

FAIR HOUSING ISSUES IN LAND USE AND ZONING

DEFINITIONS OF FAMILY and OCCUPANCY STANDARDS

The following discussion paper has been prepared to assist cities and counties in reviewing their jurisdiction's zoning ordinance for compliance with federal and state fair housing laws that protect people with disabilities. Technical assistance is provided in drafting a definition of "family" that complies with the law and using only nondiscriminatory occupancy standards.

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I. Introduction.

A decade ago, the Fair Housing Amendments Act of 1988 (hereafter “the Act”) went into effect, extending fair housing protections to individuals with disabilities in virtually every housing activity or transaction.¹ The fundamental purpose of the Act is to prohibit practices that “restrict the choices” of people with disabilities to live where they wish or “that discourage or obstruct choices in a community, neighborhood or development.”² The Act prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning rules, policies, practices, services and procedures. In addition to not discriminating against people with disabilities, cities and counties have an affirmative duty to provide reasonable accommodation in land use and zoning rules, policies, practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity to housing.³

II. Land Use and Zoning Regulations That Restrict Group Living Arrangements For People With Disabilities Violate Fair Housing Laws.

The legislative history of the Act specifically recognizes that zoning ordinance provisions have discriminated against people with disabilities by limiting opportunities to live in the community and in group home residences.

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 to live in communities. This has been accomplished by such means as the enactment or imposition of . . . 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 people with disabilities.⁴

(Emphasis added.)

Group living arrangements are often necessary to enable people with disabilities to secure the supports they need to live in the community. Moreover, integration in the community has been found to enhance the quality of life and functioning of people with disabilities.

The State of California, in enacting its own fair housing protections, specifically recognized that land use practices have discriminated against group housing for people with disabilities. In a statement of legislative intent that accompanied amendments to California’s Fair Housing and Employment Act, the following findings were made:

- 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 people with disabilities. . . are significantly more likely than other people to live with unrelated people in group housing.
- c. That this act covers unlawful discriminatory restrictions against group housing for these people.⁵

(Emphasis added.)

III. Many Local Governments Currently Have Zoning Ordinance Definitions of “Family” and Occupancy Standards That Violate Fair Housing Laws.

A recent report to the Department of Housing and Urban Development (HUD), “The California Land Use and Zoning Campaign” confirmed that many local zoning ordinances have provisions and procedural requirements that discriminate against congregate or group living arrangements.⁶ The Report, which presents findings from 90 land use and zoning audits statewide, identified, among other barriers, two provisions that have the effect of discriminating against the development, siting and use of group homes for individuals with disabilities: (1) definitions of “family” that have numerical limits on unrelated persons and (2) occupancy standards based on familial status.⁷ As explained below, both practices restrict the housing choices of individuals with disabilities in violation of federal and state fair housing laws.

The California Land Use and Zoning Campaign Report also found, through the audit interview process, that many cities and counties have not assessed how their zoning practices and procedures interfere with the development and siting of housing for individuals with disabilities. Many jurisdictions have little understanding of their obligations under fair housing laws.

This discussion paper has been prepared to assist cities and counties in reviewing their zoning ordinance definition of “family” and, where necessary, revising it for compliance with fair housing laws. Additionally, this discussion paper addresses local governments’ use of occupancy standards based on familial status, which, like restrictive definitions of family, have the effect of limiting the development and siting of group homes for people with disabilities.

IV. To Comply With Fair Housing Laws, A Definition of “Family” Must Emphasize The Functioning Of The Members As A Cohesive Household.

- **A definition should not distinguish between related and unrelated persons.**
- **A definition should not impose numerical limitations on the number of persons that may constitute a family.**

Traditionally, many cities and counties in their zoning ordinance have defined “family” as “. . . persons related by blood, marriage or adoption or not more than five unrelated persons, excluding servants.”⁸ Historically, for land use and zoning purposes, this definition has been used to limit single family low density zones (hereafter “R1 zones”) to “traditional” family households to maintain the residential character of a neighborhood. However, this restrictive definition, which limits the number of unrelated persons who may live together, has effectively prohibited the siting and development of congregate or group homes for individuals with disabilities in R1 zones. A

restrictive definition coupled with a conditional use permit requirement has also been used to strictly control the location of group homes for individuals with disabilities in multi-family zones. Under the foregoing typical definition, a group home for seven or more individuals with disabilities that functions like a family would be excluded from an R1 zone solely because the residents are unrelated by blood, marriage or adoption.⁹

Instead of distinguishing between related and unrelated persons, a definition of family should look to whether the household functions as a cohesive unit and the use of the residence is compatible with other dwellings in an R1 zone. The characteristics of the residents of the dwelling, that they are individuals with disabilities, are not relevant to an inquiry of compatibility.¹⁰

In 1980, the California Supreme Court in *City of Santa Barbara v. Adamson* struck down a municipal ordinance that permitted any number of related people to live in a house in a R1 zone but limited the number of unrelated people who were allowed to do so to five.¹¹ The City had sought to exclude a group of 12 unrelated people living in a large single family dwelling in a single family zone because they were unrelated and, thus, did not meet the City's definition of "family." The Court held that the residents of the Adamson household were a single housekeeping unit that could be termed an alternative family because they shared expenses, rotated chores, ate evening meals together, participated in recreational activities together, and became a close group with social, economic, and psychological commitments to each other. As a single housekeeping unit or, alternative family, the Adamson household could not be excluded from the single family zone nor made to apply for a conditional use permit.

Although the Adamson decision was based on violations of privacy rights under the California Constitution, both state and federal fair housing laws also prohibit restrictive definitions of family that either intentionally discriminate against people with disabilities or have the effect of excluding such individuals from housing. Restrictive definitions of family illegally limit the development and siting of group homes for individuals with disabilities, not families similarly sized and situated, and effectively deny housing opportunities to those who because of their disability live in a group home setting.¹²

A restrictive definition of family not only discriminates against people with disabilities in violation of the Act, but the failure to modify the definition of family or make an exception for group homes for people with disabilities may also constitute a refusal to make a reasonable accommodation under the Act.¹³

V. Revising The Zoning Ordinance Definition Of Family To Comply With Fair Housing Laws.

The following examples of revisions to a typical illegal definition of "family" are intended to assist local governments in meeting their obligations under fair housing laws.

Prohibited Definition: Persons related by blood, marriage or adoption or not more than five unrelated persons, excluding servants.

This definition distinguishes between related and unrelated persons and imposes numerical limits on unrelated persons in violation of fair housing laws and privacy rights.

Recommended Revisions:

Example #1: One or more persons living together as a single housekeeping unit in a dwelling unit.

This definition complies with federal and state fair housing laws and court decisions interpreting fair housing land use and zoning restrictions as well as the Adamson case discussed above. A city or county that uses this definition must also include a definition of “single housekeeping unit” and “dwelling unit” in its ordinance.

Single housekeeping unit: One person or two or more individuals living together sharing household responsibilities and activities which may include, sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social, economic and psychological commitments to each other.

Dwelling unit: Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.¹⁴

Example #2: Any group of individuals living together as the functional equivalent of a family where the residents may share living expenses, chores, eat meals together and are a close group with social, economic and psychological commitments to each other. A family includes, for example, the residents of residential care facilities and group homes for people with disabilities. A family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries or nunneries.

This definition is in itself a description of a single housekeeping unit and it is unlikely that any other terms within would need further explanation.

Example #3: One or more persons, related or unrelated, living together as a single integrated household in a dwelling unit.

A jurisdiction that uses this definition must also define “integrated household” and “dwelling unit.”

Integrated household: A household that functions as a united group.

Dwelling unit: See definition provided under example #1.

The California Land Use and Zoning Campaign reported that many cities retain illegal, restrictive, definitions of “family” in their zoning code but that they are not enforced.¹⁵ Local governments should repeal illegal definitions of family to notify the public that the definition is no longer enforced. Retaining an illegal definition in a zoning ordinance is both misleading and confusing to the public. Additionally, a restrictive definition in a municipal zoning ordinance has a chilling effect on developers of housing for people with disabilities who based on that definition determine that it will not be possible to obtain approval for a development.

In sum, local governments should use the foregoing discussion as a guide for reviewing and revising as necessary their definition of “family” to ensure compliance with fair housing laws and promote the development and siting of much needed group housing for people with disabilities in residential neighborhoods.

VI. Maximum Occupancy Limitations Must Be Based On Neutral Standards.

The Fair Housing Act exempts from its coverage reasonable occupancy restrictions regarding the maximum number of occupants permitted to occupy a dwelling.¹⁶ The legislative history is unambiguous that maximum occupancy restrictions are permissible if “applied to all occupants” and do not distinguish between related and unrelated persons.¹⁷

... a number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or in the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants.¹⁸

The U.S. Supreme Court recently distinguished between maximum occupancy restrictions and family composition regulations.¹⁹ Maximum occupancy restrictions are neutral standards that cap the number of occupants per dwelling, usually on the basis of available floor space or rooms and, serve to protect health and safety by preventing overcrowding. These restrictions are exempt from the Fair Housing Act. In contrast, occupancy standards based on family composition limit the number of unrelated people that may reside together and have the same discriminatory effect as a restrictive definition of “family.” This type of occupancy standard is subject to fair housing laws because it discriminates against people with disabilities by imposing restrictions on unrelated people who choose to live together in group homes but not traditional families.

California’s own occupancy standard for residential dwellings is an example of a permissible neutral standard:

Room dimensions (b) Floor Area: Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.²⁰

(Emphasis added).

The Legislature, by adopting this Uniform Housing Code standard, intends to pre-empt local occupancy standards generally.²¹ Municipalities may deviate from the uniform occupancy standard only if, pursuant to specific state provisions, they make express findings that a deviation is reasonably necessary due to “climatic, geological or topographical conditions.”²² Local governments should adopt the foregoing Uniform Housing Code standard for compliance with fair housing laws and to address health and safety concerns in the community.

VII. Technical Assistance for Revising and Updating Local Zoning Ordinances Is Available To Cities and Counties.

Mental Health Advocacy Services, Inc. (MHAS) through a Department of Housing and Urban Development Fair Housing Initiatives Grant provides technical assistance to local governments in reviewing and revising zoning ordinances, as necessary, for compliance with fair housing laws.

For additional information or assistance, please contact:

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¹ 42 U.S.C. §§ 3601 et seq.

² 24 C.F.R. § 100.70(a) (1994).

³ 42 U.S.C. § 3604(f)(3)(B). A model reasonable accommodation procedure for local governments to include in their zoning ordinance for compliance with state and federal fair housing laws is available from Mental Health Advocacy Services, Inc. (MHAS), 1336 Wilshire Blvd., Suite 102, Los Angeles; telephone (213)484-1628. Adoption of a reasonable accommodation procedure is one way that jurisdictions can comply with the law. MHAS, working in conjunction with Housing Rights, Inc., Berkeley, California and Protection and Advocacy, Inc., Oakland, California, provides technical assistance to jurisdictions seeking compliance with fair housing laws. This work is supported by a Department of Housing and Urban Development Fair Housing Initiative Program grant

⁴ H.R. Rep. No 711, 100th Cong., 2d Sess. 24 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2185.

⁵ Fair Housing and Employment Act. Cal. Govt. Code § 12955(1); Stats. 1993 ch. 1277, § 18.

⁶ The report was part of the California Land Use and Zoning Campaign, a project made possible by the Department of Housing and Urban Development pursuant to a HUD/FHIP grant. Copies of the report are available from the Fair Housing Congress of Southern California, 3600 Wilshire Blvd., Suite 426, Los Angeles; telephone (213) 365-7184 or fax (213) 365-7187.

⁷ Id., Audit Findings and Discussion.

⁸ Id. at 28.

⁹ California's Community Care Facilities Act requires that residential care facilities serving six or fewer people be treated the same as single family residences. This Act is intended to move people with disabilities out of institutions and into family-like surroundings in residential neighborhoods. Health & Safety Code §§ 1566 et seq.

¹⁰ *United States v. Schuylkill Township*, 1991 WL 117394 (E.D. Pa. 1990).

¹¹ *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 164 Cal. Rptr. 539 (1980).

¹² *Oxford House Inc. v. Babylon*, 819 F.Supp. 1179 (E.D. N.Y. 1993); *Oxford House v. Township of Cherry Hill*, 799 F.Supp 450 (D.N.J. 1992); *United States v. Schuylkill Township*, 1991 WL 117394 (E.D. Pa. 1990), reconsideration denied (E.D. Pa. 1991).

¹³ *United States v. City of Taylor*, 872 F.Supp.423 (E.D. Mich. 1995), modified in part, 102 F. 3d 781 (6th Cir. 1996); *Oxford House v. Babylon*, 819 F.Supp. 1179 (E.D.N.Y. 1993); *Oxford House-Evergreen v. City of Plainfield*, 769 F.Supp. 1329 (D.N.J. 1991); *Parish of Jefferson v. Allied Health Care, Inc.*, C.A. No. 91-1199, (E.D. La., June 10, 1992), 1992 WL 142574 (E.D.La. 1992).

See also note 3.

¹⁴ 42 U.S.C. § 3602.

¹⁵ California Land Use and Zoning Campaign Report at 28.

¹⁶ 42 U.S.C. § 3607(b)(1).

¹⁷ House Report at 31, reprinted in 1988 U.S.C.C.A.N. at 2192.

¹⁸ Id. See also, *Oxford House v. City of Virginia Beach*, 825 F. Supp. 1251 (E.D. Va. 1993).

¹⁹ *City of Edmonds v. Oxford House*, 115 S.Ct. 1776 (1995).

²⁰ Health & Safety Code § 17992(a) (1) (incorporating by reference ICBO Uniform Housing Code § 503.2).

²¹ *Briseno v. City of Santa Ana*, 6 Cal. App. 4th 1378 (1992), 8 Cal. Rptr. 2d 486.

²² Id.