PARTIDA, ANNA PH-3

From: Garagedoors24-7 <garagedoorsinc24.7@gmail.com>
Sent: Monday, February 16, 2026 11:26 AM
To: PC Public Comments
Subject: Public Comment- Application No. PGSH-24-0002 (1601 Baker Street)

To the Costa Mesa Planning Commission,

We are residents of 1585 Baker Street and write to formally oppose the proposed Special Use Permit for 1601 Baker Street.

After discussing this matter with neighboring households, it is clear that there is substantial concern regarding the appropriateness of this location for the proposed use. Baker Street already experiences steady vehicle traffic and constrained street parking. The surrounding area includes numerous family households and is in close proximity to several schools and educational centers, resulting in significant daily drop-off and pick-up traffic, school bus activity, and pedestrian movement.

Given these existing conditions, introducing a group living facility within an R-1 Single Family Residential zone would add density and activity that is inconsistent with the intended character of the neighborhood. The anticipated increase in parking demand, vehicle turnover, and overall intensity of use would further strain an already impacted corridor and materially affect nearby homes.

This area was planned and zoned for single-family residential living, and the proposed change would alter the functioning and expectations of the surrounding properties. As a growing family with a baby on the way, we are deeply invested in preserving the safety, stability, and residential integrity of our street.

For these reasons, we respectfully but firmly urge the Commission to deny the Special Use Permit for this location.

Thank you for your time and careful consideration.

Sincerely,

Aviran and Tal Segolie

1585 Baker Street, Costa Mesa, CA 92626

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PARTIDA, ANNA PH-3

From: slgenis@aol.com
Sent: Sunday, February 22, 2026 2:54 PM
To: PC Public Comments
Subject: Agenda ITem PH-3. SPECIAL USE PERMIT (PGSH-24-0002), oppose

I am writing to state my objections to a proposed group home at 1601 Baker Street. I would also like to thank Mayor Stephens for requesting further review of the initial determination by the Hearing Officer.

The approval of Special Use Permit (PGSH-24-0002) to allow a sober living home at 1601 Baker Street would be inappropriate inasmuch as it is immediately adjacent to a group home for at risk teens. Placing group homes side by side, regardless of the purpose of the group home, changes the nature of the nature of the neighborhood. It is absurd to maintain otherwise. Under such reasoning, we could have a senior home next to a sober living home next to a home for the developmentally disabled next to a home for abused children next to a halfway house and then start the lineup over again ad infinitum, all the while pretending we are in a typical residential neighborhood.

The Lanterman Act envisioned creating small group homes in neighborhoods so that the group home residents could experience care and/or recovery in a residential setting. This ideal is often cited by those seeking to establish various group homes. How can a residential setting be maintained when a neighborhood is insitutionalized due to side by side group facilities? This defeats the very purpose of having the facilities in residential neighborhoods to begin with.

Accordingly, when adopting ordinance NO. 17-05 regulating group homes, the City Council found that:

> WHEREAS, the purpose of sober living homes is to provide a comfortable living environment for persons with drug or alcohol addictions in which they remain clean and sober and can participate in a recovery program in a residential, community environment...

and also found the following, (also found in adopting Ordinance 14-13)::

> WHEREAS, housing inordinately large numbers of unrelated adults in a single-family home or congregating sober living homes in close proximity to each other does not provide the handicapped with an opportunity to "live in normal residential surroundings," but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the handicapped, and which no reasonable person could contend provides a life in a normal residential surrounding;

Approval of Special Use Permit (PGSH-24-0002) is clearly inconsistent with the stated intent and purpose of the City's ordinances regulating group homes . The application must therefore be denied.

Sandra Genis

PARTIDA, ANNA PH-3

From: Theresa Parra <tparra78@hotmail.com>
Sent: Monday, February 23, 2026 9:08 AM
To: PC Public Comments
Subject: Opposition to Continued Use of Special Use Permit for 1601 Sober Living Home_PGSH-42-0002

Opposition to Continued Use of Special Use Permit for 1601 Sober Living Home_PGSH-42-0002

To Whom It May Concern,

I am writing to express my strong opposition to the continued use of the Special Use Permit for the single-unit sober living home located at **1601 Baker Street Costa Mesa, CA 92626**.-PGSH-42-0002

This home is not being operated in accordance with the permit requirements. Most notably, it lacks a live-in, on-site house manager — a critical condition for maintaining the safety, supervision, and structure such a facility requires.

As a direct neighbor of this property, I can say with certainty that it has significantly impacted the safety and well-being of our residential neighborhood. The tenants, many of whom possibly have criminal records and known histories of substance abuse, have contributed to an increasingly unsafe environment. Our neighborhood includes families with young children, schools, parks, and churches within a one-mile radius — all of which should be protected and preserved as safe community spaces.

We have experienced several concerning incidents tied to individuals associated with the property at 1601, including but not limited to:

- An attempted break-in at my home by a man clearly under the influence, barefoot, who repeatedly tried to enter through our front door and attempted to scale our backyard gate. He was arrested shortly thereafter, in front of 1601.
- A man visiting a resident of 1601 jumped over our back wall in an attempt to flee when the facility director finally arrived for a check-in.
- A visitor and resident were found passed out in a vehicle that was slowly rolling in front of our driveway.
- Numerous police and emergency medical responses to the property.
- Ongoing suspicious activity involving individuals loitering in front of and across the street from 1601, whom are visiting residents of 1601.

- Most recent in the last two month, visitors dropping of residents at 2:45 am and doing repeated donuts in their car on the street in front of 1601, 1606 , 1605 Baker St and neighbors homes . If a manager was onsite that would have been stopped not to mention the late night arrival of a resident. This could have caused property damage

- and harm to neighbors as many bedrooms face the front of the houses.

These are not isolated incidents. The presence and operations of this home are creating a persistent and escalating safety concern for our neighborhood. Families, including mine, no longer feel comfortable spending time in front of our own homes with our children. We are constantly concerned about our personal safety, our children's safety, and the security of our property.

I respectfully urge you to reconsider the approval or renewal of the Special Use Permit for 1601. The current operation of this facility is not in comptiance and is proving harmful to the surrounding community.

Thank you for your time and attention to this serious matter.

Sincerely,
concerned Neighbor of Mesa Verde - Baker St

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PARTIDA, ANNA PH-3

From: Jim Fitzpatrick <jimfitzeco@gmail.com>
Sent: Monday, February 23, 2026 10:56 AM
To: PC Public Comments
Subject: Public Hearing #3 - Seeking Facts about Impacts
Attachments: Public Hearning ITEM #3.pdf

Please make the attached:

- Available for Commissioners
- Available for the Public
- Available to be presented during Oral Public Comments

Please confirm receipt of this email

Cheers,

Jim Fitzpatrick
Solutioneer in Residence

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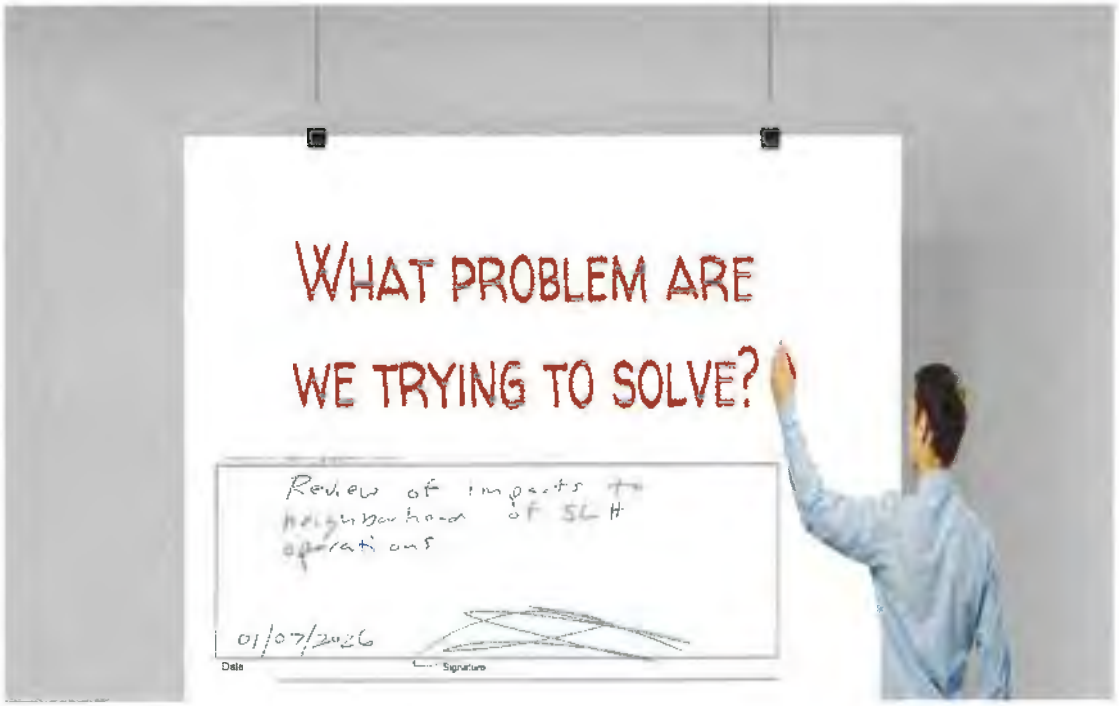


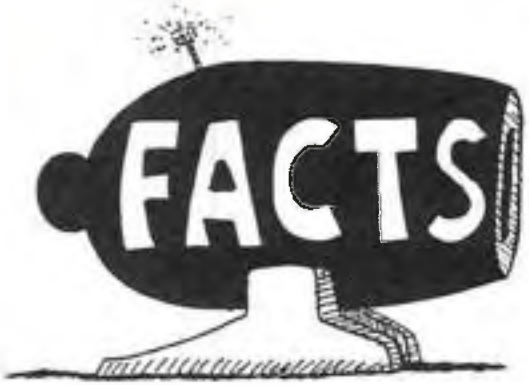
IMPACTS = FACTS

3. **CALL FOR REVIEW OF THE APPROVAL OF SPECIAL USE PERMIT 26-156 (PGSH-24-0002) TO ALLOW A SOBER LIVING HOME WITH SIX OR FEWER RESIDENTS TO BE LOCATED AT 1601 BAKER STREET**

RECOMMENDATION:

Staff recommends the Planning Commission:
1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15268 (Ministerial Projects) and 15301 (Existing Facilities); and
2. Uphold the Hearing Officer's issuance of Special Use Permit (PGSH-24-0002) to allow a sober living home with six or fewer persons (not counting the house manager) at 1601 Baker Street.

Attachments: Agenda Report
1. Draft Planning Commission Resolution
2. Hearing Officer Memorandum
3. Final Decision Memorandum
4. Call Up Review Application
5. Hearing Officer Public Comments
6. Plans



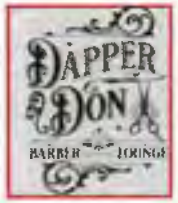
The OHIO HOUSE
115 East Wilson (A,B,C,D,E)
NEWPORT BLVD
WILSON
CIRCLE K
The OHIO HOUSE
SUPPORT
The OHIO Project

SIGNIFICANT SUPPORT

+ 30 LETTERS

NO OPPOSITION

• ~650 Feet



***

- + Business Owners
- 2 Barbers

"We get a lot of clients from the Ohio House. Definitely a benefit of the community"

"Great Program. Never been bothered by the Houses"

**
"I live around the corner, No Problems at all, Never see them"

*
"Folks have been good"

PARTIDA, ANNA PH-3

From: Francie Vesecky <francievesecky@gmail.com>
Sent: Monday, February 23, 2026 11:43 AM
To: PC Public Comments
Subject: Public Comment for 2/23/26 Hearing for 1601 Baker St
Attachments: Letter to CM Planning Comission .pdf

I have attached my public comment for the hearing about the proposed sober living facility at 1601 Baker Street on 2/23/26 .

Thank you

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Dear Members of Costa Mesa Planning Commission,

I hope this letter finds you well. My name is Frances Vesecky and I am a member of the Mesa Verde neighborhood of Costa Mesa. I am writing because I am deeply concerned about your consideration to allow a sober living facility at 1601 Baker Street and want to bring to your attention to the many problems with this plan and why it should not be approved.

1. This small 2,200 sqft home hardly seems large enough for 6 patients/residents and there will also be staff who work at the facility. Mesa Verde neighborhood is very quiet and family oriented. This business would be disruptive to our residents.
2. Baker Street is a busy residential street and this business operation will be disruptive to the flow of traffic for residents in this area.
3. Unfortunately, substance abuse treatment/recovery has high levels of relapse, approximately 40%-60% according National Institute for Drug Abuse. This facility would put my fellow Mesa Verde residents and I at a higher risk for crime in cases of relapse.
    a. A substantial amount of research has confirmed the higher prevalence of substance abuse in cases of home burglaries.
    b. The U.S. Department of Justice Bureau of Justic Statistics clearly states that "Drug users in the general population are more likely than nonusers to commit crimes" with increased rates of 26.1% for violent crimes, 24.7% for property crimes, 57.2% for driving under the influence.
    c. The U.S. Department of Justice Bureau of Justic Statistics further states that "The evidence indicates that drug users are more likely than nonusers to commit crimes, that arrestees and inmates were often under the influence of a drug at the time they committed their offense."
4. 1601 Baker Street is not an ideal location for those struggling with substance abuse because of businesses just outside of the Mesa Verde residential neighborhood.
    a. 1601 Baker Street is 0.1 miles and a three-minute walk from a liquor store.
    b. 1601 baker Street is 0.6 miles, a 12-minute walk and a 2-minute drive from a Cannabis shop.

As a concerned citizen of Costa Mesa and homeowner, I hope you will take the time to consider just how this facility will negatively affect our quiet community in Mesa Verde and how it will pose extras struggles for the individuals who are already struggling with substance abuse addiction and recovery.

The Mesa Verde neighborhood is a quiet neighborhood, other than on Halloween when we see hundreds of kids trick or treating with their parents. Please keep those kids safe from encountering discarded drugs, drug paraphernalia and people struggling with the mental illness of addiction. Please do not allow this and increase the risk of burglary or other crimes in our neighborhood. Please do not allow this special use permit and do not let 1601 Baker Street become a sober living facility.

Sincerely, Frances Vesecky

PARTIDA, ANNA PH-3

From: Wyatt Russell <wyattrusselljr@gmail.com>
Sent: Monday, February 23, 2026 11:51 AM
To: PC Public Comments
Subject: Written Public Comment - PGSH-24-0002
Attachments: 2nd Written Public Comment PGSH-24-0002.pdf

Please see attached written public comment. Thank you.

Wyatt

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Written Public Comment – Special Use Permit Application PGSH-24-0002

1601 Baker Street, Costa Mesa

Submitted and Written By: Wyatt Russell
Date: 10-23-2025
To: City of Costa Mesa – Planning Division / Hearing Officer – planninginfo@costamesaca.gov

Dear Planning Commission,

I'm writing to bring to your attention a serious credibility and compliance issue involving a pending special use permit for a proposed sober living home at **1601 Baker Street**, governed by **Costa Mesa Municipal Code § 13-311**.

At the public hearing, the applicant was directly asked whether they were already operating a sober living or recovery residence at the property. The hearing transcript reflects the following exchange:

"Hearing Officer: There was a comment made earlier by one of the public speakers about you already operating this particular location prior to obtaining the approvals. Do you have any comments with respect to that?"

"Applicant: No, we're not operating any type of sober living there. I do have a couple tenants that are living there, but they have nothing to do with sober living or recovery."

"Hearing Officer: So if you are approved, what happens with the people who are currently there?"

"Applicant: They already have a plan to go somewhere else."

That testimony is directly contradicted by a **County of Orange Health Care Agency contract** I have obtained and provided. The document is **Contract No. MA-042-19010252, Amendment No. 7**, titled **"Recovery Residence Services,"** between the County of Orange and **The Stephouse Recovery, Inc.**

This County contract:

- Has been in effect since **2018**, with renewals through **June 30, 2023**
- Is administered by the County Health Care Agency
- Requires operation of an **Orange County Sheriff-certified recovery residence**
- And explicitly lists **1601 Baker Street, Costa Mesa** as an approved service location

This matters because **§ 13-311(a)** treats operation of a group home as a defined, regulated condition. The code states that no person may open or operate a group home, or begin employment associated with one, unless the required disclosures have been made and approval obtained. There is no concept of informal or transitional operation under the code.

As a result, the applicant's statement at the hearing that they were "not operating any type of sober living" is directly inconsistent with the County contract authorizing recovery residence services at the same address.

That inconsistency triggers **§ 13-311(b)(1)**, which requires denial or revocation of a special use permit when an owner or operator has provided **materially false or misleading information or omitted pertinent information.**

I respectfully ask that this contradiction be reviewed carefully before any permit is approved or allowed to stand.

In addition, the property at 1601 Baker Street has been publicly advertised on the operator's website as a recovery residence. The interior photographs shown on the website match the historical Zillow listing photos for this specific property, confirming the location being marketed. Archived versions of the website, verified through the Internet Archive's "Wayback Machine," show that this property has been displayed and promoted as a recovery residence for years.

Under Costa Mesa Municipal Code § 13-311(a)(1), no person may open or operate a group home until the required disclosures have been provided and approval obtained. Publicly marketing and holding out a property as a recovery residence constitutes operational activity, not passive ownership. Advertising the property as a recovery residence while simultaneously representing at the hearing that no sober living use was occurring raises a material inconsistency that should be reviewed under § 13-311(b)(1).

Thank you for your time and attention to this matter.

Sincerely,
Wyatt Russell

From:	GREEN, BRENDA
To:	PARTIDA, ANNA
Subject:	FW: PC Hrg - 02-23-2026 - Public Comment - Public hearing item 1
Date:	Monday, February 23, 2026 5:37:53 PM
Attachments:	02-23-2026 LT PC objecting to recd code amd per HE housing program (SENT).pdf Exhibit 1-5.pdf image001.wmz image002.png image003.png image004.png image005.png image006.png

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Respectfully,
Brenda Green
City Clerk
City Clerk's Office | (714) 754-5221
77 Fair Drive | Costa Mesa | CA 92626

As City Hall has reopened, we encourage the public to take advantage of our appointment system. Appointments can be made at **www.costamesaca.gov/appointments**. Please note that It is required that all guests check in with our Concierge Staff, located on the 1st Floor Lobby, upon arrival at City Hall.

From: Christopher Brancart <cbrancart@brancart.com>
Sent: Monday, February 23, 2026 11:34 AM
To: HALLIGAN, MICHELLE <MICHELLE.HALLIGAN@costamesaca.gov>; MCGILL, ANNA <Anna.Mcgill@costamesaca.gov>; TAI, CARRIE <Carrie.Tai@costamesaca.gov>; CARON, MARTINA <Martina.Caron@costamesaca.gov>; COLGAN, JULIE <JULIE.COLGAN@costamesaca.gov>; OOSTERHOF, NAOMI <NAOMI.OOSTERHOF@costamesaca.gov>; PARTIDA, ANNA <ANNA.PARTIDA@costamesaca.gov>; CITY CLERK <CITYCLERK@costamesaca.gov>; PLANNING INFO <planninginfo@costamesaca.gov>
Subject: PC Hrg - 02-23-2026 - Public Comment - Public hearing item 1

- Please see the attached letter regarding tonight's public hearing before the Planning Commission, item 1, re code amendments to implement the City's Housing Element.
- The exhibits referenced in the attached letter are submitted in a separate file, Exhibits 1-5.

Please post this comment and include it in tonight's hearing record.

Thank you.

--
Christopher Brancart
Brancart & Brancart

(650) 879-0141 (voice)
(650) 879-1103 (fax)

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, please call me. Thank you.

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BRANCART & BRANCART
ATTORNEYS AT LAW

Christopher Brancart
Elizabeth Brancart

P. O. BOX 686
PESCADERO, CA 94060

Telephone (650) 879-0141
Facsimile (650) 879-1103
www.brancart.com

Street Address
8205 Pescadero Road
Loma Mar, California 94021

February 23, 2026

Via Email and Facsimile

Michelle Halligan, Sr Planner
Anna McGill, Adv Planning Mgr
Carrie Tai, Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: (714) 754-4856
michelle.halligan@costamesaca.gov
anna.mcgill@costamesaca.gov
carrie.tai@costamesaca.gov

Jeffrey Harlan, Chair
Planning Commission
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: (714) 754-5028
pcpubliccomments@costamesaca.gov
cityclerk@costamesaca.gov
planninginfo@costamesaca.gov

Re: **Planning Commission Agenda: Public Hearing Item 1**
Meeting: February 23, 2026
Missed Opportunity: Objections, Issues, and Concerns

Dear Gentlepersons:

On February 9, 2026, the Planning Commission conducted a public hearing and adopted a resolution recommending code amendments to implement the following Housing Programs pursuant to the City's Sixth Cycle (2021–2029) Housing Element:

1. Program 2O (Definition of Single Housekeeping Unit): That the City will "review and revise the definition of 'single housekeeping unit' within the zoning code to provide greater flexibility in consideration of accommodating a variety of household situations for related and unrelated individuals living together."

2. Program 2P (Group Homes): That the City will "review and adopt revisions to its zoning code applicable to group homes to affirmatively further fair housing and comply with fair housing laws per the [following] objective: review and revise the City's zoning code and application procedures applicable to group homes to promote objectivity and greater approval certainty similar to other residential uses."

3. Program 2N (Reasonable Accommodation): That the City will "review and adopt revisions to its Reasonable Accommodation process to be consistent with State and federal fair housing requirements."

As addressed in my last letter, dated February 9, 2026, **the code amendments recommended in the Commission's February 9th resolution do not meaningfully implement any of these three Housing Programs, as required under the City's Sixth Cycle (2021–2029) Housing Element.** For reference, a copy of my letter, dated February 9, is attached as Exhibit 1.

Tonight's hearing misses an opportunity to address these deficiencies in that the Commission's February 9th resolution fails to considered the sufficiency of the City's implementation of Housing Programs 2N, 2O, and 2P in light of my last letter and the following materials that are directly related to this matter:

- HCD's *Group Home Technical Advisory*, dated December 2022 (Exhibit 2);

- The Attorney General's brief, filed June 29, 2023, analyzing the unlawful provisions in the City's current group home regulations (Exhibit 3); and,

- HCD's Letter, dated November 29, 2023 (Exhibit 4);

- The Settlement Agreement between Insight and the City, dated October 24, 2025 (Exhibit 5).

* * *

The Ohio House and its residents urge the Planning Commission to review and revise its February 9th resolution recommending code amendment regarding Housing Programs 2N, 2O, and 2P in light of these authorities.

Thank you for your consideration.

/s/ Christopher Brancart
cbrancart@brancart.com

Enclosures: Exhibits 1-5

Exhibit 1

BRANCART & BRANCART
ATTORNEYS AT LAW

Christopher Brancart
Elizabeth Brancart

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PESCADERO, CA 94060

Telephone (650) 879-0141
Facsimile (650) 879-1103
www.brancart.com

Street Address
8205 Pescadero Road
Loma Mar, California 94021

February 9, 2026

Via Email and Facsimile

Michelle Halligan, Sr Planner
Anna McGill, Adv Planning Mgr
Carrie Tai, Director
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77 Fair Drive
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Jeffrey Harlan, Chair
Planning Commission
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: (714) 754-5028
pcpubliccomments@costamesaca.gov
cityclerk@costamesaca.gov
planninginfo@costamesaca.gov

Re: **Planning Commission Agenda Item PH-1**
Meeting: February 9, 2026
Objections, Issues, and Concerns

Dear Gentlepersons:

I write on behalf of The Ohio House and its residents, along with present and former Group Home owners, operators, and residents to address several issues regarding Agenda Item PH-1 to be heard, considered and acted upon by the Planning Commission at a public hearing on Monday, February 9, 2026. Item PH-1 asks the Planning Commission to approve a resolution recommending the adoption by the City Council of several code amendment purporting to implement specific housing programs set forth in the City's Sixth Cycle (2021-2029) Housing Element.

1. Issues Addressed in This Letter

This letter focuses exclusively on code amendments purporting to implement Housing Programs regarding the regulation of housing for persons with disability; specifically:

1. Program 2O (Definition of Single Housekeeping Unit): That the City will "review and revise the definition of 'single housekeeping unit' within the zoning code to provide greater flexibility in consideration of accommodating a variety of household situations for related and unrelated individuals living together."

2. Program 2P (Group Homes): That the City will "review and adopt revisions to its zoning code applicable to group homes to affirmatively further fair housing and comply with fair housing laws per the [following] objective: Review and revise the City's zoning code and application procedures applicable to group homes to promote objectivity and greater approval certainty similar to other residential uses."

3. Program 2N (Reasonable Accommodation): That the City will "review and adopt revisions to its Reasonable Accommodation process to be consistent with State and federal fair housing requirements."

To implement these programs, the City proposes to amended the following provisions of the City's zoning code (Title 13), set forth in Exhibit 3 in the Planning Commission Agenda Report:

4. Exhibit A: Chapter 1, Article 2, Definitions
5. Exhibit D: Chapter IV, Citywide Land Use Matrix
6. Exhibit H: Chapter IX, Article 15, Reasonable Accommodations
7. Exhibit K: Chapter XV, Group Homes; and,
8. Exhibit L: Chapter XVI, Group Homes in the R2-MD, R2-HD and R3 Residential Zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM,

PDC, and PDI (Planned Development Zones)

and the related Title 9's Group Home Operator's Permit, set forth in Exhibit 5.

These code amendments fail to meet the requirements in Housing Programs 2N, 2O, and 2P, but also, if enacted as presently proposed, each amendment violates three federal laws – the Fair Housing Act, ADA, and Rehabilitation Act – and several state statutes, including the California Government Code §§ 12955, 65008, 8899.50, and 11135 as well as the California Constitution.

2. The Proposed Amendment of the Definition of Single Housekeeping Unit fails to implement the requirements of the City's Housing Program 2O and promise to violate federal and state fair housing laws.

The definition of Single Housekeeping Unit (SHU) is the pivotal zoning provisions that governs housing opportunities throughout Costa Mesa's residential districts. Among all Residential Uses listed in the City's Land Use Matrix, CMMC TABLE 13-30, a Single Housekeeping Unit is the only use permitted of right in every residential districts. Thus, if the City chooses to classify an residential occupancy as a SHU, then that household may occupy any dwelling in Costa Mesa pursuant to the zoning code. If the City refuses to classify a residential occupancy as a SHU, then that household is prohibited from the City's residential districts unless specially or conditionally permitted by the City or compelled by state statute.

The City proposes to implement Housing Plan Program 2O ("Definition of Single Housekeeping Unit") by amending the current definition of Single Housekeeping Unit as follows:

Single housekeeping unit. The occupants of a dwelling unit have established ties and familiarity with each other, including joint~~ly~~ use of and responsibility for common areas, which includes interaction with each other, shared meals, household activities, and expenses and responsibilities; where residency is mutually agreed by all residents, is not transitory in nature ~~membership in the single housekeeping unit is fairly stable as opposed to transient, members have some control over who becomes a member of the household,~~ and the residential activities of the household are conducted on a ~~nonprofit~~ not-for-profit basis. ~~There is a rebuttable presumption that integral facilities do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include, but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food storage facilities, such as separate refrigerators.~~

We urge the Planning Commission to reject the resolution recommending the adoption of the proposed amended definition of Single Housekeeping Unit (SHU) because it fails to implement Housing Program 2O, invites unlawful and arbitrary enforcement, and violates state and federal fair housing statutes.

a. The Proposed SHU Definition Perpetuates The City Discrimination against Persons with Disabilities

The City last amended its SHU definition in 2014 as part of Ordinance 14-13, the City's sweeping revision of its zoning code to compel the closure of existing group homes in R1 (SFR) districts – and to prohibit any new group homes there – unless the household qualified for issuance of a specially use permit. (This same framework was enacted by the City in 2015 to group homes in the City's MFR districts, as discussed below.) A fundamental, necessary condition of the City's discriminatory zoning restrictions enacted under Ordinance 14-13 was the simultaneous adoption of the current SHU definition. Given its inclusion in Ordinance 14-13, it should come as no surprise that the City repeatedly has admitted that the purpose of the current SHU definition was to exclude group homes from the definition and privilege afforded households classified as SHUs.

To achieve this result, the City includes a facially discriminatory presumption, a list of subjective, standardless criteria (carried forward in the proposed amendment), and several of observable indicia "that a household is not operating as a single housekeeping unit," including more than one rental agreement, private, separate entrances, separate food storage and refrigerators. The proposed amendment deletes the facially discriminatory presumption but also deletes the only objective, observable standards (locks, entrance, refrigerators) in the pivotal provisions. While those observable indicia were enacted for a discriminatory purpose, they at least had the virtue of being an objective standard that could be applied to readily observable conditions (lock, entrance, refrigerators). Once observable conditions are stripped from the definition, the proposed amendment devolves into a series of necessary conditions lacking objective standard and impossible to apply without invading a household's constitutionally protected privacy.

The upshot is chilling: If applied as written, there are few if any households that could qualify as SHUs. ***Worse still, the proposed definition commits the City to police personal relationship among every dwelling's occupants and to monitor the domestic affair of every household in Costa Mesa.***

b. The Text and Terms of the Proposed Single Housekeeping Unit Definition Offends Common Sense, Valid Zoning Principles, and Fair Housing Laws

The proposed SHU amendment lacks valid, measurable, discernable, objective standards to determine whether a household qualifies as a SHU. Moreover, even if it provided valid standards, its application depends on the City's observations and determination of the nature and quality of personal relationships amongst household members and their domestic affair within the privacy of their dwellings. In sum, the proposed SHU definition is useless in application, invalid on its face, and unconstitutional in effect.[1]

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[1] There are several ways to assess the efficacy of a zoning definition. We can disaggregate its terms into necessary and sufficient conditions. We can evaluate whether its intention (what it connotes) aligns with its extension (what it denotes). But under any test, the ultimate question is whether the text provides objective standards that can be consistently applied to observable facts reflecting conditions that endure over time. Thus, most zoning regulation concern the physical

As drafted, the proposed definition consists of a series of necessary conditions regarding personal relationships that each occupant must satisfy and several domestic affairs that each occupant must perform. Each of these conditions is necessary. In other words, if the City decides that any one occupant fails to met any one of the following conditions, then the household is disqualified as a Single Housekeeping Unit:

> Single housekeeping unit. The occupants of a dwelling unit have **[1] established ties** and **[2] familiarity** with each other, including joint **[3] use** of and **[4] responsibility** for common areas, which includes **[5] interaction** with each other, **[6] shared meals**, **[7] household activities**, and **[8] expenses** and responsibilities; where **[9] residency is mutually agreed** by all residents, is **[10] not transitory** in nature and the residential activities of the household are conducted on a **[11] not-for-profit basis.**

A close examination of these necessary conditions demonstrates why the proposed definition is not only profoundly flawed for purported purpose (implementing Program 2O), but also wholly dependent on the City violating the California Constitution, fair housing law, and sound zoning principles.

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as built environment or readily observable externalities. The proposed amended SHU definition meets none of these criteria under any framework.

No.	*Necessary Condition*	*Condition's Objective Standards*	*Application*	*Can City Lawfully Observe and Verify Facts to Determine Condition*
01	**Established Ties** between each occupant with each other occupant.	No, lacks objective criteria measuring quality or quantity	a. Necessary condition must exist throughout the every persons occupancy at any point in time. b. To determine whether household's "established ties" are sufficient, each one-to-one relationship amongst occupants must be evaluated by the City; thus, in a six member household, there are 15 unique relationships to be evaluated. *C(n,r)[i.e., "n chose 2"].*	Yes, for some households, but only by proxy, limiting Establish Ties to relationships defined by law (e.g., consanguinity), and thereby discriminating against non-traditional families. No, this conditions lack any objective criteria; moreover, this condition involves personal relationships that are inherently difficult to observe and assess since relationships transpire within sphere of constitutionally protected privacy
02	**Familiarity** between each occupant with each other occupant.	No, id.	Id.	No, this conditions lack any objective criteria; moreover, this condition involves personal relationships that are inherently difficult to observe and assess since relationships transpire within sphere of constitutionally protected privacy

No.	*Necessary Condition*	*Condition's Objective Standards*	*Application*	*Can City Lawfully Observe and Verify Facts to Determine Condition*
03	**Joint use of . . . common areas**	Yes, in part, because - unlike other conditions - common areas are observable. No, since use lacks objective criteria measuring quality or quantity	Id.	No. This condition lack an objective standard; moreover, it occurs within the privacy of dwelling.
04	**Joint . . . responsibility for common areas**	No, lacks objective criteria measuring quality or quantity	Id.	No. This condition lack an objective standard; moreover, it occurs within the privacy of dwelling.
05	**Interaction with each other**	No, id.	Id.	No, this conditions lack any objective criteria; moreover, this condition involves personal relationships that are inherently difficult to observe and assess since relationships transpire within sphere of constitutionally protected privacy

No.	*Necessary Condition*	*Condition's Objective Standards*	*Application*	*Can City Lawfully Observe and Verify Facts to Determine Condition*
06	**Shared meals**	No, id.	Id., but measured by participate rate of each occupant. (i.e., Assume five occupant and five "household activities," the City must examine each occupants participation rate in a total of 25 activities. *Cartesian Product (mxn)*	No. The scope, frequency, and participation rate transpires within the privacy of dwelling
07	**Shared . . . household activities**	No, id.	Id.,	No. This condition lacks an objective, reliable standard. Moreover, participation of domestic activities transpires within the privacy of dwelling.
08	**Shared . . . expenses**	No, Id.	Yes, with an administrative subpoena.	No, unless the City obtains an administrative subpoena to obtain detailed statements of household expenses and contributions by each member of the household

No.	*Necessary Condition*	*Condition's Objective Standards*	*Application*	*Can City Lawfully Observe and Verify Facts to Determine Condition*
09	**Residency is mutually agreed by all residents**	No, Id., unless condition is intended to empowers any occupant at the time to bar any prospective occupant or oust any existing occupant from a household, regardless of that occupant's age or maturity, consensus of the other occupants, or the basis for the preclusion or ouster.	Id.	Possibility, but if and only if the City obtains confirmation from each occupant who occupied a dwelling during its purported status as a SHU.
10	**not transitory in nature**	No., Id.	No, without a duration of occupancy specified, this necessary condition cannot applied.	No, unless the City obtains an administrative subpoena, permitting the City to lawfully review records or compel statements that establish the date each occupant joined a household. This information, however, is meaningless without a temporal criterion.

No.	*Necessary Condition*	*Condition's Objective Standards*	*Application*	*Can City Lawfully Observe and Verify Facts to Determine Condition*
11	**residential activities of the household are conducted on a not-for-profit basis**	No, Id.	Yes, with an administrative subpoena, but if and only if the City can verify that the housing provider is either is incorporated as a nonprofit or operates at a loss *and* that each occupant, regardless of age, infirmity, or capacity pays an equal share of the housing expense	No, unless the City obtains an administrative subpoena, permitting the City to lawfully obtain records showing that a housing provider is a nonprofit or operates at a loss and detailed financial records reflecting household expenses and contributions by each occupant.

Does the proposed SHU definition provide with the City's zoning and code enforcers (as well as its citizens) with robust, objective standards that can be reliably applied to readily observable facts reflecting conditions that endure over the lifetime of a household? The answer is obvious no. Worse, if you assume that the proposed definition means what it says, and its conditions were uniformly applied to the wide variety of household that exist in Costa Mesa[2], very few of those households could qualify as Single Housekeeping Unit. Worse still, under the proposed definition, the City is committed to policing the personal relationship and domestic affairs of its citizens, an undertaking that is as unpopular as it is unconstitutional.

We urge the Planning Commission to reject the resolution recommending the adoption of the proposed SHU definition.

3. The proposed amendments to zoning regulations governing group homes fail to implement the objective of the City's Housing Program 2P, perpetuate discrimination against disabled persons, and promise to violate federal and state fair housing laws.

[2] Please refer to the City's demographic profile in the City's Sixth Cycle Housing Element.

The City proposes to implement Housing Plan Program 2P ("Group Homes") by not making any substantive changes to its current group home regulations, codified as CMMC Title 13, Chaps. XV and XVI, and CMMC Title 9, Chap. II, Art. 23. See Meeting Packet, Exhibit 3. As a result, the City's group home regulations continue to discriminate against housing for disabled persons, as reflected in Exhibit 1 hereto.

The only substantive change proposed by the City is to import the definition of "operator" into the definition of group home or sober living home. That amendment is deeply flawed and will not cure the problems with the City's current group home regulations. The operator definition is standardless, circular, and assumes that landlords renting to non-disabled persons do not engage in placement, rule-setting, and behavioral oversight of their tenants—an demonstrably untrue assumption.

We urge the Planning Commission to reject the resolution recommending the adoption of the proposed amendments to the group home regulations because they are insufficient.

4. The proposed amendments to the City's RA regulations fail to implement the requirements of the City's Housing Program 2N, perpetuate discrimination against disabled persons, and promise to continue violating federal and state fair housing laws.

The City proposes to implement Housing Plan Program 2N ("Reasonable Accommodation") by making modest changes to the existing regulation that fail to fulfill this Housing Program's intent and continue a policy in violation of federal and state fair housing laws.

To implement Program 2N, the City must amend the current regulation to address each of the issues raised in DRC's letter to the City dated January 12, 2026, a copy of which is attached as Exhibit 2. In addition, the City must provide a cogent definition of "institutionalization" if it intends to apply that criterion as a basis for denying RA requests.

We urge the Planning Commission to reject the resolution recommending

adoption of the proposed RA regulation because it is insufficient.

Thank you for your consideration.

/s/ Christopher Brancart
cbrancart@brancart.com

Zoning regulations for unlicensed[1] residential uses in Costa Mesa's multi-family zoning districts

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Use Definitions					
Use defined based on disability status of residents, CMMC 13-06	Yes, CC 9[6]	Yes, CC 5	No, CC 3	No, CC 3	No CC 4

[1] Licensed uses are subject to state-mandated zoning entitlements and restrictions. The Costa Mesa Municipal Code (CMMC) defines these uses as ***Residential care facilities.*** A residential facility licensed by the state where care, services, or treatment is provided to persons living in a supportive community residential setting. Residential care facilities include, but may not be limited to, the following: intermediate care facilities for the developmentally disabled (Health & Safety Code §§ 1267.8, 1267.9);community care facilities (Health & Safety Code § 1500 et seq.); residential care facilities for the elderly (Health &Safety Code § 1569 et seq.); residential care facilities for the chronically ill (22 C.C.R. § 87801(a)(5); Health & Safety Code § 1568.02); alcoholism and drug abuse facilities (Health & Safety Code §§ 11834.02—11834.30); pediatric day health and respite care facilities (Health & Safety Code § 1760 et seq.); residential health care facilities, including congregate living health facilities (Health & Safety Code §§ 1265—1271.1, 1250(i), 1250(e), (h)); family care home, foster home, group home for the mentally disordered or otherwise handicapped persons or dependent and neglected children (Wel. & Inst. Code §§ 5115—5120)." CMMC 13-06.

[2]***Sober living home*** means a group home for persons who are recovering from a drug and/or alcohol addiction and who are considered handicapped under state or federal law. Sober living homes shall not include the following: (1) residential care facilities; (2) any sober living home that operates as a single housekeeping unit." CMMC 13-06.

[3]***Group home.*** A facility that is being used as a supportive living environment for persons who are considered handicapped under state or federal law. A group home operated by a single operator or service provider (whether licensed or unlicensed) constitutes a single facility, whether the facility occupies one (1) or more dwelling units. Group homes shall not include the following: (1) residential care facilities; (2) any group home that operates as a single housekeeping unit." CMMC 13-06.

[4] "***Boardinghouse.*** A residence or dwelling, other than a hotel, wherein rooms are rented under two (2) or more separate written or oral rental agreements, leases or subleases or combination thereof, whether or not the owner, agent or rental manager resides within the residence. Boardinghouse, small means two (2) or fewer rooms being rented. Boardinghouse, large means three (3) to six (6) rooms being rented. Boardinghouses renting more than six (6) rooms are prohibited." CMMC 13-06.

[5] "***Dwelling, multi-family*** "Dwelling, multi-family" or "multi-family dwelling" is a building or buildings of permanent character placed on one (1) lot which is designed or used for residential occupancy by two (2) or more families." CMMC 13-06.

[6] ***"CC #"*** refers to page numbers in the excerpt of the current Costa Mesa Municipal Code [as of 05/09/2021], attached to this Table for reference.

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	*Sober Living Home*[2]	*Group Home*[3]	*Boardinghouse, Small < 3 rental rooms*[4]	*Boardinghouse, Large < 7 rental rooms*	*Multi-family Dwelling*[5]
Use defined based on nature of the disability of dwelling's residents, CMMC 13-06	Yes, CC 9	No, CC 5	No, CC 3	No, CC 3	No CC 4
Permitted Zoning District					
Permitted in Residential Zoning District, CMMC 13-30, 13-204	No, CC 31	No, CC 31	Yes, CC 31	Yes, if pre-existing, CC 54; No, if new, CC 31	Yes, CC 31
Permitted in Multifamily Zoning Districts (R2-MD, R2-HD, R3), CMMC 13-30	No, CC 31	No, CC 31	Yes, CC 31	Yes, if pre-existing, CC 54; No, if new, CC 31	Yes, CC 31
Permitted in Planned Development Residential Districts (PDR-LD, PDR-MD, PDR-HD, PRD-NCM, PDC, PDI), CMMC 13-30, 13-204	No, CC 31	No, CC 31	Yes, CC 31	Yes, if pre-existing, CC 54; No, if new, CC 31	Yes, CC 31
Permitted in Institutional & Recreational (I&R) Zoning District [intended for "recreation, open space, health, public services," 13-20(i), CC 17]	Yes, CC 31	Yes, CC 31	No, CC 31	No, CC 31	No, CC 31
Specially or Conditionally Permitted in Institutional & Recreational (I&R) Zoning District [intended for "recreation, open space, health, public services," 13-20(i), CC 17]	NA, CC 31	NA, CC 31	No, CC 31	No, CC 31	No, CC 31
Nonconforming Use Status					
Existing uses required to apply for Special or Conditional Use Permit to	Yes, CC 67, 59	Yes, CC 67, 59	No, CC 54	No, CC 54	NA, CC 31

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	*Sober Living Home*[2]	*Group Home*[3]	*Boardinghouse, Small < 3 rental rooms*[4]	*Boardinghouse, Large < 7 rental rooms*	*Multi-family Dwelling*[5]
continue existing use, 13-324, 13-207.1 versus 13-204, 13-30					
Separation Requirement					
Separation requirement imposed on existing uses, 13-322, 13-323, 13-324 versus 13-30, 13-204, 13-207.1	Yes: At least 650 feet between dwelling and any group home, sober living home or state-licensed drug and alcohol treatment facility. CC 66-67	Yes: At least 650 feet between dwelling and any group home, sober living home or state-licensed drug and alcohol treatment facility. CC 66-67	No, CC 54	No, CC 54	NA, 13-30
Separation requirement imposed on new uses, 13-322, 13-323, 13-324 versus 13-30 fn 7	Yes: At least 650 feet between dwelling and any group home, sober living home, or state-licensed drug and alcohol treatment facility. CC 66-67	Yes: At least 650 feet between dwelling and any group home, sober living home, or state-licensed drug and alcohol treatment facility. CC 66-67	Yes: Small boardinghouses shall locate at least six hundred fifty (650) feet from any other small boardinghouse. CC 49	Yes: Large boardinghouses shall be located at least one thousand (1,000) feet away from any other boardinghouse. CC 49	NA, 13-30
Dwelling Operator's Permit Required					
Owner or operator of dwelling must obtain an "Operator's Permit," CMMC 13-323, 9-372, or meet same conditions for	Yes, CC 67, 69 [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 67, 69 [CUP]; Yes, CC 66, 61-63 [SUP]	No	No	No

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Operator's Permit under SUP requirements, 13-322, 13-311					
Owner or operator of dwelling must obtain an "operator's permit" as a condition to qualify for a conditional use permit, CMMC 13-323, 9-372, or meet same conditions for Operator's Permit to qualify for SUP, 13-322, 13-311	Yes, CC 67, 69 [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 67, 69 [CUP]; Yes, CC 66, 61-63 [SUP]	No	No	No
Permit Application Requirements					
Permit Application: Required to list applicant/operator's every general partner and every owner with controlling interest in corporation. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22
Permit Application: Required to provide permit history or operation of similar use at any time anywhere in the United States. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22
Permit Application: Required to provide copy of rules governing conduct of residents occupying dwelling. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Permit Application: Required to identify the name, address, telephone, CDL of onsite dwelling manager. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22
Permit Application: Required to provide document reflecting criteria for acceptance of resident in dwelling. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22
Permit Application: Required to provide blank copies of all forms that residents of dwelling are required to complete. CMMC 13-311(a) + 9-374(a) versus CMMC 13-29(a) + City Form 09/2019	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	Yes, CC 61, 69; [CUP]; Yes, CC 66, 61-63 [SUP]	No, CC 22	No, CC 22	No, CC 22
Permit Notice Requirements, July 2017 (17-05) - October 2018 (18-06) time period					
Public notice of hearing on application for special use permit, CMMC 13-311(b) versus CMMC 13-29(c) [07/2017-09/2018]	Notice to be mailed to the ***owner of record and occupants*** of all properties within five hundred (500) feet of the location of the group home.	Notice to be mailed to the ***owner of record and occupants*** of all properties within five hundred (500) feet of the location of the group home.	Notices of the hearing shall be mailed to all ***property owners*** within a five hundred-foot radius of the project site	Notices of the hearing shall be mailed to all ***property owners*** within a five hundred-foot radius of the project site	Notices of the hearing shall be mailed to all ***property owners*** within a five hundred-foot radius of the project site
Occupancy limit on number of residents per dwelling					

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Occupancy limitation	City Housing Element	City Housing Element	State Housing Law/UHC	State Housing Law/UHC	State Housing Law/UHC
On-Site Manager Requirements					
Dwelling must have a 24/7 onsite manager. CMMC 13-311(a)(4) + CMMC 9-274(b)(1) versus State Housing Law	Yes, CC 62, 70	Yes, CC 62, 70	No, State Housing Law	No, State Housing Law	No, State Housing Law
Vehicle Restrictions					
Each dwelling resident limited to one vehicle that must be used as resident's primary form of transportation, 13-311(a)(5) + CMMC 9-274(b)(2)	Yes, CC 62, 70	Yes, CC 62, 70	No	No	No
Resident Parking Restrictions					
Each dwelling resident must park her vehicle on dwelling premises or within 500 feet of dwelling, 13-311(a)(5) + CMMC 9-274(b)(2) versus CMMC Title 10, Ch X (Stopping, Standing and Parking)	Yes, CC 62, 70	Yes, CC 62, 70	No	No	No
Eviction requirements					
Landlord/operator must notify resident's emergency contact, OCHA OC Links Referral Line, and Costa Mesa's Network for Homeless Solutions before an evicting resident, CMMC 13-311(a)(10) + 9-374(b)(6)	Yes, CC 62, 70	Yes, CC 62, 70	No	No	No
Landlord/operator must provide transportation to alternative housing to any resident evicted from dwelling, CMMC 13-311(a)(11) + 9-374(b)(7)	Yes, CC 62, 70	Yes, CC 62, 70	No	No	No

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	*Sober Living Home*[2]	*Group Home*[3]	*Boardinghouse, Small < 3 rental rooms*[4]	*Boardinghouse, Large < 7 rental rooms*	*Multi-family Dwelling*[5]
Landlord/operator must maintain eviction records for one year resident's eviction from dwelling, CMMC 13-311(a)(12) + 9-374(b)(8)	Yes, CC 62, 70	Yes, CC 62, 70	No	No	No
Regulation of Residents within Dwelling					
Each resident of dwelling must actively participate in a legitimate self-improvement program (e.g., 12-step program), CMMC 13-311(a)(14)(i) + 9-374(b)(10)(i)	Yes, CC 63, 71	No	No	No	No
Landlord/operator must maintain records showing that resident is actively participating in a legitimate self-improvement program (e.g., 12-step program), CMMC 13-311(a)(14)(i) + 9-374(b)(10)(i)	Yes, CC 63, 71	No	No	No	No
Landlord/operator must promulgate a rule warning that if a resident refuse to actively participating in a legitimate self-improvement program (e.g., 12-step program), then the resident may be evicted. CMMC 13-311(a)(14)(i) + 9-374(b)(10)(i)	Yes, CC 63, 71	No	No	No	No
Landlord/Operator must prohibit residents from use of any non-prescription drugs. CMMC 13-311(a)(14)(ii) + 9-374(b)(10)(ii)	Yes, CC 63, 71	No	No	No	No

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	*Sober Living Home*[2]	*Group Home*[3]	*Boardinghouse, Small < 3 rental rooms*[4]	*Boardinghouse, Large < 7 rental rooms*	*Multi-family Dwelling*[5]
Landlord/operator must evict any resident caught using any non-prescription drug. CMMC 13-311(a)(14)(ii) + 9-374(b)(10)(ii)	Yes, CC 63, 71	No	No	No	No
Landlord/operator must promulgate a good neighbor policy directing residents "to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit." CMMC 13-311(a)(14)(vi) + 9-374(b)(10)(v)	Yes, CC 63, 71	No	No	No	No
Landlord/operator must promulgate written protocol for onsite manager to follow in response to a neighbor's complaint. CMMC protocol for 13-311(a)(14)(vi) + 9-374(b)(10)(v)	Yes, CC 63, 71	No	No	No	No
Owner, Landlord, Operator, and Employee Qualification Requirements					
Owner, landlord, or operator of a dwelling is barred from obtaining a Special or Condition Use Permit for that dwelling if she was terminated from a job for sexual harassment, embezzlement, or illegally furnishing alcohol within two years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63, 71	Yes, CC 63, 71	No, CC 25	No, CC 25	No, CC 25

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Owner, landlord, or operator of a dwelling is barred from obtaining a Special or Condition Use Permit for that dwelling if she employs any person who was terminated from a job alcohol for sexual harassment, embezzlement, or illegally furnishing alcohol within two years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63, 71	Yes, CC 63, 71	No, CC 25	No, CC 25	No, CC 25
Owner, landlord, or operator of a dwelling is barred from obtaining a Special or Condition Use Permit for that dwelling if she was convicted or pleaded nolo contendere to any PC 290 sex offense or PC 667.5 felony within 10 years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63-64, 71-72	Yes, CC 63-64, 71-72	No, CC 25	No, CC 25	No, CC 25
Owner, landlord, or operator of a dwelling barred from obtaining a Special or Condition Use Permit for that dwelling if she employs any person who was convicted or pleaded nolo contendere to any PC 290 sex offense or PC 667.5 felony within 10 years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63-64, 71-72	Yes, CC 63-64, 71-72	No, CC 25	No, CC 25	No, CC 25

CMMC Regulations Governing Residential Uses in City's Multifamily Districts	***Sober Living Home[2]***	***Group Home[3]***	***Boardinghouse, Small < 3 rental rooms[4]***	***Boardinghouse, Large < 7 rental rooms***	***Multi-family Dwelling[5]***
Owner, landlord, or operator of a dwelling barred from obtaining a Special or Condition Use Permit for that dwelling if he was convicted or pleaded nolo contendere to any PC 290 sex offense or PC 667.5 felony within 10 years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63-64, 71-72	Yes, CC 63-64, 71-72	No, CC 25	No, CC 25	No, CC 25
Owner, landlord, or operator of a dwelling barred from obtaining a Special or Condition Use Permit for that dwelling if she employs any person who was convicted or pleaded nolo contrendere to any PC 451 arson offense or furnishing any controlled substance within 7 years of applying to the City for that zoning permit. CMMC 13-311(b)(2), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 63-64, 71-72	Yes, CC 63-64, 71-72	No, CC 25	No, CC 25	No, CC 25
Owner, landlord, or operator of a dwelling barred from obtaining a Special or Condition Use Permit for that dwelling if she is in recovery from abuse of drugs or alcohol and has been abstained for less than one year before applying to the City for that zoning permit. CMMC 13-311(b)(6), 9-374(e)(2) versus 13-29(g)(2)	Yes, CC 64, 72	No	No, CC 25	No, CC 25	No, CC 25

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January 12, 2026

VIA EMAIL

Kimberly Hall Barlow
Jones Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
khb@jones-mayer.com

RE: Costa Mesa's Proposed Revisions to RA Ordinance

Dear Ms. Barlow:

Thank you for the opportunity to review and comment on Costa Mesa's proposed revisions to the City's reasonable accommodation ordinance pursuant to the settlement agreement in the *Insight v. Costa Mesa* case.

In your December 19, 2025 email to us, you said that Costa Mesa was proposing to delete subsection (7) of Section 13-200.62(f) of the City's reasonable accommodation ordinance. You explained that the deletion is proposed because "it is operationally difficult for staff or the applicants to make this determination given lack of information and the difficulties in ensuring that any facilities adequately allow individual(s) with said disability(ies) to live in a residential setting. Furthermore, this subsection is unnecessary given the other provisions of the Reasonable Accommodation Ordinance." We support the deletion of subsection (7) from Section 13-200.62, which requires a finding that "the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting."

The deletion of subsection (7) is an important first step in bringing Costa Mesa's reasonable accommodation ordinance into compliance with state and federal fair housing requirements. However, in order to bring the entire reasonable accommodation regulation into compliance, Costa Mesa will need to make additional changes. Given the structure of the current ordinance, it will be difficult to do that by simply editing or rewording the text. Instead, we propose that the City repeal sections of the ordinance in their entirety and replace them with new ones.

To begin with, Section 13-200.62 (f) has problems that cannot be remedied without restructuring. That section is a list of findings "all of which are required for approval" of a reasonable accommodation request. But the list combines factors that the person or entity requesting the accommodation must establish in order to be entitled to an accommodation, i.e., the topics of Findings (1) and (2), with factors that are the City's burden to establish if it is going to deny the accommodation, i.e., the topics of Findings (3), (5), and (8). These two types of topics need to be separated to clearly delineate who – the person or entity making the request, or the City – bears the burden of proof.

As written, Findings (3), (5), and (8) require affirmative findings that there is no undue financial or administrative burden, no direct threat, and no fundamental alteration for the approval of a reasonable accommodation request. In other words, they require that the City affirmatively find that those factors are *not* present. This has the effect of putting the burden on the person or entity making the request to establish the absence of an undue burden or fundamental alteration. That is contrary to fair housing law, which makes it the City's burden to establish that there *is* an undue burden, direct threat, or fundamental alteration before denying a reasonable accommodation request. Fair housing law does not permit the City to make the establishment of the *absence* of those factors a requirement.

Undue burden, direct threat, and fundamental alteration can properly be in the reasonable accommodation ordinance, but the regulation needs to be structured in a way that makes clear that if the person or entity making the request establishes the factors addressed in Findings (1) and (2), the City must grant the accommodation unless it finds that granting the

accommodation *will* impose an undue financial or administrative burden, *will* result in a direct threat, or *will* result in a fundamental alteration (i.e., the inverse of the current language regarding findings). It does not work to combine them in the same list as the elements that the person or entity making the request has the burden to establish. The two types of findings must be bifurcated.

Moreover, the current structure of the reasonable accommodation ordinance also makes it difficult for the ordinance to adequately reflect the law governing the findings that the City must establish to deny an otherwise valid reasonable accommodation request. For example, where the ordinance authorizes the City to deny a reasonable accommodation request based on a direct threat finding, it must also state that in such a case the City must find that the threat cannot be mitigated by reasonable accommodation. 28 C.F.R. §35.139. A finding that granting a reasonable accommodation would be an undue burden or fundamental alteration must also be made “after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.” 28. C.F.R. §35.150(a)(3). It will be difficult to add such clarifications in a clear way unless the two types of findings under Section 13-200.62(f) are separated and the findings for which the City bears the burden are written in the affirmative.

Section 13-200.62 (f) also includes factors that do not fall within either the burden of the person or entity making the accommodation request or the allowable reasons for the City to deny a request, but instead layer on additional obligations that are not permitted under fair housing law. Finding (4) requires a finding that the “requested accommodation is consistent with surrounding uses in scale and intensity of use.” The City cannot apply different occupancy, use, or development standards to shared housing for people with disabilities as compared to other forms of housing, nor can it require a household of people with disabilities to be limited to fewer people than a single housekeeping unit would be allowed to have. To the extent that a requested accommodation would result in housing that was vastly different from permitted housing uses, City staff could evaluate whether granting the request would constitute a fundamental alteration to a City program or would result in an undue burden or direct threat. But simply having the same number of people that a single housekeeping unit would

be allowed to have, or failing to meet another occupancy or development standard that was not also applied to single housekeeping units, could never fall within one of those permitted reasons for denying an accommodation request. Consistency with other uses should therefore not be listed as a separate required finding.

Likewise, Finding (6) requires in some instances “a finding that the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants generally.” For the same reasons that the City is removing Finding (7), which also focuses on “facilities of a similar nature and operation” rather than on the specific housing that is at issue for a particular reasonable accommodation request, the City should remove Finding (6). It is just as true that it will be “operationally difficult for staff or the applicants to make this determination given lack of information” for Finding (6) as for Finding (7). Moreover, providing a feasibility study or market study about other housing does not fall within the burden of someone making a reasonable accommodation request. Making such a study a condition of approving a disability-related accommodation is therefore a discriminatory housing practice. This should likewise not be listed as a required finding.

The deletion of Finding (7) should also be accompanied by a revision to the language of Finding (2), which states that, “[t]he requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.” To ensure that City staff interpret Finding (2) consistent with fair housing laws, by focusing on the housing at issue in the request rather than “facilities of a similar nature and operation” elsewhere, Finding (2) should be revised to refer to an equal opportunity to use and enjoy “their dwelling,” “the dwelling at issue in the accommodation request,” or something similar.

In order to bring the reasonable accommodation ordinance into compliance with federal and state fair housing law, the City will also need to revise other portions of the ordinance. As reflected in the settlement agreement, we would welcome the opportunity to work with the City during that portion of its review of the reasonable accommodation ordinance and to provide feedback on any draft revisions of those other sections.

For those portions of the ordinance as well, it would be most effective for the City to repeal and replace language rather than try to work within the existing structure. For example, Section 13-200.62(b) loads burdensome and irrelevant requirements onto people or entities making reasonable accommodation requests. A lay homeowner who needs an accommodation due to disability should be able to comply with application requirements without having to hire an attorney or other expert to help them understand what they need to do. The City should limit the application to information that is necessary for the City to evaluate whether the person or entity making the request has met their burden, such as the location of the dwelling at issue, the existence of the disability, the nature of the accommodation that is being requested, and the connection between the disability and the requested accommodation. The provisions in Section 13-200.62(b) that require people or entities making reasonable accommodation requests to provide "[a]ny other information that the director reasonably determines is necessary for evaluating the request for reasonable accommodation" ((b)(3)) and "[a]ny other information that the hearing officer reasonably concludes is necessary to determine whether the findings required by subsection (e) of this section can be made" ((b)(7)) are particularly problematic because they are not limited to the information necessary to establish that a person or entity is entitled to a reasonable accommodation.

Section 13-200.62(d) provides that appeals of reasonable accommodation requests will be handled through the same procedures as "any other discretionary permit." However, the appeals process pertaining to reasonable accommodation requests needs to be navigable and manageable by lay people with disabilities. This provision should be repealed and replaced with new language that requires a prompt, clear statement of the reasons for any denial, establishes a simple procedure for requesting an appeal, provides a reasonable deadline for making requests for an appeal, and eliminates the need for individuals or entities to pay for the City's review of their reasonable accommodation determination.

Most importantly, the section of the reasonable accommodation ordinance addressing appeals must exempt them from the review procedures that govern general zoning matters in order to respect the privacy of people's disabilities and disability-related needs during any review process. Hearings regarding reasonable accommodations requests should not be

made by legislative bodies, and no public notice should be made regarding reasonable accommodation reviews. Public hearings create an opening for members of the public to express animus against people with disabilities, which imposes an improper barrier to people seeking such accommodations. For example, at the hearings regarding Insight's reasonable accommodation request, a member of the public told the Planning Commission that a person who is "mentally disabled does not belong in a neighborhood next door to me or any of us in this room," and someone testified to the City Council that the "mentally ill cannot associate with our children, neighbors." As you know, hearing those types of comments was traumatic for our client Ms. Doe, who spoke about her own experiences with mental illness, and the ways that staying at Insight's housing had helped her, at a hearing on Insight's reasonable accommodation request. Not only is the City not obligated to provide the public with a forum to intimidate and humiliate people like Ms. Doe, but the City cannot put people like her through such an ordeal as a condition of having their accommodation request reviewed. Nor can such animus play any part in the City's review of an accommodation request. For similar reasons, the ordinance should also make clear that only the person or entity making the request can appeal a decision regarding a reasonable accommodation, in contrast to the current language which permits virtually anyone – including neighbors with an animus against people with disabilities – to appeal.

Finally, Sections 13-200.62(e) and (g), regarding "considerations," overlap with the required "findings" in Section 13-200.62(f) in a way that impedes consistency with fair housing law. Like Section 13-200.62(f), these sections fail to make clear which elements are the burden of the person making the reasonable accommodation request to establish and which are the City's burden. Many of them are also improper considerations. For example, the City cannot take into account "whether granting the request would be consistent with the City's General Plan." By definition, any reasonable accommodation request pertaining to zoning will be inconsistent with the zoning scheme. "Requiring public entities to make exceptions to their rules and zoning policies is exactly what the FHAA does." *Anderson v. City of Blue Ash*, 798 F.3d 338, 363 (6th Cir. 2015); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994) (FHA imposes an affirmative duty to reasonably accommodate disabled persons). The question is not whether a requested disability

accommodation is inconsistent with the City's General Plan, but whether granting it would fundamentally alter the General Plan. To take another example, the City cannot take into consideration whether "the accommodation would result in a substantial increase in traffic or insufficient parking" (§ 13-200.62(g)(2)) or "create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation" (§ 13-200.62(g)(4)) unless it is also doing so with respect to single housekeeping units. Again, the City cannot impose more stringent development or occupancy standards on housing occupied by people with disabilities than on single housekeeping units, nor can it use vague or undefined conditions as a basis for denial of a reasonable accommodation request. These are examples, and not an exhaustive list, of the issues with subsections (e) and (g) of Costa Mesa's reasonable accommodation ordinance. We would be happy to provide additional comments or to discuss with you and with City staff in more detail our further thoughts on bringing the ordinance into compliance with state and federal fair housing requirements.

We appreciate your time and attention to our comments and look forward to working with you and the City further on these important access issues for Costa Mesa residents with disabilities. Please let us know if you would like to discuss any of these issues further.

Sincerely,

Autumn M. Elliott
Law Office of Autumn Elliott

Jia Min Cheng
Managing Attorney
Disability Rights California

Exhibit 2

December 2022

GROUP HOME TECHNICAL ADVISORY

CA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DIVISION OF HOUSING POLICY DEVELOPMENT

EXHIBIT 2

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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, subds. (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, subds. (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 polices 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, subds. (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, subds. (a)(1)(A), (b)(1)(B)(i), 65583, subd. (c)(5).
[37] Gov. Code, § 12926, subds. (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, subds. (a)(3), (b)(1)(C).
[40] Gov Code § 65008, subds. (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 accommodation . . . .[66]

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

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[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 non-conforming 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

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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.

EXHIBIT 3

22-56181

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE OHIO HOUSE, LLC,

Plaintiff-Appellant,

v.

CITY OF COSTA MESA,

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California

Case No. 8:19-cv-01710-JVS-GJS
Hon. James V. Selna, District Judge

BRIEF OF AMICI CURIAE THE CALIFORNIA CIVIL RIGHTS DEPARTMENT AND THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN SUPPORT OF APPELLANT AND REVERSAL

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INTRODUCTION AND INTERESTS OF AMICI

Californians have the right to obtain and hold housing of their choice without discrimination based on disability. Cal. Gov't Code §§ 12920-12921.[1] In fact, California law requires local governments to take affirmative actions to further opportunities for people with disabilities to live where they choose, in housing that meets their particular needs. These rights and requirements are enumerated in several state laws, including the California Fair Employment and Housing Act (FEHA, *id*. §§ 12900-12999) and its implementing regulations; the Housing Element Law (*id*. §§ 65580-65589.11); the Land Use Anti-Discrimination Law (*id*. § 65008); and the Affirmatively Furthering Fair Housing Law (*id*. § 8899.50).

The California Civil Rights Department (CRD, formerly known as the Department of Fair Employment and Housing) is the state agency charged with enforcing California's civil rights laws, including the fair housing protections in FEHA. In exercising this authority, CRD has promulgated comprehensive regulations implementing FEHA, *see, e.g.*, Cal. Code Regs. tit. 2, §§ 12005-12271, and has investigated and prosecuted civil actions under FEHA in state and federal court, *see* Gov't Code § 12930(e)-(j). CRD

[1] All statutory citations are to the California Codes unless otherwise indicated.

thus has a strong interest in the proper application of FEHA standards in housing discrimination cases in California.

The California Department of Housing and Community Development (HCD) is the state agency responsible for enforcing housing laws in California, and has "primary responsibility for development and implementation of housing policy." Health & Safety Code § 50152; *see also* Gov't Code § 65585(j). HCD's responsibilities also include advising cities on state housing law and policy, developing guidelines on "housing elements" and other housing law issues, and reviewing each local government's housing element for substantial compliance with the Housing Element Law. Health & Safety Code §§ 50456, 50459, 50464; Gov't Code § 65585(a)-(e). One of HCD's recent initiatives to carry this mandate out is its Group Home Technical Advisory, which was issued in 2022 in response to legal concerns around some local governments' adoption of new zoning regulations for group homes—housing shared by people with disabilities that provides support for the residents' disability-related needs—and explained

how these regulations can conflict with state law.[2] HCD thus has a strong interest in the proper application of state housing laws and their interaction with FEHA, including in the area of group homes.[3]

As discussed further below, it appears to amici that the district court failed to properly apply the broad protections California law affords people with disabilities with respect to housing. Amici therefore respectfully submit this brief to aid this Court's consideration of the important state law issues this case presents.

ARGUMENT

California law protects people with disabilities from housing discrimination, and requires cities to take affirmative actions in their land-use rules to advance the ability of people with disabilities to live in neighborhoods of their choice and in residential settings that address their

[2] This document is available on the Department's website at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf.

[3] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than the amici curiae contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E). Amici have filed a motion for leave along with this brief, as the City of Costa Mesa refused to consent to the filing. *See* Fed. R. App. P. 29(a)(2).

particular disability-related needs. As one aspect of that statutory and regulatory scheme, FEHA requires courts to carefully scrutinize local land use laws, like Costa Mesa's, that facially discriminate against group homes for people with disabilities. Such laws are permissible only if they objectively benefit people with disabilities and are the least restrictive means of achieving the municipality's policy objectives. The judgment below should be reversed because Costa Mesa failed to make such a showing, and also failed to satisfy FEHA's reasonable-accommodation requirements. Ordinances like Costa Mesa's not only violate fundamental principles of state housing and antidiscrimination law; they are also contrary to California's critical public policy goals and do real harm to people with disabilities.[4]

I. CALIFORNIA LAW PROHIBITS HOUSING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES

FEHA and its regulations expressly prohibit housing discrimination against protected classes of individuals, including people with disabilities. FEHA's protection includes its incorporation of other state housing laws as a

[4] As Appellant's opening brief explains, it appears that federal law may require reversal as well. But amici will address only certain state law issues in this brief.

potential basis for liability. In addition, the California Constitution provides a privacy right that extends to group housing.

A. FEHA and Its Implementing Regulations Prohibit Land Use Practices that Discriminate Against People with Disabilities

FEHA provides comprehensive protection against housing and employment discrimination in California. Gov't Code §§ 12900-12999. It establishes as a "civil right" the "opportunity to seek, obtain, and hold housing without discrimination" on the basis of a number of enumerated protected characteristics. *Id.* § 12921(b). FEHA prohibits specific unlawful housing practices, including discrimination or harassment generally, retaliation, otherwise making unavailable or denying a dwelling based on discrimination, and discriminating through public or private land use practices. *Id.* § 12955; *see id.* § 12955(*l*) ("Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law . . . that make housing opportunities unavailable."). FEHA defines "discrimination" to include the "refusal 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." *Id.* § 12927(c)(1).

FEHA prohibits discrimination based on, among other characteristics, disability, and "includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics." Gov't Code § 12955(m). Individuals recovering from addiction are recognized as people with disabilities, *see id.* § 12926(j), and "sober living homes and other dwellings intended for occupancy by persons recovering from alcoholism and drug addiction are protected from illegal discrimination against the disabled." *Socal Recovery, LLC v. City of Costa Mesa*, 56 F.4th 802, 814 (9th Cir. 2023).

FEHA and its federal law counterpart, the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3631, are related but offer distinct sets of protections. California courts applying FEHA "'often follow decisions construing federal antidiscrimination statutes, as long as those decisions provide appropriate guidance.'" *Walker v. City of Lakewood*, 272 F.3d 1114, 1126 (9th Cir. 2001) (quoting *Sada v. Robert F. Kennedy Med. Ctr.*, 56 Cal. App. 4th 138, 150 n.6 (1997)). Thus, in some instances, this Court "'appl[ies] the same standards to FHA and FEHA claims.'" *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 n.14 (9th Cir. 2013) (quoting *Walker*, 272 F.2d at 1131 n.8). But FEHA has force independent of the FHA, and in

certain situations it "may provide greater protection against discrimination"—that is, "the FHA provides a minimum level of protection that FEHA may exceed." *Auburn Woods I Homeowners Ass'n v. Fair Emp't & Hous. Comm'n*, 121 Cal. App. 4th 1578, 1591 (2004) (quoting *Brown v. Smith*, 55 Cal. App. 4th 767, 780 (1997)); *see also, e.g.*, *Page v. Super. Ct.*, 31 Cal. App. 4th 1206, 1215-16 (1995) (declining to follow federal decisions that would limit supervisor's personal liability under California antidiscrimination statute); *Martinez v. City of Clovis*, 90 Cal. App. 5th 193, 254-73 (2023) (analyzing FEHA claim separately from FHA claim), *petition for review pending*, No. S280039 (Cal.).

Pursuant to its legislative authority, *see* Gov't Code § 12935(a), CRD has promulgated regulations implementing FEHA. These "quasi-legislative" regulations, which "have the dignity of statutes" under principles of California administrative law, *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 10-11 (1998), are relevant to this case in at least three respects.

First, the FEHA regulations incorporate acts under other state housing laws into the definition of "[p]ublic land use practices" that can be challenged as discriminatory under FEHA. Cal. Code Regs. tit. 2, § 12005(bb). The regulations define "[p]ublic land use practices" to include

"all practices by governmental entities . . . in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities." *Id.*[5] The FEHA regulations specifically prohibit discriminatory treatment and discriminatory effects in such land use practices. *Id*. §§ 12161-12162. The regulations' definition of "land use practices" thus covers a broad range of potential public action, and prohibits such actions that make housing opportunities unavailable for people with disabilities and impose different requirements on a protected class, if the practice intentionally discriminates against or has a discriminatory effect on members of the protected class. *Id.* §§ 12005(bb), 12161(a)-(b).

Second, when a public entity's land use policy is facially discriminatory—as is the case with Costa Mesa's ordinances here, *see infra* at 14—the entity must make two specific showings to avoid liability. It must establish that the policy both "[o]bjectively benefits a protected class" *and*

[5] These practices include, among other things, adoption of ordinances, permitting and zoning decisions, actions under the Housing Element Law (part of the California Planning and Zoning Law and the State Housing Law, both cited in the regulation), and "[a]ll practices that could affect the availability, feasibility, use, or enjoyment of housing opportunities." Cal. Code Regs., tit. 2, § 12005(bb).

"[i]s the least restrictive means of achieving the identified purpose." Cal. Code Regs. tit. 2, § 12042(f)(1)(A), (f)(2).[6]

Third, the FEHA regulations also implement the statute's reasonable accommodation requirement. *See* Gov't Code § 12927(c)(1). As applicable to zoning and permitting cases, a public entity must "make reasonable accommodations unless providing the requested accommodation would constitute an undue financial and administrative burden or a fundamental alteration of its program." Cal. Code Regs. tit. 2, § 12176(c); *see* Gov't Code § 12927(c)(1) (discrimination can include failure to make reasonable accommodations).[7] Moreover, the regulations require that whenever a public entity cannot immediately grant a reasonable accommodation request, it must undertake a good-faith interactive process "to exchange information to

[6] In addition, or as an alternative, to demonstrating an "objective benefit," an entity may also show the policy "[r]esponds to legitimate safety concerns raised by the individuals affected by the facially discriminatory policy, rather than being based on stereotypes about them." Cal. Code Regs. tit. 2, § 12042(f)(1)(B). Here, the district court found the City had not offered any such concerns at trial to justify its regulations. ER 10.

[7] A proposed accommodation constitutes a "fundamental alteration" only if it would "change the essential nature of the services or operations of the person being asked to provide the accommodation or modification," and cannot be denied based on "fears or prejudices" about the disability, or because it "might possibly become an undue burden if extended to multiple other individuals who might request accommodations or modifications." Cal. Code Regs. tit. 2, § 12179(e)-(f).

identify, evaluate, and implement a reasonable accommodation or modification that allows the individual with a disability equal opportunity." Cal. Code Regs. tit. 2, § 12177(a). This includes affirmatively "identify[ing] if there is another accommodation or modification that is equally effective." *Id.* § 12177(c).

In addition to these regulatory provisions, FEHA's prohibition of actions that "make housing opportunities unavailable" based on protected characteristics, Gov't Code § 12955(*l*), is informed by state laws that require local jurisdictions to plan for and accommodate adequate housing opportunities for all individuals. A key aspect of the Planning and Zoning Law, Gov't Code §§ 65000-66499.58, is the requirement that local governments prepare a housing element, *see id*. § 65582(f). In that document, cities must thoroughly analyze fair housing issues related to housing for people with disabilities and set forth a program of actions that protect and promote such housing, as well as meaningfully, quantifiably, and affirmatively further fair housing. *Id*. § 65583.[8] Among other requirements,

[8] "'Affirmatively furthering fair housing'" is defined under California law to include "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

the housing element must "demonstrate local efforts to remove governmental constraints that hinder . . . meeting the need for housing for persons with disabilities," *id.* § 65583(a)(5), and must "remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities," *id.* § 65583(c)(3). It must include a fair housing assessment with specific goals, implementation strategies, and "metrics and milestones" for evaluating results. *Id.* § 65583(c)(10)(A)(iv). Notably, to satisfy these obligations, cities are required to use and adduce data, analyses, and quantitative objectives. *See, e.g.*, *id.* § 65583(a)(5), (a)(7), (b)(1), & (c)(10)(A)(ii). In other words, numerous provisions of state housing law address the adequacy of local policies in protecting and promoting housing opportunities for people with disabilities.

Recently, the California Court of Appeal held that local governmental actions that violate the Planning and Zoning Law (including the Housing Element Law) and make housing opportunities unavailable to members of a protected class also violate FEHA. *Martinez*, 90 Cal. App. 5th at 268-71. The court concluded that the plaintiff had stated a FEHA claim by pleading

protected characteristics." Gov't Code § 8899.50(a)(1) (internal quotation marks in original).

that a local government's failure to comply with the Housing Element Law "'make[s] housing opportunities unavailable' as that phrase is used in . . . section 12955, subdivision (*l*)." *Id.* at 269. *Martinez* thus underscores that one important aspect of FEHA's housing-related protections stems from the statute's interaction with other state housing laws.

B. California's Constitutional Privacy Right Protects Group Home Residents

In addition to these state statutory and regulatory provisions, the California Constitution provides protections for people with disabilities living in communal, group home settings that courts must consider when examining local ordinances. This protection stems from Article I, Section 1 of the California Constitution, which declares an "inalienable right[]" to (among other things) "privacy."

In *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123 (1980), the California Supreme Court held that this constitutional privacy right prohibited a city ordinance that disallowed more than five persons unrelated by blood or marriage from living in a communal setting. *Id.* at 134. The court explained that the state Constitution protects a "right of privacy not only in one's family but also in one's home . . . [and] the right to live with whomever one wishes." *Id.* at 130; *see also Coal. Advocating Legal Hous.*

Options v. City of Santa Monica, 88 Cal. App. 4th 451, 458-61 (2001) (rejecting city's limitations on who may live in an accessory dwelling unit because "the right to choose with whom to live is fundamental").

This protection is relevant here because of the importance of communal living arrangements to people with disabilities. Group homes can provide peer support for disability-related needs, help people with disabilities live in deinstitutionalized settings, and integrate residents into their communities. *See* Group Home Technical Advisory at 1, 6. As a result, the California Legislature has recognized that "'persons with disabilities . . . are significantly more likely than other persons to live with unrelated persons in group [homes].'" *Broadmoor San Clemente Homeowners Ass'n v. Nelson*, 25 Cal. App. 4th 1, 6 (1994) (quoting 1992 Cal. Stat., ch. 1277, § 18, and 12 West Cal. Legis. Serv. 6038 (legislative finding and declaration in statute relating to fair housing)).

II. THE JUDGMENT BELOW SHOULD BE REVERSED BECAUSE COSTA MESA'S ORDINANCES VIOLATE CALIFORNIA LAW

The district court failed to properly apply the state law principles just discussed, and there was no legally sufficient evidentiary basis for a reasonable jury to find for Costa Mesa, necessitating reversal.

A. Costa Mesa Failed to Make the Showings Necessary to Sustain Its Facially Discriminatory Ordinances Under FEHA

Costa Mesa's ordinances at issue here apply to "group homes," which are defined as dwellings "being used as a supportive living environment for persons who are considered handicapped under state or federal law." ER 251. As the district court correctly recognized, *see* ER 252, this scheme is a "'[f]acially discriminatory policy'" because it "explicitly conditions a housing opportunity on a protected basis, takes adverse action based on a protected basis, or directs adverse action to be taken based on a protected basis." Cal. Code Regs. tit. 2, § 12040(c) (internal quotation marks in original). Thus, to avoid liability here, Costa Mesa bore the burden of establishing both that its law "[o]bjectively benefits a protected class," *id.* § 12042(f)(1)(A), and that it "[i]s the least restrictive means of achieving the identified purpose," *id.* § 12042(f)(2). Costa Mesa did not satisfy either prong of this analysis.

"Objectively benefits a protected class." Costa Mesa's counterintuitive argument that its ordinances, which facially discriminate against group homes, in fact "objectively *benefit*" people with disabilities, ER 6-10, suffers from two key flaws.

First, the gravamen of Costa Mesa's successful "benefits" argument was that its policy purportedly advantages group homes by allowing them to avoid the restrictions the City places on "boarding houses"—*i.e.*, a 1,000-foot spacing requirement, exclusion from a single-family residential zone, and "a six-person and six-room limit." *See, e.g.*, ER 6-10. But a comparison between group homes for people with disabilities and boarding houses is inapt. The communal living, peer support, and other assistance that group homes provide are essential housing resources for people with disabilities, who may not be able to live without them, unlike the non-disabled residents of boarding houses. *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 787 (7th Cir. 2002). Thus, group homes, unlike boarding houses, are protected by state and federal fair housing laws. *See e.g.*, *Broadmoor San Clemente Homeowners Ass'n*, 25 Cal. App. 4th. at 6; Group Home Technical Advisory at 24.

The City has failed to carry its burden to justify its regulations in this case, because treating people with disabilities who require group homes slightly better than "boarding house" residents is irrelevant. *See Oconomowoc*, 300 F.3d at 787. Costa Mesa's regulations placing burdens and restrictions on group homes do not result in a "benefit" to people with disabilities, who have needs addressed by group homes that people without

disabilities who live in boarding houses do not share. Nor has the City shown that it would actually be lawful to impose on group homes the restrictions it imposes on boarding houses, or that Ohio House and other group homes would not be entitled to reasonable accommodations from them. The "benefits" defense based on a comparison to boarding houses fails as a matter of law.

Costa Mesa's restrictions on group homes also conflict with the City's obligations under state law to affirmatively further fair housing for people with disabilities and account for their particular needs. Among other deficiencies, the City's policy fails to account for the "special housing needs" of "persons with disabilities," Gov't Code § 65583(a)(7); fails to "remove governmental constraints" on housing for people with disabilities, *id.* § 65583(a)(5); and fails to give "highest priority" to factors that "limit or deny fair housing choice or access to opportunity" for people with disabilities, *id.* § 65583(c)(10)(A)(iv). These failures may well independently violate FEHA by virtue of making housing opportunities unavailable to people with disabilities. *See Martinez*, 90 Cal. App. 5th at 268-70; *supra* at 10-12. At a minimum, however, they should foreclose Costa Mesa's argument that its facially discriminatory ordinances somehow objectively benefit people with disabilities.

The City seeks to distinguish Ohio House from other shared housing that it treats like single-family homes because not all of its occupants are joint owners or tenants. ER 5606, 5918. But in *Adamson*, the Court held that the California Constitution's protection of privacy rights still applies when a property owner or primary tenant (like Ohio House) is renting out rooms for others to live in a communal setting. *See Adamson*, 27 Cal. 3d at 127-28, 136 & n.5; *City of Santa Barbara v. Adamson*, 90 Cal. App. 3d 606, 153 Cal. Rptr. 507, 509 (1979) (confirming that Adamson was renting space in her house to the other occupants). In addition, group homes like Ohio House, in which the occupants are not joint owners or tenants, are well-established and important communal housing resources for people with disabilities.[9] It is incongruous to suggest that restrictions contradicting state constitutional rights could provide a legally cognizable "benefit" to people who live in group homes.

Second, in addition to the legal inadequacy of the alleged benefits themselves, Costa Mesa failed to meet its burden to produce sufficient

[9] *See* Group Home Technical Advisory at 24-25; Polcin et al., *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcomes*, J. of Substance Abuse Treatment (2010); 38(4):356-365, at 2-4, https://tinyurl.com/2ba5ccbw.

evidence of the imposed restrictions' supposed benefit to people with disabilities. This failure is inconsistent with California's housing laws, which require public agencies to take meaningful actions to affirmatively further fair housing and to make related assessments in their planning, supported by objective, quantifiable data. Gov't Code §§ 8899.50, 65583(c)(10)(A). This includes an obligation to assess displacement risk, *id.* § 65583(c)(10)(A)(ii); analyze potential and actual governmental constraints on housing for people with disabilities and demonstrate efforts to remove constraints, *id.* § 65583(a)(5); perform a quantifiable analysis of housing needs for people with disabilities, *id.* § 65583(a)(7); state goals and quantified objectives relative to affirmatively furthering fair housing, *id.* § 65583(b)(1); address and work to remove constraints on housing for people with disabilities, *id.* § 65583(c)(3); and promote housing for people with disabilities, *id.* § 65583(c)(5).

Instead, the City's "benefits" defense relied on subjective, speculative, and unsubstantiated opinions that people with disabilities could benefit from the City's policy both allowing for the siting of group homes where they purportedly would not otherwise be allowed if they were regulated as "boarding houses," and requiring 650-foot separation to prevent potential feelings of institutionalization for group home residents. *See, e.g.*, ER 7-10.

Related, the City failed to fully consider and support with sufficient evidence, for example, the extent to which its policy precludes group homes in areas or locations where they otherwise would be sited, or already have been sited, ignoring the creation of new constraints on housing for people with disabilities. And the City failed to fully consider and support with sufficient evidence whether more housing opportunities of their choice for the protected class would be in fact lost rather than gained as a result of the policy, including ignoring displacement risks. As a result, the district court lacked the requisite objective evidence, such as detailed quantitative data, studies, or assessments of what the needs of people with disabilities were or what the actual effects of the City's group home policy would be. *See generally* ER 6-10; *see also* Cal. Code Regs. tit. 2, § 12042(f)(1)(A) (requiring defendants to show that a facially discriminatory housing policy "[o]bjectively benefits a protected class"). Indeed, what is known about the ordinances' actual effects undermines the City's claim, despite the lack of detailed quantitative studies. Those effects will include displacing dozens of people from their Ohio House homes and effectively imposing quotas on how many people recovering from addiction can live in each of the City's various neighborhoods, and therefore in the City as a whole.

"Least restrictive means." Even if Costa Mesa had been able to show that its ordinances objectively benefit people with disabilities, it would also have had to establish that its policy "[i]s the least restrictive means of achieving the identified purpose." Cal. Code Regs. tit. 2, § 12042(f)(2); *Pack v. Fort Washington II*, 689 F. Supp. 2d 1237, 1243-44, 1248 (E.D. Cal. 2009) (granting summary adjudication on FEHA facial discrimination claim because rule was not the least restrictive means of achieving alleged purpose and noting possible alternative rule).

The City did not demonstrate with sufficient evidence that it was unable to achieve its central claimed purpose—avoiding the creation of institutionalized living in residentially zoned areas—by less restrictive means than it chose. Again, assuming for purposes of discussion that the City's goal of limiting "institutionalization" was legitimate, the district court failed to scrutinize, for example, the City's claimed need for at least 650 feet of space between group homes as the least restrictive means of achieving this purpose. *See, e.g.*, ER 8-9 (lack of discussion of possible less restrictive alternatives the jury could have considered). This constitutes an independent ground for invalidating the City's facially discriminatory ordinances.

B. Costa Mesa Failed to Demonstrate Compliance with FEHA Reasonable Accommodation Requirements

Apart from having enacted facially discriminatory ordinances, the record here shows that Costa Mesa violated FEHA by failing to make a reasonable accommodation for Ohio House, which requested that it be permitted to operate within 550 feet of another group home rather than the minimum 650 feet required by the City's ordinance. This failure has two aspects. First, as specified in FEHA's regulations, Costa Mesa was required to undertake a good-faith interactive process in response to Ohio House's request for reasonable accommodation. Cal. Code Regs. tit. 2, § 12177. This includes evaluating and implementing a reasonable accommodation if possible, or *affirmatively* "identify[ing] if there is another accommodation or modification that is equally effective." *Id.* § 12177(a), (c). It appears that the City did not make these interactive efforts and the district court did not consider these requirements when determining there was sufficient evidence to find the denial of a reasonable accommodation did not violate FEHA. *See* ER 2892-97; ER 16.

Second, as relevant here, a requested accommodation may only be denied if it would constitute an unacceptable "fundamental alteration," meaning it would "change the essential nature of the services or operations"

being offered. Cal. Code Regs. tit. 2, § 12179(b)(1), (e). And, a reasonable accommodation request cannot be denied based on "fears or prejudices" about the disability, or because it "might possibly become an undue burden if extended to multiple other individuals who might request accommodations or modifications." *Id.* § 12179(f).

"Fundamental alteration." The court found that the jury had sufficient evidence to determine that a waiver of the 650-foot separation requirement constituted a "fundamental alteration" of the City's zoning code creating residential neighborhoods. This was based on City testimony that a "cluster of group homes increases the number of adults living in an area, which increase[s] parking and traffic, [and] leads to increased related complaints," such that "[t]he City wanted to reduce these effects to prevent the 'institutionalization' of residential neighborhoods and the degradation of the residential nature." ER 16.

Assuming only for purposes of argument that the City's goal was legitimate, the court's order did not discuss any sufficient evidence showing that a deviation from the 650-foot separation rule would lead to these negative results, let alone any sufficient evidence that the 100-foot departure from the rule that Ohio House requested would do so. Indeed, Ohio House had already been located 550 feet from another group home, and there was

no sufficient evidence discussed that this had created an institutionalized setting.

Moreover, the City's concerns are a far cry from what are properly considered fundamental alterations. FEHA and its regulations specifically anticipate that cities will need to adjust their zoning codes to reasonably accommodate disability-related housing needs, Gov't Code § 12927(c)(1); Cal. Code Regs tit. 2, § 12180(c)(6), undercutting the City's argument that the claimed speculative effects of increased density alleged here could be considered fundamental alterations. Here, the allegations of increased parking needs, van traffic, and loading and unloading passengers,[10] which could come from any home with several residents—such as a multi-generational family living together, a home that receives a large number of deliveries or visitors, or families with regular carpools—is unlikely to rise to the level of changing the "essential nature" of a residentially-zoned neighborhood. Because these effects can be caused by many different sources, they should be addressed by generally applicable parking regulations, traffic calming measures, or occupancy standards instead of

[10] The district court acknowledged that Ohio House did not receive any specific noise, parking, or smoking complaints in the past. ER 16.

singling out group homes with discriminatory and constraining regulations. *See, e.g.*, *Adamson*, 27 Cal. 3d at 133; Group Home Technical Advisory at 30-31.

The City's reaction to its claimed concerns also did not consider its obligations under state law to affirmatively furthering fair housing. These obligations include, among other things, protecting individuals with disabilities' right to housing of their choice, and the housing they find most suitable for their disability-related needs, while removing constraints on their ability to obtain this housing. *See, e.g.*, Gov't Code §§ 8899.50; 65583(a)(5), (c)(3), (c)(5), (c)(10)(A). The accommodation Ohio House has requested may be consistent with, and indeed required by, state housing law. The district court's failure to consider the requested accommodation in light of the City's obligations under state law was error.

"Fears or prejudices." To justify denying the accommodation, Costa Mesa argued that having a greater number of persons per household, like Ohio House does, strained the City's infrastructure, and could create "institutionalization" of zoned residential neighborhoods. ER 16. But this argument, rather than justifying denying Ohio House's accommodation request, appears to reflect a concern that other group homes might seek a similar accommodation in the future. It thus appears to rest on "fears or

prejudices" that multiple group homes might seek reasonable accommodations to locate or remain in Costa Mesa, and that group home residents somehow cause uniquely problematic traffic, noise, or activity (as the City allows similar traffic, noise, and activity from other homes with several residents). That is precisely the kind of prejudicial reasoning FEHA rejects. *Cf. Oconomowoc*, 300 F.3d at 786 (noting that FHA rejects city actions based on "blanket stereotypes about disabled persons rather than particularized concerns about individual residents . . . the use of stereotypes and ignorance, and . . . [g]eneralized perceptions about disabilities and unfounded speculations about threats to safety . . . as grounds to justify exclusion") (internal citations and quotation marks omitted).

III. RESTRICTIVE ZONING CODES LIKE COSTA MESA'S ARE CONTRARY TO PUBLIC POLICY AND HAVE A NEGATIVE IMPACT ON HOUSING FOR CALIFORNIANS WITH DISABILITIES

As discussed above, group homes are an essential resource for people with disabilities. Group homes that provide sober living environments play a key role in substance abuse recovery care.[11] They are "alcohol and drug free living environments that offer peer support for recovery outside the context

[11] U.S. Dep't of Health & Human Servs., *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health* (2016) at 4-4, https://tinyurl.com/ssnem8v3.

of treatment."[12] According to the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, community support "is a critical aspect of achieving and maintaining recovery," and thus, recovery residences "are uniquely qualified to assist individuals in all phases of recovery, especially those in early recovery, by furnishing social capital and recovery supports."[13] Research demonstrates that residents show improvement in a variety of areas, including drug and alcohol use, employment, psychiatric symptoms, and arrests.[14] Group homes thus enable people with disabilities to live in the community while still receiving the needed support for continued recovery.

As discussed above, California law recognizes the important benefits group homes provide to people with disabilities by establishing certain protections for them—protections that ordinances like Costa Mesa's fail to

[12] Polcin et al., *What Did We Learn from Our Study on Sober Living Houses and Where Do We Go from Here?* J. of Psychoactive Drugs (Dec. 2010) 42(4):425-433, at 2, https://tinyurl.com/yzcxmb3r.

[13] Substance Abuse and Mental Health Servs. Admin., *Recovery Housing: Best Practices and Suggested Guidelines* (2018) at 3, https://tinyurl.com/mr4c4arz.

[14] Korcha et al., *Sober Living Houses: Research in Northern and Southern California*, Addiction Science & Clinical Practice (2015) 10 (Suppl. 1):A30, https://tinyurl.com/rh8prtbw.

recognize. In addition to the problems inherent in the City's overall permitting requirements, the Group Home Technical Advisory explains how Costa Mesa's other, more specific group home regulations conflict with its duties to avoid discriminating against such housing and to affirmatively promote and protect it. These regulations include, for example, the City's 650-foot spacing requirement, definition of single housekeeping units, and special occupancy standards for group homes.[15] Discriminatory restrictions like these and others in Costa Mesa's ordinances "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."[16]

These problems are not hypothetical. Restrictive zoning codes have had—and continue to have—a negative impact on the availability of this important type of housing opportunity for people with disabilities.[17] As an initial matter, recent research demonstrates that group homes for those recovering from addiction are not highly concentrated in Orange County,

[15] *See generally* Group Home Technical Advisory at 23-36.

[16] *Id.* at 1.

[17] Group Home Technical Advisory at 7.

relative to the rest of California or the nation as a whole.[18] In fact, California is behind many other states in the number of such group homes per capita, despite having a higher age-adjusted alcohol/drug mortality rate than many other states.[19] Moreover, the last two years have seen a large percentage increase in the number of such deaths in California, indicating a likely increasing need for group homes in the State at a time when there are fewer homes per capita than many other states.[20]

Restrictive zoning codes can limit this number even further, as is evident from Costa Mesa's own data. Before Costa Mesa adopted its group home ordinances, it estimated there were 94 sober living homes in the City's residential zones. *Socal Recovery, LLC*, 56 F.4th at 806.[21] As of 2022, the City counted only 16 group homes, with at least 68 having closed. *Id.* at 806

[18] Mericle et al., *Identifying the Availability of Recovery Housing in the U.S.: The NSTARR Project*, Drug and Alcohol Dependence 230 (2022), at 6-8, figs. 1, 2, tbl. 1, https://tinyurl.com/y48mpfze.

[19] *Id.* at tbl. 1.

[20] Fusion Ctr., *Data Brief: 2020 and 2021 Increases in Deaths in California*, Cal. Dep't of Pub. Health (July 1, 2022), at 8, 9, tbl. 2, https://tinyurl.com/4bbcb5d4.

[21] The *SoCal Recovery* decision cites data from the city website: *City Approved Sober Living/Group Homes*, https://tinyurl.com/yukycasy. That decision did not consider the validity of the City's ordinances.

& nn.6-7. The City's closure list now includes 83 closed facilities, indicating that an additional 15 facilities may have closed.[22]

The expert evidence in this case confirms this alarming reduction in available housing for people with disabilities. Professor Brian Connolly concluded that the City's ordinances restricted the availability of group homes; some were even forced to close, displacing people with disabilities. *See* Connolly Expert Rep. at 53 (Feb. 14, 2022), ECF No. 249-3. His report also discusses how the closure of such facilities, as with other areas of the housing market, presumptively increases the cost of housing in remaining group homes. *Id.* at 54.

In short, restrictive zoning codes, such as those at issue here in Costa Mesa, constrain housing opportunities and choice for people with disabilities. This expressly contravenes FEHA, the State's housing and planning laws, the mission of CRD and HCD, and the policy of the State of California.

CONCLUSION

The judgment of the district court should be reversed.

[22] *Group Homes/Sober Living Information and Application*, Costa Mesa, https://tinyurl.com/4wjhb6ky (providing information on "Operators that have closed"). The list can be found at https://tinyurl.com/2absudwh.

Dated: June 29, 2023

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

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9th Cir. Case Number(s) 22-56181

I am the attorney or self-represented party.

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[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature */s/ Lisa C. Ehrlich* **Date** June 29, 2023
(use "s/[typed name]" to sign electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of June 2023, I electronically filed the foregoing ***BRIEF OF AMICI CURIAE THE CALIFORNIA CIVIL RIGHTS DEPARTMENT AND THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN SUPPORT OF APPELLANT AND REVERSAL*** with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Lisa Ehrlich
Lisa Ehrlich

EXHIBIT 4

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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November 29, 2023

Lori Ann Farrell Harrison, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Lori Ann Farrell Harrison:

RE: Group Home Ordinances – Letter of Technical Assistance

In the attached May 9, 2023, findings letter, the California Department of Housing and Community Development (HCD) offered to provide additional technical assistance regarding, among other things, implementation of Costa Mesa's (City) 6th cycle housing element programs to review its group home and related policies. This letter provides that technical assistance for the City's review of its group home ordinances, including Ordinance Nos. 14-13, 15-11, and 17-05, which amended Title 13 of the City's Municipal Code (MC 13), as well as related City policies, such as its reasonable accommodations procedures.

HCD has reviewed the City's group home ordinances and related policies under its authority pursuant to Government Code section 65585, which includes authority to review cities' compliance with the Land Use Discrimination Law (Gov. Code, § 65008), Affirmatively Furthering Fair Housing (AFFH) Law (Gov. Code, §§ 8899.50, 65583), and State Housing Element Law (Gov. Code, § 65580 et seq.). HCD finds that the City's group home ordinances and related policies violate Government Code sections 65008, 65583, and 8899.50 by failing to meet the City's obligations to affirmatively further, protect, and remove constraints on housing for persons with disabilities, and also by discriminating against this housing.

To comply with state law, the City must, among other things, immediately stop enforcing its group home ordinances, repeal them, and revise its reasonable accommodations policies. These actions are also necessary to timely and effectively implement the programs in the 6th cycle housing element that the City adopted on November 15, 2022, which are required for the City's housing element to substantially comply with State Housing Element Law. These include Program 2J (Transitional and Supportive Housing), 2N (Reasonable Accommodation), Program 2O (Definition of Single Housekeeping Unit), Program 2P (Group Homes), and 4A (Fair Housing).

Definitions

Various laws use the term “group homes” to refer to different types of housing for different populations. For the purposes of state fair housing and planning and zoning laws, 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, and dormitories.

- **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 and that do not provide services that require licenses under state law.

- **Licensed Facilities**—shared living residences that provide 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 state licenses because they do not provide alcoholism or drug addiction recovery and treatment services.[1]

- **Alcohol or Other Drug (AOD) Facilities**—residential facilities that must obtain state licenses because they provide alcoholism or drug addiction recovery and treatment services.

[1] Individuals recovering from alcoholism or addiction are recognized as people with disabilities (see Gov. Code, § 12926, subd. (j)), and “sober living homes and other dwellings intended for occupancy by persons recovering from alcoholism and drug addiction are protected from illegal discrimination against the disabled.” *SoCal Recovery, LLC v. City of Costa Mesa* (“*SoCal Recovery*”) (9th Cir. 2023) 56 F.4th 802, 814.

Statutory Background

Land Use Discrimination Law

California's Planning and Zoning Law (Gov. Code, § 65000 et seq.) prohibits jurisdictions from engaging in discriminatory land use and planning activities. Specifically, Government Code section 65008, subdivision (a)(1), deems any action taken by a city to be null and void if it denies an individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in the state due to illegal discrimination. Section 65008 prohibits discrimination based on any characteristic, including disabilities, protected by other state or federal laws, while adding its own prohibitions of discrimination against individuals or households who have very low, low, moderate, or middle incomes.[2] The law further recites multiple categories of actions that are determined to be discriminatory, including enactment or administration of ordinances that prohibit or discriminate based on a protected characteristic[3] and imposition of requirements on a residential use for persons with protected characteristics that are not generally imposed upon other residential uses.[4]

AFFH Law

Government Code section 8899.50 requires all California public agencies, including cities, "to administer their programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with [this] obligation . . . ."[5] AFFH means:

> 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.[6]

Moreover, the "duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development."[7]

[2] Gov. Code, § 65008, subds. (a)(1)(A), (b)(1)(B)-(C), (2)(B), (3).
[3] *Id.* at subd. (b)(1)(B).
[4] *Id.* at subd. (d)(2)(A).
[5] Gov. Code, § 8899.50, subds. (a)(2)(B), (b)(1), (2).
[6] *Id.* at subd. (a)(1).
[7] *Id.*

Housing Element Law

In addition to the general AFFH requirements in Government Code section 8899.50, State Housing Element Law includes more specific AFFH requirements for cities. Government Code section 65583 requires cities to thoroughly analyze fair housing issues related to housing for people with disabilities and set forth a program of actions that protect and promote such housing. Through their housing elements, cities must "remove governmental constraints that hinder . . . meeting the need for housing for persons with disabilities," which requires "remov[ing] constraints to, and provid[ing] reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities."[8] Section 65583 also requires cities to "promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities all persons regardless of . . . disability" or "other protected characteristics."[9] And cities' housing elements must include a fair housing assessment with specific goals, implementation strategies, and "metrics and milestones" for evaluating results.[10] In complying with these AFFH duties, cities are required to analyze data and set measurable objectives and milestones.[11]

Resource Materials

In revising its policies, amending its ordinances, and implementing its housing element programs, the City should consider HCD's Group Home Technical Advisory (Group Home TA)[12] and its AFFH Guidance Memorandum (AFFH Memo).[13] The City should also consider, among other things, the analysis in the amicus brief that HCD and CRD filed in the pending appeal in *The Ohio House, LLC v. City of Costa Mesa,* 9th Cir. Case No. 22-56181, Docket No. 25-2 (Amicus Brief). The guidance documents and Amicus Brief discuss relevant statutes, regulations, and case law, as well as HCD's and other government agencies' earlier guidance documents, academic papers, and demographic and statistical analyses.

[8] Gov. Code, § 65583, subds. (a)(6), (c)(3).
[9] *Id.* at subd. (c)(5).
[10] *Id.* at subd. (c)(10)(A)(iv).
[11] See, e.g., Gov. Code, § 65583, subds. (a)(5), (a)(7), (b)(1), (c)(10)(A)(ii).
[12] Available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf.
[13] Available at https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf.

Findings

HCD's findings include, but are not necessarily limited to, those described below.

Permitting Requirements

Ordinance Nos. 14-13, 15-11, and 17-05 establish permitting requirements for group homes.

- MC 13-311(a) requires a special use permit for unpermitted group homes of six or fewer occupants located in R1 (single-family) zones and prohibits group homes with seven or more occupants in these zones.
- MC Title 9, Chapter II, Article 23, 9-372 requires group homes of six or less to apply for an operator's permit, regardless of licensure status.
- MC 13-322 requires a Conditional Use Permit (CUP) for group homes of six or less in R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, and PDI (Planned Development Zones) Zones.
- MC 13-323 requires a CUP for group homes in the R2-MD, R2-HD and R3 residential zones and the PDR-LD, PDR-MD, PDR-HD, PDR-NCM, PDC, and PDI (Planned Development Zones) with seven or more occupants.

The City's permitting requirements for group homes and its application and enforcement of these requirements violate Government Code sections 65008, 65583, and 8899.50 by, among other things, discriminating against housing for persons with disabilities, constraining and failing to promote this housing, and restricting the fair housing choices of persons with disabilities (their right to housing of their choice and the housing they find most suitable for their disability-related needs).

The ordinances do not impose similar restrictions on other dwellings located in the zones listed above. The discriminatory effects and constraints these permitting requirements impose on group homes are evident through, among other things, the City's own data showing how severely the permitting requirements have curtailed group homes in Costa Mesa. And there are considerable other discriminatory effects, including, and among other things, the costs and burdens imposed on group homes, the displacement of persons with disabilities from housing of their choice and the disruptions of their lives, and the City's efforts to deter new group homes from opening in Costa Mesa.[14]

[14] See, e.g., Amicus Brief at pp. 27-28; *SoCal Recovery*, *supra*, 56 F.4th at p. 806 (finding that Costa Mesa engaged in "an explicit effort to reduce the number of sober living homes operating within the City.").

Furthermore, the City should not continue attempting to justify its group home restrictions by comparing them to its treatment of boardinghouses. Group homes are designed to provide communal living environments with peer and other support for their occupants' disability-related needs and to help integrate their residents into local communities. Boardinghouses do not serve these same goals. Government Code sections 65008, 65882, and 8899.50 also impose specific and unique duties on cities to affirmatively promote and protect housing for persons with disabilities that do not similarly apply to all boardinghouses.

The overall problems with the City's permitting system require the City to immediately stop enforcing its group home ordinances and repeal them. To provide additional guidance, this letter discusses below further examples of how specific provisions in these ordinances conflict with the City's duties under Government Code sections 65008, 65583, and 8899.50.

Definition of Single Housekeeping Unit

MC 13-06 defines a single housekeeping unit as follows:

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

HCD encourages the City to review pages 24-25 of the HCD Group Home Technical Advisory for policies to avoid when creating a definition of a single housekeeping unit. These problematic policies include requiring all residents to share a common lease or deed, excluding for-profit group homes and overly scrutinizing living arrangements (e.g., not allowing for locks on rooms or having separate entrances).

Lack of Grandfathering

Typically, when a zoning code changes, preexisting, nonconforming uses are "grandfathered" in and allowed to continue operating under the requirements that were in place before the amendments.[15] Costa Mesa's zoning code follows this well-established practice by allowing preexisting, nonconforming residential uses to continue operating unless they are abandoned, the dwellings they are in are declared physically unsafe, or the owner proposes structural alterations. (MC 13-203(b), 13-204.) But the City departs both from general grandfathering practices and its own grandfathering code provisions by requiring preexisting group homes to apply for permits in the same fashion as new ones to remain operational. (MC 13-311, 13-322, and 13-323.) This imposes discriminatory and constraining conditions on preexisting group homes, while creating displacement impacts that AFFH duties and State Housing Element Law require the City to consider and avoid.[16] The City should apply its generally applicable grandfathering provisions to preexisting group homes, subject to reasonable accommodations requirements.

Occupancy Limits

The City sets special occupancy limits on group homes that prohibit group homes of seven or more occupants in R-1 single family zones, require group homes with seven or more occupants to obtain permits to operate in other zones, and require group homes with six or fewer occupants to obtain permits to operate in any residential zone. (MC 9-372, 13-311)(a), 13-322, 13-323.) This is another example of the City imposing discriminatory and constraining restrictions on group homes. Concerns about overcrowding should be addressed through applying the generally applicable occupancy limits that apply to all residences instead of singling out specific types of housing based on occupants' disabilities.[17]

Costa Mesa's ordinances appear to be based on a faulty application of Health and Safety Code statutes that allow local governments to subject licensed group homes with more than six residents to conditional use or other discretionary approval processes but 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.[18] The City, however, cannot justify its restrictions on group homes

[15] See, e.g., *Edmonds v. Los Angeles County* (1953) 40 Cal.2d 642, 651 ("The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.").
[16] Gov. Code, § 65583, subds. (c)(10)(A)(ii), (v).
[17] See Uniform Housing Code, § 503.2; see also *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133.
[18] See, e.g., Health & Saf. Code, §§ 1566.3, 1569.85, 11834.23.

through statutes designed to protect small licensed facilities, which provide higher levels of support and care that require state licenses.[19] These statutes specifically apply to licensed facilities, not to unlicensed group homes. In effect, the City is inappropriately transforming state laws designed to prevent local constraints on small, licensed facilities into constraints on group homes that do not provide services requiring state licenses. Moreover, the City is imposing more restrictions on group homes with six or fewer residents than state law allows it to impose on licensed facilities with similar numbers of residents. 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 licensed facilities and to reasonable accommodations requirements.[20]

Separation Requirement

MC 13-322, 13-323, and 13-324 require 650 feet of separation between group homes, sober living homes, or state-licensed drug and alcohol treatment facilities, new and existing.

These spacing requirements have a particularly severe impact on group homes, severely limiting where they can locate, causing group homes to close, and preventing others from opening. Yet the City has not shown that these spacing requirements are necessary or that there are health, safety, or similar justifications for the spacing requirements, or that if these were actual issues, that the City could not address them through less restrictive and discriminatory policies.

Pages 27-29 of the Group Home TA provides additional guidance illustrating why the City's spacing requirements conflict with its duties under state housing law (e.g., Gov. Code, §§ 8899.50, 65008, 65583, subds. (c), (1), (5), (10)), as does the Amicus Brief.

Vehicle and Parking Requirements

The City imposes special vehicle and parking requirements on group homes. MC 13-311(a)(5) states that each dwelling resident is limited to one vehicle that must be used as the resident's primary form of transportation. MC 13-311(a)(5) requires each dwelling resident to park their vehicle on dwelling premises or within 500 feet of the dwelling.

Concerns about parking and traffic should be addressed through generally applicable rules instead of restrictions that target housing for persons with disabilities.[21]

[19] See Group Home TA at pp. 25-26.
[20] See, e.g., Health & Saf. Code, § 13113 (requiring sprinkler systems in certain licensed facilities).
[21] See *Adamson*, *supra*, 27 Cal.3d at 133; Group Home TA at p 31.

Examples of Other Permitting and Operational Requirements

The City imposes the following restrictions on group homes but not on other residences:

- MC 13-311(a)(4) requires a manager to be present during all hours, seven days a week.
- MC 13-311(a)(14)(vi) requires that the operator must have a good neighbor policy directing residents "to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit."
- MC 13-311(b) requires group homes applying for a permit to provide notice to the owner of record and all occupants within 500 feet of the group home.

Singling out group homes for restrictions like these can burden group homes with additional, unjustified costs, while perpetuating fears and stereotypes about persons with disabilities. Pages 30-33 of the Group Home TA provide additional guidance on how to avoid these and other restrictions in Costa Mesa's group home ordinances that conflict with the City's duties under Government Code sections 8899.50, 65008, 65583, subds. (c)(1), (c)(5) and (10), among others.[22]

Reasonable Accommodations

Failing to make reasonable accommodations to rules or policies, in order to allow persons with disabilities the opportunity to access housing, is a form of discrimination.[23] Making reasonable accommodations is also necessary to fulfill the City's AFFH duties and its duties to remove constraints on housing for persons with disabilities.[24]

The City should review its reasonable accommodation policies in Municipal Code section 13-200.62, along with its application of these policies, to ensure compliance with state law.[25] For example, the City: (i) must avoid denying requested accommodations based on fears or prejudicial assumptions about people with disabilities, such as that group home residents somehow uniquely cause problematic traffic, noise, or activity; (ii)

[22] See also *Oconomowoc Residential Programs, Inc. v. City of Milwaukee* (7th Cir. 2002) 300 F.3d 775, 783 (finding that house manager requirement is discriminatory because it effectively mandates an "institutional" arrangement that is not "on par with" housing policies for those who are not disabled); *Potomac Group Home Corp. v. Montgomery County, Md.* (D. Md. 1993) 823 F.Supp. 1285, 1296 (finding that notice requirements discriminate against and stigmatize persons with disabilities).
[23] See, e.g., Gov. Code, § 12927, subd. (c)(1).
[24] See, e.g., Gov. Code, §§ 8899.50, 65583, subds. (a)(6), (c)(3), (5).
[25] See, e.g., Cal. Code Regs., tit. 2, §§ 12176-12185; Group Home TA at pp. 18-20; Amicus Brief at pp. 21-25.

may not place the burden on reasonable accommodation applicants to demonstrate that their requested accommodations would not create undue burdens on the City or fundamental alterations to its zoning code; (iii) may not require applicants to show that they could not find any other housing within the city that would meet their disability-related needs; and (iv) must engage in good faith with reasonable accommodation requests and avoid delay or burdensome procedural requirements.[26]

Costa Mesa May Still Address Problems that Might Arise at Individual Group Homes

The City has resources to legally address problems that might occur at individual group homes. 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, the City can address these issues through the same code enforcement and other legal processes it applies to others who violate municipal codes and other laws. If the City has evidence that a group home operator is providing services that require a license without obtaining one, it can contact the state's Department of Social Services or Department of Health Care Services, which can initiate investigations and take remedial action if appropriate.[27]

This may still require considering if reasonable accommodations are appropriate in some circumstances. And the City should avoid overbroad or discriminatory applications of nuisance laws, such as those basing civil nuisance actions on 911 calls for emergency services.[28] But if a group home is found to have violated local or state law, the City may, for example, 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, constraining, and unlawful regulations for all group homes.

[26] See, e.g., Cal. Code Regs., tit. 2, §§ 12177-12179; 28. C.F.R. § 35.150(a)(3).
[27] See Group Home TA at pp. 33-36, 37.
[28] See. e.g., Cal. Code Regs., tit. 2, § 12162, subd. (a); see also California Attorney General Rob Bonta letter to all Cities and Counties in California re Crime Free Hosing Policies (Apr. 21, 2023), available at https://oag.ca.gov/system/files/attachments/press-docs/Crime%20Free%20Housing%20Guidance_4.21.23.pdf.

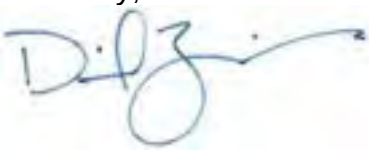
Conclusion

Costa Mesa's ordinances are blocking new group homes from opening, forcing existing ones to close, and imposing costs, administrative burdens, and fees that make it difficult for group homes to operate, while displacing persons with disabilities and disrupting their lives. The City is creating these restrictions and problems in the context of a shortage of adequate housing for persons with disabilities, which is a particularly acute issue within California's broader housing crisis.

HCD has reviewed the City's group home ordinances and found that they violate Government Code sections 65008, 65583, and 8899.50. The City must stop enforcing these ordinances, repeal them, change its reasonable accommodation policies and practices, and review other zoning practices in light of HCD's guidance to ensure that the City is complying with state law. These actions are necessary for the City to comply with its duties under Government Code sections 65008, 65583, and 8899.50, and are among the things that the City must do to bring its 6th cycle housing element into substantial compliance with State Housing Element Law.

For technical assistance regarding the City's 6th Cycle housing element, please contact Jose Armando Jauregui at jose.jauregui@hcd.ca.gov. If you have any questions regarding the content of this letter, please contact Bentley Regehr at bentley.regehr@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosures: Letter from HCD regarding City of Costa Mesa's 6th Cycle (2021-2029) Adopted Housing Element (May 9, 2023)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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May 9, 2023

Lori Ann Farrell Harrison, City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Lori Ann Farrell Harrison:

RE: City of Costa Mesa's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Costa Mesa's (City) housing element that was adopted on November 15, 2022 and received for review on March 10, 2023. In addition, the California Department of Housing and Community Development (HCD) considered technical modifications from its prior review authorized by Resolution Number 2022-67. Pursuant to Government Code section 65585, subdivision (h), HCD is reporting the results of its review. In addition, HCD considered comments from Costa Mesa First pursuant to Government Code section 65588, subdivision (c).

The adopted housing element meets the statutory requirements of State Housing Element Law (Gov. Code, § 65580 et seq.). However, the housing element cannot be found in substantial compliance until the City has completed necessary rezones to make prior identified sites available and address the shortfall of sites to accommodate the RHNA pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021) as described below.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to make prior identified sites available or accommodate a shortfall of sites, pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c), are completed. As this year has passed and Programs 3B (Fairview Development Center), 3C (North Costa Mesa Specific Plan), 3D (Urban plans and Overlays), and 3N (Reused sites) have not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning has been completed. Once the City completes the rezone, a copy of the resolution or ordinance should be transmitted to HCD. HCD will review the documentation and issue correspondence identifying the updated status of the City's housing element compliance.

Additionally, the City must continue timely and effective implementation of all programs including but not limited to the following:

- Program 2A (Inclusionary Housing Ordinance)
- Program 2B (Affordable Housing Development)
- Program 2I (State Density Bonus Incentives)
- Program 2J (Transitional and Supportive Housing)
- Program 2M (Parking Standards for Residential Development)
- Program 2N (Reasonable Accommodation)
- Program 2O (Definition of Single Housekeeping Unit)
- Program 2P (Group Homes): Please note, HCD may follow up with additional technical assistance. Please see HCD's Group Home Technical Advisory at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf.
- Program 3B (Fairview Development Center)
- Program 3G (City-wide Vote Requirements)
- Program 3R (Development of Large Sites)
- Program 4A (Fair Housing)

The City must monitor and report on the results of these and other programs through the annual progress report, required pursuant to Government Code section 65400. Please be aware, Government Code section 65585, subdivision (i), grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or State Housing Element Law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant, the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: https://www.opr.ca.gov/planning/general-plan/guidelines.html.

HCD appreciates the dedication and cooperation of the City's housing element team provided during the review and update. HCD particularly applauds the efforts of Jennifer Le and Scott Drapkin whose collaboration, communication, expertise and public service is truly commendable. HCD wishes the City success in implementing its housing element and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code section 65400. If you have any questions or need additional technical assistance, please contact Jose Armando Jauregui of our staff, at Jose.jauregui@hcd.ca.gov.

Sincerely,

Paul McDougall
Senior Program Manager

Exhibit 5

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of this 24th day of October, 2025 ("Effective Date"), by and among, the Parties listed below (together with their respective successors, assigns, heirs and/or subrogees, individually, "Party" or, collectively, "Parties").

PARTIES

The parties ("Parties") to this Agreement, collectively and together with their successors and assigns are as follows:

1. Plaintiff and Counter-Defendant INSIGHT PSYCHOLOGY AND ADDICTION, INC, a California Corporation ("Insight");

2. Plaintiff JANE DOE, an individual ("Ms. Doe");

3. Defendant and Counter-Plaintiff CITY OF COSTA MESA, a general law municipal corporation ("City" or "Costa Mesa");

4. Counter-Defendants MARY HELEN BEATIFICATO, an individual ("Ms. Beatificato") and GERALD GROSSO, an individual ("Dr. Grosso").

RECITALS

1. For multiple years, Insight provided supportive housing for adults with mental health and cognitive disabilities, such as Ms. Doe, at 2641Santa Ana Avenue in the City of Costa Mesa (the "Property") in one of the City's multifamily zones (R2-MD).

2. Beginning in 2015, City adopted a series of zoning ordinances, including but not limited to Ordinance Nos. 15-11, 15-13, 17-05, and 17-06 (collectively, the "Group Home Regulations"), which among other things, require group homes in the City's multifamily zones to obtain a conditional use permit and operator's permit.

3. On March 12, 2020, Insight filed a complaint in the United States District Court for the Central District of California against the City, Case No. 8:20−cv−00504−MEMF−JDE (the "Action"), based on allegations that the City's adoption, implementation, and enforcement of its regulations for group homes violate State and Federal fair housing and antidiscrimination laws, including without limitation the federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, California's Fair Employment and Housing Act, and Section 11135 of the California Government Code (the "Claims"). On August 7, 2020, Ms. Doe joined the Action as a Plaintiff.

4. On October 30, 2020, the City filed counterclaims against Insight, Ms. Beatificato, and Dr. Grosso, which were later narrowed to a nuisance counterclaim against Insight, Ms. Beatificato, and Dr. Grosso for continuing to provide supportive housing without a conditional use permit and operator's permit after the City had denied Insight's applications for a conditional use

permit and operator's permit ("Counterclaim"). During the pendency of this case, Insight stopped providing its housing on the Property.

5. The Parties understand and agree that the Parties dispute liability, that litigation is expensive, and that this Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose. Without any admission of liability or concession of the other Party's position, the Parties want to resolve all claims in this Agreement amicably. The Parties have agreed to the material terms in this Agreement and now seek to memorialize their settlement as set forth below.

6. The Parties do not admit, and expressly deny, violation of any federal, state or local law, and deny any wrongdoing or liability whatsoever.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the promises exchanged herein, the Parties agree as follows:

1. City's Obligations

a. **Settlement Payment**. The City shall pay Insight and Ms. Doe the amount of One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) (the "Settlement Payment") for their attorneys' fees, payable within fifteen (15) business days of the Effective Date. Payment shall be comprised of readily available funds made payable to Rutan and Tucker Client Trust Account. The Settlement Payment shall remain in the Rutan and Tucker Client Trust Account until it is distributed to Insight and Ms. Doe per separate written agreement.

b. **Amendment of Group Home Regulations**. The City shall implement Program 2N of the City's 6th Cycle 2021-2029 Housing Element Update (Revised March 1, 2023) by June 30, 2026. At the request of the City, Disability Rights California and/or the Law Office of Autumn Elliott may review and comment on revisions to the City's Reasonable Accommodation process. In particular, before the revision required under Program 2N is submitted to the Planning Commission or City Council for review, recommendation, or adoption, City staff are encouraged (but not required) to: (a) provide a draft of that revision to Disability Rights California and the Law Office of Autumn Elliott; (b) provide them with a reasonable period to comment on and respond to the draft revision; and (c) to discuss any comments with Disability Rights California or Elliott prior to submitting any proposed recommendation to the Planning Commission.

2. **Insight and Doe's Obligations**

a. **Distribution of Settlement Payment**. Concurrently herewith, Insight and Ms. Doe shall mutually agree in writing on the distribution of the Settlement Payment between Insight and Ms. Doe.

3. **Notifying Court of Settlement.** Upon execution of this Agreement, the Parties shall immediately file a Joint Notice advising the Court that the case has been settled, and the Parties shall withdraw any and all pending motions and requests, including requests for sanctions.

4. **Dismissal of Plaintiffs' Claims and City's Counterclaim**. Within fifteen (15) business days of the Effective Date, the Parties shall file a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure requesting dismissal with prejudice of the Claims filed by Insight and Ms. Doe and the Counterclaim filed by the City in the Action.

5. **Settlement; Mutual Releases**. Subject to the terms of this Agreement, the Parties hereby mutually waive, release and forever discharge any and all claims against each other arising from the Action and the facts and circumstances described in the Action, including Plaintiffs' Claims and the City's Counterclaim; and, the release contained herein includes a release of any and all disputes and/or claims related to the allegations of the Claims or the Counterclaim that were, or could have been, asserted in the Action, related to the facts of the Action (collectively the foregoing are the referred to herein as the "Released Claims.")

6. **Waiver of California Civil Code Section 1542**.

The Parties understand and agree that the releases provided herein extend to all of the Released Claims, whether known or unknown, suspected or unsuspected. With respect to the Released Claims, the Parties expressly waive and relinquish any and all rights they may have under California Civil Code Section 1542, which provides as follows:

> **"§ 1542. (General Release — Claims Extinguished.) A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

MHB Insight ____ Ms. Doe MHB Ms. Beatificato

____ Dr. Grosso ____ City

The Parties expressly waive and release any rights and benefits which they have or may have under any similar law or rule of any other jurisdiction and pertaining to the matters released herein. It is the Parties' intention through this Agreement and with the advice of counsel that they shall fully, finally and forever settle and release the Released Claims as set forth above. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters, notwithstanding the discovery of any additional claims or facts relating thereto.

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____ Insight ____ Ms. Doe ____ Ms. Beatificato

____ Dr. Grosso CGD City

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____ Insight ____ Ms. Doe ____ Ms. Beatificato

GJG ____ Dr. Grosso ____ City

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____ Insight JD Ms. Doe ____ Ms. Beatificato

____ Dr. Grosso ____ City

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7. **Enforcement of Agreement**. This Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding by any Party hereto wherein the claims are concerning or related to the Released Claims and/or this Agreement; provided, however that any Party, as well as Disability Rights California, may move to enforce the specific terms of this Agreement by filing a Petition for Writ of Mandate and/or Complaint for Breach of Contract in Orange County Superior Court, after first meeting and conferring with the Party alleged to have violated any term of this Agreement. If any Party, or Disability Rights California, files a Petition for Writ of Mandate and/or Complaint for Breach of Contract in the Orange County Superior Court to enforce the specific terms of this agreement, no other Party may assert that a Party or Disability Rights California lack standing.

8. **Power and Authority**. Each person executing this Agreement represents and warrants that he or she has the power, and is duly authorized, to execute this Agreement on behalf of the person or entity that he or she purports to represent.

9. **Reliance on Representations**. The Parties each acknowledge and agree that the other Parties to this Agreement are entering into this Agreement in reliance on their respective representations set forth in this Agreement and that the failure of any such representation shall be a material breach of this Agreement without further action by any Party.

10. **Agreement Entered into Voluntarily**. This Agreement is entered into freely and voluntarily. Each Party has executed this Agreement with full knowledge of its significance and with the express intention of affecting its legal consequence. None of the Parties have relied upon any representation of any other Party in signing this Agreement. Each Party has had the opportunity to retain legal counsel to review and approve this Agreement.

11. **Neutral Construction**. The Parties agree that this Agreement may not be altered, amended, modified or otherwise changed except by a writing executed by each Party. Each Party further agrees that because each Party has been active in the preparation and negotiation of the terms of this Agreement, it shall not be construed against any Party in the event of any dispute as to the meaning of its terms.

12. **Governing Law**. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California.

13. **Severability**. In the event that, at any time after the execution of this Agreement, any portion or provision of it is found by a court of competent jurisdiction to be illegal, invalid, unenforceable, non-binding, or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

14. **Counterparts; Execution**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts so executed shall constitute an agreement binding on all the Parties, notwithstanding that all the Parties are not a signatory to the same counterpart. This Agreement may be executed by facsimile or electronic signature, either of which will be deemed to have the same force and effect as an original signature.

[signatures on following page]

CITY OF COSTA MESA

By: Cecilia Gallardo-Daly
Its: Interim City Manager
Signed with authorization provided in closed session at the Regular City Council Meeting October 21, 2025

Approved as to Form:

JONES & MAYER

By: Kimberly Hall Barlow
Its: City Attorney

EVERETT DOREY LLP

By: Seymour B. Everett, III
Its: Special Counsel

INSIGHT PSYCHOLOGY & ADDICTION, INC

By: Mary Helen Beatificato
Its: Owner and General Counsel

MARY HELEN BEATIFICATO

By: Mary Helen Beatificato

GERALD GROSSO

By: Gerald Grosso

JANE DOE

By: Jane Doe
Signed with pseudonym to protect privacy

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By: Jane Doe
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Its: Owner and General Counsel

MARY HELEN BEATIFICATO

By: Mary Helen Beatificato

GERALD GROSSO

By: Gerald Grosso

JANE DOE

Jane Doe
Jane Doe (Oct 24, 2025 19:48:36 EDT)

By: Jane Doe
Signed with pseudonym to protect privacy

CITY OF COSTA MESA

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Its: Interim City Manager
Signed with authorization provided in closed session at the Regular City Council Meeting October 21, 2025

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Its: Owner and General Counsel

MARY HELEN BEATIFICATO

By: Mary Helen Beatificato

GERALD GROSSO

Gerald J Grosso
Gerald J Grosso (Oct 24, 2025 16:27:48 PDT)

By: Gerald Grosso

JANE DOE

By: Jane Doe
Signed with pseudonym to protect privacy