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GROUP HOME TECHNICAL ADVISORY

CA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT



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1. EXECUTIVE SUMMARY

Group homes are an especially important type of housing for persons with disabilities. By supporting their residents' individualized needs while providing flexible and affordable housing options, group homes help persons with disabilities live in deinstitutionalized settings that facilitate their integration into local communities.

In recent years, some local governments have amended their zoning ordinances to add new regulations for group homes, particularly for recovery residences—group homes that provide housing for persons recovering from alcoholism or drug addiction. These amendments have raised concerns that local governments are not complying with their affirmative obligations under state planning and zoning laws to promote more inclusive communities and affirmatively further fair housing (AFFH). These amendments have also generated disputes and confusion over whether local governments are violating fair housing laws by discriminating against persons with disabilities or other protected characteristics.

Among other concerns, local land use policies and practices can block new group homes from opening, force existing ones to close, and impose costs, legal fees, and administrative burdens that make it difficult for group homes to operate. These concerns arise in the context of a shortage of adequate housing for persons with disabilities, which is a particularly acute problem within California's broader housing crisis.

With concerns, disputes, and confusion continuing to grow, this Group Home Technical Advisory (Group Home TA) provides guidance on how state planning and zoning and fair housing laws apply when local governments attempt to regulate group homes through land use policies and practices. It is designed to help local governments comply with their obligations under these state laws, including, for example, the Planning and Zoning Law,¹ Housing Element Law,² AFFH provisions,³ Anti-Discrimination in Land Use Law,⁴ and the Fair Employment and Housing Act (FEHA)⁵ (collectively, state housing laws).

The California Department of Housing and Community Development (HCD) is issuing the Group Home TA under its authority to provide guidance about housing law and

¹ Gov. Code, § 65000 et seq.

² Gov. Code, §§ 65580 - 65589.11.

³ See, e.g., Gov. Code, §§ 8899.50, 65583, subds. (c)(5),(10).

⁴ Gov. Code, § 65008.

⁵ Gov. Code, § 12900 et seq.

policy.⁶ The primary intended users are local planning agencies and their staff, but group home operators, advocates, and residents may also benefit from this information.

Contents

- **Background information about group homes** and the essential role they play in providing housing for persons with disabilities (pp. 6-8);
- **General guidance about overall state housing law standards** that (1) require local governments to remove constraints on group homes and affirmatively support them, and (2) prohibit local land use policies and practices that discriminate against group home owners, operators, and residents (pp. 8-23);
- **Specific guidance about how these standards apply to common issues** that arise when local governments attempt to regulate group homes through local land use policies and practices (pp. 23-36);
- **Lists of state government resource materials and contacts** (pp. 36-37).

Policy Guidance Summary

The Group Home TA's guidance for how local governments can comply with state housing laws regarding group homes includes the following:

- **Housing Element Law and AFFH.** Assess whether a policy or practice complies with Housing Element Law and AFFH requirements to avoid constraining housing for persons with disabilities and to affirmatively support this housing and its residents' fair housing choices (pp. 8-12). Consider the Group Home TA's examples of specific questions to guide local governments' analysis of these issues (pp.11-12).
- **Discriminatory Purpose or Effect.** Ensure that the policy or practice does not discriminate on the basis of disability or other characteristics protected by state law. Apply the Group Home TA's analysis on how to determine if a policy or practice has a discriminatory purpose or effect and how to implement flexible reasonable accommodation procedures that promptly and efficiently resolve accommodation requests in compliance with state housing laws and regulations. (pp. 12-20).

⁶ See, e.g., Health & Saf. Code, §§ 50152, 50406, subds. (e), (n), 50456, subd. (a), 50459, subd. (a); Gov. Code, § 65585, subd. (a). The Group Home TA is intended to provide general informational guidance only. It does not constitute legal advice.

- **Supportive and Transitional Housing.** Comply with the specific protections for group homes that fall within the definitions of supportive or transitional housing (pp. 20-22).
- **State and Federal Law Distinctions.** Confirm that a policy or practice complies with state housing laws even if it complies with federal law, because California law provides broader and different protections than federal law (pp. 22-23).
- **Definition of Single-Family Residence.** Avoid restrictive definitions of single housekeeping units or single-family homes that impermissibly constrain group homes from locating in single-family zones. This includes, for example, avoiding definitions that equate group homes with boardinghouses, require all residents to share a common deed or lease, overly scrutinize residents' living arrangements, or automatically exclude group homes that are owned by for-profit businesses or pay staff to help manage a home's operations (pp. 24-25).
- **Group Homes that Do Not Provide Licensable Services.** Allow group homes that operate as single-family residences and that do not provide licensable services to locate in single-family neighborhoods, subject only to the generally applicable, nondiscriminatory health, safety, and zoning laws that apply to all single-family residences (pp. 25-26).
- **Group Homes that Provide Licensable Services to Six or Fewer Residents.** Allow group homes that operate as single-family residences and that provide licensable services to six or fewer residents to locate in single-family neighborhoods, subject only to the generally applicable, nondiscriminatory health, safety, and zoning laws that apply to all single-family residences (pp. 25-26).
- **Group Homes that Provide Licensable Services to Seven or More Residents.** Ensure that any permitting or approval requirements for group homes that provide licensable services to seven or more residents are consistent with state housing laws (pp. 25-26).
- **Preexisting Nonconforming Uses.** Avoid retroactively applying a new zoning provision to group homes that were already operating before the provision was enacted (p. 27).
- **Spacing Requirements.** Avoid requirements for minimum spacing between group homes that go beyond those the Legislature has specified for limited types of licensed facilities and that conflict with state housing laws (pp. 27-29).

- **Occupancy Limits and Building, Fire, or Other Health and Safety Code Requirements.** Apply the same, generally applicable, nondiscriminatory occupancy limits and other building, fire, health, and safety requirements to group homes that apply to other housing, subject to reasonable accommodation requirements or the Legislature’s requirements for specific types of licensed facilities, such as those serving persons with limited mobility (p. 29).
- **Other Requirements for Group Home Operators and Residents.** Avoid the other examples of special requirements for operators and residents discussed that can overly constrain group homes, conflict with the duty to affirmatively support this housing, and discriminate on the basis of disability and other protected characteristics. Examples discussed include, among other things, parking requirements, restrictions on residents or staff, neighborhood notice requirements, and local law enforcement registration requirements (pp. 30-33).
- **State Administrative Procedures for Investigating Licensing Issues.** Use the Department of Health Care Services (DHCS) or California Department of Social Services (CDSS) processes for investigating and resolving complaints that unlicensed group homes are providing services that require licenses from these departments (pp. 33-35).
- **Public Nuisance and Other Code Enforcement Actions.** Use generally applicable, nondiscriminatory laws and code enforcement procedures to investigate and, if appropriate, prosecute group home operators that are creating public nuisances; violating building, housing, fire, or other public health and safety codes; committing fraud; or engaging in other unlawful activities (p. 36).

This summary and the Group Home TA are not intended as all-inclusive guides to every issue that might arise when local governments attempt to regulate group homes. But by following the Group Home TA’s framework and considering how it applies to the examples of common issues, local governments can ensure that their land use policies and practices comply with state housing laws.

Conclusion

Local governments that follow the Group Home TA’s guidance can still address concerns about group homeowners or operators that mistreat or abuse their residents, engage in insurance fraud or other illegal practices, or operate their homes in unsafe manners or in ways that create public nuisances. But research has shown that these problems are limited to a small minority of group homes, with the majority of group homes being well managed and operating compatibly with their surrounding neighborhoods, while providing essential housing resources. Focusing on individual

group homes that are problematic is more consistent with state law and helps avoid adopting overly broad and constraining zoning regulations for all group homes.

2. TERMS USED

Different laws use the term “group homes” to refer to different types of housing for different populations covered by different regulatory schemes. The following terms refer to various types of residences in which unrelated persons share the residence:

- **Shared Living Residences**—any housing shared by unrelated persons, including, for example, group homes, recovery residences, some community care residential facilities, some supportive and transitional housing, emergency shelters, boardinghouses, dormitories, etc.
- **Group Homes**—housing shared by unrelated persons with disabilities that provide peer and other support for their residents’ disability related needs and in which residents share cooking, dining, and living areas, and may, in some group homes, participate in cooking, housekeeping, and other communal living activities.
- **Licensed Group Homes**—group homes that provide services that require licenses under state law.
- **Unlicensed Group Homes**—group homes that may provide some supportive services for their residents but not services that require licenses under state law.
- **Recovery Residences** or **Sober Living Homes**—group homes for persons recovering from alcoholism or drug addiction in which the residents mutually support each other’s recovery and sobriety and that do not require licenses from DHCS because they do not provide alcoholism or drug addiction recovery and treatment services.
- **Alcohol or Other Drug (AOD) Facilities**—residential facilities that must obtain licenses from DHCS because they provide alcoholism or drug addiction recovery and treatment services.⁷

⁷ See, e.g., Health & Saf. Code, § 11834.02.

- **Community Care Residential Facilities**—residential facilities that must obtain licenses from CDSS because they provide 24-hour nonmedical care and supervision for adults or children.⁸

3. BACKGROUND

Among the many reasons that group homes are essential housing for persons with disabilities is the support these homes provide for their residents' individualized, disability-related needs. This includes the peer support that group homes encourage their residents to provide to each other when sharing a home, as well as the services these homes can provide. These services range from basic support for independent living to more intensive care and supervision services that require state licenses. By providing peer support, services, or both, group homes help their residents live in deinstitutionalized settings and integrate into local communities. For these and other reasons, as the California Legislature has recognized, “persons with disabilities . . . are significantly more likely than other persons to live with unrelated persons in group [homes].”⁹

Because group homes are such important housing resources for persons with disabilities, state law not only protects them from discriminatory land use policies and practices, it mandates that local governments affirmatively support group homes locating in their communities.¹⁰ Federal law also protects group homes, leading courts across the country to conclude that “encourag[ing] and support[ing] handicapped persons' right to live in a group home in the community of their choice” is “the public policy of the United States.”¹¹

The communities of choice for many group homes are often single-family neighborhoods. Recovery residences, for example, often locate in single-family

⁸ See, e.g., Health & Saf. Code, §§ 1502, 1568.01, 1569.2, subs. (o)-(p).

⁹ *Broadmoor San Clemente Homeowners Ass'n v. Nelson*, (1994) 25 Cal.App.4th 1, 6, quoting Stats. 1993, ch. 1277, § 18; 12 West Cal.Legis.Services, p. 6038.

¹⁰ See, e.g., Gov. Code, §§ 8899.50, 65583, subs. (a)(1), (a)(7), (c)(10).

¹¹ *Broadmoor*, 25 Cal.App.4th at 9, quoting *Rhodes v. Palmetto Pathway Homes, Inc.* (South Carolina 1991) 303 S.C. 308, 400 S.E.2d 484, 486.

neighborhoods because this helps “recovering addicts’ reintegration into society and redevelopment of self-sufficiency.”¹²

But “for every group home that is successfully established, experts estimate that another closes or never opens because of community opposition.”¹³ The legislative history of the Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq., and federal Fair Housing Act (“FHA”), 42 U.S.C. section 3601 et seq., show that the Legislature and Congress considered local governments’ longstanding practices of using land use ordinances to exclude group homes when amending these civil rights laws to protect housing for persons with disabilities.¹⁴

Local opposition to group homes is often based on fears that they will disrupt neighborhoods, increase crime rates or drug use, generate excessive traffic and parking, or lower property values. But numerous studies, representing decades of research, have found that fears like these are unfounded.¹⁵ In fact, studies have shown that group homes are often the best maintained properties on their blocks and function so much like other homes “that most neighbors within one to two blocks . . . do not even know that a group home . . . is nearby.”¹⁶

This is not to minimize very real problems that have arisen at some group homes. In particular, some local governments have raised concerns based on problems at some recovery residences operated by unscrupulous owners seeking to maximize their profits

¹² Laurie C. Malkin, *Troubles at the Doorstep: The Fair Housing Amendments Act of 1988 and Group Homes for Recovering Substance Abusers* (1995) 144 U. Pa. L. Rev. 757, 772-73 & nn. 55-60; *Oxford House, Inc. v. Township of Cherry Hill* (“Cherry Hill”) (D. New Jersey 1992) 799 F.Supp. 450, 453.

¹³ Malkin, *supra*, n. 12 at 795 & n. 171.

¹⁴ See, e.g., *Broadmoor, supra*, 25 Cal. App. 4th at 6, quoting Stats.1993, ch. 1277, § 18; 12 West Cal.Legis.Services, p. 6038; H.R. Rep. 100-711, 23-24, reprinted in 1988 U.S.C.C.A.N. 2173, 2184-2185.

¹⁵ See, e.g., Malkin, *supra*, n. 12 at 797-798 & nn. 181-184; 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); Senate Comm. on Health Analysis of SB 786, Feb. 17, 2017 at 3, 5.

¹⁶ Daniel 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 & n. 50-52.

at the expense of their residents' wellbeing. These problems have included neglecting and abusing residents, engaging in insurance fraud, and creating public nuisances.¹⁷

While these are very real concerns, the examples of exploitive, abusive, and illegal practices appear to be limited to a small minority of recovery residences.¹⁸ Moreover, in contrast to laws specially designed to address fraud, violations of state licensing laws, or health and safety violations and public nuisances, local land use policies are often too blunt and too broadly sweeping for properly addressing these problems. They risk continuing the history of discrimination against group homes by doing more to constrain and exclude well-functioning ones than they do to abate problems at dysfunctional ones.

Before local governments amend their zoning ordinances to regulate group homes, they should first determine if the proposed amendments will comply with state housing laws. They should apply the Group Home TA's framework and consider its examples of common issues that arise when local governments attempt to use land use laws to regulate group homes.

4. FRAMEWORK FOR ASSESSING IF LOCAL LAND USE POLICIES AND PRACTICES COMPLY WITH STATE HOUSING LAWS' PROTECTIONS OF GROUP HOMES

Confirming that local land use policies and practices for group homes comply with state housing laws involves assessing whether they comply with requirements for local governments to affirmatively support this housing in their communities and whether they discriminate on the basis of disability or other protected characteristics. Both assessments are necessary to confirm that a local land use policy or practice complies with state housing laws. Although the Group Home TA discusses Housing Element Law

¹⁷ See, e.g., Samantha Schmidt, *Drug Rehab 'Mogul' Convicted of Sexually Assaulting 7 Female Patients at Treatment Centers*, Washington Post, Feb. 27, 2018, <https://www.washingtonpost.com/news/morning-mix/wp/2018/02/27/drug-rehab-mogul-convicted-of-sexually-assaulting-7-female-patients-at-treatment-centers/>; Danielle L. Liberman, Current Development, *Not Too Sunny in the Sunshine State: The Need to Improve Florida's Opioid Abuse Treatment Centers to Combat the National Public Health Crisis*, 31 Geo. J. Legal Ethics 723, 735-738 (2018).

¹⁸ See, e.g., Government Accounting Office, *Report to Congressional Requesters: Substance Use Disorder – Information on Recovery Housing Prevalence, Selected States' Oversight, and Funding* ("GAO Report") (March 2018) at 7-9 & n.18, available at <https://www.gao.gov/assets/gao-18-315.pdf>; see also studies cited *supra*, nn. 15-16.

and AFFH requirements before fair housing laws, local governments can assess their compliance with these laws in any order.

A. DO THE POLICIES AND PRACTICES COMPLY WITH HOUSING ELEMENT LAW AND AFFH REQUIREMENTS?

California law has long promoted more inclusive communities, such as by requiring local governments to protect and promote housing for persons with special needs, including, among others, lower income households and persons with disabilities or who have experienced homelessness.¹⁹ Housing Element Law requires local governments to analyze the special housing needs of these populations and develop policies and programs to address those needs.²⁰

As of January 1, 2019, AB 686 built upon these existing obligations to broadly require all state or local governments involved in programs or activities related to housing or community development to affirmatively further fair housing and take no actions inconsistent with this requirement.²¹ The Legislature defined AFFH, to mean:

taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.²²

In AB 686, the Legislature also amended Housing Element Law to include new, specific AFFH requirements starting in 2021 for local governments when they prepare and implement housing elements. These requirements include, for example, identifying and addressing fair housing issues; analyzing integration and segregation patterns;

¹⁹ See, e.g., Gov. Code, § 65583, subds. (a)(1), (a)(7); Housing Elements Building Blocks, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

²⁰ See, e.g., Gov. Code, § 65583, subds. (a)(7), (c).

²¹ Gov. Code, § 8899.50, subd. (a)(2).

²² *Id.* at (a)(1).

analyzing patterns and trends of disparate housing needs and disproportionate access to housing opportunities; and setting specific goals, adopting responsive policies, and taking effective actions that will affirmatively further fair housing.²³

Taken together, the earlier Housing Element Law provisions and the newer AFFH requirements clarify local governments' affirmative responsibilities regarding group homes. As the historical record and California and federal legislative histories confirm, local land use laws have too often treated group homes as problems to be avoided or restricted. Local governments' obligations under state law have been misunderstood as being limited to avoiding discrimination and meeting a minimum threshold for fulfilling the locality's share of regional housing needs for persons with disabilities.

But local governments must go beyond these basic requirements by actively supporting the inclusion of group homes in their communities and removing constraints on this housing. This includes, for example, supporting the housing choices of individuals with protected characteristics.²⁴ Persons with disabilities have the right to live in accessible housing in the most integrated setting appropriate to their needs, which includes having access to disability-related support and services that individuals need to live in deinstitutionalized settings.²⁵ Local governments must also avoid policies that unjustifiably displace group home occupants from their homes.²⁶

HCD has previously issued guidance about local governments' obligations under older Housing Element Law provisions and the more recently enacted AFFH provisions. These guidance documents are available through links listed under the Planning and Community Development tab on HCD's website.²⁷ Local governments should read the detailed guidance provided in these documents, which include:

- Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements (April 2021 Update),²⁸
- Housing Element Building Blocks,²⁹

²³ See, e.g., Gov. Code, § 65583, subd. (c)(10).

²⁴ See, e.g., Gov. Code, § 65583, subd. (c)(10)(A)(iv); 24 C.F.R. § 5.151 (2022).

²⁵ See, e.g., *Olmstead v. Zimring* (1999) 527 U.S. 581, 602, 607; 24 C.F.R. § 5.151 (2022); 28 C.F.R. § 35.130(d), (e)(1) (2022).

²⁶ Gov. Code, § 65583, subd. (c)(10)(A)(v).

²⁷ Available at <https://www.hcd.ca.gov/>.

²⁸ Available at http://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

²⁹ Available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

- Housing Element Building Blocks – Persons with Disabilities,³⁰ and
- Housing Element Building Blocks – Constraints for People with Disabilities.³¹

HCD’s earlier guidance documents discuss in more detail how local governments can assess their compliance with Housing Element Law and AFFH requirements. The following types of questions can help local jurisdictions assess if they are meeting their affirmative obligations to protect and promote the housing rights of persons with disabilities:³²

- **Has the jurisdiction analyzed the special housing needs of persons with disabilities** by including in this analysis, among other things:
 - data about the number of persons and households in this group?
 - quantifiable and qualitative descriptions of their housing needs and descriptions of existing resources or programs for them?
 - assessments of unmet needs?
- **Has the jurisdiction analyzed and explained how it will meet those needs** by, among other things:
 - identifying potential programs, policy options, and resources?
 - discussing local resources and service providers?
 - identifying housing types that can accommodate persons with disabilities?
 - developing housing programs or strategies to address identified needs?
- **Has the jurisdiction analyzed and removed constraints on housing for persons with disabilities** by, among other things:
 - analyzing potential governmental constraints to the development, improvement, and maintenance of housing for persons with disabilities?
 - examining ordinances, policies, or practices that are unjustifiably having the effect of constraining or excluding housing variety and availability for persons with disabilities?
 - providing reasonable accommodations for persons with disabilities through programs that remove constraints?
 - ensuring that its reasonable accommodation procedures comply with state fair housing laws and regulations?
 - in general, demonstrating local efforts to remove constraints?

³⁰ Available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/people-disabilities-including-developmental-disabilities>.

³¹ Available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/constraints-people-disabilities>.

³² See, e.g., Gov. Code, §§ 8899.50, 65583, subds. (a)(4), (7), (c)(3), (5), (10).

- **Has the jurisdiction met its AFFH obligations for persons with disabilities** by, among other things:
 - actively supporting their integration into the local community?
 - actively supporting their fair housing rights, including their right to choose where to live and to access housing opportunities with services and support for their disabilities?
 - considering whether policies and practices are displacing persons with disabilities from their homes?
 - examining and redressing segregated living patterns?
 - fostering the integration of persons with disabilities into the community?
 - conducting outreach and education in the community to support the fair housing rights of persons with disabilities?
 - identifying and analyzing any policies or practices that have the purpose or effect of discriminating against persons with disabilities, perpetuating their segregation, or impeding their integration?
 - examining any justifications for policies or practices with discriminatory effects and identifying and implementing less discriminatory alternatives?

- **Has the jurisdiction conducted individualized, evidence- and data-based research and analysis**, including for:
 - any specific benefits that it believes a land use policy or practice regarding group homes will provide to persons with disabilities?
 - any specific health or safety issues that a jurisdiction believes justify land use policies or practices regarding group homes?³³

B. DO THE POLICIES AND PRACTICES UNLAWFULLY DISCRIMINATE BASED ON DISABILITY OR OTHER PROTECTED CHARACTERISTICS?

In addition to the laws requiring local governments to affirmatively support group homes, state fair housing laws prohibit jurisdictions from discriminating against them.³⁴ For example, the Anti-Discrimination in Land Use Law, Government Code section 65008,

³³ See, e.g., Cal. Code Regs., tit. 2, §§ 12042, subd. (f), 12179, subd. (b)(3).

³⁴ Fair housing laws protect group homes. See, e.g., Cal. Code Regs., tit. 2, § 12005, subd. (o); *Lakeside Resort Enterprises, LP v. Board of Sup's of Palmyra Twp.* (3d Cir. 2006) 455 F.3d 154, 159–60. See also *infra* at pp. 22-23 (explaining that while federal fair housing cases can provide important guidance for interpreting state fair housing laws, California's fair housing and disability rights laws provide broader protections than federal laws).

prohibits discriminatory local land use policies and practices and declares any such discriminatory policies or practices null and void.³⁵ This includes discrimination based on any characteristic protected by the FEHA and other state civil rights laws.³⁶

Disability rights protections extend to persons with disabilities, persons regarded or treated as having, or having had, a disability, or persons with a record or history of a disability.³⁷ Complying with fair housing requirements for individuals with certain types of disabilities, such as individuals with developmental disabilities, will not excuse unlawful discrimination against other individuals with other types of disabilities, such as individuals recovering from alcoholism or drug addiction.³⁸

The Anti-Discrimination in Land Use Law also includes protections not specified in the FEHA, such as prohibitions against land use policies and practices that discriminate against housing for “persons or families of very low, low, moderate, or middle income.”³⁹ Therefore, depending on a group home’s intended occupants, jurisdictions must consider whether their policies discriminate against not only persons with disabilities, but, for example, very low- or low income households if the residence is designed for persons with disabilities who have experienced homelessness.

State fair housing laws protect not only group homes’ occupants, but other persons associated with them or other persons who may be harmed by discriminatory land use policies and practices, such as group homes’ operators, owners, and landlords.⁴⁰

³⁵ Gov. Code, § 65008, subs. (a), (b)(1). The FEHA similarly prohibits discriminatory land use policies and practices. Gov. Code, § 12955, subd. (l); Cal. Code Regs., tit. 2, §§ 12161, 12162. See also Government Code section 11135 (prohibiting discrimination by recipients of state funding or financial assistance).

³⁶ See, e.g., Gov. Code, §§ 65008, subs. (a)(1)(A), (b)(1)(B)(i), 65583, subd. (c)(5).

³⁷ Gov. Code, § 12926, subs. (j), (m); 42 U.S.C. § 3602(h); Joint Statement of the Department of Housing and Urban Development and the Department of Justice – State and Local Land Use Laws and Practices and the Application of the Fair Housing Act (Nov. 10, 2016) at 6 (“HUD – DOJ 2016 Jt. Stmt. on Local Land Use Laws”), available at <https://www.justice.gov/opa/file/912366/download>.

³⁸ Recovering from alcoholism or drug addiction is a disability protected by fair housing laws. See, e.g., *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir.1994), *aff’d City of Edmonds v. Oxford House* (1995) 514 U.S. 725; *Cherry Hill*, *supra*, 799 F.Supp. at 459; HUD – DOJ 2016 Jt. Stmt. on Local Land Use Laws at 6.

³⁹ Gov. Code, § 65008, subs. (a)(3), (b)(1)(C).

⁴⁰ Gov Code § 65008, subs. (a)(1)(A), (b)(1)(B)(ii), incorporating Gov. Code, § 12955, subd. (m).

Identifying and correcting discriminatory land use policies and practices requires understanding three general types of discrimination:

1. intentional discrimination,
2. discriminatory effects, and
3. failure to provide reasonable accommodations.⁴¹

i. INTENTIONAL DISCRIMINATION

Intentional discrimination includes “an act or failure to act” in which any protected characteristic “is a motivating factor . . . even though other factors may have also motivated the practice.”⁴² Unlike employment discrimination law, in which plaintiffs must prove that a defendant’s action or inaction was substantially motivated by a discriminatory purpose, under fair housing law, a “housing practice” can be found illegal if it “demonstrates an intent to discriminate in any manner.”⁴³

Intentional discrimination is best understood as purposeful discrimination because it “does not require proof of personal prejudice or animus.”⁴⁴ Even if local officials are not hostile towards persons with disabilities or act with benign intents to help them, a discriminatory policy or practice can still be unlawful. It is also unlawful for government officials to acquiesce to members of the public’s prejudicial views even if the officials themselves do not share those views.⁴⁵

Establishing intentional discrimination often involves evidence that persons with protected characteristics were treated worse than others without those characteristics. But this is only one way to prove discrimination.⁴⁶ Intentional discrimination does not require “the existence of a similarly situated entity who or which was treated better”⁴⁷ A local land use policy or practice that “inflicts collateral damage by harming some, or even all, individuals from a favored group in order to successfully

⁴¹ Although these are some of the most common, general types of discrimination issues that arise with local land use policies and practices, this is not an exhaustive list. See, e.g., Cal. Code Regs., tit. 2, §§ 12161-62 (listing more detailed examples).

⁴² Gov. Code, § 12955.8; *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 217-218; Cal. Code Regs., tit. 2, § 12041, subd. (b).

⁴³ Gov. Code, § 12955.8.

⁴⁴ Cal. Code Regs., tit. 2, § 12041, subd. (b).

⁴⁵ Cal. Code Regs., tit. 2, § 12161, subd. (c).

⁴⁶ *Pacific Shores Properties, LLC v. City of Newport Beach* (9th Cir. 2013) 730 F.3d 1142, 1158-1159.

⁴⁷ *Id.* at 1158.

harm members of a disfavored class does not cleanse the taint of discrimination.”⁴⁸ Sometimes it “simply underscores the depth of the defendant’s” discriminatory intent.⁴⁹

Intentional discrimination can be established through facial discrimination, direct evidence, or circumstantial evidence.

FACIAL DISCRIMINATION

Facially discriminatory laws or policies explicitly regulate housing or take an adverse action based on a protected characteristic.⁵⁰ Local governments can engage in facial discrimination even when a law or policy does not expressly refer to, for example, group homes or persons with disabilities. “Proxy discrimination is a form of facial discrimination” in which a jurisdiction:

enacts a law or policy that treats individuals differently on the basis of seemingly neutral criteria that are so closely associated with the disfavored group that discrimination on the basis of such criteria is, constructively, facial discrimination against the disfavored group. For example, discriminating against individuals with gray hair is a proxy for age discrimination because the fit between age and gray hair is sufficiently close.⁵¹

To avoid liability for a law or policy that facially discriminates against persons with disabilities, a local government must show that the policy:

- (1) either (a) actually benefits persons with disabilities or (b) is justified by individualized safety concerns raised by the persons the policy affects, and
- (2) is “the least restrictive means of achieving” one or both of these goals.⁵²

⁴⁸ *Id.* at 1159.

⁴⁹ *Id.* See also *id.* at 1158 – 1162 & n. 23.

⁵⁰ Cal. Code Regs., tit. 2, § 12040, subd. (c).

⁵¹ *Pacific Shores Properties*, 730 F.3d at 1160 n. 23, internal quotations and citations omitted.

⁵² Cal. Code Regs., tit. 2, §§ 12042, subd. (f), 12161, subd. (d); *Larkin v. State of Mich. Dept. of Social Services* (6th Cir. 1996) 89 F.3d 285, 290.

These justifications for facial discrimination are “extremely narrow exception[s],” and jurisdictions should be wary of relying on them.⁵³ Jurisdictions must support them with at least, if not more than, the specific and thorough analysis and evidence required by Housing Element Law, including its AFFH provisions. Generalized concerns or ones based on stereotypes will not suffice.⁵⁴ Jurisdictions should also consider less discriminatory alternatives.⁵⁵ And in light of jurisdictions’ obligations to “protect existing residents from displacement” and otherwise affirmatively further fair housing, laws or policies that displace group home occupants from their current, chosen residences warrant especially thorough scrutiny.⁵⁶

DIRECT EVIDENCE

Direct evidence includes written or oral statements showing in themselves that a protected characteristic was a motivating factor in a local jurisdiction’s decision. Direct evidence can itself establish a violation. The affirmative defenses for facial discrimination claims do not apply to direct evidence claims.⁵⁷

CIRCUMSTANTIAL EVIDENCE

Even when policies or statements in themselves do not establish a discriminatory intent, local land use policies and practices can still be found discriminatory based on circumstantial evidence, which can include: (1) the policy’s or practice’s impact, (2) its historical background, (3) the more recent, specific sequence of events leading up to it, (4) departures from usual procedures, (5) departures from usual substantive standards, and (6) the legislative or administrative history.⁵⁸

⁵³ *Dothard v. Rawlinson* (1977) 433 U.S. 321, 334; *Bangerter v. Orem City Corp.* (10th Cir. 1995) 46 F.3d 1491, 1504; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 31 nn. 7, 8 (explaining that public policy exceptions to Unruh Act’s prohibitions of discrimination are “rare” and “should be carefully and narrowly construed”).

⁵⁴ *Larkin*, 89 F.3d at 291-292 (rigorously examining and rejecting an agency’s justifications and evidence for spacing and community notice requirements for group homes in holding that they violate the FHA).

⁵⁵ Cal. Code Regs., tit. 2, § 12042, subd. (f).

⁵⁶ See, e.g., Gov. Code, § 65583, subds. (c)(10)(A)(iv), (v).

⁵⁷ See, e.g., Cal. Code Regs., tit. 2, § 12042, subds. (c)-(e).

⁵⁸ HUD – DOJ 2016 Jt. Stmt. on Local Land Use Laws at 4, citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252, 265-68.

These factors are not the only ones that may be considered.⁵⁹ And “very little evidence” is needed to “raise a genuine issue” of a discriminatory intent.⁶⁰ Procedural or substantive departures from AFFH or housing element requirements when regulating group homes would be relevant evidence to consider in assessing if local officials acted for discriminatory purposes.

ii. DISCRIMINATORY EFFECTS

Even if a local government has not acted with a discriminatory purpose, its land use policies or practices can be found unlawful if they have an unjustified discriminatory effect. A discriminatory effect is generally established through statistical evidence showing that a policy or practice actually or predictably results in a disparate impact on a group of persons with protected characteristics or that it perpetuates segregation.⁶¹

If a local land use practice is found to have a discriminatory effect, a jurisdiction can avoid liability if it shows there is a legally sufficient justification for its policy or practice.⁶² A jurisdiction must establish each of the following:

- (1) The practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory purposes;
- (2) The practice effectively carries out the identified purpose;
- (3) The identified purpose is sufficiently compelling to override the discriminatory effect; and
- (4) There is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect.⁶³

Generalized or hypothetical analysis of these elements will not suffice. They must be “supported by evidence.”⁶⁴

To comply with Housing Element Law, including its AFFH provisions, a jurisdiction should not wait for group home occupants or operators to bring discriminatory effects claims but should research on its own whether its policies or practices have discriminatory effects on these residences. If so, the jurisdiction should also complete

⁵⁹ *Pacific Shores Properties*, 730 F.3d at 1159.

⁶⁰ *Id.*; Gov. Code, § 12955.8; Cal. Code Regs., tit. 2, § 12041, subd. (b).

⁶¹ Cal. Code Regs., tit. 2, § 12060, subd. (b).

⁶² Cal. Code Regs., tit. 2, § 12062, subd. (b).

⁶³ *Id.*

⁶⁴ Cal. Code Regs., tit. 2, § 12062, subd. (c).

the evidence-based analysis needed to determine whether there are legally sufficient justifications for these discriminatory policies or practices, including analyzing less discriminatory alternatives.

iii. REASONABLE ACCOMMODATIONS

Discrimination can also arise from a jurisdiction failing “to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.”⁶⁵ A request for a reasonable accommodation may only be denied if:

(1) The individual on whose behalf the accommodation was requested is not an individual with a disability;

(2) There is no disability-related need for the requested accommodation (in other words, there is no [connection] between the disability and the requested accommodation);

(3) The requested accommodation would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation.

(4) The requested accommodation would impose an undue financial and administrative burden on the person who is asked to provide the accommodation; or

(5) The requested accommodation would constitute a direct threat to the health or safety of others (i.e., a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation⁶⁶

Three common issues, among others, can arise when group home operators or occupants request reasonable accommodations in local land use policies and practices:

1. **While a jurisdiction should adopt a formal reasonable accommodations process so that, among other reasons, the public knows how to request accommodations, these processes should be flexible enough to promptly and efficiently resolve accommodations requests without creating**

⁶⁵ Gov. Code, § 12927, subd. (c)(1).

⁶⁶ Cal Code Regs., tit. 2, § 12179.

unnecessary procedural barriers.⁶⁷ These processes should allow group home operators to request reasonable accommodations “at any time . . . while seeking or enjoying a housing opportunity,” including, for example, when: (1) considering whether to buy or lease a home; (2) filing a permit application, or (3) responding to allegations they have violated a zoning code or other ordinance.⁶⁸ If local governments are repeatedly denying accommodation requests or delaying resolving them, they should analyze whether this is due to the requestors failing to provide sufficient information and support or to procedures erecting impermissible barriers to accommodations.⁶⁹

2. “[I]n most cases, an individual’s medical records or detailed information about the nature of a person’s disability is not necessary” to establish that a person has a disability or that this disability requires a reasonable accommodation in a land use policy or practice.⁷⁰ A reliable third party with knowledge of a person’s disabilities can usually provide sufficient information for assessing a request for an accommodation in a local land use policy or practice.⁷¹ For example, it is well established that persons recovering from alcoholism or drug addiction have disabilities and that recovery residences support their recoveries. Thus, information provided by a recovery residence operator, such as its occupancy or other policies, for example, should generally suffice to establish its occupants have disabilities and the justifications for the

⁶⁷ See, e.g., *id.* at §§ 12176, subd. (c), 12178.

⁶⁸ See, e.g., *id.* at § 12176, subd. (f).

⁶⁹ See, e.g., *id.* at § 12177; see also these examples of reasonable accommodation ordinances: Oakland Mun. Code, ch. 17.131, available at https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.131REACPOPR; Model Ordinance for Providing Reasonable Accommodation Under Federal and State Fair Housing Laws (“Model Reasonable Accommodation Ordinance”), Mental Health Advocacy Services, Inc. (September 2003), available at https://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints/docs/model_reasonable_accomodation_ordinance.pdf.

⁷⁰ Supplement to Initial Statement of Reasons for FEHC’s Fair Housing Regulations at 26, quoting HUD DOJ May 17, 2004 Joint Statement on Reasonable Accommodations, available at <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2019/07/FairHousingReg-SupplementInitialStatementReasons.pdf>.

⁷¹ Cal. Code Regs., tit. 2, § 12178.

requested accommodations, allowing local officials to assess the request without probing into the occupants' private medical records or histories.⁷²

3. **Denials of reasonable accommodation requests must be based on individualized assessments, and specific evidence, not generalized or speculative concerns about group homes or persons with disabilities.** The state's fair housing regulations provide specific guidance about the type of evidence required to meet this standard.⁷³

5. SUPPORTIVE HOUSING AND TRANSITIONAL HOUSING REQUIREMENTS

If a group home operates in ways that fall within the statutory definitions of supportive housing or transitional housing, jurisdictions must also comply with Housing Element Law's specific protections of these types of housing. This section summarizes these protections, which are explained more fully in other HCD guidance documents, including:

- Housing Accountability Act Technical Assistance Advisory (Sep. 15, 2020),⁷⁴
- Housing Element Building Blocks – Zoning for a Variety of Housing Types,⁷⁵
- Senate Bill 2 – Legislation Effective January 1, 2008: Local Planning and Approval for Emergency Shelters and Transitional and Supportive Housing (Apr. 10, 2013 update),⁷⁶ and
- Transitional and Supportive Housing, Chapter 183, Statutes of 2013 (SB 745) (Apr. 24, 2014).⁷⁷

⁷² *Id*; *Regional Economic Community Action Program, Inc. v. City of Middletown* (2d Cir. 2002) 294 F.3d 35, 47-48 & n.3, superseded on other grounds as stated in *Brooker v. Altoona Housing Authority* (W.D. Penn 2013) 2013 WL 2896814 at *9 n. 8.

⁷³ Cal. Code Regs., tit 2, § 12179.

⁷⁴ Available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>.

⁷⁵ Available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/zoning-variety-of-housing-types>.

⁷⁶ Available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-2-combined-update-mc-a11y.pdf>.

⁷⁷ Available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb745memo042414.pdf>.

Supportive Housing Definition. Government Code section 65582, subdivision (g), defines supportive housing to mean housing that:

- has no limit on the length of stay;
- is linked to onsite or offsite services that assist residents in improving their health status, retaining the housing, and maximizing their ability to live and, where possible, work in the community; and
- is occupied by the “target population,” which “means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act . . . and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans and homeless people.”⁷⁸

Transitional Housing Definition. Government Code section 65582, subdivision (j), defines “transitional housing” to mean “buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.” Therefore, in contrast to supportive housing, transitional housing may limit the length of stay, is not required to provide supportive services (though may be linked to them), and is not limited to residents within the “target population.”

Key Protections for Supportive and Transitional Housing. If a group home operates in ways that qualify it as either supportive or transitional housing, jurisdictions must comply with Housing Element Law’s additional protections for these types of housing.

This includes the requirement that supportive and transitional housing “shall be considered a *residential use of property* and shall be *subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.*”⁷⁹ In other words, transitional housing and supportive housing are permitted in all zones allowing residential uses and are not subject to any restrictions (e.g., occupancy limit) not imposed on similar dwellings (e.g., single-family home, apartments) in the

⁷⁸ Gov. Code, § 65582, subd. (i).

⁷⁹ Gov. Code, § 65583, subd. (c)(3), emphasis added.

same zone in which the transitional housing and supportive housing is located. For example, transitional housing located in an apartment building in a multifamily zone is permitted in the same manner as an apartment building in the same zone, and supportive housing located in a single-family home in a single-family zone is permitted in the same manner as a single-family home in the same zone.

In addition, if supportive housing meets the specifications of Government Code section 65650 et seq, it must be treated as “a use by right in all zones where multifamily and mixed uses are permitted”⁸⁰ By-right approval means that the use cannot require a conditional use permit or other discretionary review, even if a permit is required for other residential dwellings of the same type in the same zone.⁸¹ This nondiscretionary (i.e., ministerial) approval requirement renders the proposed use statutorily exempt from the California Environmental Quality Act if the project “complies with written, objective development standards and policies.”⁸²

When supportive or transitional housing does require a permit of any type, the Housing Accountability Act limits jurisdictions’ authority to deny the permit.

These limits are discussed at length in HCD’s Housing Accountability Act Technical Assistance Advisory (Sep. 15, 2020).⁸³

6. STATE LAW PROVIDES BROADER PROTECTIONS THAN FEDERAL LAW

The Legislature has specified that the FEHA may be interpreted broadly to provide “greater rights and remedies” than federal laws.⁸⁴ The Legislature has also emphasized that “[t]he law of this state in the area of disability provides protections independent from those in [federal law],” noting that California law “has always, even prior to passage of the federal [ADA], afforded additional protections.”⁸⁵

Examples of California providing “greater rights and remedies” than federal law include, among other things, state law’s broader definitions of disabilities (e.g., only requiring a mere limitation of a major life activity for a mental or physical condition to qualify as a

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Gov. Code, § 65651, subd. (b)(2); Pub. Resources Code, § 21080, subd. (b)(1); Cal. Code Regs., tit. 14, §§ 15002, subds. (i)(1), 15268(a).

⁸³ See *supra*, n. 74.

⁸⁴ Gov. Code, §§ 12955.6, 12993.

⁸⁵ Gov. Code, § 12926.1, subd. (a).

disability compared to federal law requiring a substantial limitation); prohibition of land use policies and practices that discriminate against housing designed for persons or families of very low, low, moderate, or middle income; requirements for how local governments must affirmatively support housing for persons with disabilities; specific requirements for supportive and transitional housing; and reasonable accommodations regulations.⁸⁶

Therefore, federal laws set a floor, not a ceiling, for the fair housing rights that the state may provide through the FEHA, Anti-Discrimination in Land Use Law, and other state laws.⁸⁷ Likewise, although federal court decisions about federal fair housing laws can provide important guidance for interpreting state fair housing laws, their interpretations of state laws are not binding authority.⁸⁸ Confusion can arise if local governments assume that resolving whether a local land use policy or practice complies with federal law automatically resolves whether it complies with state law.

To avoid this confusion, local governments should follow these two general guidelines:

- **If a policy or practice violates federal fair housing law, it also likely violates state law.**
- **But the converse is not necessarily true.** If a policy or practice complies with federal fair housing laws, local governments should independently determine whether it complies with state law's broader protections.

7. COMMON ISSUES IN LOCAL ORDINANCES THAT REGULATE GROUP HOMES

HCD cannot anticipate all the issues that might arise if local governments attempt to regulate group homes through local land use laws. But the following are examples of some common ones that can arise.

⁸⁶ See, e.g., Gov. Code, §§ 12926.1; 65008, subds. (a), (b); 65583, subds. (a), (c); Cal. Code Regs., §§ 12176-12185.

⁸⁷ See, e.g., Gov. Code, § 12926.1, subd. (a); *California Federal Sav. and Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 285; 42 U.S.C. § 3615.

⁸⁸ See, e.g., Cal. Code Regs, tit. 2, § 11001, subd. (b).

A. DEFINITIONS OF SINGLE HOUSEKEEPING UNITS OR SINGLE-FAMILY HOMES

Zoning ordinances sometimes attempt to restrict or limit group homes in single-family residential zones (e.g., R-1) through definitions of single housekeeping units or single-family homes. Overly restrictive definitions risk violating not only state housing laws, but the California Constitution's protections of the rights of unrelated persons to live together in communal housing.⁸⁹

Persons with disabilities choose to live in group homes because these homes provide peer and other support for their residents' disability-related needs, while helping to integrate residents into their communities. Group homes should be treated as single-housekeeping units if they are designed to foster these mutually supportive peer relationships; allow open-ended stays or at least, on average, stays of more than a few weeks; and provide shared kitchen, dining, living, and other spaces in which residents may, in certain homes, participate in basic, shared cooking and housekeeping activities.

In general, localities should avoid including provisions in definitions of shared-housekeeping units, single-family homes, or other single residential dwellings that:

- **Equate group homes with boardinghouses.** Group homes' shared communal purposes to provide peer and other support for their occupants' disability-related needs and to help integrate them into their local communities makes this an inapt comparison. Boardinghouses do not provide communal housing designed to support the needs of persons with disabilities.
- **Require all residents to share a common deed or lease.** The California Constitution's protections of personal privacy extend to individuals' choices to live together even when they are not joint owners or tenants.⁹⁰ And group homes can still provide a communal setting that supports their residents' needs without all residents being joint owners or tenants.
- **Automatically exclude group homes that are owned by for-profit businesses or that pay a house manager or resident to help manage a**

⁸⁹ See, e.g., *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.

⁹⁰ See, e.g., *Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 88 Cal.App.4th 451, 458-459.

home's operations. These are well-established models for group homes.⁹¹ And persons with certain types of disabilities may need supportive, in-house staff to be able to live in a group home.

- **Overly scrutinize living arrangements** by, for example, requiring residents to take care of all housekeeping tasks, share all bathrooms and refrigerators, and eat all meals together, or by prohibiting locks on bedroom doors. Localities do not impose such conditions on families of related persons, who may live in R-1 neighborhoods even if they can afford to hire housekeepers or gardeners, do not share all bathrooms, decline or lack the time to eat all meals together, or choose to install locks on parents', teenagers', or other relatives' bedroom doors. And different types of group homes may require different living arrangements and provide different levels of housekeeping or other services based on their residents' individualized needs or other considerations.

B. REQUIREMENTS THAT ALL GROUP HOMES WITH MORE THAN SIX RESIDENTS MUST OBTAIN PERMITS TO LOCATE IN SINGLE-FAMILY ZONES

Some local zoning ordinances require all group homes with more than six residents to apply for conditional use permits or obtain other special approvals to locate in single-family zones. These ordinances appear to be based on Health and Safety Code statutes that require local governments to treat many types of licensed group homes with six or fewer residents the same as single-family homes and prohibit requiring these small, licensed group homes to obtain conditional use permits or other special approvals to locate in single-family zones.⁹²

But local policies that require *all* group homes with more than six residents to obtain conditional use or other permits inappropriately turn state laws designed to remove constraints on small, licensed group homes into constraints on the many other group homes that do not require state licenses.

⁹¹ Douglas L. Plocin and Diane Henderson, *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Homes*, 40 J Psychoactive Drugs (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2556949/> (discussing how a “strong manager” model of operations” can function in ways that provide the same or similar benefits of a communal environment and peer support as group homes that residents own and operate themselves).

⁹² See, e.g., Health & Saf. Code, §§ 1566.3, 1569.85, 11834.23.

To comply with the Health and Safety Code’s exemptions for small, licensed group homes and with housing element, AFFH, and fair housing requirements to remove constraints on and prevent discrimination against group homes, local governments should follow these guidelines:

- **Group homes that operate as single-family residences and that do not provide licensable services should be allowed in single-family neighborhoods, subject only to the generally applicable, nondiscriminatory health, safety, and zoning laws that apply to all single-family residences.** This is true even if these homes have more than six residents. Because these homes are not providing licensable services, they should be treated the same as other residences.⁹³
- **Group homes that operate as single-family residences and that provide licensable services to six or fewer residents should be allowed in single-family neighborhoods, subject only to the generally applicable, nondiscriminatory health, safety, and zoning laws that apply to all single-family residences.** This complies with, among other things, the Health and Safety Code protections for these smaller, licensed group homes.
- **Group homes operating as single-family residences that provide licensable services to more than six residents may be subject to conditional use or other discretionary approval processes.** Local governments must still provide flexible and efficient reasonable accommodations in these permitting processes. This means that some requests for exceptions to permitting processes should be resolved through reasonable accommodation procedures instead of conditional use procedures.⁹⁴ In addition, any substantive requirements for these group homes must still comply with the local government’s obligations to remove constraints on housing for persons with disabilities, affirmatively support it, and prevent discrimination against it. The next sections provide further guidance on how to meet these obligations.⁹⁵

⁹³ See also *supra* at pp. 20-22 (discussing specific protections for supportive and transitional housing).

⁹⁴ See, e.g., Letter from Attorney General Bill Lockyer to The Hon. William Hartz, Mayor of Adelanto (May 15, 2001) (explaining that relying on conditional use procedures to address reasonable accommodation requests can lead to fair housing violations).

⁹⁵ Although the Group Home TA focuses on group homes operating as single-family residences, the same principles apply to those operating, for example, as multifamily residences in multifamily zones.

C. RETROACTIVE COMPLIANCE

Zoning codes typically allow uses that began lawfully before a new zoning provision was adopted or amended to continue after these new requirements are imposed, with the concept of legal nonconforming existing uses found in almost all zoning codes. For example, a local government may change zoning requirements to disallow auto repair uses in the downtown area. An existing auto repair shop would continue to be allowed to continue to operate because at the time when the use began it was an allowable use.⁹⁶

Local governments should generally treat existing group homes similarly when amending their zoning codes. Retroactive application of new zoning provisions should be avoided, especially if it will displace persons with disabilities from the homes they have chosen. Any exception to the well-established practice of allowing legal nonconforming uses to continue should be supported by substantial analysis and evidence showing that it is required to protect public health, safety, and welfare. This analysis and evidence should include specific local data and evidence, not merely anecdotal reports about problems that have arisen at some group homes or generalized descriptions of the public health, safety, and welfare interests that the new amendments are designed to serve.

D. SPACING REQUIREMENTS

Spacing requirements restrict group homes from locating within a specific distance of other group homes. Local governments should be very wary about imposing spacing requirements that extend beyond the limited requirements the Legislature has deemed necessary to prevent the overconcentration of certain licensed facilities to ensure their residents are integrated into their communities.

The Legislature has found spacing requirements justified only for specific types of licensed facilities. Community care facilities, intermediate care facilities serving persons with developmental disabilities who require intermittent but recurring skilled nursing care, and pediatric day health and respite care facilities that provide services to children with particularly acute or chronic healthcare needs and their parents or guardians must be separated by at least 300 feet. Congregate living health facilities serving persons with terminal or life-threatening illnesses or with catastrophic or severe disabilities

⁹⁶ See, e.g., *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 552; *Edmonds v. Los Angeles County* (1953) 40 Cal.2d 642, 651.

acquired through trauma or nondegenerative neurologic illness must be separated by at least 1,000 feet.⁹⁷

Further limiting these spacing requirements, the Legislature has specified that they:

- apply to some types of licensed facilities, but not to others. For example, the spacing requirements apply only to some types of intermediate care facilities but not to AOD facilities or to residential care facilities for the elderly;
- apply to proposed, new facilities, not existing ones;
- only require separation of facilities with similar licenses; and
- allow closer spacing based on local needs and conditions.⁹⁸

Contrary to these carefully crafted limitations on spacing requirements, some local governments have imposed spacing requirements on recovery residences, including those already in operation. These spacing requirements are very unlikely to withstand scrutiny under state housing laws. Among other things:

- **They are at odds with the Legislature’s narrowly crafted spacing requirements in section 1267.9.**
- **They can conflict with local governments’ obligations to, for example, remove constraints on housing for persons with disabilities, affirmatively support such housing, avoid policies that displace persons with protected characteristics, and affirmatively support their right to live where they choose.**⁹⁹
- **They are very hard to justify based on the narrow exceptions that state fair housing laws allow for facial discrimination.** Justifications based on the goal of avoiding overconcentration are difficult to establish and require substantial and detailed statistical evidence establishing that an overconcentration of recovery residences has reached the point where it is, for example, creating an institutionalized living environment or perpetuating segregation within specific

⁹⁷ Health & Saf. Code, §§ 1267.9, subd. (b) (setting spacing requirements for these types of community care residential facilities), 1502 (defining facilities that are subject to 300-foot spacing requirements), 1250 (defining facilities subject to 1000-foot spacing requirements).

⁹⁸ Health & Saf. Code, § 1267.9.

⁹⁹ See, *supra*, at pp. 9-12.

neighborhoods or communities. Merely comparing the number of recovery residences in one city with the number in others generally will not suffice.¹⁰⁰

- **They can lack the flexibility required to reasonably accommodate recovery residences and their occupants' disability-related needs.**
- **The Legislature has repeatedly rejected attempts to impose spacing requirements on recovery residences.** As recently as 2018, for instance, the Legislature declined to adopt SB 786, a bill that would have imposed a 300-foot spacing requirement on recovery residences.¹⁰¹ The legislative history shows that the Legislature considered the lack of clear data showing that this spacing requirement would benefit persons recovering from alcohol and drug addiction. The Legislature also considered concerns that this spacing requirement would discriminate on the basis of disability, impede opening new recovery residences, reduce access to much needed recovery and treatment services, and stigmatize recovery residences and their occupants.¹⁰²

In sum, local governments should avoid imposing spacing requirements that extend beyond those specified in Health and Safety Code section 1267.9.¹⁰³

¹⁰⁰ See, *supra*, at pp. 15-16. Spacing requirements like this also need to withstand scrutiny under other standards for assessing intentional discrimination or discriminatory effects. See, *supra*, at pp. 12-19.

¹⁰¹ Sen Bill No. 786 (2017-2018 Reg. Session). This bill is one of many times that the Legislature has declined to enact, or the Governor has vetoed bills attempting to regulate recovery residences. See, e.g., Sen. Com. on Health, analysis of Sen. Bill 786 (2017-2018 Reg. Sess.) at 7-8 (listing several other bills with similar provisions that the died in the Legislature between 2006 and 2007); California Research Bureau, *Sober Living Homes in California: Options for State and Local Regulation* (October 2016) at 14-16 (listing over 20 bills affecting recovery residences introduced between 1998 and 2016 that the Legislature did not pass or the Governor vetoed).

¹⁰² Sen. Com. on Health Analysis of Sen. Bill 786 at 6, 8-9.

¹⁰³ Recent federal court decisions rejecting challenges under federal and California laws to spacing requirements for recovery residences have not considered the important differences between state and federal laws. See, e.g., *Yellowstone Women's First Step House, Inc. v. City of Costa Mesa* (C.D. Cal. Oct. 8, 2015) 2015 WL 13764131 at *7-8, affirmed in part and vacated in part, 2021 WL 4077001 (9th Cir. Sep. 8, 2021) (unpublished, nonprecedential decision). These differences include, for example, the affirmative duties that California's Housing Element Law imposes on local governments and the broader rights and remedies for persons with disabilities under California's fair housing laws. See, *supra*, at pp. 22-23.

E. OCCUPANCY LIMITS AND BUILDING, FIRE, OR OTHER HEALTH AND SAFETY CODE REQUIREMENTS

Subject to the Legislature's requirements for specific types of licensed facilities, such as those serving persons with limited mobility, and to requests for reasonable accommodations, local governments should apply the same generally applicable occupancy limits to group homes that they do to other housing. Under the Uniform Housing Code section 503.2, at least one room in a dwelling unit must have a floor area of at least 120 square feet, with other habitable rooms, except kitchens, required to have a floor area of at least 70 feet. When more than two people occupy a room for sleeping purposes, the required floor area increases by 50 square feet. For example, a bedroom intended for two people could be as small as 70 square feet, while a bedroom would need to be at least 120 square feet to accommodate three people or at least 170 square feet to accommodate four people.

Likewise, to avoid imposing overly costly and burdensome constraints on group homes, the best practice is to apply the same general building, fire, and other health and safety codes that apply to other residences, subject to state health and safety code provisions specific to certain types of residential facilities.¹⁰⁴ Although group home operators may request reasonable accommodations from public health and safety standards, fair housing laws allow local governments to deny these requests if, among other things, they would cause direct threats to public health and safety.

F. REQUIREMENTS FOR OPERATORS AND RESIDENTS

Requirements for operators and residents often take the form of specific services or management practices that the local jurisdiction feels are necessary for the successful operation of group homes. These requirements tend to deal with the internal affairs of the operations and frequently involve issues beyond those in typical land use regulations. For example, local jurisdictions do not typically regulate the number of daily visitors to a single-family home or other residential property.

When applied to group homes, these types of regulations raise concerns that a local government is imposing conditions on them that are contrary to its duties to support housing for persons with disabilities, prevent discrimination on the basis of disability or other protected characteristics, and provide reasonable accommodations.

¹⁰⁴ See, e.g., Health & Saf. Code, § 13113 (requiring sprinkler systems in certain licensed residential facilities).

Before adopting or applying any such regulations even for licensed group homes, local governments should analyze whether they are consistent with state housing laws and document this analysis. Local governments should also consider whether such regulations are consistent with the Health and Safety Code's provisions and regulations for licensed facilities.

Although this Group Home TA cannot address all potential issues regarding potential regulations of operators and residents, the following are examples of requirements taken from recent local ordinances:

Imposing Special Parking Requirements on Group Homes. Requiring group homes to have or construct additional off-street parking spaces can impose considerable costs that constrain housing opportunities for persons with disabilities. These special parking requirements will often conflict with the right to privacy under the California Constitution,¹⁰⁵ as well as local governments' obligations to affirmatively support housing for persons with disabilities and avoid discriminating against them. Jurisdictions imposing additional parking requirements assume that group homes serving adults will have more residents who drive and will therefore use more on-street parking than other households. But these assumptions should at the very least be tested by studying the actual causes and extent of on-street parking shortages in an area.¹⁰⁶ Local governments should also consider less discriminatory alternatives, such as street-parking permit systems for all households or other generally applicable parking and vehicle regulations.

Restricting Recovery Residence Occupants to Persons Actively Participating in Recovery Programs. While most occupants of recovery residences participate in recovery programs, local governments should not impose this as a condition of living in a recovery residence. There are different models of recovery, not all of which involve participating in 12-step or similar programs. And recovering from alcoholism or drug addiction is legally recognized as a protected disability regardless of whether someone has participated or is currently participating in a recovery or treatment program.¹⁰⁷

¹⁰⁵ *Adamson, supra*, 27 Cal.3d at 133 (concluding that parking concerns are best addressed by limitations that "appl[y] evenly to all households" and concluding that zoning ordinances are suspect when they focus on users instead of uses).

¹⁰⁶ See, e.g., Lauber, *supra*, n. 16 at 385 & n. 52 (citing studies finding that group homes do not generate undue amounts of parking or traffic).

¹⁰⁷ *Hernandez v. Hughes Missile System Co.* (9th Cir. 2004) 362 F.3d 564, 568; HUD – DOJ 2016 Jt. Stmt. on Local Land Use Laws at 7-8.

Restricting Occupancy Exclusively to Persons with Disabilities. Regulations restricting group home occupancy exclusively to persons with disabilities or with a specific disability may sometimes intrude on individuals' fair housing choices and privacy rights. They also risk discriminating on the basis of other protected statuses. Inflexible occupancy restrictions, for example, could preclude group homes designed for families in which one member has a disability or recovery residences designed for parents in recovery who are seeking to reunite with their children.

Restricting Occupants or Staff from Homes Based on Their Criminal History Records. Policies that prohibit individuals from living in or working at group homes based on individuals' criminal history records may be intended to protect the occupants of these homes. But local governments contemplating adopting or applying such policies should carefully review California Code of Regulations, title 2, sections 11017.1; 12162, subdivision (b); and 12264-12271, which set parameters on using criminal history information that, among other things, restrict access to employment or housing. Local governments should also consider state laws and regulations that apply to criminal background checks for licensed facilities' employees.¹⁰⁸

Requiring Recovery Residences or AOD Facilities to Immediately Remove Occupants Who Violate Policies Prohibiting Alcohol or Drug Use. Although Health and Safety Code section 11834.26, subdivision (d), requires AOD facilities to plan how to address a resident's relapse, that subdivision clarifies that this "does not require a licensee to discharge a resident." This recognizes that approaches to addressing someone's relapse may vary depending on a recovery residence's or AOD facility's program, the circumstances of the relapse, and an individual's personal history and needs. Local policies should allow the same flexibility. Moreover, requirements to immediately remove relapsing residents with tenancy rights may conflict with landlord-tenant laws.

Other Examples

- **House Manager Requirements**—requiring group homes to have a house manager on site around the clock or always available to come to the residence within 30 or 45 minutes.
- **Visitor Restrictions**—requiring group homes to limit who can visit and under what conditions.

¹⁰⁸ See, e.g., Health & Saf. Code §§ 1522, 1569.17, 11834.27; Cal. Code Regs., tit. 9, §§ 10564, 10615, 10624, tit. 22, §§ 80019-19.2.

- **Records Maintenance**—requiring group homes to maintain specific records about the internal affairs or occupants of the house.
- **Codes of Conduct**—requiring group homes to have special conduct codes for their residents.
- **Neighborhood Notice Requirements**—imposing special neighborhood notice requirements on group homes.
- **Law Enforcement Registration Requirements**—requiring group homes to register with the local sheriff’s office or other law enforcement offices.

Regulations like these can be based on mistaken or prejudicial fears about group homes, instead of actual data and evidence. Particularly in light of research finding that fears about group homes endangering neighbors’ health and safety are unfounded,¹⁰⁹ such provisions may in themselves be regarded as evidence that a local government is not complying with its requirements to affirmatively support housing for persons with disabilities and prevent discrimination against group homeowners, operators, and residents.

Regulations like these can also create unnecessary constraints on group homes by imposing overbroad, additional costs and burdens on the many group homes that capably serve their occupants’ needs and seamlessly integrate into their communities. They can intrude on privacy rights. They can discriminate on the basis of disability or other protected characteristics if, for example, requirements like these are imposed on group homes but not on other housing. For these reasons, among others, regulations like these generally conflict with state housing laws.

G. Civil Actions for Operating Without a Required State License

Some categories of group homes, such as all those serving children, require state licenses. But many, if not most, group homes do not require state licenses to operate. These include, for example, group homes that provide peer support and limited services to residents but not the more extensive care and supervision that requires obtaining a license. Recovery residences that do not provide alcoholism or drug addiction recovery or treatment services are other examples of group homes that do not require licenses.

Examples of group homes that do require licenses include the ones in this table:

¹⁰⁹ See, *supra*, nn. 15-16.

Use	Health and Safety Code Sections	Licensing Agency
Community Care Residential Facilities (including various subcategories)	§ 1500 et seq. & § 1569 et seq., e.g.,	California Department of Social Services (CDSS)
AOD Facilities	§ 11834.01 et seq.	California Department of Health Care Services (DHCS)

Some local governments have amended their zoning ordinances to declare that operating a business without a required state license is a public nuisance. Some of these ordinances single out recovery residences that are providing recovery or treatment services without a license. These jurisdictions file civil actions seeking to abate these nuisances by closing some noncompliant recovery residences, requiring others to obtain the required license, or imposing limitations on recovery residences that were not providing recovery or treatment services.

Local governments have discretion to define as public nuisances’ business or construction activities that are undertaken without a required permit or license. And at least one California appellate court has upheld a city’s public nuisance action against a recovery residence where the owners’ own website advertised that they provided on-site drug addiction treatment services.¹¹⁰

But jurisdictions considering adopting this practice should still carefully assess the issues and problems that can arise under state law. Guidelines for local governments considering this include the following:

- Avoid targeting these nuisance actions on group homes operating without required licenses while ignoring other businesses operating in residences without required licenses.** Although public prosecutors have broad discretion to prioritize which violations or violators to prosecute, they cannot use this discretion in ways that discriminate on the basis of disability or other protected characteristics. Jurisdictions should not single out group homes unlawfully operating without required licenses while ignoring businesses doing the same thing in other residences.

¹¹⁰ *City of Dana Point v. New Method Wellness, Inc.* (2019) 39 Cal.App.5th 985.

- **Give group homes the same opportunities to respond to and resolve alleged code violations as other alleged violators.** For example, if other property owners or businesses are allowed to respond to and resolve alleged code violations during investigations or administrative hearings, those same procedures should apply to group homes that are allegedly providing services that require a license without having obtained one.
- **Use the processes available through DHCS and CDSS, for example, for resolving allegations that a group home is operating without a required license.** If a locality has evidence that a residence is providing unlicensed recovery or treatment services in facilities under DHCS's jurisdiction or unlicensed care or supervision for residents in facilities under CDSS's jurisdiction, it should use these departments' processes for investigating such complaints and abating them if they have merit.¹¹¹ This is especially important when group home operators have not openly admitted that they are providing unlicensed services on-site.

Determining what activities at a group home rise to the level of licensable services, in contrast to common policies or mutual support activities that do not require licenses, can involve nuanced and technical issues that are beyond the expertise of most local planning or code enforcement staff. DHCS's and CDSS's staff have the expertise and experience to investigate these claims, make these determinations, and abate violations of the licensing laws they enforce.

If jurisdictions are filing their own, more costly civil actions to resolve disputes over whether a group home requires a license, this runs the risk of courts issuing mistaken rulings without the benefit of DHCS's or CDSS's findings and expertise.¹¹² It also raises questions under state housing laws about why a local government is not availing itself of DHCS's or CDSS's procedures and opting instead to subject a group home to more expensive and burdensome civil litigation.

¹¹¹ See, e.g., Cal. Code Regs., tit. 9, § 10542, tit. 22, § 80006.

¹¹² Cf. *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 390 (explaining that under primary jurisdiction doctrine, courts may suspend proceedings to allow an administrative agency with specialized expertise to determine an issue within the scope of its regulatory authority).

H. ENFORCING GENERALLY APPLICABLE MUNICIPAL CODES AND OTHER LAWS

If group home operators are engaging in activities that constitute public nuisances; violating generally applicable building, housing, or other health and safety laws; committing fraud; or engaging in other illegal activities, local governments can address these issues through the same code enforcement and other legal processes they apply to others who violate municipal codes and other laws. This may still require considering if reasonable accommodations are appropriate in some circumstances. And local governments should avoid overbroad or discriminatory applications of nuisance laws, such as basing nuisance actions on 911 calls for emergency services.¹¹³ But if a group home is found to have violated local or state law, local governments may seek equitable relief that could include more stringent oversight and other affirmative relief to prevent further violations.

Focusing on individual group homes that are actually causing problems is a better practice than adopting overly broad and constraining regulations for all group homes that conflict with state housing laws.

8. RESOURCE MATERIALS AND STATE CONTACTS

Resource Materials

Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements (April 2021 Update), available at https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf

Housing Accountability Act Technical Assistance Advisory, HCD (Sep. 15, 2020), available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>

Housing Element Building Blocks, HCD, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>

¹¹³ See, e.g., Cal. Code Regs., tit. 2, § 12162, subd. (a); United States Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances (Sep. 13, 2016), available at <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

Housing Element Building Blocks – Constraints for People with Disabilities, HCD, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/constraints-people-disabilities>

Housing Element Building Blocks – Persons with Disabilities, HCD, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/people-disabilities-including-developmental-disabilities>

Housing Element Building Blocks – Zoning for a Variety of Housing Types, HCD, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/zoning-variety-of-housing-types>

Joint Statement of the Department of Housing and Urban Development and the Department of Justice – State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, HUD - DOJ (Nov. 10, 2016), available at <https://www.justice.gov/opa/file/912366/download>

Senate Bill 2—Legislation Effective January 1, 2008: Local Planning and Approval for Emergency Shelters and Transitional and Supportive Housing, HCD (Apr. 10, 2013 update), available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-2-combined-update-mc-a11y.pdf>

Transitional and Supportive Housing, Chapter 183, Statutes of 2013 (SB 745), HCD (Apr. 24, 2014), available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb745memo042414.pdf>

Contacts

HCD

HCD accepts requests for technical assistance from local jurisdictions and requests for review of potential violations from any party. All comments submitted to HCD are subject to the California Public Records Act. Send email requests to: ComplianceReview@hcd.ca.gov.

California Department of Health Care Services (DHCS)

Information about DHCS's complaint process for licensing issues at AOD facilities is available at <https://www.dhcs.ca.gov/individuals/Pages/Sud-Complaints.aspx>, by emailing sudcomplaints@dhcs.ca.gov, or by calling (877) 685-8333.

California Department of Social Services (CDSS)

Information about CDSS's complaint process for licensing issues at facilities that it regulates is available at <https://www.cdss.ca.gov/reporting/file-a-complaint/ccld-complaints> or by calling (844) 538-8766.