Written by Paul Dumont
10.13.2011

CIVIL RIGHTS - On Tuesday, October 11, 2011 sober living homes in Newport Beach heard news they had been longing to hear for many years: the United States Department of Justice, Civil Rights Division, weighed in with Amicus Curiae support for housing providers echoing their complaints the City had been violating the Fair Housing Act.

The Department of Justice, along with Housing and Urban Development, is tasked with enforcing provisions of the Federal Fair Housing Act and the Americans with Disabilities Act. These laws specifically provide protection against discriminatory land use ordinances imposed by municipalities that unduly limit housing opportunities for protected classes, including recovering alcoholics and addicts. Until Tuesday, the Federal government had declined to interfere in the Newport Beach controversy over limitations on sober living homes imposed by their Ordinance enacted in 2008.

Specifically, the DOJ asserts Newport Beach intentionally discriminated against a protected class and a lower Court mistakenly believed th at was okay due to a lack of proof non-disabled people were treated differently. Justice clarifies the legal requirements to prove discriminatory intent. They point out the lower court's misstatement of the proof required for intentional discrimination claims could significantly hamper the ability of both the United States and private litigants to enforce the FHA and ADA.

Many provisions of the Newport Beach ordinance are mirrored in the Community Care Facilities ordinance proposed in Los Angeles. And many of the stated reasons to support the ordinance found to be discriminatory in Newport Beach can be found in the legislative history in Los Angeles.

Evidence demonstrating discriminatory reasons motivated an ordinance is enough to prevail on a claim of intentional discrimination. Los Angeles initially sought only to regulate sober living homes and then broadened the scope to all shared living arrangements in an attempt to evade this FHA protection. Judges are not stupid; they look to the intent of an ordinance.

The time has come for the City of Los Angeles to go back to the drawing board and figure out a way to use existing nuisance abatement laws to regulate problem properties of all kinds, regardless of whether the residents happen to be sober. The proposed LA law should be scrapped.

(Paul Dumont is a sober living home owner and a sober housing advocate.) -cw

Tags: Newport Beach, Fair Housing Act, Civil Rights, Department of Justice, Los Angeles,

Community Care Facilities

CityWatch
Vol 9 Issue 82
Pub: Oct 14, 2011

Written by Paul Dumont
07.11.2011

VOICES - Councilmember Mitch Englander recently inherited Council District 12 from Greig Smith, author of a motion to get sober living homes out of single family zones. The reasoning is that group homes for the disabled are commercial operations posing quality of life and public safety issues inappropriate for residential areas. The ordinance seeks to segregate group home residents from low density zones. Council District 12 has, by far, the least amount of multifamily housing.

Similarly, Tommy Olmstead, Georgia State Commissioner of Human Resources, thought people with mental illness did not belong in community based settings. Olmstead ignored mental health professional's opinion that 2 women were ready to transition from a psychiatric hospital into mainstream society.

In 1999 the Supreme Court ruled they had the right to receive care in the most appropriate integrated setting, and that government has an affirmative duty to plan for integration under the Americans with Disabilities Act. This obligation became known as the "integration mandate".

In June, 2011 the States Department of Justice, Fair Housing Enforcement Section issued a statement that declares the goal of the integration mandate "has yet to be fully realized. Some state and local governments have begun providing more integrated community alternatives to individuals in or at risk of segregation in institutions or other segregated settings. Yet, many people who could and want to live, work, and receive services in integrated settings are still waiting for the promise of Olmstead to be fulfilled." Enforcing Olmstead is a top DOJ priority.

The Fair Housing Act provides separate and distinct protections for disabled people. The Joint Statement of the Department of Justice and the Department of Housing and Urban Development explains 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."

Reasonable accommodations must be considered for disabled people seeking exceptions to land use and zoning laws that hinder their ability to live in single family areas.

The City of Los Angeles seeks an end run around this federal law by regulating all shared living arrangements in single family zones. The question of legality would then turn to enforcement. Under the Fair Housing Act a prima facie showing of discriminatory effect may also be established by evidence that a facially neutral housing practice perpetuates segregated housing patterns. Los Angeles will be in violation of the Fair Housing Act if code enforcement efforts center on intended targets: sober living homes housing a protected class of disabled people.

The proposed Community Care Facilities ordinance runs afoul of both the Americans with

Disabilities Act as made specific in the Olmstead decision, and the Fair Housing Act. Pushing perceived problems into other areas is not a solution and it creates a lot of new challenges.

Englander claims “If a group home is licensed and meets [certain] requirements then they can continue to provide their services without a problem”. This idea was addressed by DOJ/HUD in their statement which cautions municipalities “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.” If the purportedly legitimate reasons advanced to support regulating group homes are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

Los Angeles has no objective data to support the notion single family homes with multiple leases are any more of a problem than those with only one agreement.

In 2008 Smith distributed an email containing a Daily News article “underscoring the need to regulate unlicensed group homes in residential neighborhoods.” That article complained “Many of these owners and operators are also convicted felons, as are the inhabitants of such homes - addicts, alcoholics, parolees and probationers, convicted sex offenders and paranoid schizophrenics.”

The evidence does show Smith was responding to the wishes of his constituents, but the constituents were motivated in substantial part by discriminatory concerns - and that in and of itself proves a Fair Housing Act violation. Paranoid schizophrenics and recovering alcoholics and addicts are not necessarily criminals. Most are not.

We are not without options for controlling placement of group homes. Orange County defined offers certification for providers who seek government referrals. 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.

The original motion sought to regulate sober living homes that are not presently eligible for any license (hence the characterization of “unlicensed group homes” implying they are illegal).

Council could offer providers incentives to locate future homes in other areas. Simply outlawing sober living homes along with all multiple lease arrangements in low density zones has been met with fierce opposition by a host of housing, civil and disability rights lawyers and is being monitored by the Justice Department. Government will be fighting government.

In a 2011 campaign interview, Englander railed against sober living homes stating “community care facilities are not part of the community and they don’t care. They do not belong in your single family neighborhoods.”

In the same interview, he bragged about spending our tax dollars hiring outside lawyers to fight a developer because he does not trust our City Attorney. In the current fiscal climate, and in the face of certain litigation, this proposal is nonsensical.

Los Angeles deserves a more responsive and practical approach to controlling problem homes.

(Paul Dumont is a sober living home owner and a sober housing advocate.) -cw

CityWatch
Vol 9 Issue 55
Pub: July 13, 2011

Sober Living Saves Lives

Neighbors of a few poorly operated group homes persuaded Councilmember Greig Smith to propose an ordinance outlawing sober living homes in our neighborhoods. The 2007 Motion sought to regulate Sober Living Homes and that file was closed as the matter was sent to the Planning Department Staff. Several Staff Reports followed. The January 2010 report stated "Staff considered alternative amendments to this definition as a way to regulate sober living homes as unlicensed group residential uses, and found that every alternative definition was fatally flawed. Every alternative considered was illegal, unenforceable, or discriminatory. In particular, some were too broad in their impact, such that several individuals living as roommates would be prohibited. Other definitions, such as ones that require investigation of who uses what rooms or facilities in the household, are unenforceable." Greig Smith could not accept these facts, and the Planning Commission never considered that report.

In the three years Planning Staff was considering the issue, a handful of particular group homes were identified as nuisance properties, apparently the result of an after-the-fact search for justification for the regulation. Most all of the specific addresses contained in the public file are not sober living homes at all. Rather, they range from a CSUN College Party House to sex offender homes. The January 2010 report pointed out that the "vast majority" of sober living homes are "well integrated into their surrounding neighborhoods and do not cause problems." Councilmember Smith's office worked in conjunction with the City Attorney's Nuisance Abatement Prosecutors to close these [non-sober living] homes in Council District 12, without the new proposed ordinance.

The October 2010 Staff Report completely reversed their January findings, and broadened the regulatory scope adding a definition of "Correctional or Penal Institution[as] ...any building...used for the housing...[of] persons under sentence from a federal, state or county court..." and required a Conditional Use Permit. In other words, if two or more people on probation lived together anywhere in LA, they would need a CUP. The Department of Corrections and several prisoner/housing rights groups, and a flood of other opposition caused Planning Staff to eliminate those provisions entirely in the February 2011 Supplemental Staff Report. Provisions making it illegal for anyone to rent more than one room under separate agreements remain. This proposal was presented to the Planning Commission and the motion to approve failed. Greig Smith, presented another motion, Council File No. 11-0262, to assert jurisdiction over the failed proposal and that request is scheduled for a PLUM Committee Meeting March 29, 2011.

Many groups including Association of Community Human Service Agencies, Shields for Families, Disability Rights California, Corporation for Supportive Housing, Shelter Partnership, LA County Department of Mental Health, AADAP Inc., CAADPE, United Homeless Healthcare Partners, So Cal Assoc Non Profit Housing, Walden House, Public Counsel, Amistad de Los Angeles, and the Inner City Law Center have all weighed in with comments and are opposed to the proposed ordinance. The Sober Living Coalition obviously opposes the proposal.

This regulatory attempt started with complaints about group homes mischaracterized as "sober living" homes. When City Planners realized sober living homes were not the problem, they changed the scope to "boarding houses". Real sober living homes were not and are not the problem, and real sober living homes are not boarding houses. As proved by recent Nuisance Abatement actions existing laws are sufficient to address any problem properties, sober or not. Problem home operators obviously do not follow existing laws, and any new law will only serve to create barriers to quality sober housing that has saved many lives in Los Angeles for decades, without negatively impacting our neighborhoods.

Licensed drug and alcohol treatment centers got caught up in the witch hunt and the current version of the ordinance limits occupancy to "two per bedroom", with no definition of bedroom or consideration of their existing licensed capacity. The State Alcohol and Drug Program licensing agency was not consulted. No licensed treatment centers are identified in Planning's public records as causing any problems requiring action by our City.

Recovering drug addicts and alcoholics will be living somewhere in our City. The proposed ordinance only identifies where they can not live. Pushing them out of single family neighborhoods (where evidence shows they are most effective) with insufficient capacity in multi family zones is not a plan. Once again, City Planning has failed to plan.