



Frequently Asked Questions Regarding Group Homes

Contact Planning Division for more information at (714) 754-5245

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1. Joint Statement of the Department of Justice and the Department of Housing and Urban Development

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. Ci) The Act does not preempt 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.

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2. Definitions:

Alcoholism or Drug Abuse Recovery or Treatment facility - An adult alcoholism or drug abuse recovery or treatment facility that is licensed pursuant to Section 11834.01 of the California Health & Safety Code. Alcoholism or Drug Abuse Recovery or Treatment Facilities are a subset of Residential Care Facilities.

Conditional use permit - A discretionary approval usually granted by the planning commission which allows a use or activity not allowed as a matter of right, based on specified findings.

Group Home - A facility that is being used as a supportive living environment for persons who are considered handicapped under state or federal law.

Handicapped - As more specifically defined under the fair housing laws, a person who has a physical or mental impairment that limits one (1) or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment, not including current, illegal use of a controlled substance.

Integral facilities - Any combination of two (2) or more group homes which may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one (1) operation shall be referred to as integral facilities and shall be considered one (1) facility for purposes of applying federal, state and local laws to its operation. Examples of such integral facilities include, but are not limited to, the provision of housing in one (1) facility and recovery programming, treatment, meals, or any other service or services to program participants in another

facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one (1) licensed or unlicensed facility.

Integral uses - Any two (2) or more residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two (2) or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such integral use shall be considered one (1) use for purposes of applying federal, state and local laws to its operation.

Operator - A company, business or individual who provides residential services, i.e., the placement of individuals in a residence, setting of house rules, and governing behavior of the residents as residents. Operator does not include a property owner or property manager that exclusively handles real estate contracting, property management and leasing of the property and that does not otherwise meet the definition of operator.

Permitted use - Any use allowed in a land use zoning district without requiring a discretionary approval, and subject to the provisions applicable to that district.

Residential Care Facility. A residential facility licensed by the state where care, services, or treatment is provided to persons living in a supportive community residential setting.

Single Housekeeping Unit - The occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities; membership in the single housekeeping unit is fairly stable as opposed to transient, members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food storage facilities, such as separate refrigerators.

Sober Living Home - a Group Home for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under state or federal law. Sober living homes shall not include the following: (1) Residential Care Facilities; (2) any Sober Living Home that operates as a single housekeeping unit.

3. What is the difference between a Residential Care Facility and a Sober Living Home?

A Residential Care Facility is licensed by the California Department of Health Care Services (DHCS). Homes are required to be licensed by the DHCS when at least one of the following services is provided: detoxification, group sessions, individual sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning.

A Sober Living Home is a home used by people recovering from substance abuse, which serve as an interim environment between rehab and their future lives. These homes are not allowed to provide the same services of a Residential Care Facility. Sober Living Homes are primarily meant to provide housing for people who have just come out of rehab and need a place to live that is structured and supporting for those in recovery.

4. Are Residential Care Facilities and Group Homes permitted in single-family residential neighborhoods (R1 zone)?

Residential Care Facilities and Group Homes serving six or fewer persons are permitted in the R1 zone. Group homes require a Special Use Permit (CMCC 13-311). Special Use Permit applications may be obtained from the City of Costa Mesa Community Improvement Division.

5. Are Residential Care Facilities and Group Homes permitted in multifamily residential zones (R2-MD, R2-HD, R3, PDR-LD, PDR-HD, PDR-NCM, PDC, and PDI)?

Residential Care Facilities and Group Homes serving six or fewer persons are permitted in multifamily zones. Group homes serving six or fewer residents require a Special Use Permit (CMCC 13-311). Special Use Permit applications may be obtained from the City of Costa Mesa Development Services Division. Residential Care Facilities and Group Homes serving seven or more persons require a Conditional Use Permit (see #10 below).

6. What are the licensing requirements?

California law requires that homes providing care and supervision and/or detoxification services to be licensed. The state agencies that license these facilities are:

- The State Department of Social Services (DOSS) who is responsible for licensing and oversight of Community Care Facilities, which are facilities where nonmedical care and supervision are provided for children or adults in need of personal services, Residential Care Facilities include, assisted living for the elderly, Foster Care Facilities, homes for the developmentally disabled, and Child Care Centers.
- The State Department of Health Care Services (DHCS) licenses facilities providing 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug misuse or abuse.
- Sober Living Homes providing group living arrangements for people who have graduated from drug and alcohol programs, but do not provide care or supervision to those individuals, are not required to be licensed.

7. Does State law include any overconcentration standards or separation requirements between Residential Care Facilities?

The DHCS does not have the authority to require or enforce separation requirements or overconcentration standards.

The City has a separation requirements for Sober Living Facilities operating within the R1 zones which is discussed below.

8. 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.

9. 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.

10. What are the City's zoning regulations on Group Homes and Residential Care Facilities?

State law pre-empts local regulation on group homes that serve six or fewer persons. This reflects the State's policy to move away from institutional care and to treat individuals with mental and/or physical handicaps in residential settings. State law requires that group homes of six or fewer residents be regulated in the same manner as single-family residences for zoning purposes. Consequently, the City's Zoning Code permits Group Homes and Residential Care Facilities that serve six or fewer persons in all residential zones. All homes must comply with all City laws that are enforced in residential zones such as noise, parking of vehicles, overall property maintenance, use of garage, etc.

11. When is a conditional use permit (CUP) required?

A CUP is required for any Residential Care Facility or Group Home located in a multifamily residential zone serving seven or more persons (CMCC 13-323). A CUP is a discretionary permit requiring public notification and public hearing before the Planning Commission. If approved, conditions are included to ensure compatibility of approved land use with surrounding properties. Group homes serving seven or more must also obtain an Operator's Permit as a condition of the CUP.

12. 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 un rebutted 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.

13. Which City Departments do I contact if I experience disturbance issues with a Group Home or a Residential Care Facility in my neighborhood? A Zoning violation?

The Costa Mesa Police Department can respond to any disturbance complaints in the City after normal business hours. The phone number to contact is (714) 754-5252.

The Code Enforcement Division can respond to issues with noise, property maintenance, use of garage, or any other Zoning violations. The phone number to contact is (714) 754-5623.

- The DHCS can investigate complaints regarding licensed facilities. The links to these State departments are provided below.

14. Where can I find a list of existing group homes in my community?

Since not all residential facilities are required to be licensed and facilities that serve six or fewer are treated like any other single-family residence, there is not a complete list of all existing group homes.

The following websites provide information and a list of existing licensed facilities:

California Department of Social Services (DOSS), Community Care Licensing Division (CCLD): www.cclcd.ca.gov

California Department of Health Care Services (DHCS): www.dhcs.ca.gov