family or multi-family homes, because of the disability, familial status or income of the intended residents, than those imposed on developments generally.[33]

Local government is also required to have a program that sets forth a five-year schedule of actions to implement its housing element.[34] The program must "[a]ddress and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including . . . housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities."[35]

Constitutional Right to Privacy

The California Constitution contains an express right to privacy, adopted through the initiative process in 1972. The California Supreme Court has held that this constitutional right protects the fundamental right to choose with whom to live.[36] The right to privacy has been held to protect the right of unrelated persons to live together when they function as a household.[37] This can have implications for people with disabilities, who frequently live together in licensed or unlicensed living arrangements of varying size. Thus, for example, local land-use ordinances that define "family" or the number of people who can live together based on whether persons are related by blood, marriage or adoption, but treat differently or limit the number of unrelated people who live together as a household, would violate the constitutional right to privacy.

B. California Licensing Laws

1. Licensing Agencies and Types of Licensed Homes

Most residential programs for people with disabilities are licensed by one of three state agencies: The Department of Social Services (DSS), the Department of Alcohol and Drug Programs (DADP), and the Department of Public Health (DPH). The following list is not exhaustive, but covers the major categories of residential facilities. (*See also,* Appendix A.)

Department of Social Services (DSS)

The Community Care Licensing Division of DSS licenses a range of housing types pursuant to the Community Care Facilities Act (CCF Act)[38] and the Residential Care Facilities for the Elderly Act (RCFE Act).[39] These homes provide 24-hour non-medical care and supervision for adults and children. The CCF Act is intended to meet the "urgent need to establish a coordinated and comprehensive statewide service system of quality community care for mentally ill, developmentally and physically disabled, and children and adults who require care or services" by licensed facilities and as alternatives to state institutionalization.[40] Homes licensed under the RCFE Act are intended to "represent a humane approach to meeting the housing, social and service needs of older persons, and can provide a homelike environment for older persons with a variety of care needs."[41]

- *Group Homes* are homes of any capacity that provide 24-hour nonmedical care and supervision in a structured environment, primarily to children and youth who are in the foster care system, who have developmental and emotional disabilities, or who are partipating in alcohol and drug treatment or other programs. In addition, Group Homes provide social, psychological, and behavioral programs for lower risk juvenile offenders.

- *Small Family Homes* provide 24-hour care in the licensee's family residence for six or fewer children who have emotional, developmental, or physical disabilities, and who require special care and supervision as a result of such disabilities.

- *Adult Residential Facilities* are homes of any capacity that provide 24-hour non-medical care for adults ages 18 through 59, who are unable to provide for their own daily needs. Adults may have physical, developmental, and/or mental disabilities.

- *Residential Care Facilities for the Elderly (RCFE)* provide care, supervision and assistance with activities of daily living, such as bathing and grooming. They may also provide incidental medical services under special care plans. The facilities provide services to persons 60 years of age and over and persons under 60 with compatible needs. RCFEs may also be known as assisted living facilities, retirement homes and board and care homes. The homes can range in size from six beds or fewer to over 100 beds. The residents in these facilities require varying levels of personal care and protective supervision.

- *Social Rehabilitation Facilities* provide 24-hour non-medical care and supervision in a group setting to adults recovering from psychiatric disabilities, who temporarily need assistance, guidance, or counseling.

- *Residential Facilities for the Chronically Ill* are homes with a maximum licensed capacity of 25. Care and supervision is provided to adults who have Acquired Immune Deficiency Syndrome (AIDS) or the Human Immunodeficiency Virus (HIV).

- *Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN).* SB 962 (Chesbro 2005) created a pilot program authorizing the Community Care Licensing Division to license and monitor what are often referred to as SB 962 Homes to provide 24-hour services for up to five adults with developmental disabilities, who are moving to the community from Agnews Developmental Center, and who have special health care and intensive support needs.

Department of Alcohol and Drug Programs (DADP)

- Alcohol *or Drug Abuse Recovery or Treatment Facilities* provide non-medical recovery or treatment services in a supportive environment for adults who are addicted to alcohol or drugs.

DADP does not license *Sober Living Homes*, which are unlicensed cooperative living arrangements (sometimes referred to as a sober living environment, transitional housing, or alcohol and drug free housing) for persons recovering from alcohol and/or other drug problems. Because the residents of such homes are people with disabilities under state and federal anti-discrimination statutes, the same fair housing protections apply as to DADP-licensed facilities.

A bill introduced in the 2007-08 legislative session (SB 992 (Wiggins)) would have created a licensing category that would apply to approximately 900 sober living homes, referred to in the bill as "adult recovery maintenance facilities," with oversight by DADP. SB 992 was vetoed on September 30, 2008.[42]

Department of Public Health (DPH)

The Department of Public Health's Licensing and Certification Program licenses a range of residential health facilities under the Health & Safety Code.[43] Residential health facilities include the following:

- *Congregate Living Health Facilities*, provide home-like settings, usually for no more than 12 residents who need the availability of skilled nursing care on an intermittent, recurring, extended or continuous basis. They provide services for people with physical disabilities, who may be ventilator dependent, persons with a diagnosis of a terminal or life-threatening illness, or people who are "catastrophically and severely disabled."

- *Intermediate Care Facilities/Developmentally Disabled* are facilities for 16 or more individuals that provide 24-hour personal care, habilitation, developmental, and

supportive health services to persons with developmental disabilities whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

- *Intermediate Care Facilities/Developmentally Disabled-Habilitative* have a capacity of 4 to 15 beds and provide 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer persons with developmental disabilities who have intermittent recurring needs for nursing services, but have been certified by a medical doctor as not requiring availability of continuous skilled nursing care.

- *Intermediate Care Facilities/Developmentally Disabled-Nursing* have a capacity of 4 to 15 beds and provide 24-hour personal care, developmental services, and nursing supervision for persons with developmental disabilities who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. They serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

- *Nursing Facilities* are licensed health facilities that are certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare Program or as a nursing facility in the federal Medicaid Program, or as both.

- *Skilled Nursing Facilities* provide skilled nursing care and supportive care to persons whose primary need is for availability of skilled nursing care on an extended basis.

2. Local Regulation of Housing for People with Disabilities and Children

a. Homes licensed for six or fewer residents

State licensing provisions pertaining to residential community care facilities, residential care facilities for the elderly, residential health facilities, and drug and alcohol treatment programs all provide that licensed homes for six or fewer individuals "shall be considered a residential use of property" and the residents and operators "shall be considered a family for purposes of any law or zoning ordinance which relates to the residential use of property."[44] The provisions further provide that such housing may not be treated as a business or as differing in any other way from a family dwelling. Restrictive covenants prohibiting business or commercial use or limiting neighborhoods to "residential" use may not be applied to exclude homes for people with disabilities for six or fewer, based not only on the language of the facility licensing statutes but also on FEHA, which prohibits discrimination that restricts housing for people with disabilities.[45]

b. Homes Licensed for Seven or More Residents

California facility licensing statutes explicitly protect facilities for six or fewer residents from local land use and zoning regulation that treat such housing differently than single-family homes. This begs the question of the extent to which larger homes may be regulated and restricted. Local governments often impose conditions or restrictions on housing for more than six

individuals, such as requiring conditional use permits or excluding larger homes from designated residential zones.

The law is less clear on the extent to which these larger homes may be subject to local land use regulation. The distinction between housing for six or fewer and housing for more than six residents is based on state licensing statutes; no such distinction is made in state and federal fair housing statutes. Thus, for example, the California cases invalidating restrictive covenants as applied to licensed housing cite to licensing statutes that say homes for six or fewer must be treated like single-family residences (see note 45); but, the holdings themselves have been based on fair housing laws that broadly prohibit discrimination against people with disabilities. Federal and state case law does not adequately resolve these questions.[46]

While state law does confer greater discretion on local governments to impose requirements on homes for more than six residents, fair housing law prohibits requirements that apply exclusively to housing for protected classes—i.e., people with disabilities and children. Large homes for people with disabilities or children could not, for example, be excluded entirely from zones that allow similar uses or similarly sized residences. Moreover, as noted above, any land use rules, policies, practices or procedures must be modified or waived as a reasonable accommodation where necessary to provide people with disabilities equal housing opportunity.

Neither licensing provisions nor fair housing laws forbid local governments from imposing restrictions or conditions, even on homes for six or fewer residents, as long as they are identical to those applied to other family dwellings of the same type in the same zone. Likewise, the provisions do not forbid application of ordinances dealing with health and safety, building standards, environmental standards, or other matter within the local public entity's jurisdiction—again, if the ordinance does not distinguish residents of licensed homes from persons who reside in other family dwellings in the same zone. The CCF Act was amended in 2006 to clarify that local governments may fully enforce local ordinances against housing licensed for six or fewer, including fines and other penalties, as long as the ordinances do not treat such housing differently than other single-family homes.[47]

3. "Overconcentration" Provisions

Many licensed homes are subject to so-called "overconcentration" restrictions. The CCF Act describes "the policy of the state to prevent overconcentrations of residential care facilities which impair the integrity of residential neighborhoods."[48] The section says that DSS "shall deny an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration," which is defined as a separation of less than 300 feet.[49] Certain health facilities (e.g., intermediate care facilities), licensed by DPH, are also subject to a 300-foot spacing requirement.[50] Congregate living health facilities, licensed by DPH, are subject to a 1,000-foot spacing requirement.[51] Separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment programs, foster family homes, or transitional shelter care facilities.

It is noteworthy that California's spacing requirements were initially enacted well before 1988, when disability and familial status were added as protected classes to the federal Fair Housing Act and, thus, prior to conforming amendments made to the state's Fair Employment and Housing Act. Advocates point out that the concept of overconcentration and the characterization of housing for people with disabilities as "impair[ing] the integrity of residential neighborhoods" are antithetical to the goal of equal housing opportunity for people with disabilities who need the support provided by licensed residential care homes.

The same language of state and federal fair housing provisions that prohibit discrimination based on disability and familial status also prohibit discrimination based on other protected categories (e.g., race, religion, gender, national origin). Arguably, therefore, prohibitions on clustering or overconcentrations of homes for people with disabilities or children are no more valid than they would be with respect to households of African Americans, Jews, or other protected groups.

California's separation requirements have not been challenged under the federal FHAA. However, such requirements have, almost without exception, been struck down in litigation brought in other states.[52] Overconcentration provisions have been found to thwart efforts to treat people with disabilities as equal members of the community and to have a degrading effect on such persons' self esteem and self worth.[53] The conclusion of one federal court typifies the reasoning of these cases: "Simply put, the complaint of 'no more in my back yard' is just as unacceptable an excuse for discrimination against the handicapped as the discriminatory cry of 'not in my back yard.'"[54]

The overconcentration statutes authorize exceptions to spacing requirements based on special local needs and conditions.[55] This would include exceptions authorized as reasonable accommodations when necessary to afford equal housing opportunities to people with disabilities. Such accommodations could not lawfully be denied due to concerns of neighbors based on stereotypes about people with disabilities, and would have to be granted if they are reasonable and not burdensome to the municipality.

III. PUBLIC POLICY ISSUES

As discussed in the Introduction, the California Legislature and Congress have, in the past several decades, recognized that people with disabilities and children have a right to live as a part of, rather than apart from neighborhoods and communities. By necessity, this has led to an expanded need for accessible and affordable community-based housing and resources. And while community inclusion and integration have been widely accepted, largely without incident, there has been resistance, particularly in communities that believe that they have received more than their "fair share" of housing and services.[56]

The 2002 CRB Report (*see* Note 9) characterized the primary policy issues concerning residential care facilities as involving "a conflict between state (and federal) requirements to protect individuals from discrimination and local governments' right and responsibility to exercise control over its communities."[57]

In summarizing its policies and guiding principles with respect to housing for people with disabilities and others, the League of California Cities recently stated the following:

> The League supports permitting cities to exercise review and land use regulation of group home facilities and residential care facilities in residential neighborhoods including the application of zoning, building and safety standards. State and county licensing agencies should be required to confer with the city's planning agency in determining whether to grant a license to a community care facility. The League recognizes that better review and regulation of residential care facilities will protect both the community surrounding a facility and the residents within a facility from a poorly managed facility or the absence of state oversight.
>
> The League supports state legislation to require a minimum distance of 300 feet between all new and existing residential care facilities.[58]

With respect to housing for people with disabilities and for children, aspects of these policies and principles, including minimum distance requirements, are not reconcilable with state and federal fair housing law. As noted in the legislative history of the FHAA, while local government does have the authority to apply zoning, building and safety standards to housing for people with disabilities, to the extent that these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities and children. (*See* Note 16.) Improved communication between state and local licensing agencies and city planning agencies would be beneficial to assist local planning efforts. But, if the purpose is to determine "whether" to grant a license, then there would be clear interference with prospective residents' equal housing opportunity.

The CRB Report concludes that "there are no easy resolutions to the complicated ongoing issues around siting residential care facilities in the community. Some goals conflict, like local control and federal/state protections. In addition, some 'quality' issues are hard to legislate. . . . Resolutions that address and balance the needs of neighbors, the needs of residents needing services, and the needs of local government are difficult to identify and achieve."[59]

Not all approaches to addressing siting issues involve proposals to simply create greater obstacles to, or restrict, the development of group housing—such as spacing and density limits, neighbor notification requirements, and public hearing processes. Following are examples of efforts to at least begin addressing these complex issues—from California and at the national level—that offer alternative approaches, involving, for example, better information sharing, collaboration, quality monitoring, and community planning.

SCR 27 Care Facilities Task Force

Clustering, or "overconcentration," of housing for people with disabilities is one of the primary issues of contention among some local jurisdictions, community members, housing providers and advocates. One effort to analyze and make recommendations on this issue was the Care Facilities Task Force, established in 1997 pursuant to Senate Resolution 27.[60] The 16-member task force was comprised of local government representatives, service providers, and housing

advocates. The task force issued a report in January 1998.[61] The task force report is discussed in the CRB Report, which notes that:

> While members agreed on the need for reform, they disagreed on what direction such reform should take.
>
> Local officials supported legislative action that would allow greater local involvement (such as increasing the required distance between facilities, placing moratoriums on new facilities, and other measures that would limit facility expansions and prevent new facilities in communities that already had several facilities). In contrast, service providers who had experienced neighborhood resistance and proponents of fair housing opposed such action and stressed the importance of retaining existing state and federal fair housing protections and equal opportunities for facility residents. Fair housing advocates further maintained that existing laws allow persons with disabilities the right to choose where to live regardless of the number of persons with disabilities in a particular community, and that spacing and density restrictions violate these laws.[62]

As the CRB Report further notes, "[t]he task force concluded that there were no quick solutions to the complicated issues and concerns. Instead, they presented long-range recommendations that would promote quality residential care and a wider dispersal of residential care facilities."[63] The recommendations included pilot programs to try out new approaches and document their success and failure, and implementation of statewide mechanisms/activities to enhance quality of services while preserving neighborhoods.

The SCR 27 Report recommendations resulted in the introduction of a number of bills.[64] These met with limited success, but there were reportedly some favorable results, including a pilot program to encourage housing providers to work with neighborhood residents to resolve issues.[65]

Local Officials Guide

In the years following enactment of the 1988 amendments to the federal Fair Housing Act (FHA), the National League of Cities (NLC) led an effort to again amend the act to clarify how the FHA and local zoning authority interact with respect to residential care homes. In response, more than 50 civil rights, disability, fair housing and human services advocacy organizations came together to form the Coalition to Preserve the Fair Housing Act (Coalition) to oppose legislative efforts to water down the FHA's protections. This led to discussions between the NLC and the Coalition to discuss these issues. The joint statement from the U.S. Justice Department and the U.S. Department of Housing and Urban Development on group homes, local land use, and the Fair Housing Act (*see* Note 18) was one result of these discussions.

The NLC and the Coalition also jointly produced a guidebook, *Local Officials Guide*, on the siting of homes for people with disabilities and children, which, it was anticipated, would make legislation unnecessary.[66] The *Local Officials Guide* discusses the shared and divergent views of the NLC and the Coalition on a number of policy issues concerning the siting of housing for people with disabilities and children. There were disagreements related to such issues as

mandatory public notification and hearings versus the use of reasonable accommodation procedures, the appropriateness of "good neighbor" policy requirements, the application of spacing and density requirements, and the circumstances under which public safety concerns allow local regulating of residential facilities.

The NLC and the Coalition did identify numerous areas of agreement as well. These included, for example, the following:[67]

- Homes that are entitled to locate "by right" are not required to provide advance notification or be subjected to public hearing requirements.

- Notification requirements that are applied only to group homes violate the FHA.

- Local government officials and advocates should work together to educate existing neighbors and other stakeholders about the housing needs of all protected classes under the FHA, and the extent to which group homes fill a portion of this need.

- State and local governments should support ombudsmen, conciliation and alternative dispute resolution processes and make them available to all community stakeholders.

- Local governments have an obligation to promote equal housing choice for people with disabilities and at-risk children and should use tools to encourage the integration of residential facilities throughout the entire community, including the development of financial incentives.

- Only when other tools prove to be ineffective, and in unusual circumstances when homes are so densely clustered as to re-create an institutional setting (as occurred in *Familystyle, Inc. v. City of St. Paul* (*see* Note 52)), should courts allow a locality to enforce reasonable spacing restrictions designed to promote greater integration of homes throughout the greater community.

- Public safety is a critical concern, shared by public officials, neighbors, providers and residents of group homes. And communities have a duty and the responsibility to ensure the safety of all its members.

- Even-handed enforcement of rules designed to provide for community tranquility are not discriminatory under the FHA.

The *Local Officials Guide* emphasizes the importance of state and local long-range comprehensive plans, developed in consultation with community stakeholders, as important tools for balancing the needs of individuals with disabilities and others who require group housing and the needs of those who live in neighborhoods where such homes exist or could exist. Such plans are not specific to particular parcels but make long-range recommendations for the development of a general area. "A comprehensive plan should identify the needs of a particular community and display a commitment to meeting those needs. The plan should also seek the integration of group homes into neighborhoods throughout the community."[68]

The *Local Officials Guide* certainly does not resolve the important policy issues and differences related to the siting of housing for people with disabilities and children. But it exemplifies—as an alternative to legislative proposals that would weaken fair housing rights and impair equal housing choice—a constructive first step in identifying ways that local officials, neighbors, providers, and advocates can work collaboratively to ensure that the vital housing needs of people with disabilities and at-risk children are met while also meeting overall community needs.

Building Better Communities Network

The Building Better Communities Network website (http://www.bettercommunities.org) is an information clearinghouse and communication forum dedicated to building inclusive communities and to successfully siting affordable housing and community services. As described on the website:

> The Building Better Communities Network grew from the four year undertaking by the Campaign for New Community to build inclusive community. The Network was founded on the belief that welcoming communities are better communities, and that there are broad social benefits of diverse, collaborating communities that transcend the benefits to specific classes or individuals. The Network supports the expansion of housing and human services for all people and advocates for inclusive communities where civil rights are protected, diversity is celebrated, neighbors and community institutions collaborate for mutual support, and all members of the community are involved in planning for matters which affect their quality of life. We recognize the potential for conflicts and pledge ourselves to create the opportunity for a discussion in which all parties can be heard.
>
> Unlike many other organizations focused on creating housing or providing legal or financial assistance, the Network focuses exclusively on deepening the bonds of community and helping neighbors and community institutions collaborate and respond to the housing and service needs of people who are poor, homeless or who have disabilities.

The above initiatives are not offered as ultimate solutions but, rather, as a starting point for discussions and as potential models for ways of approaching complex public policy issues. People with disabilities and others who need supportive housing options will continue to be an ever-increasing presence in neighborhoods and communities. Developing approaches that start with the goal of YIMBY (Yes-In-My-Backyard) rather than NIMBY (Not-In-My-Backyard) will ultimately be to the benefit of all members of the community.

NOTES

[1] The focus of this informational hearing is the siting of licensed and unlicensed group living arrangements for individuals with disabilities and children—that is, individuals who are protected under state and federal fair housing laws. Not addressed are issues related to populations not covered by fair housing laws, such as housing for parolees.
[2] Welfare & Institutions Code § 5358(a).
[3] Welfare & Institutions Code § 5358(c)(1).
[4] Welfare & Institutions Code § 4500 *et seq.*
[5] *Association of Retarded Citizens – California v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.
[6] Welfare & Institutions Code § 4502(a), (b).
[7] Source: http://www.dds.cahwnet.gov/FactsStats/Home.cfm. Most of the remaining individuals live with parents, guardians or family members or in their own homes. Approximately 3,800 people with developmental disabilities live in state institutions (developmental centers) or nursing facilities.
[8] California Department of Alcohol and Drug Programs, *Substance Abuse and Crime Prevention Act of 2000: Fourth Annual Report to the Legislature* (October 2005), p. 17.
[9] Foster, Lisa K., *Residential Care Facilities in the Neighborhood: Federal, State and Local Requirements* (California Research Bureau, California State Library, December 2002) (CRB Report); available at http://www.library.ca.gov/crb/02/18/02-018.pdf.
[10] Government Code § 12926(i), (k).
[11] 42 U.S.C. § 3601 *et seq.*
[12] Discrimination includes a refusal to rent or negotiate for "or otherwise make unavailable or deny" a dwelling unit; discrimination in the "terms, conditions, or privileges of a sale or rental" of a dwelling unit or in the "provision of services or facilities in connection therewith"; making or publishing any discriminatory statement in regard to a dwelling unit; or misrepresenting the availability of a dwelling.
[13] Terminology used to refer to people with disabilities has evolved since the *Cleburne* case. Terms such as "the retarded" or "retarded adults" have given way to so-called "people first" language, in recognition that people are not conditions or diseases. A child is not autistic but, rather, *has* autism or is a child *with* autism. A person is not retarded but, rather, has mental retardation or, more acceptably, has a cognitive disability or an intellectual disability. In most contexts, the term "handicap," which more appropriately refers to a physical or attitudinal constraint imposed upon a person, has given way to "disability." The latter change is reflected in the language of the federal Fair Housing Amendments Act of 1988 (which uses handicap) and the later-enacted Americans with Disabilities Act of 1990 (which uses disability).
[14] (1985) 473 U.S. 432, 461 (Marshall, J, concurring in part, dissenting in part).
[15] *Id.*
[16] H.R. Rep. No. 100-711, 100th Cong., 2d Sess. 24, *reprinted in* 1988 U.S. Code Cong. & Admin.News at 2173, 2185.
[17] Group homes for children are similarly covered by the FHAA under the provisions that prohibit discrimination in housing based on "familial status."

[18] *Joint Statement of the Department of Justice and the Department of Housing and Urban Development – Group Homes, Local Land Use, and the Fair Housing Act.* Available at http://www.usdoj.gov/crt/housing/final8_1.htm.

[19] Examples of reasonable accommodations in land use and zoning are: Increasing the number of residents in housing for people with disabilities for economic or therapeutic reasons; extending the footprint of housing to make the interior accessible to wheelchairs; relief from side yard requirements to install ramps; reduction in parking requirements based on the number of residents who drive or have cars; waiver of concentration or dispersal rules. *Fair Housing Reasonable Accommodation: A Guide to Assist Developers and Providers of Housing for People with Disabilities in California*, Mental Health Advocacy Services, Inc. (February 2005).

[20] Government Code § 65583(a)(5).

[21] Government Code § 65583(c)(3).

[22] Department of Housing and Community Development web site at http://www.hcd.ca.gov/hpd/hrc/plan/he/sb520_hpd.pdf.

[23] 42 U.S.C. §§ 12131-12165.

[24] 29 U.S.C. § 794.

[25] California Government Code § 11135 provides protections against discrimination by the state or any entity receiving state funds that are at least as broad as Title II of the ADA. Government Code § 11135(b). Therefore, discrimination based on disability in land use and zoning activities would also violate state law.

[26] (1999) 527 U.S. 581.

[27] Government Code § 12900 *et seq.*

[28] AB 1234 (Calderon 1992), Chapter 182, Statutes of 1992; SB 2244 (Polanco 1993), Chapter 1277, Statutes of 1993.

[29] Chapter 1277, Statutes of 1993, Sec. 18.

[30] Government Code § 12955.6. FEHA is broader than the Fair Housing Act, for example, in also prohibiting discrimination in housing based on marital status, ancestry, sexual orientation and source of income. And while federal case law clarifies that discrimination under the Fair Housing Act may be established solely on the basis of discriminatory effect, this issue is explicitly addressed in California's statute. Government Code § 12955.8(b).

[31] Government Code § 65000 *et seq.*

[32] Government Code § 65008(a) and (b).

[33] Government Code § 65008(d)(2).

[34] Government Code § 65583(c).

[35] Government Code § 65583(c)(3).

[36] *Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 459-60.

[37] *Adamson v. City of Santa Barbara* (1980) 27 Cal.3d 123.

[38] Health & Safety Code § 1500 *et seq.*

[39] Health & Safety Code § 1569 *et seq.*

[40] Health & Safety Code § 1501(a).

[41] Health & Safety Code § 1569.1(g).

[42] SB 992 was substantially similar to AB 36 (Strickland 2006) and AB 926 (Chu)

[43] Health & Safety Code § 1250 *et seq.*

[44] Health & Safety Code § 1566.3 (community care facilities); *see also, e.g.*, Health & Safety Code § 1267.8 (residential health care facilities); Health & Safety Code § 1568.0831; and Health & Safety Code § 11834.23 (alcohol and drug treatment facilities).
[45] *E.g., Hall v. Butte Home Health* (1997) 60 Cal. App. 4th 308; *Broadmoor San Clemente Homeowners Assoc. v. Nelson* (1994) 25 Cal.App.4th 1.
[46] Federal courts in other jurisdictions have held, for example, that requirements for conditional use permits for larger licensed homes violate the FHAA. *E.g., ARC of New Jersey v. New Jersey* (D.N.J. 1996) 950 F.Supp. 637. The federal Ninth Circuit Court of Appeals (which includes California), on the other hand, held that a conditional use permit process, in itself, did not violate the FHAA in the case of a home that was too large for its lot and did not conform in size and bulk with other structures in the single family zone. *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300. But the Ninth Circuit also held that a requirement that a special-use permit issued to a homeless shelter be subject to annual review violated the federal FHAA. *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941. The potential conditions that might change, rendering reasonable accommodations unreasonable at a later date, the Court said, could be handled under the ordinary law of nuisance and the city's power to declare and abate nuisances. *Id.* at 945.
[47] Health & Safety Code § 1566.3, SB 2184 (Bogh), Chapter 746, Statutes of 2006.
[48] Health & Safety Code § 1520.5(a).
[49] Health & Safety Code § 1520(a), (b).
[50] Health & Safety Code § 1267.9.
[51] Health & Safety Code § 1267.9(b)(2).
[52] *E.g., Children's Alliance v. City of Bellevue* (W.D. Wash. 1997) 950 F.Supp. 1491 (striking down a 1,000-foot spacing ordinance); *Larkin v. Michigan Protection & Advocacy Service* (6th Cir. 1996) 89 F.3d 285 (striking down a 1,500 spacing statute). The one exception—*Familystyle v. City of St. Paul* (8th Cir. 1991) 923 F.2d 91—in which a 1,320-foot spacing requirement was upheld, has explicitly been rejected outside of the Eighth Circuit. This was one of the earliest cases decided under the FHAA and it applied an incorrect, "rational basis," standard to the FHAA. *See, e.g., Larkin.* The facts were also quite extreme—involving a proposal to establish 21 group homes in a one-and-a-half block area.
[53] *E.g., Horizon House Developmental Services, Inc. v. Township of Upper Southampton* (E.D. Pa 1992) 804 F.Supp. 683, 691, *aff'd* 995 F.2d 217 (3d Cir. 1993).
[54] *Oxford House-C v. City of St. Louis* (E.D. Mo 1994) 843 F.Supp. 1556.
[55] *E.g.* Health & Safety Code § 1520.5(b).
[56] It must be noted, though, that for some neighborhoods, any housing for people with disabilities is too much. "Not in my back yard" often means "none in my back yard."
[57] CRB Report, p. 4.
[58] League of California Cities, *Summary of Existing Policy and Guiding Principles: Housing, Community and Economic Development.* (March 2008), p. 3.
[59] CRB Report, p. 5.
[60] SCR 27 (Kopp), Chapter 96, Statutes of 1997.
[61] California Senate Health and Human Services Committee, *Senate Concurrent Resolution 27 Resolution Report to the Legislature and the Governor* (January 31, 1998) (SCR 27 Report), available from Senate Publications, 1020 N St., Rm. B-53, Sacramento.
[62] CRB Report, p. 25.

[63] *Id.*
[64] *See* Appendix B; and CRB Report, Appendix C.
[65] AB 323 (Baca), Chapter 561, Statutes of 1997; *see* CRB Report, pp. 25-26.
[66] Whitman, Cameron & Parnas, Susan, *Local Officials Guide: Fair Housing: The Siting of Group Homes for the Disabled and Children* (National League of Cities 1999) (*Local Officials Guide*).
[67] *Local Officials Guide*, pp. 12, 15, 19.
[68] *Id.* at 23.

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.[1] The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

Questions and Answers

on the Fair Housing Act and Zoning

Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.[2] Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

Q. Who are persons with disabilities within the meaning of the Fair Housing Act?

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

Q. What is a reasonable accommodation under the Fair Housing Act?

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback

example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

Q. What is the procedure for requesting a reasonable accommodation?

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be

concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and unrebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

Q. What is the status of group living arrangements for children under the Fair Housing Act?

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them

group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

Q. How are zoning and land use matters handled by HUD and the Department of Justice?

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

---

1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.

2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

To: All California Mayors:

Re: Adoption of A Reasonable Accommodation Procedure

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).) [1] Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community. [2]

---

[1] Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

[2] A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at < http://www.bazelon.org/cpfha/cpfha.html> [as of February 27, 2001].)

It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.[3] The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.[4] Further, most of this increase will likely be concentrated in California's nine largest counties.[5]

- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

---

[3]See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <http://www.calsilc.org/housing.html> [as of February 27, 2001].

[4]The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

[5]These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

discriminatory procedures such as these is not of itself a violation of the FHA.[6] Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.[7] This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.[8]

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

---

[6] See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

[7] See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

[8] Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.[9] Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step[10] and from various nonprofit groups which provide services to people with disabilities, among others.[11] It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,

BILL LOCKYER
Attorney General

---

[9]Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

[10] Within California, these include the cities of Long Beach and San Jose.

[11] Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.

#12

NLSLA

Neighborhood Legal Services
of Los Angeles County

May 31, 2011

Executive Director's Office
(818) 834-7590
ndudovitz@nls-la.org

Hon. Richard Alarcon
Los Angeles City Hall, Room 470
200 North Spring Street
Los Angeles, CA 90012

Re: Council File 11-0262 – Proposed ordinance amending various LAMC sections and adding definitions of *Community Care Facility, licensed; Residential Care Facility for the Elderly, licensed;* and *Alcoholism or Drug Abuse Recovery or Treatment Facility, licensed.*

Dear Councilmember Alarcon:

Neighborhood Legal Services of Los Angeles County (NLSLA) writes in response to your request to review the proposed Community Care Facilities Ordinance (Los Angeles City Council File 11-0262). We find the proposed ordinance very problematic and we agree with the analysis provided by Public Counsel and Disability Resource Center.

In addition to their comments, NLSLA would also add three additional points with regard to the proposed ordinance.

I. *The proposed ordinance could increase the risk of homelessness for families affected by state budget cuts taking effect on July 1st.*

The proposed ordinance would adversely affect families currently receiving public benefits, such as CalWORKs and Medi-Cal. On July 1st, CalWORKs will cut 8% in cash aid. Further, up to 15% will be cut for "Child Only" families, with more cuts over an 84-month period. Medi-Cal will require increased co-pays and coverage for Adult Day Health and other programs. We support Public Counsel's analysis that the proposed amendment will increase the risk of homelessness for people with shared living arrangements. Without a grandfathering clause to ease implementation of the ordinance, and given the severe shortage of affordable housing in Los Angeles, low income residents could be forced into a position of homelessness. It may be somewhat reckless to fail to do a study regarding how many households would be affected by the proposed ordinance. The residents actually affected may be greater than originally contemplated

by the Council. Given the economic climate, shortage of affordable housing, and upcoming decrease in public assistance, the ordinance may detrimentally affect Los Angeles residents.

II. *The proposed ordinance is overly broad and could have unintended effects on Los Angeles families.*

The proposed changes are troubling because they are overly restrictive, potentially excluding many families that would not in any way disrupt the character of single-family zoning. For instance, as part of the ongoing economic crisis, many young people have lost or been unable to find full-time employment, moving back in with their parents as a result. Many have nowhere else to turn. But the proposed ordinance's restrictive re-definitions of "family" and "single housekeeping unit" under LAMC § 12.03 could be read to prohibit parents from accepting more than one adult child. The proposed amendment to the definition of "family" requires that a family live together "as a single housekeeping unit." Meanwhile, the definition of "single housekeeping unit" excludes arrangements in which a resident owner rents part of the household under more than one lease, "either written or oral." Consequently, families in which two adult children have returned under separate oral lease agreements would find to their bewilderment that Los Angeles no longer considers them to be a "family."

Additionally, the proposed ordinance would change the definition of "boarding or rooming house" in LAMC § 12.03 to include "a one-family dwelling where lodging is provided to individuals . . . under two or more separate agreements or leases, either written or oral . . ." Again, this could be read to include families in which multiple grown children have returned to stay. Under proposed LAMC § 12.22(A)(30), one family-dwellings located on lots zoned RD "shall not be used as a boarding or rooming house." Thus, many families might find their homes suddenly declared boarding houses, contrary to applicable zoning requirements. Particularly in light of today's harsh economic climate, which has fallen disproportionately on the shoulders of young people, the proposed ordinance could have unintended and overly-broad effects on Los Angeles families.

III. *Enforcement of the proposed ordinance would be difficult to administer.*

As drafted, the proposed ordinance would be problematic in its enforcement. Under Section 1 of the proposed ordinance, a boarding or rooming house would be satisfied by "monetary or non-monetary consideration under two or more separate agreements or leases, either written or oral." Consideration is a very broad concept that could be fulfilled in many ways. For example, it can be an actual monetary payment or the provision of a service, such as mowing the lawn, taking out the trash weekly, or washing dishes. To find whether consideration has been established, the Los Angeles Housing Department may have to conduct a detailed investigation of each alleged violation. Consideration is further complicated under the proposed ordinance as it may also be established with an oral agreement, which would again require very detailed, potentially costly, and time consuming investigations. In addition, complicit tenants and landlords could easily conceal the presence of a boarding home in an area zoned for single family residences. Detection of boarding houses would therefore be difficult. Under the proposed definition, the

only requirement to establish a boarding house is that there are separate agreements renting out a unit. In effect, Los Angeles housing inspectors would have no means of knowing the presence of a boarding house absent physical alterations to a unit.

Investigation would most likely be adverse, as complaints will not arise from inside the unit. Housing complaints or SCEP inspections usually provide a thirty-day notice prior to the inspection date. It is unclear whether a thirty-day notice will be required for an inspection related to boarding or rooming housing. The Fourth Amendment can be applied to administrative inspections conducted by housing inspectors. *Camera v. Municipal Court*, 387 U.S. 523 (1967). Although administrative hearings and procedures might provide for an inspection, a warrant is required to enter the private property of non consenting residents. *Conner v. City of Santa Ana*, 897 F.2d 1487 (9th Cir. 1990). In sum, inspection of units suspected as boarding homes would be problematic in situations where the resident does not consent, especially if the boarding home is located in an RD Zone and jeopardizes a tenant's tenancy. Other real health and safety housing code violations will consequently not be reported out of fear of eviction creating a negative enforcement problem.

Please feel free to contact me if I can be of further assistance in this matter.

Best Regards,

Neal S. Dudovitz
Executive Director

Fred Nakamura /by DDO
Fred Nakamura
Supervising Attorney

12

Stating a discriminatory preference in a housing post is illegal - please flag discriminatory posts as prohibited

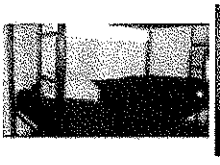
please flag with care:
miscategorized
prohibited
spam/overpost
best of craigslist

Avoid scams and fraud by dealing locally! Beware any arrangement involving Western Union, Moneygram, wire transfer, or a landlord/owner who is out of the country or cannot meet you in person. *More info*

$500 LIVE WITH ACTORS AND MUSICIANS-CARPOOL TO AUDITIONS-NO DEPOSIT (LA County areas)

Date: 2009-10-05, 3:22PM PDT
Reply to: socalhousing@gmail.com [Errors when replying to ads?]

Interested? Got a question? Contact me here

Bed in shared room

$29 per night

Includes:
- Continental breakfast
- Smoking OK

Description

Share in a great 7 BEDROOM 4 bathroom house with an all inclusive package. Free Cable, Free WiFi and computer, Full Laundry and Kitchen, Live in house keeper (that means no chores for YOU)Fresh coffee is provided every morning-ALL you can drink. So if you'd like to live in a place where you are not just tolerated, but accepted and celebrated for your differences, then this is home!!! Don't forget about convenience, this home is walking distance to the Metro Orange Line. Close to: Los Angeles, LA, SFV, San Fernando Valley, Woodland Hills, West Hills, Winnetka, Reseda, Canoga Park, Chatsworth, Northridge,

Full Coverage

TASTEFUL, SPACIOUS LIVING IN THE VALLEY!! MOVE IN WITH ONLY 320.00!! (Granada Hills) $320

craigslist.org Apr 1, 2009 **Story Timeline: 196 days**

socalhousing@gmail.com | 818-322-4619 Rinaldi and Zelzah, Granada Hills, CA SHARE IN THIS BEAUTIFUL 8 BEDROOM 5 BATHROOM HOME!! LIVE-IN MAID, POOL TABLE, BRAND NEW 50 INCH PLASMA, 2 LIVING ROOMS, 3 FIRE PLACES AND A HUGE BACK Furnished 5+BR/ 4+BA Room/ Share $500/ month Bedrooms 5+ Bathrooms 4+ full, 0 partial Sq Footage 5,500 Parking 3+ dedicated Pet Policy No pets Deposit $0 DESCRIPTION Inside-You'll find a beautiful, completely furnished, 8 bedroom home fully loaded with everything you need. Are you a professional at what you do for a living? Are some of your goals in life geared towards the entertainment industry, multi media design, comedy, or music? Would you like to network with professionals just like yourself, while increasing your resources? Would you like to do it over breakfast before you even leave the house? Do... [read full story]

Latest article on this story:

AHH SAVOR THE FLAVOR OF LIFE! THIS IS THE LIFE AND IT SHOULD BE YOURS! (Los Angeles County) $500	craigslist.org	Apr 3, 2009

First article on this story:

$320 WITH OVER 30 ROOMS TO CHOOSE FROM, YOU CAN LIVE WEREVER YOU WANT!! (SAN FERNANDO VALLEY)	craigslist.org	Apr 1, 2009

Selected publications with coverage of this story:

craigslist.org

Found 8 documents:

Actors and Musicians start here! No Deposit! No Credit OK!

View larger image




Date Listed	Sep-12-09
Price	**$500.00**
Address	17420 Lahey St, Granada Hills, CA, 91344-3425 View map

This beautiful home is only six blocks from the original "Entertainment Launching Pad".
JUST PAY YOUR FIRST MONTH'S RENT AND MOVE IN TODAY OR RESERVE A SPOT This incredible home is only 15 minutes away from Hollywood and the studios. Come network with other actors and musicians trying to make it in the industry. Share leads, compare ideas or just have a great time and enjoy living in this beautiful home with all it has to offer. If you're trying to make it in the movies or music industry this is the place for you. We're just 18 minutes from Hollywood or Burbank Studios. Share and compare audition information with other actors and musicians living at our home. Come enjoy an equal share in a beautiful coed house in the San Fernando Valley. NO CREDIT CHECK! I'M LOOKING FOR GOOD

$400 Entertainers Launching Pad II, No Deposit! No Credit OK! (Granada Hills/Northridge)

Date: 2010-02-25, 11:15AM PST
Reply to: hous-t6gnu-1617584162@craigslist.org [Errors when replying to ads?]

This beautiful home is only six blocks from the original "Entertainment Launching Pad".
JUST PAY YOUR FIRST MONTH'S RENT AND MOVE IN TODAY OR RESERVE A SPOT
This incredible home is only 15 minutes away from Hollywood and the studios. Come network with other actors and musicians trying to make it in the industry. Share leads, compare ideas or just have a great time and enjoy living in this beautiful home with all it has to offer. If you're trying to make it in the movies or music industry this is the place for you. We're just 18 minutes from Hollywood or Burbank Studios. Share and compare audition information with other actors and musicians living at our home. Come enjoy an equal share in a beautiful coed house in the San Fernando Valley. NO CREDIT CHECK! I'M LOOKING FOR GOOD PEOPLE, NOT A GOOD CREDIT RATING!!! This house has a daily house keeping service, a full laundry, a music room with high end karaoke equipment you can plug in your instrument and make all the noise you want, a full gym, a full laundry, a swimming pool, jacuzzie, cable TV including HBO, Showtime, The Movie Channel, Cinemax and On Demand. I also pay for Wireless Internet, unlimited long distance telephone within the continental United States, pool man, and gardener. It's fully furnished with all you need. Just one short block to public transportation. Only 20 minutes to downtown LA. Limited spaces available in both men's and women's dorms.
*****DON'T LET THIS OPPORTUNITY PASS YOU BY - CALL NOW AND RESERVE YOUR SPOT*****
*******HOUSE KEEPER AND UTILITIES ARE AN ADDITIONAL $100 PER MONTH********
CALL 818-454-5127

Location: Granada Hills/Northridge
it's NOT ok to contact this poster with services or other commercial interests

Feb 22 -
$500 COME STAY WHERE THE FUN NEVER ENDS, WE LOVE TO MEET NEW PEOPLE - (CALL JENNY and move in today!!)

Feb 21 - $400 Quiet Environment - No leases - (Granada Hills)

Feb 21 - $500 UTILITIES INCLUDED - room in quiet non-smoking Granada Hills House - (CalArts, Sylmar, Northridge, CSUN) pic

Feb 21 -
$500 ESTA ES UN CASA PARA...AHHH I THOUGHT I COULD SPELL IN SPANISH - (UNDALAY ARRBA ARRIBA MUCHO MUCHO) img

Feb 21 -
$500 ATTENTION: CSUN STUDENTS ARE ON A WAITING LIST FOR CAMPUS- CALL NO - (Don't be fooled by sober living homes) img

Feb 21 - $550 Large and Clean Furnished and Private Bedroom in quiet home - (Granada Hills, Northridge, CSUN)

Feb 21 -
$500 NO HIDDEN FEES=(FREE HOUSE CLEANING INCLUDED)+++(FREE UTILITIES)= - (Reseda and Granada Hills) img

Feb 21 - $400 Move in today, Pool Table, Full Gym, Internet, Cable, No deposit! - (Granada Hills/Northridge) pic

Feb 21 - $559 GRANADA HILLS GUEST UNIT - (near White Oak and Chatsworth)

Feb 21 - $625 Newer Home!- 2 Rooms Avail- Safe/Clean Gated, Pool/Spa, New Furniture! - (East Simi Valley) pic

Feb 21 - $550 Dog Friendly - Large Yard- Parking - (Granada Hills)

Feb 20 - $650 Rooms for rent, utilities included! - (SAN FERNANDO VALLEY)

Feb 20 - $650 Room with private bathroom - (Granada Hills)

Feb 20 - $600 Open Room in 4 Bedroom Home - (Granada Hills) pic

Feb 20 - $550 2 rooms for rent - (granada hills)

Feb 20 -
$500 WHO WANTS TO LIVE IN A REAL HOUSE WITH PEOPLE YOU CAN CALL FRIEND (ASK ABOUT OUR NEW HOME OPENING THIS WEEK) img

Feb 20 - $320 MOVE IN WITH ONLY 320.00 PAY YOUR BALANCE LATER!! - (NO DEPOSITS OR CREDIT CHECKS) img

Feb 20 - $400 Entertainers Launching Pad II, No Deposit! No Credit OK! - (Granada

Stating a discriminatory preference in a housing post is illegal - please flag discriminatory posts as prohibited

Avoid scams and fraud by dealing locally! Beware any arrangement involving Western Union, Moneygram, wire transfer, or a landlord/owner who is out of the country or cannot meet you in person. *More info*

please flag with care:
miscategorized
prohibited
spam/overpost
best of craigslist

$400 Entertainers Launching Pad II, No Deposit! No Credit OK! (Granada Hills/Northridge)

Date: 2010-02-23, 11:14AM PST
Reply to: hous-wewza-1614389933@craigslist.org [Errors when replying to ads?]

This beautiful home is only six blocks from the original "Entertainment Launching Pad".
JUST PAY YOUR FIRST MONTH'S RENT AND MOVE IN TODAY OR RESERVE A SPOT
This incredible home is only 15 minutes away from Hollywood and the studios. Come network with other actors and musicians trying to make it in the industry. Share leads, compare ideas or just have a great time and enjoy living in this beautiful home with all it has to offer. If you're trying to make it in the movies or music industry this is the place for you. We're just 18 minutes from Hollywood or Burbank Studios. Share and compare audition information with other actors and musicians living at our home. Come enjoy an equal share in a beautiful coed house in the San Fernando Valley. NO CREDIT CHECK! I'M LOOKING FOR GOOD PEOPLE, NOT A GOOD CREDIT RATING!!! This house has a daily house keeping service, a full laundry, a music room with high end karaoke equipment. You can plug in your instrument and make all the noise you want, a full gym, a full laundry, a swimming pool, jacuzzie, cable TV including HBO, Showtime, The Movie Channel, Cinemax and On Demand. I also pay for Wireless Internet, unlimited long distance telephone within the continental United States, pool man, and gardener. It's fully furnished with all you need. Just one short block to public transportation. Only 20 minutes to downtown LA. Limited spaces available in both men's and women's dorms.
*****DON'T LET THIS OPPORTUNITY PASS YOU BY - CALL NOW AND RESERVE YOUR SPOT*****
*******HOUSE KEEPER AND UTILITIES ARE AN ADDITIONAL $100 PER MONTH********
CALL 818-454-5127

- Location: Granada Hills/Northridge
- it's NOT ok to contact this poster with services or other commercial interests