



Residential Recovery Facilities Conference March 2, 2007

Radisson Hotel
Newport Beach, CA



A California Public Agency Conference to Protect the
Character of Residential Neighborhoods

CA AB 1494 AUTHOR: DeSaulnier (D)
TITLE: Foster Care: Group Homes
INTRODUCED: 02/23/2007
SUMMARY:

Expands the definition of a group home to include a nondetention licensed residential care home operated by the County of Contra Costa with a capacity of up to 25 beds, that provides the specified services.

CA AB 1558 AUTHOR: Soto (D)
TITLE: Community Care Facilities: License System
INTRODUCED: 02/23/2007
SUMMARY:

Requires the director of the Department of Social Services maintain and update the system, and would authorize inclusion of additional information, including, but not limited to, administrative or court actions against any licensees, staffing information, and information regarding client characteristics. Requires the Department make public information contained in the system available to the public by prescribed dates depending on the type of care.

CA AB 370 AUTHOR: Adams (R)
TITLE: Sex Offenders: Residency Restrictions
INTRODUCED: 02/14/2007
SUMMARY:

Relates to sex offender registry requirements. Removes the exclusion of a residential facility which serves 6 or fewer persons from the definition of a single family dwelling. Allows a county or city to prohibit a person released on parole, after having served a term of imprisonment for any offense for which registration as a sex offender is required, from residing, during the parole period, in any single family dwelling with any other person also on parole, unless those persons are related.

CA AB 759 AUTHOR: Karnette (D)
TITLE: Fire Protection: Residential Care Facilities
INTRODUCED: 02/22/2007
SUMMARY:

Requires every residential care facility for the elderly that is licensed to care for not more than 6 residents, to have an approved, operable automatic fire sprinkler system. Requires the State Fire Marshal to adopt regulations to implement these provisions by January 1, 2009, including addressing those fire safety features no longer required of a licensee after an operable automatic fire sprinkler system has been installed and maintained.

CA SB 710 **AUTHOR:** Dutton (R)
TITLE: AFDC-FC: Group Homes: Rates
INTRODUCED: 02/23/2007
SUMMARY:

Relates to existing law that prohibits the Department of Social Services from establishing a rate for a new program of a new or existing provider or foster care group home, or for a new program at a new location for an existing providing, unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county.

CA SB 915 **AUTHOR:** Hollingsworth (R)
TITLE: Group Homes Housing Sex Offenders: Zoning
INTRODUCED: 02/23/2007
SUMMARY:

Makes changes to existing law that establishes the State Department of Social Services and the State Department of Mental Health. Establishes the policy of the state that mental be provided treatment in community settings, and prohibits discrimination in the enactment of zoning ordinances based upon the use of property for psychiatric care and treatment of patients. Declares the use of property for the care of 6 or fewer persons is residential use.

CA SB 992 **AUTHOR:** Wiggins (D)
TITLE: Substance Abuse: Adult Recovery Facilities
INTRODUCED: 02/23/2007
SUMMARY:

Requires the Department of Alcohol and Drug Programs to administer the licensure, certification, and regulation of adult recovery maintenance facility. Eliminates the prohibition against levying licensing fees for licensure of nonprofit organizations or local governmental entities, with respect to fees for licensure of an alcoholism or drug abuse recovery or treatment facility or an adult recovery maintenance facility.

CA SB 1000 **AUTHOR:** Harman (R)
TITLE: Substance Abuse: Adult Recovery Facilities
INTRODUCED: 02/23/2007
SUMMARY:

Requires the Department of Alcohol and Drug Programs to administer the licensure, certification, and regulation of adult recovery maintenance facilities.

CA AB 1526 AUTHOR: Lieber (D)
TITLE: Housing for Elderly or Disabled Persons
INTRODUCED: 02/23/2007
SUMMARY:

Relates to licensing of community care facilities. Exempts those facilities occupied by elderly or disabled persons from provisions. Exempts facilities that are approved or operated under provisions of the federal Tax Reform Act of 1986 and the federal Housing and Community Development Act of 1974.

CA SB 257 AUTHOR: Cogdill (R)
TITLE: Residential Facilities for the Elderly
INTRODUCED: 02/14/2007
SUMMARY:

Relates to the Residential Care Facilities for the Elderly Act, which provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services.

CA SB 708 AUTHOR: Dutton (R)
TITLE: Group Homes
INTRODUCED: 02/23/2007
SUMMARY:

Provides that no group home serving a certain number of mentally disordered or otherwise handicapped persons or dependent and neglected children may be licensed as such unless the city in which the group home is located issues a conditional use permit to the owner of the group home.

CA SB 709 AUTHOR: Dutton (R)
TITLE: Residential Care Facilities
INTRODUCED: 02/23/2007
SUMMARY:

Permits a city and county to submit the Director of Social Services additional documentation and evidence regarding the siting of a proposed residential care facility designed for a certain number of residents. Authorizes the director, after review of the information submitted by a city or county, to suggest that the applicant consider alternative siting locations.

- Q & A goal = 15 minutes

11:15 to 11:25 – Break

11:30 to 12:30 – Second Panel

Legislative Perspective

- What kinds of things have been brought to the Legislature? How have they fared? What has been the Legislature's perspective on these issues?
- **What do we know about how federal law can or should be changed to help localities address adverse impacts?**
- If localities were to ~~prepare~~ a bill or bills, ~~what should the bills do?~~
- Q & A (support)

MODERATOR AND SPEAKERS:

(D)

Cynthia

- **State Senator Tom Harman and Assembly Member Mimi Walters** (co-moderators) Harman/Walters will present comments about the issue, along with any pending bills they may be looking at introducing. They will introduce other legislators and/or legislative staff in the audience, and offer them a chance to make brief comments before, after, or during the discussion. They will also introduce the panelists and invite them to answer the questions above. Steve Rosansky will assist in moderating Q&A if need be (20 minutes).

Dutton
4 bills
Teresa
Larry/Sen
Dutton

- **Genevieve Morelos**, Legislative Analyst, League of California Cities
- **Teresa Trujillo**, Legislative Director, Assembly Member William Emerson's Office
- **Anne Blue**, Emanuels Jones & Associates
Genevieve, Teresa, and Anne will all address the issues and bills that have been brought to the Legislature, how they have they fared? What has been the Legislature's perspective on the Group Home issue? Also will discuss if localities were to get behind bills, what should the bills do? (15 minutes).

Why bills died
Suspense file

- **Dave Levy**, Orange County Fair Housing Council
Dave will work on answering what aspects of federal law might be affected if changes were proposed, and whether or not that has recently been attempted (10 minutes).

Bill List

Walters

926

- **Q & A goal = 15 minutes**

Legal answer

history

Don Dorn

Wiggin/Harman

12:30 to 1:15 – Lunch & Networking

Sign-ups for more information/networking e-mail list.

1:15 to 2:30 – Third Panel

Best Practices – Who's Doing What to Minimize Adverse Impacts

- Where communities have established good relationships with facility and home operators, what have they done?
- What tools do the best group home/recovery facility operators use to best integrate into neighborhoods?
- What resources are there for owner-operators and for residents to address issues collaboratively?
- Where bad operators exist, what are the best tools that cities can legally use to close down poorly-run homes or to help improve those that want to improve?
- Proposition 36 – its goals, impacts – is it working?
- Q & A

A California Public Agency Conference to Protect the Character of Residential Neighborhoods

Friday, March 2nd, 2007
8:30 a.m. to 2:30 p.m.
Newport Beach Radisson Hotel
4545 MacArthur Boulevard, Newport Beach, CA

CONFERENCE PROGRAM (PANEL DISCUSSION DRAFT VERSION)

8:30 to 9:30 – Registration and Continental Breakfast
Sign-ups for more information/networking e-mail list.

9:30 to 9:40 – Welcome & Conference Goals
Newport Beach Mayor Steve Rosansky

9:45 to 11:15 – First Panel
Recovery Facilities & Group Homes 101

- What different types of facilities are there? From community care, treatment, and recovery homes to homes for parolees.
- What does current law (state and federal) say about what localities can or cannot do regarding residential recovery facilities? What court cases have we seen?
- **How does the recovery process work – from court appearance to placement?**
- How are recovery facilities and homes regulated, licensed, or certified at the State or County level?
- What kinds of impacts have localities seen from residential recovery homes?
- Q & A

MODERATOR AND SPEAKERS:

- **Robin Clauson**, City Attorney of Newport Beach (moderator)
Robin will introduce the panel briefly and direct issues/Q&A to panelists (5 minutes)
- **Jeff Goldfarb**, Rutan and Tucker
- **Barbara Kautz**, Goldfarb and Lipman
Barbara and Jeff will discuss the various types of facilities. Then they will talk about how FHAA, court cases, and State laws work to regulate what municipalities can and cannot do regarding the facilities (30 minutes).
- **Joan Robbins**, CA Dept of Alcohol and Drug Programs (ADP)
- **Sergio Ramirez**, CA Department of Social Services (DSS)
Joan and Sergio will discuss how ADP regulates recovery facilities and how SSA regulates community care facilities, including how communities can measure whether or not they have "enough" to address local need (20 minutes).
- **Alene M. Taber**, Jackson, DeMarco, Tidus & Peckenpaugh
- **Kylee Otto**, Santa Ana City Attorney's Office
Kylee and Alene will discuss what kinds of impacts their communities/clients have seen from group facilities (10 minutes).
- **Dave Levy**, Orange County Fair Housing Council
Dave will give OC FHC's perspective on issues like disparate treatment, disparate impact – how FHAA is interpreted locally (10 minutes).

ask identify selves, by media,

A/V City Atty's Look Attachment

What's doing what, confusing

About program

Children only - Adult component. 300-600 children

§ 11834.2

commensurate w/ local

open

Unlicensed workers, HIPAA, reasonable accommodation

Enforcement side, Agency contracts w/ all local govts, resource for local govts/town

Cal Code of Regulations

limited degree of privacy

Melibu - Bldg safety, Rehab, not going to do anything

Apodaca Capt. Diego Hene

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- Proposition 36 – its goals, impacts – is it working?
- Q & A

MODERATOR AND SPEAKERS:

- **Dave Kiff, Assistant City Manager, City of Newport Beach (Moderator)**
- **Gregory P. Priamos, City Attorney, City of Riverside**
- **Dean J. Pucci, Law offices of Jones & Mayer, Assistant City Attorney for Westminster, La Habra, Fullerton, Costa Mesa, Whittier**
- **Margaret Dooley, Southern California Coordinator for Prop 36**
- **Geoff Henderson, Phoenix House (Santa Ana, CA)**
- **James Allen Brierly, Orange County Sober Living Network**
- **Lt. Jeff Bardzik, Orange County Sheriff's Department, in charge of voluntary certification of Group Homes**

2:30 PM – Adjourn

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RRFC Conference
March 2, 2007
Newport Beach, CA

We would like to acknowledge the generous support of our sponsor. Their contribution to the Group Homes – Residential Recovery Facilities Conference has helped make this event a success.

RUTAN
ATTORNEYS AT LAW

AGENDA

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PANEL #1

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11:15 to 11:25 – Break

APPLICATION OF FEDERAL FAIR HOUSING ACT TO GROUP HOMES

by Jeffrey A. Goldfarb

1. Both Federal Fair Housing Act Amendments (42 USC § 3604 (f)) and the California Fair Employment and Housing Act (Gov. § 12955) prohibit enforcement of zoning ordinances which discriminate against housing opportunities for the handicapped.

(a) In approving the FHAA, the House of Representatives said: "The FHAA is intended to prohibit the application of special requirements through land use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the availability of the handicapped to live in a residence of their choice in the community." (House report on FHAA)

(b) The FHAA broadly defines "handicapped person" as either a person who is physically or mentally impaired in a way which limits one or more life activities, a person with a record of having such an impairment, or a person who is not so impaired but is viewed as impaired by society. (42 USC § 3602(h))

(c) Recovering alcoholics and persons suffering from drug addiction are "Handicapped" as that term is used in the legislation. (*City of Edmonds v. Oxford House* (1995) 514 U.S. 725, 728-29; see also, *U.S. v. Southern Mgmt. Corp.* (4th Cir. 1992) 955 F.2d 914, 917-23.)

2. Three ways zoning can discriminate in violation of the Acts:

(a) Disparate Treatment or Intentional Discrimination - when the zoning ordinance restricts housing opportunities for handicapped persons vis-a-vis non-handicapped persons and the regulations are *based upon the handicapped status of the resident*.

(i) Prime Facie Case - plaintiff is required to show only that the [handicapped status] of the people who were to live in the [proposed facility] was a motivating factor in the [city's] decision.

(A) Ex. Zoning ordinance required persons wishing to locate group home to notify nearby residents that they were planning to operate a group home and the nature of the handicapped residents proposed. (*Potomac Group Home v. Montgomery County, Maryland* (D. Md. 1993) 823 F.Supp. 1285)

(B) Zoning requirement mandating homes for the handicapped be separated from each other by no less than one thousand (1,000) feet violated FHAA because the determination of whether the separation requirement applied was dependent on the handicapped status of the residents. (*Horizon House Development Services v. Township of Upper South Hampton* (1992) 804 F.Supp. 683)

(ii) Defense - burden shifts to the city to demonstrate that the regulation stemmed from a legitimate, non-discriminatory reason or objective.

(b) Disparate Impact - a zoning regulation may also run afoul of the FHAA if it simply has a *discriminatory impact or effect* on handicapped persons. This occurs when "outwardly neutral practices" (i.e., denying permits for structures physically inconsistent with the surrounding property) create a significantly adverse or disproportionate impact on handicapped persons' housing opportunities. (*Gamble v. City of Escondido* (9th Cir.) 104 F.3d at 306)

(i) Example: A City has a fire regulation that requires residents to be able to exit the house in under one minute. This would have a discriminatory impact on physically handicapped persons who are not able to exit so quickly.

(ii) Prime facie case:

(A) Plaintiff must prove that the neutral practice actually or predictably results in discrimination. Raising an inference is insufficient—plaintiff must show that the handicapped group is actually discriminated against in the availability of housing when compared to similarly situated groups (i.e., comparing (1) handicapped group of persons who are not a single housekeeping unit but wish to live together to (2) non-handicapped persons who are not a single housekeeping unit but wish to live together).

(B) Must show a causal connection between the neutral practice and the discriminatory effect.

(iii) DEFENSE - burden shifts to government to demonstrate

(A) that the rule or condition serves a legitimate governmental purpose; and

(B) that the rule represents the least discriminatory means to serve that governmental purpose. (*Oxford House, Inc. v. Town of Babylon* (E.D. NY 1993) 819 F.Supp. 1179).

(c) Duty to Provide Reasonable Accommodation - the FHAA states that it is a discriminatory practice to refuse to make "reasonable accommodations in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." (42 USC § 3604(f)(3)(B))

(i) "Reasonable accommodation' means changing some rule that is generally applicable to everyone so as to make its burden less onerous on the handicapped individual." (*Oxford House v. City of Albany* (N.D. NY 1993) 819 F.Supp. 1168)

(A) Ex. Lets take the fire code example again. The "one minute exit requirement" is more burdensome on handicapped persons and prevents the handicapped persons from being able to take advantage of the housing. Waiving the "one minute exit requirement" renders the housing available for the handicapped person. Group home owner can request a Reasonable Accommodation under which the City would waive the parking requirement. Failure to do so may constitute a violation of the FHAA.

(ii) A reasonable accommodation is required unless it would result in a fundamental alteration in the nature of a program or would impose undue financial or administrative burdens on the city. (See, *U.S. v. Village of Marshall, Wisconsin* (W.D. WI 1991) 787 F.Supp. 872, 878)

3. CASE STUDY: *City of Costa Mesa v. Coastal Recovery Living*, OCSC Case No. 00CC12248.

(a) Facts:

(i) Group home owner began operating a group home in R-1 housing 30-40 parolees who were also recovering drug and alcohol abusers.

(ii) House was located next door to a church that operated a day care facility.

(iii) High degree of transience. Owner testified that average person stays 6 months in house. We were lucky enough to get the testimony of one of the parole officers who regularly visited the house and he testified that several people moved into and out of the house every week.

(iv) Owners paid substantial sums by State to house the parolees/recoverees.

(b) Our theory of case:

(i) If we were going to close the house, we need to make sure that we were not discriminating against persons based upon their handicap. As a result, the city could not simply consider the home a business and close it down as an unpermitted use.

(ii) Because the house was in the R-1 zone, it had to be operated like a single family use. In *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 134, the Court held that people need not be related to be considered a single family for zoning purposes. Citing cases such as *City of White Plains v. Ferraiolo*

(1974) 313 NE2d 756, the Court held that people simply had to live together as a "single housekeeping unit." In *City of White Plains*, the Court had elaborated on the concept and stressed one of the primary features of living together as a single housekeeping unit is a lack of transiency among the housekeeping unit's members.

(iii) Using the evidence of the high degree of transiency, we filed a declaratory relief/injunction action to prevent them from occupying the property until such time that they actually lived like a single housekeeping unit.

(iv) Ocean Recovery defended in part by claiming that granting the injunction would violate the FHAA.

(A) **Not Disparate Treatment.** The zoning regulations treated everyone in the R-1 the same - everyone in the R-1 has to live like a single housekeeping unit.

(B) **Not Disparate Impact.** Ocean Recovery could not show that the R-1 requirements had a discriminatory impact on housing opportunities for persons in recovery because the group to which they were similarly situated once you controlled for the handicap are non-handicapped people who wish to live together, but do not live together as a single housekeeping unit. Under the code, however, that group would similarly be prohibited from living in the R-1.

(C) **Not Required to Grant A Reasonable Accommodation.**

(1) they never requested one.

(2) even if they had, permitting persons to live in the R-1 who do not live together as a single housekeeping unit would be a fundamental alteration of the entire concept behind establishing the R-1 zone.

(v) Court issued permanent injunction and house was sold.

SELECTED STATUTES AND CASES

1. Fair Housing Act Amendments ("FHAA") [portion] 42 USC § 3604
2. California Fair Employment and Housing Act (Gov. Code § 12955)
3. Gov. Code § 65008
4. Community Care Facilities Act ([portion] H&S Code § 1500 *et seq.*)
5. Alcoholism or Drug Abuse Recovery or Treatment Facilities Act (H&S § 11834 *et seq.*)
6. *City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725
7. *Gamble v. City of Escondido* (9th Cir. 1996) 104 F.3d 300

10. — Blockbusting, single-family homeowner exemption

Where defendant was charged solely with "blockbusting representations", under § 3604 of this title prohibiting inducing or attempting to induce, for profit, any person to sell or rent any dwelling by representations regarding entry or prospective entry into neighborhood of person or persons of particular race or color, subsec. (b)(1) of this section exempting certain sales of single-family houses from coverage under § 3604 of this title was not applicable. *U. S. v. Mitchell*, N.D.Ga. 1971, 327 F.Supp. 476. Civil Rights ⇨ 131

11. Four or less family residence exemption

Exemption under subsec. (b)(2) of this section of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other where owner actually maintains and occupies one of such living quarters

as his residence is inapplicable to claim based on § 1982 of this title declaring that all United States citizens have same right as enjoyed by white citizens to inherit, purchase, lease, sell, hold and convey real and personal property. *Morris v. Cizek*, C.A.7 (Ill.) 1974, 503 F.2d 1361. Civil Rights ⇨ 131

In view of subsec. (b)(2) of this section exempting rooms or units, in dwellings containing living quarters occupied or intended to be occupied by no more than four families if owner occupies one of such living quarters as his residence, from operation of § 3604 of this title governing discrimination in sale or rental of housing, potential tenants' claims under § 3604 of this title governing housing rental for alleged act of racial discrimination, arising out of refusal of owners of two-family home to lease an apartment to their home on terms demanded by potential tenants, failed. *Fred v. Kokinokos*, E.D.N.Y. 1972, 347 F.Supp. 942. Civil Rights ⇨ 131

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwell-

ing is not available for inspection, a dwelling is in fact so available.

(e) For profit, to induce or attempt to sell or rent any dwelling by representation or prospective entry into the neighborhood of a particular race, color, religion, status, or national origin.

(f)(1) To discriminate in the sale or rental of a dwelling because of a handicap of—

(A) that buyer or renter,¹

(B) a person residing in or intending to occupy a dwelling after it is so sold, rent

(C) any person associated with

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to occupy a dwelling after it is so sold, rent

(C) any person associated with

(3) For purposes of this subsection

(A) a refusal to permit, at the request of a person, reasonable modifications to be occupied by such person if such modifications may be necessary to afford such person access to the premises except that, in the case of a modification on the renter agreement, a modification on the renter agreement of the premises to the condition of the premises, reasonable wear and tear

(B) a refusal to make reasonable accommodations, rules, policies, practices, or services if such accommodations may be necessary to afford opportunity to use and enjoy a dwelling

(C) in connection with the design and construction of covered multifamily dwellings for the first time that is 30 months after September 8, 1981, to design and construct those dwellings that—

ing is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter;¹

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.²

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine

whether the design and construction is consistent with the requirements of paragraph (3)(C).

(6)(A) Nothing in paragraph (5) shall affect the authority and responsibility of the local public agency certified pursuant to paragraph (3)(C) to receive and process complaints and to enforce the provisions of this subchapter in enforcement activities under this subchapter.

(B) Determinations by a State or unit of general local government under paragraphs (5)(A) and (5)(B) shall be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means—

(A) buildings consisting of four or more units which have one or more elevators;

(B) ground floor units in other multifamily units.

(8) Nothing in this subchapter shall be construed to limit any law of a State or unit of general local government or other jurisdiction in which this subchapter requires dwellings to be designed or constructed in a manner that affords handicapped persons the same opportunity as afforded by this subchapter.

(9) Nothing in this subsection shall be construed to make available to an individual who is a tenant in a dwelling whose tenancy would result in such a direct threat to the health or safety of the individual or whose tenancy would result in such a direct threat to the property of others.

Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 1620; Title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 1620; Title VIII, § 808(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620

¹ So in original. The comma probably should be omitted.

² So in original. The period probably should be omitted.

HISTORICAL AND STATUTE

Revision Notes and Legislative Reports	American
1968 Acts. Senate Report No. 721, see 1968 U.S. Code Cong. and Adm. News, p. 1837.	1968 100- hibit
1974 Acts. Senate Report No. 93-693 and House Conference Report No. 93-1279, see 1974 U.S. Code Cong. and Adm. News, p. 4273.	Su § 6(b) "sex, Sul § 6(b) statu
1988 Acts. House Report No. 100-711, see 1988 U.S. Code Cong. and Adm. News, p. 2173.	Sul address

whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub.L. 93-383, Title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub.L. 100-430, §§ 6(a)-(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

¹ So in original. The comma probably should be a semicolon.

² So in original. The period probably should be a semicolon.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Acts. Senate Report No. 721, see 1968 U.S. Code Cong. and Adm. News, p. 1837.

1974 Acts. Senate Report No. 93-693 and House Conference Report No. 93-1279, see 1974 U.S. Code Cong. and Adm. News, p. 4273.

1988 Acts. House Report No. 100-711, see 1988 U.S. Code Cong. and Adm. News, p. 2173.

Amendments

1988 Amendments. Heading. Pub.L. 100-430, § 6(e), inserted "and other prohibited practices".

Subsecs. (a), (b). Pub.L. 100-430, § 6(b)(2), inserted "familial status," after "sex," wherever appearing.

Subsecs. (c) to (e). Pub.L. 100-430, § 6(b)(1), inserted "handicap, familial status," after "sex," wherever appearing.

Subsec. (f). Pub.L. 100-430, § 6(a), added subsec. (f).

FAIR EMPLOYMENT AND HOUSING DEPT.

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Cal. Civ. Prac. Employment Litigation § 5:28, Discrimination Based on "English-Only" Rules.

Employment Coordinator Employment Practices § 2:5, California.

Employment Law Deskbook for Human Res. Prof. § 15:7, State EEO Laws -- California.

Treatises and Practice Aids

California Practice Guide: Employment Litigation Ch. 7-A, A. Title VII and the California Fair Employment and Housing Act.

Guide to Employment Law and Regulation 2d § 25:6, Antidiscrimination Law.

Article 2

HOUSING DISCRIMINATION

Section

- 12955. Unlawful practices.
- 12955.1. Discrimination; disabled persons; design and construction of multifamily dwellings; building standards; adoption of regulations.
 - 12955.1.1. Covered multifamily dwellings and multistory dwelling unit defined.
- 12955.2. Familial status.
- 12955.3. Disability.
- 12955.4. Religious organizations; preference to persons of same religion; restrictions.
- 12955.5. Discriminatory housing practices; collecting information.
- 12955.6. Construction with other laws.
- 12955.7. Coercion, intimidation, threats, or interference with rights.
- 12955.8. Unlawful practices; proof; business establishment.
- 12955.9. Housing for older persons; application.
- 12956. Retention of records upon notice of complaint.
- 12956.1. Restrictive covenants based on race, sex, or other discriminatory grounds; notice; exception; determination that covenant is void; criminal penalty; recordation of modified documents.

Article 2 was added by Stats.1980, c. 992, § 4.

Law Review and Journal Commentaries

Discrimination against children in rental housing: A California perspective. Baxter Dunaway and Timothy J. Blied (1979) 19 Santa Clara L.Rev. 21.

Review of selected 1992 California legislation. 24 Pac.L.J. 1057 (1993).

Zoning, housing, custody. 22 Mental & Physical Disability L. Rep. 488 (1998).

§ 12955. Unlawful practices

It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability of any person seeking to purchase, rent or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or

rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability, or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, sexual orientation, familial status, source of income, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation,

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familial status, marital status, disability, national origin, source of income, or ancestry. 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 (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, "race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability" 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.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p)(1) For the purposes of this section, "source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

(Added by Stats.1980, c. 992, § 4. Amended by Stats.1992, c. 182 (S.B.1234), § 7; Stats.1993, c. 1277 (A.B.2244), § 4; Stats.1999, c. 589 (S.B.1148), § 2; Stats.1999, c. 590 (S.B.1098), § 4; Stats.1999, c. 591 (A.B.1670), § 11.4; Stats.1999, c. 592 (A.B.1001), § 9.7; Stats.2004, c. 568 (S.B.1145), § 8.)

Historical and Statutory Notes

The 1992 amendment inserted references to familial status and disability throughout; and rewrote subd. (d).

The 1992 amendment also inserted the provision prohibiting discrimination against a person who has aided or encouraged another to exercise or enjoy the rights secured under this part in subd. (f); added subd. (h) relating to representations regarding entry into the neighborhood of persons of a particular race, color, religion, etc.; added subd. (i) relating to discrimination by a person or entity whose business involves real estate-related transactions; added subd. (j) relating to multiple listing services; added subd. (k) making it unlawful to otherwise make unavailable or deny dwellings

based on discrimination; and made nonsubstantive changes throughout.

For short title and legislative findings and declarations of Stats.1992, c. 182 (S.B.1234), see Historical and Statutory Notes following § 12920.

The 1993 amendment substituted "disability" for "blindness or other physical disability" in subd. (d); substituted "disability" for "disability of that person or persons, or of prospective occupants or tenants," in subd. (e); corrected the spelling of "unavailable" in subd. (k); and added subd. (l).

For letter of intent from Senator Burton regarding Stats.1999, c. 589 (S.B. 1148), see His-

CALIFORNIA GOVERNMENT CODE SECTION 65008.

(a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) (A) The lawful occupation, age, or any characteristic of the individual or group of individuals listed in subdivision (a) or (d) of Section 12955, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2.

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the **Civil Code**, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the **Civil Code** and subdivisions (n), (o), and (p) of Section 12955 of this **code** shall apply to subparagraph (A).

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income.

(b) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing.

(B) (i) Because of the lawful occupation, age, or any characteristic listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the owners or intended occupants of the residential development or emergency shelter.

(ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in clause (i) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the **Civil Code**, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the **Civil Code** and subdivisions (n), (o), and (p) of Section 12955 of this **code** shall apply to clause (i).

(C) Because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the **Health and Safety Code**, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter because of, in whole or in part, either of the following:

(A) The method of financing.

(B) The occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of very low, low, or moderate income.

(3) A city, county, city and county, or other local **government** agency may not, pursuant to subdivision (d) of Section 65589.5, disapprove a housing development project or condition approval of a housing development project in a manner that renders the project infeasible if the basis for the disapproval or conditional approval includes any of the reasons prohibited in paragraph (1) or (2).

(c) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state **government** or by a local public entity, as defined in Section 50079 of the Health and Safety **Code**, than those imposed on nonassisted developments, except as provided in subdivision (e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or emergency shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2) (A) No city, county, city and county, or other local governmental agency may, because of the lawful occupation age, or any characteristic of the intended occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 or because the development is intended for occupancy by persons and families of very low, low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil **Code**, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil **Code** and subdivisions (n), (o), and (p) of Section 12955 of this **code** shall apply to subparagraph (A).

(e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title do not prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state **government** or by a local public entity, as defined in Section 50079 of the Health and Safety **Code**, or other residential developments or emergency shelters intended for occupancy by persons and families

of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) "Residential development," as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of very low, low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

child so placed. A facility may not require, as a condition of placement, that a child be identified as an individual with exceptional needs as defined by Section 56026 of the Education Code.

(c) Neither the requirement for any license nor any regulation shall restrict the implementation of the provisions of this section. Implementation of this section does not obviate the requirement for a facility to be licensed by the department.

(d) Pursuant to this section, children with varying designations and varying needs, except as provided by statute, may be placed in the same licensed foster family home or with a foster family agency for subsequent placement in a certified family home. Children with developmental disabilities, mental disorders, or physical disabilities may be placed in licensed foster family homes or certified family homes, provided that an appraisal of the child's needs and the ability of the receiving home to meet those needs is made jointly by the placement agency and the licensee in the case of licensed foster family homes or the placement agency and the foster family agency in the case of certified family homes, and is followed by written confirmation prior to placement. The appraisal shall confirm that the placement poses no threat to any child in the home.

For purposes of this chapter, the placing of children by foster family agencies shall be referred to as "subsequent placement" to distinguish the activity from the placing by public agencies.

1502. As used in this chapter:

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day program" means any community-based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24-hour basis.

(3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit

EXHIBIT 4

basis.

(5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and

operated on a nonprofit basis.

(11) "Transitional shelter care facility" means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) "Transitional housing placement facility" means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

1502.3. For purposes of this chapter, a "community care facility," pursuant to Section 1502, includes a transitional shelter care facility. A "transitional shelter care facility" means a short-term residential care program that meets all of the following requirements:

(a) It is owned by the county, and operated by the county or by a private nonprofit organization under contract to the county.

(b) It is a group care facility that provides for 24-hour nonmedical care of persons, under 18 years of age, who are in need of personal services, supervision, or assistance that is essential for sustaining the activities of daily living, or for the protection of the individual on a short-term basis. As used in this section, "short-term" means up to 90 days from the date of admission.

(c) It is for the sole purpose of providing care for children who have been removed from their homes as a result of abuse or neglect, or both; for children who have been adjudged wards of the court; and, for children who are seriously emotionally disturbed children. For purposes of this subdivision, "abuse or neglect" means the same as defined in Section 300 of the Welfare and Institutions Code. For purposes of this subdivision, "wards of the court" means the same as defined in Section 602 of the Welfare and Institutions Code. For purposes of this subdivision, "seriously emotionally disturbed children" means the same as defined in subdivision (a) of Section 5600.3 of the Welfare and Institutions Code.

(d) It primarily serves children who have previously been placed in a community care facility and are awaiting placement into a different community care facility that is appropriate to their needs.

Children residing in transitional shelter care facilities may include children who are very difficult to place in appropriate community care facilities because of factors which may be present in combination, including: threatening, aggressive, suicide, runaway or destructive behaviors and behaviors as defined in Section 5600.3 of the Welfare and Institutions Code.

(e) Based upon an agreement with the county, the licensee shall agree to accept, for placement into its transitional shelter care program, all children referred by the county.

(f) The licensee shall not discharge any child without the permission of the county, except when a child:

(1) Commits an unlawful act and the child must be detained in a juvenile institution.

(2) Requires either of the following:

(A) Physical health care in an acute care hospital.

(B) Mental health services in an acute psychiatric hospital.

(g) The licensee shall provide a program that is designed to be flexible enough to care for a highly variable population size and shall allow for the special needs of sibling groups.

1502.4. (a) (1) A community care facility licensed as a group home for children pursuant to this chapter may accept for placement, and provide care and supervision to, a child assessed as seriously emotionally disturbed as long as the child does not need inpatient care in a licensed health facility.

(2) For the purpose of this chapter, the following definitions shall apply:

(A) "Inpatient care in a licensed health facility" means care and supervision at a level greater than incidental medical services as specified in Section 1507.

(B) "Seriously emotionally disturbed" means the same as paragraph (2) of subdivision (a) of Section 5600.3 of the Welfare and Institutions Code.

(b) If a child described in subdivision (a) is placed into a group home program classified at rate classification level 13 or rate classification level 14 pursuant to Section 11462.01 of the Welfare and Institutions Code, the licensee shall meet both of the following requirements:

(1) The licensee shall agree to accept, for placement into its group home program, only children who have been assessed as seriously emotionally disturbed by either of the following:

(A) An interagency placement committee, as described in Section 4096 of the Welfare and Institutions Code or by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(B) A licensed mental health professional pursuant to paragraph (3) of subdivision (i), or subdivision (j), of Section 11462.01 of the Welfare and Institutions Code if the child is privately placed or only county funded.

(2) The program is certified by the State Department of Mental Health, pursuant to Section 4096.5 of the Welfare and Institutions Code, as a program that provides mental health treatment services for seriously emotionally disturbed children.

(c) The department shall not evaluate, or have any responsibility or liability with regard to the evaluation of, the mental health treatment services provided pursuant to this section and paragraph (3) of subdivision (f) of Section 11462.01 of the Welfare and Institutions Code.

1502.5. Notwithstanding Section 1502, residential care facilities for the elderly, as defined in Section 1569.2, shall not be considered community care facilities and shall be subject only to the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)).

1502.6. The department shall deny a private adoption agency a license, or revoke an existing private adoption agency license, unless the applicant or licensee demonstrates that it currently and continuously employs either an executive director or a supervisor who has had at least five years of full-time social work employment in the field of child welfare as described in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code or Division 13 (commencing with Section 8500) of the Family Code, two years of which shall have been spent performing adoption social work services in either the department or a licensed California adoption agency.

1503. As used in this chapter, "license" means a basic permit to operate a community care facility.

A license shall not be transferable.

1503.5. (a) A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

(1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(4) The facility represents itself as a licensed community care facility.

(5) The facility is performing any of the functions of a foster family agency or holding itself out as a foster family agency.

(6) The facility is performing any of the functions of an adoption agency or holding itself out as performing any of the functions of an adoption agency as specified in paragraph (9) of subdivision (a) of Section 1502.

(b) No unlicensed community care facility, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed community care facility, the department shall refer residents to the appropriate local or state ombudsman, or placement, adult protective services, or child protective services agency if either of the following conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

1504. As used in this chapter, "special permit" means a permit issued by the state department authorizing a community care facility

to offer specialized services as designated by the director in regulations.

A special permit shall not be transferable.

1504.5. (a) (1) This chapter does not apply to any independent living arrangement or supportive housing, described in paragraph (2) of subdivision (c), for individuals with disabilities who are receiving community living support services, as described in paragraph (1) of subdivision (c).

(2) This section does not affect the provisions of Section 1503.5 or 1505.

(3) Community living support services described in paragraph (1) of subdivision (c) do not constitute care or supervision.

(b) (1) The Legislature finds and declares that there is an urgent need to increase the access to supportive housing, as described in paragraph (2) of subdivision (c), and to foster community living support services, as described in paragraph (1) of subdivision (c), as an effective and cost-efficient method of serving persons with disabilities who wish to live independently.

(2) It is the intent of the Legislature that persons with disabilities be permitted to do both of the following:

(A) Receive one or more community living support services in the least restrictive setting possible, such as in a person's private home or supportive housing residence.

(B) Voluntarily choose to receive support services in obtaining and maintaining supportive housing.

(3) It is the intent of the Legislature that community living support services, as described in paragraph (1) of subdivision (c), enable persons with disabilities to live more independently in the community for long periods of time.

(c) (1) "Community living support services," for purposes of this section, are voluntary and chosen by persons with disabilities in accordance with their preferences and goals for independent living. "Community living support services" may include, but are not limited to, any of the following:

(A) Supports that are designed to develop and improve independent living and problemsolving skills.

(B) Education and training in meal planning and shopping, budgeting and managing finances, medication self-management, transportation, vocational and educational development, and the appropriate use of community resources and leisure activities.

(C) Assistance with arrangements to meet the individual's basic needs such as financial benefits, food, clothing, household goods, and housing, and locating and scheduling for appropriate medical, dental, and vision benefits and care.

(2) "Supportive housing," for purposes of this section, is rental housing that has all of the following characteristics:

(A) It is affordable to people with disabilities.

(B) It is independent housing in which each tenant meets all of the following conditions:

(i) Holds a lease or rental agreement in his or her own name and is responsible for paying his or her own rent.

(ii) Has his or her own room or apartment and is individually responsible for arranging any shared tenancy.

(C) It is permanent, wherein each tenant may stay as long as he or she pays his or her share of rent and complies with the terms of his or her lease.

(D) It is tenancy housing under which supportive housing providers

are required to comply with applicable state and federal laws governing the landlord-tenant relationship.

(E) Participation in services or any particular type of service is not required as a condition of tenancy.

(d) Counties may contract with agencies or individuals to assist persons with disabilities in securing their own homes and to provide persons with disabilities with the supports needed to live in their own homes, including supportive housing.

(e) For purposes of this section and notwithstanding any other provision of law, an individual with disabilities may contract for the provision of any of the community support services specified in paragraph (1) of subdivision (c) in the individual's own home including supportive housing, as part of that individual's service, care, or independent living plan, only through a government funded program or a private health or disability insurance plan.

(f) An individual's receipt of community living support services as defined in paragraph (1) of subdivision (c) shall not be construed to mean that the individual requires care or supervision or is receiving care or supervision.

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l) (1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(n) (1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701g), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(q) Any similar facility determined by the director.

1505.2. A licensing agency may authorize a foster family home to

provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family home is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met.

1505.5. The director shall adopt regulations authorizing residential facilities, as defined in Section 1502, to fill unused capacity on a short-term, time-limited basis to provide temporary respite care for frail elderly persons, functionally impaired adults, or mentally disordered persons who need 24-hour supervision and who are being cared for by a caretaker or caretakers. The regulations shall address provisions for liability coverage and the level of facility responsibility for routine medical care and medication management, and may require screening of persons to determine the level of care required, a physical history completed by the person's personal physician, and other alternative admission criteria to protect the health and safety of persons applying for respite care. The regulations shall permit these facilities to charge a fee for services provided, which shall include, but not be limited to, supervision, room, leisure activities, and meals.

No facility shall accept persons in need of care beyond the level of care for which that facility is licensed.

1506. (a) (1) Any holder of a valid license issued by the department that authorizes the licensee to engage in any foster family agency functions, may use only a certified family home that has been certified by that agency or a licensed foster family home approved for this use by the licensing county pursuant to Section 1506.5.

(2) Any home selected and certified for the reception and care of children by that licensee shall not, during the time it is certified and used only by that agency for these placements or care, be subject to Section 1508. A certified family home may not be concurrently licensed as a foster family home or as any other licensed residential facility.

(3) A child with a developmental disability who is placed in a certified family home by a foster family agency that is operating under agreement with the regional center responsible for that child may remain in the certified family home after the age of 18 years. The determination regarding whether and how long he or she may remain as a resident after the age of 18 years shall be made through the agreement of all parties involved, including the resident, the foster parent, the foster family agency social worker, the resident's

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.01-11834.18

11834.01. The department has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities.

(a) In administering this chapter, the department shall issue new licenses for a period of two years to those programs that meet the criteria for licensure set forth in Section 11834.03.

(b) Onsite program visits for compliance shall be conducted at least once during the license period.

(c) The department may conduct announced or unannounced site visits to facilities licensed pursuant to this chapter for the purpose of reviewing for compliance with all applicable statutes and regulations.

11834.02. (a) As used in this chapter, "alcoholism or drug abuse recovery or treatment facility" or "facility" means any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(b) As used in this chapter, "adults" may include, but is not limited to, all of the following:

(1) Mothers over 18 years of age and their children.

(2) Emancipated minors, which may include, but is not limited to, mothers under 18 years of age and their children.

(c) As used in this chapter, "emancipated minors" means persons under 18 years of age who have acquired emancipation status pursuant to Section 7002 of the Family Code.

(d) Notwithstanding subdivision (a), an alcoholism or drug abuse recovery or treatment facility may serve adolescents upon the issuance of a waiver granted by the department pursuant to regulations adopted under subdivision (c) of Section 11834.50.

11834.03. Any person or entity applying for licensure shall file with the department, on forms provided by the department, all of the following:

(a) A completed written application for licensure.

(b) A fire clearance approved by the State Fire Marshal or local fire enforcement officer.

(c) A licensure fee, established by the department in accordance with Section 11834.15.

11834.09. (a) Upon receipt of a completed written application, fire clearance, and licensing fee from the prospective licensee, and subject to the department's review and determination that the prospective licensee can comply with this chapter and regulations adopted pursuant to this chapter, the department may issue a single license to the following types of alcoholism or drug abuse recovery

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or treatment facilities:

(1) A residential facility.

(2) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same licensee.

(b) Failure to submit a completed written application, fire clearance, and payment of the required licensing fee in a timely manner shall result in termination of the department's licensure review and shall require submission of a new application by the prospective licensee.

(c) Failure of the prospective licensee to demonstrate the ability to comply with this chapter or the regulations adopted pursuant to this chapter shall result in departmental denial of the prospective licensee's application for licensure.

11834.10. A licensee shall not operate an alcoholism or drug abuse recovery or treatment facility beyond the conditions and limitations specified on the license.

11834.15. (a) The department shall calculate and establish the fee for initial licensure and for extension of the period of licensure. The nonrefundable licensing fee shall be calculated every two years in an amount sufficient to cover the department's cost in administering the licensure under this chapter for other than nonprofit organizations and local governmental entities. No fee shall be levied for licensure of nonprofit organizations or local governmental entities.

(b) The department may assess civil penalties in accordance with Sections 11834.31 and 11834.34.

11834.16. A license shall be valid for a period of two years from the date of issuance. The department may extend the licensure period for subsequent two-year periods upon submission by the licensee of a completed written application for extension and payment of the required licensing fee prior to the expiration date shown on the license. Failure to submit to the department the required written application for extension of the licensing period, or failure to submit to the department the required licensing fee prior to the expiration date on the license, shall result in the automatic expiration of the license at the end of the two-year licensing period.

11834.17. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulations relating to the subject of fire and life safety in alcoholism and drug abuse recovery facilities which is more restrictive than those standards adopted by the State Fire Marshal.

11834.18. (a) Nothing in this chapter shall authorize the

imposition of rent regulations or controls for licensed alcoholism or drug abuse recovery or treatment facilities.

(b) Licensed alcoholism and drug abuse recovery or treatment facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity.

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.20-11834.25

11834.20. The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need.

The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purposes of this article, "six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

11834.21. Any person licensed under this chapter who operates or proposes to operate an alcoholism or drug abuse recovery or treatment facility, the department or other public agency authorized to license such a facility, or any public or private agency which uses or may use the services of the facility to place its clients, may invoke the provisions of this article.

This section shall not be construed to prohibit any interested party from bringing suit to invoke the provisions of this article.

11834.22. An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 11834.23, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons.

11834.23. Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be included within the definition of a boarding

house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.

This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents.

11834.24. No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to an alcoholism or drug abuse recovery or treatment facility because of a failure to comply with local ordinances from which the facility is exempt under Section 11834.23, if the applicant otherwise qualifies for a fire clearance, license, permit, or similar authorization.

11834.25. For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.26-11834.29

11834.26. (a) The licensee shall provide at least one of the following nonmedical services:

- (1) Recovery services.
- (2) Treatment services.
- (3) Detoxification services.

(b) The department shall adopt regulations requiring records and procedures that are appropriate for each of the services specified in subdivision (a). The records and procedures may include all of the following:

- (1) Admission criteria.
- (2) Intake process.
- (3) Assessments.
- (4) Recovery, treatment, or detoxification planning.
- (5) Referral.
- (6) Documentation of provision of recovery, treatment or detoxification services.
- (7) Discharge and continuing care planning.
- (8) Indicators of recovery, treatment, or detoxification outcomes.

(c) In the development of regulations implementing this section, the written record requirements shall be modified or adapted for social model programs.

11834.27. (a) The department shall have the sole authority in state government to establish the appropriate minimum qualifications of the licensee or designated administrator, and the staff of a provider of any of the services specified in subdivision (a) of Section 11834.26. These qualifications may include, but not be limited to, education, skills, life experience, and training.

(b) Nothing in this section shall be construed to apply to credentialing or licensing of individuals or to certification qualifications established pursuant to Chapter 7 (commencing with Section 11833).

11834.29. Any licensee that provides recovery, treatment, or detoxification services, that is not in compliance with the requirements of this article, shall have one year from the effective date of the regulations adopted by the department pursuant to this article and pursuant to Article 5 (commencing with Section 11834.50) to comply. In the event that the licensee fails to comply, the department shall take action against the licensee pursuant to Article 4 (commencing with Section 11834.36).

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.30-11834.34

11834.30. No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct, or maintain an alcoholism or drug abuse recovery or treatment facility to provide recovery, treatment, or detoxification services within this state without first obtaining a current valid license issued pursuant to this chapter:

11834.31. If a facility is alleged to be in violation of Section 11834.30, the department shall conduct a site visit to investigate the allegation. If the department's employee or agent finds evidence that the facility is providing alcoholism or drug abuse recovery, treatment, or detoxification services without a license, the employee or agent shall take the following actions:

(a) Submit the findings of the investigation to the department.

(b) Upon departmental authorization, issue a written notice to the facility stating that the facility is operating in violation of Section 11834.30. The notice shall include all of the following:

(1) The date by which the facility shall cease providing services.

(2) Notice that the department will assess against the facility a civil penalty of two hundred dollars (\$200) per day for every day the facility continues to provide services beyond the date specified in the notice.

(3) Notice that the case will be referred for civil proceedings pursuant to Section 11834.32 in the event the facility continues to provide services beyond the date specified in the notice.

(c) Inform the facility of the licensing requirements of this chapter.

11834.32. (a) The director may bring an action to enjoin the violation of Section 11834.30 in the superior court in and for the county in which the violation occurred. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

(b) With respect to any and all actions brought pursuant to this section alleging actual violation of Section 11834.30, the court shall, if it finds the allegations to be true, issue its order enjoining the alcoholism or drug abuse recovery or treatment facility from continuance of the violation.

11834.34. (a) In addition to the penalties of suspension or revocation of a license issued under this chapter, the department may also levy a civil penalty for violation of this chapter or the regulations adopted pursuant to this chapter.

(1) The amount of the civil penalty shall not be less than

twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. Except for penalties assessed pursuant to Section 11834.31, in no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day.

(2) Any licensee that is cited for repeating the same violation within 24 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) and fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(3) Any licensee that has been assessed a civil penalty pursuant to paragraph (2) that repeats the same violation within 24 months of the violation subject to paragraph (2) is subject to an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(b) Prior to the assessment of any civil penalty, the department shall provide the licensee with notice requiring the licensee to correct the deficiency within the period of time specified in the notice.

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.35-11834.45

11834.35. Any employee or agent of the department upon presentation of proper identification, may enter and inspect any building, premises, and records, at a reasonable time, with or without notice, to secure information regarding compliance with, or to prevent a violation of, this chapter or any regulation adopted pursuant to this chapter. Failure of the owner or operator of the building or premises to allow the employee or agent of the department to enter and inspect the building, premises, and records, shall result in the department taking legal action to gain entry by an inspection warrant issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. The cost of any legal action required to gain entry to a licensed facility shall be borne by the owner or operator responsible for preventing the department from entering and inspecting the building, premises, and records.

11834.36. (a) The director may suspend or revoke any license issued under this chapter, or deny an application for licensure, for extension of the licensing period, or to modify the terms and conditions of a license, upon any of the following grounds and in the manner provided in this chapter:

- (1) Violation by the licensee of any provision of this chapter or regulations adopted pursuant to this chapter.
- (2) Repeated violation by the licensee of any of the provisions of this chapter or regulations adopted pursuant to this chapter.
- (3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions described in paragraph (1) or (2).
- (4) Conduct in the operation of an alcoholism or drug abuse recovery or treatment facility that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California.
- (5) Misrepresentation of any material fact in obtaining the alcoholism or drug abuse recovery or treatment facility license.
- (6) Failure to pay any civil penalties assessed by the department.

(b) The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the alcoholism or drug abuse recovery or treatment facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the department

receives the proposed decision from the Office of Administrative Hearings.

11834.37. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) The department shall commence and process licensure revocations under this chapter in a timely and expeditious manner. The Office of Administrative Hearings shall give priority calendar preference to licensure revocation hearings pursuant to this chapter, particularly revocations where the health and safety of the residents are in question.

11834.38. Any license suspended pursuant to this chapter may be reinstated pursuant to Section 11522 of the Government Code.

11834.39. (a) The withdrawal of an application for a license after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any of these grounds.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

11834.40. A license shall terminate by operation of law, prior to its expiration date, when any of the following conditions occur:

(a) The licensee sells or otherwise transfers the facility or the property of the facility as identified on the license, unless the transfer of ownership applies to the transfer of stock when the facility is owned by and licensed as a corporation, and when the transfer of stock does not constitute a majority change in ownership.

(b) The licensee surrenders the license to the department.

(c) The licensee moves the facility identified on the license from one location to another. The department shall develop regulations to provide for an expedited application and licensing process for a newly located facility.

(d) The licensee is a sole proprietor and the licensee dies.

(e) The licensee actually or constructively abandons the licensed facility. Constructive abandonment includes insolvency, eviction, or seizure of assets or equipment resulting in the failure to provide recovery, treatment, or detoxification services to residents.

11834.45. The civil and administrative remedies available to the department pursuant to this chapter are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11834.50

11834.50. The department shall adopt regulations to implement this chapter in accordance with the purposes required by Section 11835. These regulations shall be adopted only after consultation with appropriate groups affected by the proposed regulations. The regulations shall include, but not be limited to, all of the following:

- (a) Provision for a formal appeal process for the denial, suspension, or revocation of a license.
- (b) Establishment of requirements for compliance, procedures for issuance of deficiency notices and civil penalties for noncompliance.
- (c) Provision for the issuance of a waiver for an alcoholism or drug abuse recovery or treatment facility to serve not more than three adolescents, or 10 percent of the total licensed capacity, whichever is less, age 14 years and older, when a need exists and services specific to adolescents are otherwise unavailable. The regulations shall specify the procedures and criteria for granting the waiver. The procedures shall include, but not be limited to, criminal record reviews and fingerprinting.
- (d) Establishment of the elements and minimum requirements for recovery, treatment, and detoxification services.
- (e) Provision for an expedited process for reviewing an application for licensure when a license is terminated pursuant to subdivision (c) of Section 11834.40.

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*514 U.S. 725, *; 115 S. Ct. 1776, **;
131 L. Ed. 2d 801, ***; 1995 U.S. LEXIS 3183*

CITY OF EDMONDS, PETITIONER v. **OXFORD HOUSE, INC.**, ET AL.

No. 94-23

SUPREME COURT OF THE UNITED STATES

514 U.S. 725; 115 S. Ct. 1776; 131 L. Ed. 2d 801; 1995 U.S. LEXIS 3183; 63 U.S.L.W. 4402; 95 Cal. Daily Op. Service 3577; 95 Daily Journal DAR 6197; 9 Fla. L. Weekly Fed. S 10

March 1, 1995, Argued
May 15, 1995, Decided

PRIOR HISTORY:

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

DISPOSITION: 18 F.3d 802, affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner sought review of decision from the United States Court of Appeals for the Ninth Circuit, which reversed a holding that a city zoning code's family definition rule was exempt from the Fair Housing Act. That decision conflicted with another court of appeals' decision declaring a similar family definition provision exempt. Certiorari was granted to resolve the conflict.

OVERVIEW: Respondent opened a group home for 10 to 12 adults recovering from alcoholism and drug addiction located in a neighborhood zoned for single-family residences. Under a zoning rule, occupants had to be a "family," and family meant an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage. Petitioner city sued the group home seeking a declaration that the zoning code family definition rule was exempt from the Fair Housing Act, 42 U.S.C.S. § 3601 et seq. The Act prohibited discrimination in housing against persons with handicaps. Section 3607(b)(1) exempted from the Act any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The sole question was whether the family composition rule qualified as a maximum occupancy restriction. The court held that the zoning provisions were classic examples of a use restriction and complementing family composition rule and that this zoning code provision describing who could compose a "family" was not a maximum occupancy restriction exempt from the Act.

OUTCOME: The judgment was affirmed because the city's zoning code provision describing who may compose a "The case was remanded for a decision as to whether the city's actions violated the Fair Housing Act's prohibitions against discrimination.

EXHIBIT 6

CORE TERMS: maximum, dwelling, occupant, zoning, single-family, occupancy, exemption, composition, occupy, exempt, cap, accommodation, neighborhood, unrelated, land-use, marriage, prescription, handicap, genetics, floor area, residential, encompass, housing, resident, qualify, land use, overcrowding, ordinance, generous, zone

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HN1 ⚡ The Fair Housing Act, 42 U.S.C.S. § 3601 et seq., declares it unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter. 42 U.S.C.S. § 3604(f)(1)(A). [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN2 ⚡ Discrimination covered by the Fair Housing Act, 42 U.S.C.S. § 3601 et seq., includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling. 42 U.S.C.S. § 3604(f)(3)(B). [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN3 ⚡ Land-use restrictions aim to prevent problems caused by the "pig in the parlor instead of the barnyard." In particular, reserving land for single-family residences preserves the character of neighborhoods, securing zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN4 ⚡ Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. These restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN5 ⚡ The court recognizes the distinction between maximum occupancy restrictions and land-use restrictions. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN6  [42 U.S.C.S. § 3607\(b\)\(1\)](#)'s language -- "restrictions regarding the maximum number of occupants permitted to occupy a dwelling" -- surely encompasses maximum occupancy restrictions. But the formulation does not fit family composition rules typically tied to land-use restrictions. In sum, rules that cap the total number of occupants in order to prevent overcrowding of a dwelling "plainly and unmistakably," fall within [§ 3607\(b\)\(1\)](#)'s absolute exemption from the Fair Housing Act's, [42 U.S.C.S. § 3601](#) et seq., governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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DECISION: City's single-family zoning rule, invoked against group home for persons recovering from alcoholism and drug addiction, held not exempt from scrutiny under Fair Housing Act ([42 USCS 3601](#) et seq.).

SUMMARY: A provision of the zoning code of a city in the state of Washington, in governing areas zoned for single-family dwelling units, defined "family" as (1) an individual or two or more persons related by genetics, adoption, or marriage; or (2) a group of five or fewer persons not so related. After a group home for 10 to 12 unrelated adults recovering from alcoholism or drug addiction began operation in a leased dwelling within a single-family residential zone in the city, the city issued criminal citations to the owner and one resident for allegedly violating the zoning restriction. The corporation that operated the home requested that the home be allowed to remain in the leased dwelling as a "reasonable accommodation" pursuant to a provision of the Fair Housing Act (FHA) ([42 USCS 3604\(f\)\(3\)\(B\)](#)), which made it illegal to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations might be necessary to afford persons with handicaps equal opportunity to use and enjoy a dwelling. The city declined the corporation's request and instead passed an ordinance listing group homes as permitted uses in multifamily and general commercial zones. The city, seeking a declaration that the zoning restriction did not violate the FHA, filed suit against the corporation in the United States District Court for the Western District of Washington. The corporation, counterclaiming under the FHA, alleged that the city had failed to make a reasonable accommodation. The United States filed a separate action on the same reasonable accommodation ground, and the two cases were consolidated. The District Court, in granting summary judgment to the city, ruled that the zoning restriction was exempt from the FHA's requirements under an FHA provision ([42 USCS 3607\(b\)\(1\)](#)) exempting reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The United States Court of Appeals for the Ninth Circuit, in reversing and remanding on appeal, said that [3607\(b\)\(1\)](#) exempted only occupancy restrictions that applied to all occupants, regardless of whether such occupants were related to each other ([18 F3d 802, 4 ADD 1004](#)).

On certiorari, the United States Supreme Court affirmed. In an opinion by Ginsburg, J., joined by Rehnquist, Ch. J., and Stevens, O'Connor, Souter, and Breyer, JJ., it was held that (1) [3607\(b\)\(1\)](#) removed from the FHA's scope only total occupancy limits, that is, numerical ceilings that serve to prevent overcrowding in living quarters; (2) [3607\(b\)\(1\)](#) did not exempt prescriptions of the family-defining kind, that is, provisions designed to foster the family

character of a neighborhood; and (3) the city's zoning provision was a family composition rule and was not a maximum occupancy restriction exempt from FHA scrutiny under 3607(b)(1), since the provision, although capping at five the number of unrelated persons allowed to occupy a single-family dwelling, did not cap the total number of people permitted to live in such a dwelling.

Thomas, J., joined by Scalia and Kennedy, JJ., dissenting, expressed the view that (1) 3607(b)(1) did not set forth a narrow exemption for only absolute or unqualified restrictions regarding the maximum number of occupants; and (2) the city's zoning provision--which established for some dwellings a five-occupant limit, with an exception for traditional families--qualified for the 3607(b)(1) exemption as a restriction regarding the maximum number of occupants permitted to occupy a dwelling.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

- ◆ HOUSING AND URBAN DEVELOPMENT §6
- ◆ ZONING §2

Fair Housing Act -- occupancy limits -- family composition rules -- group home --
Headnote:[1A]^{LEdHN(1A)} [1B]^{LEdHN(1B)} [1C]^{LEdHN(1C)} [1D]^{LEdHN(1D)}

A provision of the Fair Housing Act (FHA) (42 USCS 3607(b)(1))--exempting from FHA scrutiny reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling--removes from the FHA's scope only total occupancy limits, that is, numerical ceilings that serve to prevent overcrowding in living quarters; 3607(b)(1) does not exempt prescriptions of the family-defining kind, that is, provisions which, fastening on the composition of households rather than on the total number of occupants living quarters can contain, are designed to foster the family character of a neighborhood; thus, a city's zoning provision governing areas that are zoned for single-family dwelling units--which provision has been invoked against a group home for persons recovering from alcoholism and drug addiction--is a family composition rule and is not a maximum occupancy restriction exempt from FHA scrutiny, where (1) the provision defines "family" as (a) an individual or two or more persons related by genetics, adoption, or marriage, or (b) a group of five or fewer persons not so related, and (2) the provision, although capping at five the number of unrelated persons allowed to occupy a single-family dwelling, does not cap the total number of people who may live in a such a dwelling. (Thomas, Scalia, and Kennedy, JJ., dissented from this holding.)

[***LEdHN2]

- ◆ COURTS §763

live controversy -- enforcement of zoning provision --
Headnote:[2A]^{LEdHN(2A)} [2B]^{LEdHN(2B)}

A live controversy remains between a city and the United States with respect to a group home for persons with handicaps, against which home the city sought to enforce a zoning provision barring a group of more than five unrelated persons from occupying a single-family dwelling, where (1) a state law, enacted after the provision's attempted enforcement, bars the city from enacting or maintaining an ordinance or zoning regulation which treats a residential structure occupied by persons with handicaps differently from a similar residential structure occupied by a family or other unrelated individuals; but (2) even if the new state law prevents the city from enforcing the zoning provision against the group home, the United States seeks damages and civil penalties from the city under the Fair Housing Act (42 USCS 3601 et seq.) for conduct occurring prior to enactment of the state law.

[***LEdHN3]

- ◆ STATUTES §102

construction -- policy -- Fair Housing Act --
Headnote:[3]^{LEdHN(3)}↓

In deciding whether a provision of a city's zoning code barring a group of more than five unrelated persons from occupying a single-family dwelling is a maximum occupancy restriction that is exempt from Fair Housing Act (FHA) (42 USCS 3601 et seq.) scrutiny under an FHA provision (42 USCS 3607(b)(1)) exempting reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling, the United States Supreme Court will (1) be mindful of the FHA's stated policy to provide, within constitutional limitations, for fair housing throughout the United States; (2) note precedent recognizing the FHA's broad and inclusive compass and therefore according a generous construction to the FHA's complaint-filing provision; and (3) accordingly, regard the case in question as an instance in which an exception to a general statement of policy is sensibly read narrowly in order to preserve the primary operation of the policy. (Thomas, Scalia, and Kennedy, JJ., dissented from this holding.)

[*LEdHN4]**

◆ ZONING §2

regulation as occupancy restriction --

Headnote:[4A]^{LEdHN(4A)}↓[4B]^{LEdHN(4B)}↓

A space and occupancy standard, set forth in a city's zoning provision that caps the number of occupants that a dwelling may house based on floor area, is a prototypical maximum occupancy restriction encompassed by a provision of the Fair Housing Act (FHA) (42 USCS 3607(b)(1)) which exempts from FHA scrutiny reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

[*LEdHN5]**

◆ HOUSING AND URBAN DEVELOPMENT §7

discrimination -- large families --

Headnote:[5A]^{LEdHN(5A)}↓[5B]^{LEdHN(5B)}↓

Under a provision of the Fair Housing Act (FHA) (42 USCS 3607(b)(1))--exempting from FHA scrutiny reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling--landlords legitimately may refuse, pursuant to local prescriptions on maximum occupancy, to allow large families to live in small quarters, notwithstanding an FHA provision (42 USCS 3602(k)) making it illegal to discriminate in housing against families with children under the age of 18.

[*LEdHN6]**

◆ HOUSING AND URBAN DEVELOPMENT §7

discrimination -- familial status --

Headnote:[6A]^{LEdHN(6A)}↓[6B]^{LEdHN(6B)}↓

Pursuant to a provision of the Fair Housing Act (FHA) (42 USCS 3607(b)(1)) under which no FHA provision regarding familial status applies with respect to housing for older persons, retirement communities are exempt from the FHA's proscription of discrimination against families with minor children (42 USCS 3602(k)).

[*LEdHN7]**

◆ APPEAL §1750

subsequent proceedings below -- what may be considered --

Headnote:[7]^{LEdHN(7)}↓

With respect to the United States Supreme Court's review on certiorari of a controversy

arising from a city's attempted enforcement--against a group home for persons recovering from alcoholism and drug addiction--of a zoning provision barring a group of more than five unrelated persons from occupying a single-family dwelling, it remains for the lower courts to decide whether the city's actions violate housing discrimination provisions of the Fair Housing Act (FHA) (42 USCS 3604(f)(1)(A) and 3604(f)(3)(B)), where (1) the parties have presented only the threshold question whether the city's zoning provision is a maximum occupancy restriction that is exempt from FHA scrutiny under an FHA provision (42 USCS 3607(b)(1)); and (2) the Supreme Court has decided only that the zoning provision is not such a maximum occupancy restriction.

SYLLABUS:

Respondent **Oxford House** operates a group home in Edmonds, Washington, for 10 to 12 adults recovering from alcoholism and drug addiction in a neighborhood zoned for single-family residences. Petitioner City of Edmonds (City) issued citations to the owner and a resident of the house, charging violation of the City's zoning code. The code provides that the occupants of single-family dwelling units must compose a "family," and defines family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons." Edmonds Community Development Code (ECDC) § 21.30.010. **Oxford House** asserted reliance on the Fair Housing Act (FHA), which prohibits discrimination in housing against, *inter alios*, persons with handicaps. Discrimination covered by the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Edmonds subsequently sued **Oxford House** in federal court, seeking a declaration that the FHA does not constrain the City's zoning code family definition rule. **Oxford House** counter-claimed under the FHA, charging the City with failure to make a "reasonable accommodation" permitting the maintenance of the group home in a single-family zone. Respondent United States filed a separate action on the same FHA "reasonable accommodation" ground, and the cases were consolidated. The District Court held that the City's zoning code rule defining "family," ECDC § 21.30.010, is exempt from the FHA under 42 U.S.C. § 3607(b)(1) as a "reasonable . . . restriction regarding the maximum number of occupants permitted to occupy a dwelling." The Court of Appeals reversed, holding § 3607(b)(1)'s absolute exemption inapplicable.

Held: Edmonds' zoning code definition of the term "family" is not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1). Pp. 731-738.

(a) Congress enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land-use restrictions and maximum occupancy restrictions. Land-use restrictions designate districts -- *e. g.*, commercial or single-family residential -- in which only compatible uses are allowed and incompatible uses are excluded. Reserving land for single-family residences preserves the character of neighborhoods as family residential communities. To limit land use to single-family residences, a municipality must define the term "family"; thus family composition rules are an essential component of single-family use restrictions. Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically on the basis of available floor space or rooms. Their purpose is to protect health and safety by preventing dwelling overcrowding. Section 3607(b)(1)'s language -- "restrictions regarding the maximum number of occupants permitted to occupy a dwelling" -- surely encompasses maximum occupancy restrictions, and does not fit family composition rules typically tied to land-use restrictions. Pp. 732-735.

(b) The zoning provisions Edmonds invoked against **Oxford House**, ECDC §§ 16.20.010 and 21.30.010, are classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling: So long as they are related by "genetics, adoption, or marriage," any number of people can live in a house. A separate ECDC provision -- § 19.10.000 -- caps the number of occupants a dwelling

may house, based on floor area, and is thus a prototypical maximum occupancy restriction. In short, the City's family definition rule, ECDC § 21.30.010, describes family living, not living space per occupant. Defining family primarily by biological and legal relationships, the rule also accommodates another group association: Five or fewer unrelated people are allowed to live together as though they were family. But this accommodation cannot convert Edmonds' family values preserver into a maximum occupancy restriction. Edmonds' contention that subjecting single-family zoning to FHA scrutiny will overturn Euclidian zoning and destroy the effectiveness and purpose of single-family zoning both ignores the limited scope of the issue before this Court and exaggerates the force of the FHA's anti-discrimination provisions, which require only "reasonable" accommodations. Since only a threshold question is presented in this case, it remains for the lower courts to decide whether Edmonds' actions violate the FHA's prohibitions against discrimination. Pp. 735-738.

COUNSEL: W. Scott Snyder argued the cause and filed briefs for petitioner.

William F. Sheehan argued the cause for private respondents. With him on the brief were Elizabeth M. Brown, David E. Jones, John P. Relman, Robert I. Heller, and Steven R. Shapiro.

Deputy Solicitor General Bender argued the cause for respondent United States. With him on the brief were Solicitor General Days, Assistant Attorney General Patrick, Cornelia T. L. Pillard, Jessica Dunsay Silver, and Gregory B. Friel. *

* Briefs of amici curiae urging reversal were filed for the City of Lubbock by Jean E. Shotts, Jr.; for the City of Mountlake Terrace by Gregory G. Schrag; for the Township of Upper St. Clair by Robert N. Hackett; and for the International City/County Management Association et al. by Richard Ruda, Lee Fennell, and Michael J. Wahoske.

Briefs of amici curiae urging affirmance were filed for the Commonwealth of Massachusetts et al. by Scott Harshbarger, Attorney General of Massachusetts, and Stanley J. Eichner, Donna L. Palermino, and Leo T. Sorokin, Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: Grant Woods of Arizona, Winston Bryant of Arkansas, Alan G. Lance of Idaho, Thomas J. Miller of Iowa, Richard P. Ieyoub of Louisiana, Frankie Sue Del Papa of Nevada; Tom Udall of New Mexico, Charles W. Burson of Tennessee, Dan Morales of Texas, Jan Graham of Utah, Rosalie Simmonds Ballantine of the Virgin Islands, and Darrell V. McGraw, Jr., of West Virginia; for the American Association on Mental Retardation et al. by Lois G. Williams, Jerrold J. Ganzfried, Gregg A. Hand, Leonard S. Rubenstein, and Ira A. Burnim; for the American Association of Retired Persons by Steven S. Zaleznick, Michael Schuster, Bruce B. Vignery, and Deborah M. Zuckerman; for the American Planning Association by Brian W. Blaesser and Daniel M. Lauber; for the American Society of Addiction Medicine et al. by Paul M. Smith, Seth P. Stein, Robert L. Schonfeld, Richard Taranto, and Carolyn I. Polowy; for the American Train Dispatchers Division of Brotherhood of Locomotive Engineers et al. by Lawrence M. Mann; and for the National Fair Housing Alliance by Timothy C. Hester, Robert A. Long, Jr., and Christina T. Uhrich.

Briefs of amici curiae were filed for the City of Fultondale by Palmer W. Norris and Fred Blanton, Jr.; and for the Pacific Legal Foundation by Ronald A. Zumbun and Anthony T. Caso.

JUDGES: GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA and KENNEDY, JJ., joined, post, p. 738.

OPINION BY: GINSBURG

OPINION: [*728] [**1778] [***807] JUSTICE GINSBURG delivered the opinion of the Court.

[LEdHR1A]** [1A]^{LEdHR(1A)} The Fair Housing Act (FHA or Act) prohibits discrimination in housing against, *inter alios*, persons with handicaps. n1 Section 807(b)(1) of the Act entirely exempts from the FHA's compass "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). This case presents the question whether a provision in petitioner City of Edmonds' zoning code qualifies for § 3607(b)(1)'s complete exemption from FHA scrutiny. The provision, governing areas zoned for single-family dwelling units, defines "family" as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five **[**1779]** or fewer [unrelated] persons." Edmonds Community Development Code (ECDC) § 21.30.010 (1991).

----- Footnotes -----

n1 The FHA, as originally enacted in 1968, prohibited discrimination based on race, color, religion, or national origin. See 82 Stat. 83. Proscription of discrimination based on sex was added in 1974. See Housing and Community Development Act of 1974, § 808(b), 88 Stat. 729. In 1988, Congress extended coverage to persons with handicaps and also prohibited "familial status" discrimination, *i. e.*, discrimination against parents or other custodial persons domiciled with children under the age of 18. 42 U.S.C. § 3602(k).

----- End Footnotes -----

The defining provision at issue describes who may compose a family unit; it does not prescribe "the maximum number of occupants" a dwelling unit may house. We hold that § 3607(b)(1) does not exempt prescriptions of the family-defining kind, *i. e.*, provisions designed to foster the family character of a neighborhood. Instead, § 3607(b)(1)'s absolute exemption removes from the FHA's scope only total occupancy limits, *i. e.*, numerical ceilings that serve to prevent overcrowding in living quarters.

I

In the summer of 1990, respondent **Oxford House** opened a group home in the City of Edmonds, Washington (City), for **[*729]** 10 to 12 adults recovering from alcoholism and drug addiction. The group home, called **Oxford House-Edmonds**, is located in a neighborhood zoned for single-family residences. Upon learning that **Oxford House** had leased and was operating a home in Edmonds, the City issued criminal citations to the owner and a resident of the house. The citations charged violation of the zoning code rule that defines who may live in single-family dwelling units. The occupants of such units must compose a "family," and family, under the City's defining rule, "means an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage." ECDC § 21.30.010. **Oxford House-Edmonds** houses more than five unrelated persons, and therefore does not conform to the code.

Oxford House asserted reliance on the ^{HN1} Fair Housing Act, 102 Stat. 1619, 42 U.S.C. § 3601 *et seq.*, which declares it unlawful "to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . that buyer or renter." § 3604(f)(1)(A). The parties have stipulated, for purposes of this litigation, that the residents of **Oxford House-Edmonds** "are recovering alcoholics and drug addicts and are handicapped **[**808]** persons within the meaning" of the Act. App. 106.

^{HN2} Discrimination covered by the FHA includes "a refusal to make reasonable

accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." § 3604(f)(3)(B). **Oxford House** asked Edmonds to make a "reasonable accommodation" by allowing it to remain in the single-family dwelling it had leased. Group homes for recovering substance abusers, Oxford urged, need 8 to 12 residents to be financially and therapeutically viable. Edmonds declined to permit **Oxford House** to stay in a single-family residential zone, but passed an ordinance **[*730]** listing group homes as permitted uses in multifamily and general commercial zones.

Edmonds sued **Oxford House** in the United States District Court for the Western District of Washington, seeking a declaration that the FHA does not constrain the City's zoning code family definition rule. **Oxford House** counterclaimed under the FHA, charging the City with failure to make a "reasonable accommodation" permitting maintenance of the group home in a single-family zone. The United States filed a separate action on the same FHA "reasonable accommodation" ground, and the two cases were consolidated. Edmonds suspended its criminal enforcement actions pending resolution of the federal litigation.

On cross-motions for summary judgment, the District Court held that ECDC § 21.30.010, defining "family," is exempt from the FHA under § 3607(b)(1) as a "reasonable . . . restriction regarding the maximum number of occupants permitted to occupy a dwelling." App. to Pet. for Cert. B-7. The United States Court of Appeals for the Ninth Circuit reversed; holding § 3607(b)(1)'s absolute exemption inapplicable, the Court of Appeals remanded the cases for further consideration of the claims asserted by **Oxford House** and the United States. *Edmonds v. Washington State Building Code Council*, 18 F.3d 802 (1994).

[1780]**

[*LEdHR2A]** [2A]^{LEdHR(2A)} The Ninth Circuit's decision conflicts with an Eleventh Circuit decision declaring exempt under § 3607(b)(1) a family definition provision similar to the Edmonds prescription. See *Elliott v. Athens*, 960 F.2d 975 (1992). n2 We granted **[*731]** certiorari to resolve the conflict, 513 U.S. 959 (1994), and we now affirm the Ninth Circuit's judgment. n3

----- Footnotes -----

n2 The single-family residential zoning provision at issue in *Elliott* defines "family," in relevant part, as "one (1) or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage or adoption, no such family shall contain over four (4) persons." 960 F.2d at 976.

[*LEdHR2B]** [2B]^{LEdHR(2B)}

n3 On May 17, 1993, the State of Washington enacted a law providing:

"No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, 'handicaps' are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602)." Wash. Rev. Code § 35.63.220 (1994).

The United States asserts that Washington's new law invalidates ECDC § 21.30.010,

Edmonds' family composition rule, as applied to **Oxford House**-Edmonds. Edmonds responds that the effect of the new law is "far from clear." Reply to Brief in Opposition 4. Even if the new law prevents Edmonds from enforcing its rule against **Oxford House**, a live controversy remains because the United States seeks damages and civil penalties from Edmonds, under 42 U.S.C. §§ 3614(d)(1)(B) and (C), for conduct occurring prior to enactment of the state law. App. 85.

----- End Footnotes-----

II

[***LEdHR3] [3]^{LEdHR(3)} The sole question before the [***809] Court is whether Edmonds' family composition rule qualifies as a "restriction regarding the maximum number of occupants permitted to occupy a dwelling" within the meaning of the FHA's absolute exemption. 42 U.S.C. § 3607(b)(1). n4 In answering this question, we are mindful of the Act's stated policy "to provide, within constitutional limitations, for fair housing throughout the United States." § 3601. We also note precedent recognizing the FHA's "broad and inclusive" compass, and therefore according a "generous construction" to the Act's complaint-filing provision. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212, 34 L. Ed. 2d 415, 93 S. Ct. 364 (1972). Accordingly, we regard this case as an instance in which an exception to "a general statement [*732] of policy" is sensibly read "narrowly in order to preserve the primary operation of the [policy]." *Commissioner v. Clark*, 489 U.S. 726, 739, 103 L. Ed. 2d 753, 109 S. Ct. 1455 (1989). n5

----- Footnotes-----

n4 Like the District Court and the Ninth Circuit, we do not decide whether Edmonds' zoning code provision defining "family," as the City would apply it against **Oxford House**, violates the FHA's prohibitions against discrimination set out in 42 U.S.C. §§ 3604(f)(1)(A) and (f)(3) (B).

n5 The dissent notes *Gregory v. Ashcroft*, 501 U.S. 452, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991), as an instance in which the Court did not tightly cabin an exemption contained in a statute proscribing discrimination. See *post*, at 743-744. *Gregory* involved an exemption in the Age Discrimination in Employment Act of 1967, 81 Stat. 602, as amended, 29 U.S.C. §§ 621-634, covering state and local elective officials and "appointee[s] on the policymaking level." § 630(f). The question there was whether state judges fit within the exemption. We held that they did. A state constitutional provision, not a local ordinance, was at stake in *Gregory* -- a provision going "beyond an area traditionally regulated by the States" to implicate "a decision of the most fundamental sort for a sovereign entity." 501 U.S. at 460. In that light, the Court refused to attribute to Congress, absent plain statement, any intent to govern the tenure of state judges. Nothing in today's opinion casts a cloud on the soundness of that decision.

----- End Footnotes-----

A

Congress enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land-use restrictions and maximum occupancy restrictions.

Land-use restrictions designate "districts in which only compatible uses are allowed and incompatible uses are excluded." D. Mandelker, *Land Use Law* § 4.16, pp. 113-114 (3d ed. 1993) (hereinafter Mandelker). These restrictions typically categorize uses as single-family residential, multiple-family residential, commercial, or industrial. See, e. g., 1 E. Ziegler, Jr., Rathkopf's *The Law of Zoning and Planning* § 8.01, pp. 8-2 to 8-3 (4th ed. 1995); Mandelker § 1.03, p. [**1781] 4; 1 E. Yokley, *Zoning Law and Practice* § 7-2, p. 252 (4th ed. 1978).

HN3 Land-use restrictions aim to prevent problems caused by the "pig in the parlor instead of the barnyard." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 71 L. Ed. 303, 47 S. Ct. 114 (1926). In particular, reserving land for single-family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet [*733] seclusion and clean air make the area a sanctuary [***810] for people." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 39 L. Ed. 2d 797, 94 S. Ct. 1536 (1974); see also *Moore v. East Cleveland*, 431 U.S. 494, 521, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977) (Burger, C. J., dissenting) (purpose of East Cleveland's single-family zoning ordinance "is the traditional one of preserving certain areas as family residential communities"). To limit land use to single-family residences, a municipality must define the term "family"; thus family composition rules are an essential component of single-family residential use restrictions.

HN4 Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. See, e. g., International Conference of Building Officials, *Uniform Housing Code* § 503(b) (1988); Building Officials and Code Administrators International, Inc., *BOCA National Property Maintenance Code* §§ PM-405.3, PM-405.5 (1993) (hereinafter *BOCA Code*); Southern Building Code Congress, International, Inc., *Standard Housing Code* §§ 306.1, 306.2 (1991); E. Mood, *APHA-CDC Recommended Minimum Housing Standards* § 9.02, p. 37 (1986) (hereinafter *APHA-CDC Standards*). n6 These restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding. See, e. g., *BOCA Code* §§ PM-101.3, PM-405.3, PM-405.5 and commentary; Abbott, *Housing Policy, Housing Codes and Tenant Remedies: An Integration*, 56 B. U. L. Rev. 1, 41-45 (1976).

----- Footnotes -----

n6 Contrary to the dissent's suggestion, see *post*, at 745, n. 5, terminology in the APHA-CDC Standards bears a marked resemblance to the formulation Congress used in § 3607(b)(1). See APHA-CDC Standards § 2.51, p. 12 (defining "Permissible Occupancy" as "the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit").

----- End Footnotes -----

HN5 We recognized this distinction between maximum occupancy restrictions and land-use restrictions in *Moore v. East Cleveland*, 431 U.S. 494, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977). In *Moore*, the Court held unconstitutional the constricted definition of "family" contained [*734] in East Cleveland's housing ordinance. East Cleveland's ordinance "selected certain categories of relatives who may live together and declared that others may not"; in particular, East Cleveland's definition of "family" made "a crime of a grandmother's choice to live with her grandson." *Id.*, at 498-499 (plurality opinion). In response to East Cleveland's argument that its aim was to prevent over-crowded dwellings, streets, and schools, we observed that the municipality's restrictive definition of family served the asserted, and undeniably legitimate, goals "marginally, at best." *Id.*, at 500 (footnote omitted). Another East Cleveland ordinance, we noted, "specifically addressed . . . the

problem of overcrowding"; that ordinance tied "the maximum permissible occupancy of a dwelling to the habitable floor area." *Id.*, at 500, n. 7; accord, *id.*, at 520, n. 16 (STEVENS, J., concurring in judgment). Justice Stewart, in dissent, also distinguished restrictions designed to "preserve the character of a residential area," from prescription of "a minimum habitable floor area per person," *id.*, at 539, n. 9, in the interest of community health and safety. n7

----- Footnotes -----

n7 Other courts and commentators have similarly differentiated between land-use restrictions and maximum occupancy restrictions. See, e. g., *State v. Baker*, 81 N.J. 99, 110, 405 A.2d 368, 373 (1979); 7A E. McQuillin, *The Law of Municipal Corporations* § 24.504 (3d ed. 1989); Abbott, *Housing Policy, Housing Codes and Tenant Remedies: An Integration*, 56 B. U. L. Rev. 1, 41 (1976).

----- End Footnotes -----

[***LEdHR1B] [1B]^{LEdHR(1B)} [***LEdHR4A] [4A]^{LEdHR(4A)} [***LEdHR5A] [5A]^{LEdHR(5A)} [***LEdHR6A] [6A]^{LEdHR(6A)} ^{HNG} Section 3607(b)(1)'s [***811] language -- "restrictions regarding the maximum number of occupants permitted to occupy a dwelling" -- surely encompasses maximum occupancy restrictions. n8 [*735] [**1782] But the formulation does not fit family composition rules typically tied to land-use restrictions. In sum, rules that cap the total number of occupants in order to prevent overcrowding of a dwelling "plainly and unmistakably," see *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493, 89 L. Ed. 1095, 65 S. Ct. 807 (1945), fall within § 3607(b)(1)'s absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not. n9

----- Footnotes -----

n8 The plain import of the statutory language is reinforced by the House Committee Report, which observes:

"A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status." H. R. Rep. No. 100-711, p. 31 (1988).

[***LEdHR5B] [5B]^{LEdHR(5B)} [***LEdHR6B] [6B]^{LEdHR(6B)}

n9 Tellingly, Congress added the § 3607(b)(1) exemption for maximum occupancy restrictions at the same time it enlarged the FHA to include a ban on discrimination based on "familial status." See *supra*, at 728, n. 1. The provision making it illegal to discriminate in housing against families with children under the age of 18 prompted fears that landlords

would be forced to allow large families to crowd into small housing units. See, e. g., Fair Housing Amendments Act of 1987: Hearings on H. R. 1158 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 100th Cong., 1st Sess., 656 (1987) (remarks of Rep. Edwards) (questioning whether a landlord must allow a family with 10 children to live in a two-bedroom apartment). Section 3607(b)(1) makes it plain that, pursuant to local prescriptions on maximum occupancy, landlords legitimately may refuse to stuff large families into small quarters. Congress further assured in § 3607(b)(1) that retirement communities would be exempt from the proscription of discrimination against families with minor children. In the sentence immediately following the maximum occupancy provision, § 3607(b)(1) states: "Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons."

----- End Footnotes-----

B

*****LEdHR1C** [1C]^{LEdHR(1C)}Turning specifically to the City's Community Development Code, we note that the provisions Edmonds invoked against **Oxford House**, ECDC §§ 16.20.010 and 21.30.010, are classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling. In plain terms, they direct ***736** that dwellings be used only to house families. Captioned "USES," ECDC § 16.20.010 provides that the sole "Permitted Primary Use" in a single-family residential zone is "single-family dwelling units." Edmonds itself recognizes that this provision simply "defines those uses permitted in a single family residential zone." Pet. for Cert. 3.

*****LEdHR4B** [4B]^{LEdHR(4B)}A separate provision caps the number of occupants a dwelling may house, based on floor area:

"Floor Area. Every dwelling unit shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping *****812** purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two." ECDC § 19.10.000 (adopting Uniform Housing Code § 503(b) (1988)). n10

This space and occupancy standard is a prototypical maximum occupancy restriction.

----- Footnotes-----

n10 An exception to this provision sets out requirements for efficiency units in apartment buildings. See ECDC § 19.10.000 (1991) (adopting Uniform Housing Code § 503(b) (1988)).

----- End Footnotes-----

*****LEdHR1D** [1D]^{LEdHR(1D)}Edmonds nevertheless argues that its family composition rule, ECDC § 21.30.010, falls within § 3607(b)(1), the FHA exemption for maximum occupancy restrictions, because the rule caps at five the number of unrelated persons

allowed to occupy a single-family dwelling. But Edmonds' family composition rule surely does not answer the question: "What is the maximum number of occupants permitted to occupy a house?" So long as they are related "by genetics, adoption, or marriage," any number of people can live in a house. Ten siblings, their parents and grandparents, for example, could dwell in a house in Edmonds' single-family residential **[**1783]** zone without offending Edmonds' family composition rule.

[*737] Family living, not living space per occupant, is what ECDC § 21.30.010 describes. Defining family primarily by biological and legal relationships, the provision also accommodates another group association: Five or fewer unrelated people are allowed to live together as though they were family. This accommodation is the peg on which Edmonds rests its plea for § 3607(b)(1) exemption. Had the City defined a family solely by biological and legal links, § 3607(b)(1) would not have been the ground on which Edmonds staked its case. See Tr. of Oral Arg. 11-12, 16. It is curious reasoning indeed that converts a family values preserver into a maximum occupancy restriction once a town adds to a related persons prescription "and also two unrelated persons." n11

----- Footnotes -----

n11 This curious reasoning drives the dissent. If Edmonds allowed only related persons (whatever their number) to dwell in a house in a single-family zone, then the dissent, it appears, would agree that the § 3607(b)(1) exemption is unavailable. But so long as the City introduces a specific number -- any number (two will do) -- the City can insulate its single-family zone *entirely* from FHA coverage. The exception-takes-the-rule reading the dissent advances is hardly the "generous construction" warranted for antidiscrimination prescriptions. See Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 212, 34 L. Ed. 2d 415, 93 S. Ct. 364 (1972).

----- End Footnotes -----

Edmonds additionally contends that subjecting single-family zoning to FHA scrutiny will "overturn Euclidian zoning" and "destroy the effectiveness and purpose of single-family zoning." Brief for Petitioner 11, 25. This contention both ignores the limited scope of the issue before us and exaggerates the force of the FHA's antidiscrimination provisions. We address only whether Edmonds' family composition rule qualifies for § 3607(b)(1) exemption. Moreover, the FHA antidiscrimination provisions, when applicable, require only "reasonable" accommodations to afford persons with handicaps "equal opportunity to use and enjoy" housing. §§ 3604(f)(1)(A) and (f)(3)(B).

[*738] * * *

[*LEdHR7]** [7]^{LEdHR(7)} The parties have presented, and we have decided, only a threshold question: Edmonds' zoning code provision describing who may compose a "family" is not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1). It remains **[***813]** for the lower courts to decide whether Edmonds' actions against **Oxford House** violate the FHA's prohibitions against discrimination set out in §§ 3604(f)(1)(A) and (f)(3)(B). For the reasons stated, the judgment of the United States Court of Appeals for the Ninth Circuit is

Affirmed.

DISSENT BY: THOMAS

DISSENT: JUSTICE THOMAS, with whom JUSTICE SCALIA and JUSTICE KENNEDY join,

dissenting.

Congress has exempted from the requirements of the Fair Housing Act (FHA) "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1) (emphasis added). In today's decision, the Court concludes that the challenged provisions of petitioner's zoning code do not qualify for this exemption, even though they establish a specific number -- five -- as the maximum, number of unrelated persons permitted to occupy a dwelling in the single-family neighborhoods of Edmonds, Washington. Because the Court's conclusion fails to give effect to the plain language of the statute, I respectfully dissent.

I

Petitioner's zoning code reserves certain neighborhoods primarily for "single-family dwelling units." Edmonds Community Development Code (ECDC) § 16.20.010(A)(1) (1991), App. 225. To live together in such a dwelling, a group must constitute a "family," which may be either a traditional kind of family, comprising "two or more persons related [*739] by genetics, adoption, or marriage," or a nontraditional one, comprising "a group of five or fewer persons who are not [so] related." § 21.30.010, App. 250. As respondent United States conceded at oral argument, the effect of these provisions is to establish a rule that "no house in [a single-family] area of the city shall have more than five occupants unless it is a [traditional kind [***1784] of] family." Tr. of Oral Arg. 46. In other words, petitioner's zoning code establishes for certain dwellings "a five-occupant limit, [with] an exception for [traditional] families." *Ibid.*

To my mind, the rule that "no house . . . shall have more than five occupants" (a "five-occupant limit") readily qualifies as a "restriction regarding the maximum number of occupants permitted to occupy a dwelling." In plain fashion, it "restrict[s]" -- to five -- "the maximum number of occupants permitted to occupy a dwelling." To be sure, as the majority observes, the restriction imposed by petitioner's zoning code is not an absolute one, because it does not apply to related persons. See *ante*, at 736. But § 3607(b)(1) does not set forth a narrow exemption only for "absolute" or "unqualified" restrictions regarding the maximum number of occupants. Instead, it sweeps broadly to exempt *any* restrictions *regarding* such maximum number. It is difficult to imagine what broader terms Congress could have used to signify the categories or kinds of relevant governmental restrictions that are exempt from the FHA. n1

----- Footnotes -----

n1 A broad construction of the word "any" is hardly novel. See, e. g., *John Hancock Mut. Life Ins. Co. v. Harris Trust and Sav. Bank*, 510 U.S. 86, 96, 126 L. Ed. 2d 524, 114 S. Ct. 517 (1993) (citing, as examples where "Congress spoke without qualification" in ERISA, an exemption for "'any security' issued to a plan by a registered investment company" and an exemption for "'any assets of . . . an insurance company or any assets of a plan which are held by . . . an insurance company'" (quoting 29 U.S.C. §§ 1101(b)(1), 1103(b)(2)) (emphasis in *John Hancock*)); *Citizens' Bank v. Parker*, 192 U.S. 73, 81, 48 L. Ed. 346, 24 S. Ct. 181 (1904) ("The word *any* excludes selection or distinction. It declares the exemption without limitation").

----- End Footnotes -----

[*740] Consider a real estate agent who is [***814] assigned responsibility for the city of Edmonds. Desiring to learn all he can about his new territory, the agent inquires: "Does the city have *any* restrictions regarding the maximum number of occupants permitted to

occupy a dwelling?" The accurate answer must surely be in the affirmative -- yes, the maximum number of unrelated persons permitted to occupy a dwelling in a single-family neighborhood is five. Or consider a different example. Assume that the Federal Republic of Germany imposes no restrictions on the speed of "cars" that drive on the Autobahn but does cap the speed of "trucks" (which are defined as all other vehicles). If a conscientious visitor to Germany asks whether there are "any restrictions regarding the maximum speed of motor vehicles permitted to drive on the Autobahn," the accurate answer again is surely the affirmative one -- yes, there is a restriction regarding the maximum speed of trucks on the Autobahn.

The majority does not ask whether petitioner's zoning code imposes any restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Instead, observing that pursuant to ECDC § 21.30.010, "any number of people can live in a house," so long as they are "related 'by genetics, adoption, or marriage,'" the majority concludes that § 21.30.010 does not qualify for § 3607(b)(1)'s exemption because it "surely does not answer the question: 'What is the maximum number of occupants permitted to occupy a house?'" *Ante*, at 736. The majority's question, however, does not accord with the text of the statute. To take advantage of the exemption, a local, state, or federal law need not impose a restriction *establishing* an *absolute* maximum number of occupants; under § 3607(b)(1), it is necessary only that such law impose a restriction "regarding" the maximum number of occupants. Surely, a restriction can "regard" -- or "concern," "relate to," or "bear on" -- the maximum number [*741] of occupants without establishing an absolute maximum number in all cases. n2

----- Footnotes -----

n2 It is ironic that the majority cites Uniform Housing Code § 503(b) (1988), which has been incorporated into petitioner's zoning code, see ECDC § 19.10.000, App. 248, as a "prototypical maximum occupancy restriction" that would qualify for § 3607(b)(1)'s exemption. *Ante*, at 736. Because § 503(b), as the majority describes it, "caps the number of occupants a dwelling may house, based on floor area," *ibid.* (emphasis added), it actually caps the *density* of occupants, not their *number*. By itself, therefore, § 503(b) "surely does not answer the question: 'What is the maximum number of occupants permitted to occupy a house?'" *Ibid.* That is, even under § 503(b), there is no single absolute maximum number of occupants that applies to every house in Edmonds. Thus, the answer to the majority's question is the same with respect to both § 503(b) and ECDC § 21.30.010: "It depends." With respect to the former, it depends on the size of the house's bedrooms, see *ante*, at 736 (quoting § 503(b)); with respect to the latter, it depends on whether the house's occupants are related.

----- End Footnotes -----

[**1785] I would apply § 3607(b)(1) as it is written. Because petitioner's zoning code imposes a qualified "restriction regarding the maximum number of occupants permitted to occupy a [***815] dwelling," and because the statute exempts from the FHA "any" such restrictions, I would reverse the Ninth Circuit's holding that the exemption does not apply in this case. n3

----- Footnotes -----

n3 I would also remand the case to the Court of Appeals to allow it to pass on respondents' argument that petitioner's zoning code does not satisfy § 3607(b)(1)'s requirement that qualifying restrictions be "reasonable." The District Court rejected this argument, concluding

that petitioner's "five-unrelated-person limit is reasonable as a matter of law," App. to Pet. for Cert. B-10, but the Court of Appeals did not address the issue.

----- End Footnotes-----

II

The majority's failure to ask the right question about petitioner's zoning code results from a more fundamental error in focusing on "maximum occupancy restrictions" and "family composition rules." See generally *ante*, at 731-734. These two terms -- and the two categories of zoning rules they describe -- are simply irrelevant to this case.

[*742] A

As an initial matter, I do not agree with the majority's interpretive premise that "this case [is] an instance in which an exception to 'a general statement of policy' is sensibly read 'narrowly in order to preserve the primary operation of the [policy].'" *Ante*, at 731-732 (quoting *Commissioner v. Clark*, 489 U.S. 726, 739, 103 L. Ed. 2d 753, 109 S. Ct. 1455 (1989)). Why *this* case? Surely, it is not because the FHA has a "policy"; every statute has that. Nor could the reason be that a narrow reading of 42 U.S.C. § 3607(b)(1) is necessary to preserve the primary operation of the FHA's stated policy "to provide . . . for fair housing throughout the United States." § 3601. Congress, the body responsible for deciding how specifically to achieve the objective of fair housing, obviously believed that § 3607(b)(1)'s exemption for "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling" is consistent with the FHA's general statement of policy. We do Congress no service -- indeed, we *negate* the "primary operation" of § 3607(b)(1) -- by giving that congressional enactment an artificially narrow reading. See *Rodriguez v. United States*, 480 U.S. 522, 526, 94 L. Ed. 2d 533, 107 S. Ct. 1391 (1987) (*per curiam*) ("It frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be law"); *Board of Governors, FRS v. Dimension Financial Corp.*, 474 U.S. 361, 374, 88 L. Ed. 2d 691, 106 S. Ct. 681 (1986) ("Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself . . . , in the end, prevents the effectuation of congressional intent"). n4

----- Footnotes-----

n4 The majority notes "precedent recognizing the FHA's 'broad and inclusive' compass, and therefore according a 'generous construction' to the Act's complaint-filing provision." *Ante*, at 731 (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212, 34 L. Ed. 2d 415, 93 S. Ct. 364 (1972)). What we actually said in *Trafficante* was that "the language of the Act is broad and inclusive." *Id.*, at 209. This is true enough, but we did not "therefore" accord a generous construction either to the FHA's "antidiscrimination prescriptions," see *ante*, at 737, n. 11, or to its complaint-filing provision, § 810(a), 42 U.S.C. § 3610(a) (1970 ed.) (repealed 1988). Instead, without any reference to the language of the Act, we stated that we could "give vitality to § 810(a) only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities within the coverage of the statute." 409 U.S. at 212. If we were to apply such logic to this case, we would presumably "give vitality" to § 3607(b)(1) by giving it a generous rather than a narrow construction.

----- End Footnotes-----

[*743] In any event, as applied to the present case, the majority's interpretive

[*816]** premise clashes with our decision in *Gregory v. Ashcroft*, 501 U.S. 452, 456-470, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991), in which we held that state judges are not protected by the Age Discrimination in Employment **[**1786]** Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U.S.C. §§ 621-634 (1988 ed. and Supp. V). Though the ADEA generally protects the employees of States and their political subdivisions, see § 630(b)(2), it exempts from protection state and local elected officials and "appointee[s] on the policymaking level," § 630(f). In concluding that state judges fell within this exemption, we did not construe it "narrowly" in order to preserve the "primary operation" of the ADEA. Instead, we specifically said that we were "not looking for a plain statement that judges are excluded" from the Act's coverage. *Gregory, supra*, at 467. Moreover, we said this *despite* precedent recognizing that the ADEA "broadly prohibits" age discrimination in the workplace. *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 120, 83 L. Ed. 2d 523, 105 S. Ct. 613 (1985) (quoting *Lorillard v. Pons*, 434 U.S. 575, 577, 55 L. Ed. 2d 40, 98 S. Ct. 866 (1978)). Cf. *ante*, at 731 (noting "precedent recognizing the FHA's 'broad and inclusive' compass" (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 34 L. Ed. 2d 415, 93 S. Ct. 364 (1972))).

Behind our refusal in *Gregory* to give a narrow construction to the ADEA's exemption for "appointee[s] on the policymaking level" was our holding that the power of Congress to "legislate in areas traditionally regulated by the States" is **[*744]** "an extraordinary power in a federalist system," and "a power that we must assume Congress does not exercise lightly." 501 U.S. at 460. Thus, we require that "Congress should make its intention 'clear and manifest' if it intends to pre-empt the historic powers of the States." *Id.*, at 461 (quoting *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65, 105 L. Ed. 2d 45, 109 S. Ct. 2304 (1989)). It is obvious that land use -- the subject of petitioner's zoning code -- is an area traditionally regulated by the States rather than by Congress, and that land-use regulation is one of the historic powers of the States. As we have stated, "zoning laws and their provisions . . . are peculiarly within the province of state and local legislative authorities." *Warth v. Seldin*, 422 U.S. 490, 508, n. 18, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975). See also *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30, 44, 130 L. Ed. 2d 245, 115 S. Ct. 394 (1994) ("Regulation of land use [is] a function traditionally performed by local governments"); *FERC v. Mississippi*, 456 U.S. 742, 768, n. 30, 72 L. Ed. 2d 532, 102 S. Ct. 2126 (1982) ("Regulation of land use is perhaps the quintessential state activity"); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13, 39 L. Ed. 2d 797, 94 S. Ct. 1536 (1974) (Marshall, J., dissenting) ("I am in full agreement with the majority that zoning . . . may indeed be the most essential function performed by local government"). Accordingly, even if it might be sensible in other contexts to construe exemptions narrowly, that principle has no application in this case.

[*817] B**

I turn now to the substance of the majority's analysis, the focus of which is "maximum occupancy restrictions" and "family composition rules." The first of these two terms has the sole function of serving as a label for a category of zoning rules simply invented by the majority: rules that "cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms," that "ordinarily apply uniformly to all residents of all dwelling units," and that have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ante*, at **[*745]** 733. n5 The majority's **[**1787]** term does bear a familial resemblance to the statutory term "restrictions regarding the maximum number of occupants permitted to occupy a dwelling," but it should be readily apparent that the category of zoning rules the majority labels "maximum occupancy restrictions" does not exhaust the category of restrictions exempted from the FHA by § 3607 (b)(1). The plain words of the statute do not refer to "available floor space or the number and type of rooms"; they embrace no requirement that the exempted restrictions "apply uniformly to all residents of all dwelling units"; and they give no indication that such restrictions **[*746]** must have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ibid*.

----- Footnotes -----

n5 To my knowledge, no federal or state judicial opinion -- other than three § 3607(b)(1) decisions dating from 1992 and 1993 -- employs the term "maximum occupancy restrictions." Likewise, not one of the model codes from which the majority constructs its category of zoning rules uses that term either. See *ante*, at 733 (citing authorities). Accordingly, it is difficult to conceive how Congress, in 1988, could have "enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions." *Ante*, at 732.

In this context, the majority seizes on a phrase that appears in a booklet published jointly by the American Public Health Association and the Centers for Disease Control -- "the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit." *Ante*, at 733, n. 6 (quoting APHA-CDC Recommended Minimum Housing Standards § 2.51, p. 12 (1986)). Even if, as the majority boldly asserts, this phrase "bears a marked resemblance to the formulation Congress used in § 3607(b)(1)," *ante*, at 733, n. 6, I fail to comprehend how that would add to our understanding of the statute. The majority surely cannot hope to invoke the rule that where "Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed." *Molzof v. United States*, 502 U.S. 301, 307, 116 L. Ed. 2d 731, 112 S. Ct. 711 (1992) (quoting *Morissette v. United States*, 342 U.S. 246, 263, 96 L. Ed. 288, 72 S. Ct. 240 (1952)). The quoted phrase from the APHA-CDC publication can hardly be called a "term of art" -- let alone a term in which is "accumulated the legal tradition and meaning of centuries of practice." See also *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 69 L. Ed. 2d 672, 101 S. Ct. 2789 (1981) (applying the rule to "terms that have accumulated settled meaning under either equity or the common law").

----- End Footnotes-----

Of course, the majority does not contend that the language of § 3607(b)(1) precisely describes the category of zoning rules it has labeled "maximum occupancy restrictions." Rather, the majority makes the far more narrow claim that the statutory language "surely encompasses" that category. *Ante*, at 734. I readily concede this point. n6 But the obvious conclusion that § 3607(b)(1) encompasses "maximum occupancy restrictions" tells us nothing [***818] about whether the statute *also* encompasses ECDC § 21.30.010, the zoning rule at issue here. In other words, although the majority's discussion will no doubt provide guidance in future cases, it is completely irrelevant to the question presented in *this* case.

----- Footnotes -----

n6 According to the majority, its conclusion that § 3607(b)(1) encompasses all "maximum occupancy restrictions" is "reinforced by" H. R. Rep. No. 100-711, p. 31 (1988). See *ante*, at 734, n. 8. Since I agree with this narrow conclusion, I need not consider whether the cited Committee Report is either authoritative or persuasive.

----- End Footnotes-----

The majority fares no better in its treatment of "family composition rules," a term employed

by the majority to describe yet another invented category of zoning restrictions. Although today's decision seems to hinge on the majority's judgment that ECDC § 21.30.010 is a "classic example of a . . . family composition rule," *ante*, at 735, the majority says virtually nothing about this crucial category. Thus, it briefly alludes to the derivation of "family composition rules" and provides a single example of them. n7 Apart from these two references, however, the majority's analysis consists [***747**] *solely* of announcing its conclusion that "the formulation [of § 3607(b)(1)] does not fit family composition rules." *Ibid*. This is not reasoning; it is *ipse dixit*. Indeed, it is not until *after* this conclusion has been announced that the majority (in the course of summing up) even defines "family composition rules" at all. See *ibid*. (referring to "rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain").

----- Footnotes -----

n7 See *ante*, at 733 ("To limit land use to single-family residences, a municipality must define the term 'family'; thus family composition rules are an essential component of single-family residential use restrictions"); *ante*, at 734 ("East Cleveland's ordinance 'selected certain categories of relatives who may live together and declared that others may not'; in particular, East Cleveland's definition of 'family' made 'a crime of a grandmother's choice to live with her grandson'" (quoting *Moore v. East Cleveland*, 431 U.S. 494, 498-499, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977) (plurality opinion))).

----- End Footnotes -----

[****1788**] Although the majority does not say so explicitly, one might infer from its belated definition of "family composition rules" that § 3607(b)(1) does not encompass zoning rules that have one particular purpose ("to preserve the family character of a neighborhood") or those that refer to the qualitative as well as the quantitative character of a dwelling (by "fastening on the composition of households rather than on the total number of occupants living quarters can contain"). *Ibid*. Yet terms like "family character," "composition of households," "total [that is, absolute] number of occupants," and "living quarters" are noticeably absent from the text of the statute. Section 3607(b)(1) limits neither the permissible purposes of a qualifying zoning restriction nor the ways in which such a restriction may accomplish its purposes. Rather, the exemption encompasses "any" zoning restriction -- whatever its purpose and by whatever means it accomplishes that purpose -- so long as the restriction "regard[s]" the maximum number of occupants. See generally *supra*, at 739-742. As I have explained, petitioner's zoning code does precisely that. n8

----- Footnotes -----

n8 All that remains of the majority's case is the epithet that my reasoning is "curious" because it yields an "exception-takes-the-rule reading" of § 3607(b)(1). *Ante*, at 737, n. 11. It is not clear why the majority thinks my reading will eviscerate the FHA's antidiscrimination prescriptions. The FHA protects handicapped persons from traditionally defined (intentional) discrimination, 42 U.S.C. §§ 3604(f)(1), (2), and three kinds of specially defined discrimination: "refusal to permit . . . reasonable modifications of existing premises"; "refusal to make reasonable accommodations in rules, policies, practices, or services"; and "failure to design and construct [multifamily] dwellings" such that they are accessible and usable, §§ 3604(f)(3)(A), (B), (C). Yet only *one* of these four kinds of discrimination -- the "reasonable accommodations" prescription of § 3604(f)(3)(B) -- is even arguably implicated by zoning rules like ECDC § 21.30.010. In addition, because the exemption refers to "local, State, or Federal restrictions," even the broadest reading of § 3607(b)(1) could not possibly insulate

private refusals to make reasonable accommodations for handicapped persons. Finally, as I have already noted, see *supra*, at 741, n. 3, restrictions must be "reasonable" in order to be exempted by § 3607(b)(1).

----- End Footnotes-----

[*748] In sum, it does not matter that [***819] ECDC § 21.030.010 describes "family living, not living space per occupant," *ante*, at 737, because it is immaterial under § 3607(b) (1) whether § 21.030.010 constitutes a "family composition rule" but not a "maximum occupancy restriction." The sole relevant question is whether petitioner's zoning code imposes "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling." Because I believe it does, I respectfully dissent.

REFERENCES: ♦ [Return To Full Text Opinion](#)

- ♦ [Go to Supreme Court Brief\(s\)](#)
- ♦ [Go to Oral Argument Transcript](#)

[15 Am Jur 2d, Civil Rights 249, 250, 255; 83 Am Jur 2d, Zoning and Planning 230, 231, 234, 238](#)

10A Federal Procedural Forms, L Ed, Housing and Urban Development 39:34.3, 39:34.7, 39:54.13-39:54.16

8 Am Jur Proof of Facts 2d 53, Unreasonableness of Zoning Restriction; 23 Am Jur Proof of Facts 3d 499, Discrimination on the Basis of Handicap Under the Fair Housing Act; 24 Am Jur Proof of Facts 3d 543, Zoning--Invalidity of Single-Family Zoning Ordinance

28 Am Jur Trials 1, Housing Discrimination Litigation

[42 USCS 3607\(b\)\(1\)](#)

Americans With Disabilities: Practice and Compliance Manual 14:26, 14:27, 14 :42, 14:43, 15:29-15 :33

L Ed Digest, Housing and Urban Development 6; Zoning 2

L Ed Index, Family and Relatives ;Group Homes; Housing and Urban Development; Residential Area or District; Zoning

ALR Index, Civil Rights and Discrimination; Disabled Persons; Fair Housing Act; Family, Relatives, and Household; Group Homes; House and Home; Housing and Slum Clearance; Residential Area or Neighborhood; Zoning

Annotation References:

Refusal to rent based on sex or familial status as violation of Fair Housing Act (Civil Rights Act of 1968, 801 ([42 USCS 3604](#))), [115 ALR Fed 467](#).

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence. [87 ALR4th 294](#).

Applicability and application of zoning regulations to single residences employed for group

living of mentally retarded persons. 32 ALR4th 1018 .

Validity of ordinance restricting number of unrelated persons who can live together in residential zone. 12 ALR4th 238.

What constitutes a "family" within meaning of zoning regulation or restrictive covenant. 71 ALR3d 693.

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*104 F.3d 300, *; 1997 U.S. App. LEXIS 370, **;
97 Cal. Daily Op. Service 263; 97 Daily Journal DAR 473*

JOHN GAMBLE; FIE A. GAMBLE; LIFE CARE RESIDENCES, INC., doing business as Oak Hill Residential Care, Plaintiffs-Appellants, v. CITY OF ESCONDIDO, Defendant-Appellee.

No. 95-56019

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

104 F.3d 300; 1997 U.S. App. LEXIS 370; 97 Cal. Daily Op. Service 263; 97 Daily Journal DAR 473

October 10, 1996, ** Submitted, Pasadena, California

** The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir. R. 34-4 and Fed. R. App. P. 34(a).
January 10, 1997, Filed

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Southern District of California. D.C. No. CV-94-00637-EJS. Edward J. Schwartz, District Judge, Presiding.

DISPOSITION: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant applicants sought review of the summary judgment of the United States District Court for the Southern District of California, for appellee city, in appellant's action that challenged appellee's denial of a building permit for a facility for physically disabled elderly adults in a single-family residence area.

OVERVIEW: Appellant applicants sought a permit for a complex for physically disabled elderly adults in a single-family residence area. Appellee city denied the permit because the proposed building was too large for the lot and did not conform to the neighborhood. Appellants filed an action that challenged the denial on Fair Housing Act, equal protection, and due process grounds, and the trial court granted appellee summary judgment. Appellants sought review and the court affirmed the judgment. The court held that to establish disparate treatment, appellants had to prove discriminatory motive, and appellants did not claim that appellee granted a permit to a similarly situated party relatively near the time it denied their permit, or show that appellee's permit practices had an adverse or disproportionate impact on the physically disabled or elderly. The court further found that the statute did not require reasonable accommodation for health care facilities, which was a substantial element of appellants' plan, and physically disabled are not a protected class for purposes of equal protection under U.S. Const. amend. XIV.

OUTCOME: The summary judgment for appellee city, in appellant applicants' challenge to appellee's denial of their application of a building permit for a facility for physically disabled elderly adults in a single family area, was affirmed because appellants failed to establish a discriminatory motive, and appellee's zoning practices were reasonable applications of its zoning power.

EXHIBIT 7

CORE TERMS: physically, disabled, conditional use permit, prima facie case, discriminatory effect, disparate impact, discriminatory, adult, health care facility, accommodation, housing, employment discrimination, disparate treatment, Fair Housing Act, summary judgment, neighborhood, elderly, motive, recommended, handicapped, dwelling, city council, equal protection, zoning, Fair Housing Act Amendments, rational basis test, similarly situated, health facility, protected class, rational basis

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HN1 ⚡ The court reviews a grant of summary judgment de novo. Summary judgment is appropriate when the movant shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. A dispute about a material fact is genuine if there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN2 ⚡ The court applies Title VII discrimination analysis in examining Fair Housing Act (FHA) discrimination claims. The FHA is analogous to Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., which prohibits discrimination in employment. Thus, a plaintiff can establish an FHA discrimination claim under a theory of disparate treatment, or disparate impact. Additionally, a plaintiff may sue under the Fair Housing Act, § 3604(f)(3)(B), if a local municipality refuses to make reasonable accommodations for handicapped housing. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN3 ⚡ To bring a disparate treatment claim, the plaintiff must first establish a prima facie case. The elements are (1) plaintiff is a member of a protected class, (2) plaintiff applied for a conditional use permit and was qualified to receive it, (3) the conditional use permit was denied despite plaintiff being qualified, and (4) defendant approved a conditional use permit for a similarly situated party during a period relatively near the time plaintiff was denied its conditional use permit. If plaintiff establishes the prima facie case, the burden shifts to defendant to articulate a legitimate, nondiscriminatory reason for its action. If defendant satisfies its burden, plaintiff must prove by a preponderance of evidence that the reason asserted by the defendant is a mere pretext. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN4  Proof of discriminatory motive is crucial to a disparate treatment claim. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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[Public Health & Welfare Law](#) > [Housing & Public Buildings](#) > [Fair Housing](#) 

HN5  To establish a prima facie disparate impact case, a plaintiff must establish at least that the defendant's actions had a discriminatory effect. The elements under the Fair Housing Act, 42 U.S.C.S. § 3604(f)(3)(B), of a prima facie case under a disparate impact theory are (1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices. Demonstration of discriminatory intent is not required under disparate impact theory. However, a plaintiff must prove the discriminatory impact at issue. Raising an inference of discriminatory impact is insufficient. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN6  A municipality commits discrimination under the Fair Housing Act, 42 U.S.C.S. § 3604(f)(3)(B), if it refuses to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the physically disabled equal opportunity to use and enjoy a dwelling. A dwelling is defined as any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. 42 U.S.C.S. § 3602(b). These portions of the statute affirmatively require the city to make reasonable accommodations for handicapped residences. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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[Public Health & Welfare Law](#) > [Housing & Public Buildings](#) > [Fair Housing](#) 

HN7  The Fair Housing Act, 42 U.S.C.S. § 3604(f)(3)(B), does not require reasonable accommodation for health care facilities. If the health care facility were necessary to house the physically challenged living in the building, reasonable accommodation might be construed to include the health care complex. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

CALIFORNIA DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

1700 K STREET
SACRAMENTO, CA 95814-4037
TDD (916) 445-1942
(916)



February 11, 2000

**TO: COUNTY ALCOHOL AND DRUG PROGRAM ADMINISTRATORS
LICENSED ALCOHOLISM OR DRUG ABUSE RECOVERY OR
TREATMENT FACILITIES**

SUBJECT: GOOD NEIGHBOR GUIDELINES

Enclosed is a revised copy of the Department of Alcohol and Drug Programs' *Good Neighbor Guidelines*. The edition of the *Guidelines* mailed to you in January 2000, contained a printing error and, therefore, we ask that you destroy your copy.

Please accept our apologies for any inconvenience this oversight has caused you, and thank you in advance for your assistance in this matter. If you have any questions about the *Guidelines*, please contact Lois MacNeil at (916) 323-1806. For additional copies of the *Guidelines*, please contact ADP's Resource Center at (800) 879-2772.

A handwritten signature in black ink, appearing to read 'D. L. Feinberg'.

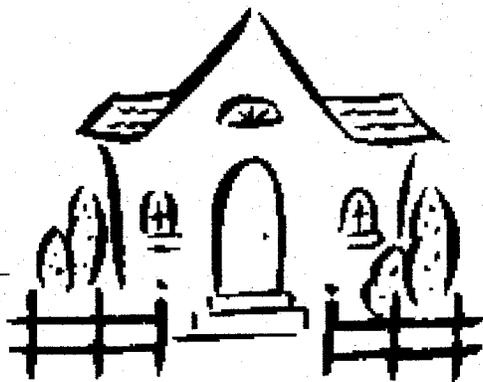
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Enclosure

Good Neighbor Guidelines

Establishing and Maintaining
Positive Relationships in the Community

A Guidebook for Residential Alcohol and
Drug Abuse Facilities



Acknowledgments

Good Neighbor Guidelines was developed in response to recommendations from the Care Facilities Task Force which was established by Senate Concurrent Resolution 27 (Senator Quentin L. Kopp, 1997).

The Department of Alcohol and Drug Programs (ADP) is very grateful to the California Association of Services for Children and the California Association of Children's Homes for allowing us to paraphrase their "A Guidebook for Group Home Providers." We borrowed much of their fine work and made it appropriate to residential alcohol and drug abuse (AOD) facilities.

This adaptation of *Good Neighbor Guidelines* was written by the California Association of Addiction Recovery Resources under subcontract with the Social Model Recovery Services, through its contract with ADP. The information expressed herein is to assist AOD facilities in establishing and maintaining positive relationships in the community. Questions or comments regarding this document should be directed to:

Department of Alcohol and Drug Programs
1700 K Street
Sacramento, CA 95814
(800) 879-2772 (California only)
(916) 327-3728 FAX (916) 323-1270
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Introduction



What makes a good neighbor? From personal experiences in our own homes, we all have a pretty clear idea of neighborliness. Good neighbors are people we can rely on to keep an eye on our house when we're away, people we can rely on to give us a hand if we need a little extra help, people we can depend on to help keep the street looking good by keeping their lawns mowed, their yards neat and free of litter, and houses painted. Good neighbors are the folks that we're glad bought the house next door and that we miss when they move away.

When you open a residential alcohol and drug abuse facility (hereafter referred to as an AOD facility) in a residential community, you become the new neighbor on the block and the neighborhood's expectations about you are the same as they would be about any new neighbor moving in. Because there have been instances where AOD facilities unfortunately have not practiced good neighbor principles, community residents may become suspicious or hostile when they learn that an AOD facility has opened or is about to open in their neighborhood.

As a licensee of an AOD facility, what can you do to turn this attitude around and promote AOD facilities as being good neighbors? This booklet can help. It contains ideas, suggestions and tips, identified by experienced providers and licensing reviewers, for establishing and maintaining positive relationships in the community. It also includes some examples of protocols and communications that you may wish to adapt for use in your own AOD facility.

We hope that you will find the suggestions contained in this booklet helpful and consider incorporating them into your AOD facility. Those of us who are committed to providing neighborhood-



Good Neighbor Guidelines

based treatment services for individuals suffering from alcohol or other drug problems must make sure that our residents are committed to being good neighbors, our homes are maintained and our staff conduct themselves in a responsible, positive, professional manner that contributes to the quality of our communities and enhances the AOD facility's efforts to be a good neighbor. In short, we must be good neighbors!



Site Selection



AOD facilities need to:

- Anticipate potential problems.
- Choose a location most appropriate for your services and clientele.
- Review the neighborhood composition of possible sites. Find out who lives there, what schools, businesses, or organizations are located there.
- Anticipate questions and be prepared to answer them. For instance, locating too near a school, playground or liquor store often raises community concerns.
- Contact local zoning or planning boards early in your planning to identify regulations.
- Make it a priority to find space that meets existing zoning requirements.
- Assemble a group of expert and lay persons who support your cause and who would be willing to testify on your behalf should public hearings on siting issues be needed.
- Choose a residential facility which will require minimal renovations. It should have sufficient bedrooms, bathrooms, meeting space and office space; provide a safe environment for staff and residents; meet the Americans With Disabilities Act requirements (especially if you are interested in public funding), and be accessible and appropriate for the target population(s).



Before You Move In



Even before you begin services at your AOD facility, there is work to do to reassure your new neighbors that you will be a positive addition to their community. The old maxim “you never get a second chance to make a good first impression” applies here. Do your homework so that you can anticipate and prevent problems before they occur. Consider the following:

- Know your neighborhood and make sure you have a legal right to be there—is the zoning appropriate; do you need a conditional use permit (which may be required of facilities with more than six residents)?
- Make sure that you have secured all the required fire permits, licenses, business licenses, and permits.
- Be sure your home purchase agreement or lease has an escape clause releasing you if you are unable to open the AOD facility.
- Develop a neighbor introduction letter and prepare written materials about your program that can be shared with neighbors; be clear, factual and straightforward. (See “Samples and Examples”—Page 17 for an example of a “Neighbor Introduction.”)
- Have a good-neighbor plan ready in advance and put it into effect as soon as you move in.



Maintenance



Maintenance is the essence of “good neighborliness.” Neighbors appreciate neighbors who keep up their property. In your case, good maintenance of the AOD facility may also act to reassure neighbors that your program and the residents served are a valued addition to the neighborhood.

Each AOD facility should be physically maintained in a manner that does credit to the neighborhood. The objective should be to be “the best looking place in the neighborhood.”

- Conduct monthly inspections of the agency’s AOD facility and recognize or reward the staff and clients for their efforts.
- Adhere to community standards for landscaping, painting and décor.
- Keep the exterior free of old furniture, appliances or cars.
- Do not allow residents or visitors to litter.



Law Enforcement



It is important to develop a relationship with local law enforcement, or with any local response agencies. You need their understanding and support. A “bunker” mentality on your part will mean that law enforcement will only hear a one-sided accounting of any situation. Make their jobs as easy for them as you can. Consider the following:

- Get to know the local police, sheriff and fire department. Invite them to become familiar with the program and facility, and orient them to your mission and goals.
- If possible, recruit a law enforcement officer for your Board of Directors.
- Discuss the Code of Federal Regulations, Title 42, Chapter 1, Part 2, Confidentiality Rules. If possible, work with all law enforcement agencies on a plan for how to cooperate with their requests for information on individuals without violating individual rights to confidentiality.
- Develop a back-up system of support within the AOD facility to minimize your reliance on law enforcement in crisis situations.



Complaints



Complainants will find a listener somewhere. If it's not you, it will be local government, local media or a State licensing agency. The involvement of any of these entities can start a series of processes over which you have little direct control. Wouldn't you be in a better position if you had the first opportunity to respond to concerns? Consider the following:

- Make sure the neighbors know who to contact in the AOD facility if they have a complaint or a question, and how to contact that person. Periodically visit neighbors and leave your business card.
- Select a staff member to represent the AOD facility and ask the neighbors to appoint a representative as well. Ask them to be available to one another to discuss any neighborhood issues that may arise.
- Provide mediation crisis intervention training to the person assigned to deal with complaints.
- Develop a written protocol or procedures for staff to follow when a complaint is received. (See "Samples and Examples"—Page 18 for an example of a "Complaint Protocol.")
- Learn to field complaints in a positive way. Even if it appears that the AOD facility is unfairly criticized, the response should be one of acceptance and understanding.



Good Neighbor Guidelines

- Respond to any complaints whether legitimate or not. If the complaint does not concern your facility, say so. However, if you are able to remedy the problem, offer to help. If the problem stems from your facility, correct it and assure the complainant that it won't happen again. Then, take appropriate measures so that the problem is not repeated.
- Keep your Board of Directors informed about neighborhood issues; you never know when the support of the Board will be needed to handle a problem in the community. Ideally, you will have representatives of the community serving on your Board of Directors, and this might be the time to call upon their services.

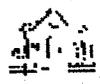


Communication



AOD facilities often fare very differently in their relationships with neighbors and the community in general. Sometimes this is because of local circumstances beyond the control of the licensee. More often, however, this is because of differences in approach to local communication. Public relations are very important! Consider some of the following approaches:

- Hold periodic open houses; invite the neighbors in now and then. Without violating confidentiality, show off your AOD facility; show your neighbors your successes to help them buy into the need for your AOD facility.
- When someone moves into the neighborhood, have a staff member visit the neighbor. Welcome your neighbor to the neighborhood, acquaint them with the program and give them the name and phone number of the administrator or agency liaison, should concerns arise.
- If you plan to make significant improvements to your property, it is wise to inform your neighbors of the changes before the work is commenced. The more your neighbors know, the less concerns they will have.



Client Conduct



Regardless of the number of residents served in your AOD facility, it is your responsibility to assure that residents of your program are conducting themselves in such a way as to respect the neighborhood and honor the AOD facility. The following are some suggested rules to ensure your residents are also good neighbors:

- Residents should not loiter in the front yard. Designate outdoor smoking areas that will not interfere with your neighbors. Use the back yard or park for outdoor activities.
- Restrict radios, stereos and television to indoor use and keep the volume of stereos and television at a level that does not disturb the neighbors.
- Residents should dress appropriately and use appropriate language.
- Residents should not engage in any aggressive confrontation with each other or the neighbors.
- Residents should not cut across or walk on neighbors' property.
- If your program does not have "off street" parking, or if multiple vehicles are unsightly, make provisions for residents to leave their vehicles somewhere other than at the house. Use your best judgment, and be consistent



with other homes in the neighborhood, but be aware that one of the most frequent complaints is the number of cars parked at and coming to and from the AOD facility.

- Prohibit any auto maintenance in the driveways/front yards.
- Keep the garage door closed when possible.
- Make a wall hanging or poster and place it where residents and staff can see it daily. (See “Samples and Examples”—Page 19 for an example of a “Wall Hanging.”)



Staff Conduct



Your staff represents your AOD facility. They are also role models to your residents and community. Consider some of the following rules for staff conduct:

- Staff should observe all rules set for residents. (See “Client Conduct”—Page 12.)
- The agency should have a “Code of Ethics” for all staff and it should be reviewed by staff on a regular basis. Each staff person and volunteer should be required to sign this code of ethics. (See “Samples and Examples”—Page 20 for an example of a “Code of Ethics.”)
- All staff and volunteers shall be aware of the Code of Federal Regulations, Title 42, Chapter 1, Part 2 Confidentiality Rules and shall maintain them at all times.
- Be an overall good neighbor. See the neighbors and let them see you. Build relationships on a personal level as much as your time allows.



**Join, Join, and
Join!**



Belonging to local groups and community service organizations is a great way to “walk the walk” as a member of the community. The following are some suggestions for getting involved in the community:

- Participate in the neighborhood watch program.
- Participate in homeowners and apartment associations.
- Encourage staff to get involved in community organizations (e.g., as board members of other community nonprofit organizations, volunteers with police or fire auxiliaries, etc.) so that you will be known and seen as people who are actively involved in the betterment of the community.
- Belong everywhere: Chamber of Commerce, Rotary, Lions, Kiwanis, etc. You are a member of the community and should act like one.



Community Service



Community service activities are wonderful opportunities to demonstrate your commitment to the neighborhood and your concern for the good citizenship of your residents. Following is a list of community service activities you could undertake, and add to the list those activities that would be appropriate in your neighborhood and community:

- Offer to remove and replace garbage cans for the disabled or elderly on trash day.
- Offer to mow lawns, make home repairs or do yard work for neighbors who are incapacitated or elderly.
- Help clean up the neighborhood in the aftermath of storms, floods, etc.
- Patrol for and remove litter.
- Participate in local community special events.
- Purchase goods and services from local merchants.
- Participate in the adopt-a-highway program.
- Participate in the neighborhood watch program.
- If graffiti appears in the neighborhood, help to remove it.
- Offer to paint street numbers on curbs.



Samples and Examples
Neighbor
Introduction

Easy Does It Recovery Home

Dear Neighbor,

I would like to introduce myself. My name is John/Mary Smith and I am the Director of The Easy Does It Recovery Home. Our organization has been incorporated since 1982 and has been successfully serving recovering alcoholics and drug addicts since that time. We have 12 male residents in this AOD facility.

It is our agency's mission to assist these men in their journey to sobriety and recovery by offering them a safe, nurturing environment and skills to function as nondrinking or nonusing citizens in an alcohol- and drug-free environment. Our residential facility provides 24-hour staff supervision, which means there is always someone in charge of the home whom you can reach should you have a question or concern. The State of California Department of Alcohol and Drug Programs licenses us as a Residential Nonmedical Alcoholism and Drug Abuse Recovery or Treatment Facility.

It is important that our men live in a community like this since it is in such an environment where they will live when they complete their recovery and treatment services. We take this responsibility very seriously. Our residents learn the importance of being a good neighbor and a positive asset to this community. Please help us to become better neighbors and consider us for involvement or help in any community projects.

If you have any questions or concerns, you may contact my staff or me at 555-4444.

Sincerely,

John/Mary Smith
Director



Samples and Examples
Complaint Protocol

Although there are no requirements in regulation that AOD facilities develop a neighborhood complaint process, it is highly recommended that each AOD facility do so and inform the staff as to the procedure to take should a neighbor complain to the AOD facility. The following is an example:

Easy Does It Recovery Home

To: All Staff
From: Mary Smith, Director
Subject: Neighbor Complaints

Should anyone come to the door with a concern or complaint, please follow these instructions:

1. You are allowed to let him/her know we are The Easy Does It Recovery Home, an AOD facility for recovering alcoholics and drug addicts. You are not allowed to give him/her any specific information about our residents.
2. If he/she asks, you may give your name.
3. Ask for his/her name and phone number—if he/she is unwilling to give this information, that is fine—please only ask once.
4. If he/she does give you a name and phone number, tell him/her that Mary Smith, Director will give him/her a call to discuss any concerns he/she may have.
5. Give him/her a copy of the Neighbor Introduction Letter and let him/her know if he/she has any questions, to please call Mary Smith at the number on the letter.
6. Once you have asked for a name and number, and given him/her a copy of the Neighbor Introduction Letter, you are instructed to politely excuse yourself, letting him/her know you need to return to your duties. At no time are you to engage in a discussion or debate about the validity or invalidity of his/her concern or complaint.
7. If you have been through these steps and the person is refusing to leave or is trying to force his/her way into the AOD facility, page me or the designated staff person in charge. As a last resort you should call the local authorities.



Samples and Examples
Wall Hanging

Create a wall hanging that can be displayed in a central location where all staff and residents can see it on a regular basis.

Easy Does It Recovery Home

- This is our home.
- Always treat it with respect.
- Remember that you and your actions reflect on our home.
- We are happy to be in this neighborhood.
- Always think of what you can do to make this home and our community better.



Samples and Examples
Code of Ethics

Staff of the Easy Does It Recovery Home is dedicated to the belief in the dignity and worth of all human beings.

Staff will promote and assist in the recovery or treatment of all persons regardless of the ability to pay, without regard to ethnic group identification, religion, age, sex, color or disabilities.

Staff will maintain an appropriate supportive relationship with all persons served, and not become personally, socially, sexually or romantically involved with a resident while the resident is in a professional relationship with the program.

Staff will not commit any act of violence or threats of violence against residents or other staff.

Staff will not become financially involved with residents served.

Staff will strictly adhere to established rules of confidentiality regarding all records, materials and knowledge concerning persons served in accordance with all current government and program regulations.

Staff will respect organizational policies and procedures, along with the rights of other staff members, cooperating with management both on the job and in association with other agencies with which he/she may come in contact in his/her job.

Staff will regularly evaluate their own skills, strengths and limitations, striving always for self-improvement, personal growth and increased knowledge through further education and training.



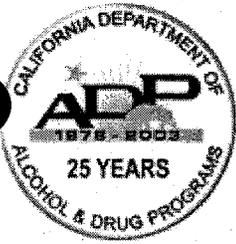
State of California
Department of Alcohol and Drug Programs
1700 K Street
Sacramento, California 95814

(800) 879-2772 (California Only)
(916) 327-3728

FAX: (916) 323-1270
TTY: (916) 445-1942
<http://www.adp.state.ca.us>

ADP Publication No. 00-3607

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Fact Sheet:

Licensing and Certification Division Alcohol and/or Other Drug Recovery or Treatment Facilities: Most Frequently Asked Questions



The Licensing and Certification Division (LCD) is responsible for the licensing and certifying of adult, non-medical alcohol and/or other drug (AOD) recovery or treatment facilities (programs), Drug Medi-Cal certification of clinics in the State of California, and the licensing of Narcotic Treatment Programs.

Information can be obtained about Narcotic Treatment Programs at
<http://www.adp.ca.gov/FactSheets>.

Licensing and Certification of AOD Facilities Frequently Asked Questions

Licensed vs. Unlicensed Facilities

1. What facilities (programs) must the Department of Alcohol and Drug Programs (ADP) license?

California Code of Regulations (CCR), Title 9, Section 10501, defines a "facility" as any building or group of buildings which is maintained and operated to provide on a residential basis, one or more of the following alcoholism or drug abuse recovery or treatment services: detoxification; individual, group or educational sessions; treatment or recovery planning.

2. What facilities do not require licensure by ADP?

- Facilities that provide a cooperative living arrangement (sometimes referred to as a sober living environment, transitional housing, or alcohol and drug free housing) for persons recovering from alcohol and/or other drug problems. It is important to note that while sober living environments or alcohol and drug free housing are not required to be licensed by ADP, business permits or clearances may be required by the local cities or counties in which the houses are located.
- Facilities with licenses from other departments (e.g., group homes licensed by the Department of Social Services; Chemical Dependency Recovery Hospitals licensed by the Department of Health Services).

Licensed vs. Certified Facilities

3. What is the difference between a licensed and a certified facility?

Any residential facility providing one or more of the following services to adults must be licensed: detoxification; group, individual or educational sessions; and/or recovery or treatment planning. Nonresidential programs are not required to be licensed.

In addition to licensure, ADP provides a voluntary certification process to identify programs which exceed a minimal level of service quality and are in substantial compliance with the Department's standards. Certification is available to both residential and nonresidential programs. Obtaining certification is considered advantageous in gaining the confidence of both potential residents and third party payers.

More information may be obtained from the *Licensing and Certification of Alcohol and/or Other Drug (AOD) Recovery or Treatment Program* Fact Sheet by accessing the following ADP web page:

[http://www.adp.ca.gov/FactSheets/Licensing and Certification of Alcoholism or Drug Abuse Recovery or Treatment Programs.pdf](http://www.adp.ca.gov/FactSheets/Licensing_and_Certification_of_Alcoholism_orDrug_Abuse_Recovery_or_Treatment_Programs.pdf)

4. What kind of services will I expect to find in a licensed facility?

Residential facilities provide non-medical services to individuals who are working to overcome their addiction to alcohol and/or other drugs. Services include education, group, or individual sessions; recovery or treatment planning; and detoxification services. In addition, a licensed facility may offer individualized services (e.g., vocational and employment search training, community volunteer opportunities, new skills training, peer support, social and recreational activities, and information about and referral to appropriate community services).

5. Who do these facilities serve?

Residential facilities licensed by ADP serve adults 18 years of age and older. Adult facilities may also serve a limited number of adolescents (14 and older) on a waiver basis. Some facilities allow dependent children to reside with their parents. Licensed facilities are mandated to display their license, which indicates the treatment capacity and the population they are allowed to serve, in a public location.

Locating a Facility

6. I am looking for an alcohol and/or drug program. How do I locate one and how can I tell if it is licensed and/or certified?

LCD maintains a list, in county order, of licensed and/or certified programs. This information can be obtained by accessing the following ADP web page: www.adp.ca.gov/LCB/pdf/lcb_rprt.pdf

In addition, the County Alcohol and Drug

Administrator in your county has a list of programs that you can obtain by contacting your Alcohol and Drug Program County Office. You may locate your county's contact information at: <http://www.adp.ca.gov/RC/pdf/cadpaac.pdf>

7. Will ADP recommend a facility or program?

ADP will not recommend a facility or program. ADP assures that facilities meet mandated requirements through the licensing and certification process. ADP recommends that individuals research programs or facilities that are being considered to find the one that best meets their needs. You may contact your County Alcohol and Drug Program Administrator for names and descriptions of programs in your county. You may also contact ADP and request any information regarding complaints that have been filed against any particular licensed and/or certified program.

8. How does one pay for services?

Payments for services are arranged by agreement between the resident and the facility. Some facilities receive federal and state funds through contracts with counties. Although costs may vary, any recovery or treatment service fee must be addressed in a written agreement at time of admission.

Starting a Facility

9. What is the process for licensing an alcohol and/or other drug (AOD) facility?

Prospective applicants must first have a location where they plan to provide non-medical alcoholism or drug abuse recovery, treatment, or detoxification services.

The applicant must also complete an initial application, submit an approved fire clearance from the local fire authority and pay an applicable license fee (nonprofit organizations and local governmental entities are exempt from the license fee). Incomplete applications will be returned to the applicant.

Finally, the applicant must pass a facility on-site inspection conducted by ADP to determine compliance with all applicable laws and regulations. When it has been determined that the applicant is in compliance with all requirements, ADP will issue a license valid for two years.

Further information regarding the requirements for AOD licensure and certification, or Drug Medi-Cal certification can be provided to you by calling (916) 322-2911, or by writing to:

*Department of Alcohol and Drug Programs
LCD
1700 K Street, 3rd Floor
Sacramento, CA 95814*

Application packets for AOD licensure and certification, or Drug Medi-Cal certification can also be accessed on the following ADP web pages:

For Initial Licensing Application
<http://www.adp.ca.gov/LCB/InitialLicenseApp.shtml>

For Initial Certification Application
<http://www.adp.ca.gov/LCB/InitialCertificationApp.shtml>

For Initial Drug Medi-Cal Certification
http://www.adp.ca.gov/LCB/Drug_MediCal.shtml

ADP has contracted with the California Association of Addiction Recovery Resources (CAARR) to assist providers with free technical assistance. You may contact CAARR at (916) 338-9460 or by accessing the following web page: www.caarr.org.

Information regarding funding that may be available for establishing a facility can be obtained at the federal Substance Abuse and Mental Health Services Administration (SAMHSA) website: www.samhsa.gov.

10. Can I get financial assistance to open an AOD facility?

Funding sources can be located through the ADP's Resource Center website:
<http://www.adp.ca.gov/RC/fundinfo.shtml>

You may also get funding information from Substance Abuse and Mental Health Services Administration (SAMHSA) website: www.samhsa.gov or by calling (301) 443-4111

For nonprofit health care facilities, the Cal-Mortgage Loan Insurance program offers assistance in obtaining private financing for developing or expanding services. You may contact the California Office of Statewide Health Planning and Development, Cal-Mortgage Loan Insurance Division at (916) 324-9957, or write them at 300 Capitol Mall, Suite 1500, Sacramento, California 95814, or by e-mail at cminsure@oshpd.ca.gov

The California Association of Addiction Recovery Resources (CAARR) website can also provide useful information: www.caarr.org

11. What program areas are addressed by AOD licensure and certification?

The licensing application process includes a thorough review of the facility's program in the following areas: fire clearance, water supply clearance, plan of operation, total occupancy and treatment capacity determination, reporting requirements, personnel requirements, personnel records, admission agreements, health screening, resident records, personal rights, telephones, transportation, health-related services, food service, activities, building and grounds, indoor and outdoor activity space, storage space, fixtures, furniture, and equipment.

12. Will I need a zoning permit or local land use permit?

All facilities and programs applying for certification are required to submit approval from the local agency authorized to provide a building use permit. A residential facility that has a

licensed treatment capacity of six beds or less is exempt from this requirement.

Facilities must meet all required city and county local ordinances prior to licensure and certification.

13. What role do other government agencies play in the licensing process?

ADP is the sole licensing authority for residential non-medical alcoholism or drug abuse recovery or treatment facilities.

Local officials are involved in zoning of property for commercial or residential use and issuance of use permits and business licenses. Facilities providing services to six or fewer people are exempt from certain local land use, zoning ordinances (not exempt from ADP licensure), and other restrictions, under the Health and Safety Code, beginning with Section 11834.20. The code states that such facilities cannot be subject to taxes, fees, use permits, or zoning requirements that other single family dwellings are not subject to.

Facilities utilizing central food service may also be subject to special permits issued through the local health department.

Local fire safety inspectors (or a representative from the State Fire Marshal's Office) conduct site visits in every facility applying for licensure to determine compliance with fire safety regulations. Although ADP may issue a license without regard to a conditional use permit, no license can be issued without an appropriate fire safety clearance. A valid fire clearance must be maintained.

The Federal Fair Housing Act of 1988 provides protection from discrimination for facilities serving persons recovering from problems related to the use of alcohol or other drugs.

14. How do I get referrals or clients for my facility?

There are several possible methods for getting referrals or clients. You can contact your County Alcohol and Drug Program Administrator and/or local organized alcohol and/or other drug groups such as Alcoholics Anonymous or Narcotics Anonymous. You may also advertise. ADP does not make referrals to facilities.

Complaints

15. How do I file a complaint about an AOD program?

ADP investigates complaints that deal with violations of the law, regulations, and/or certification standards, including facilities which are alleged to be operating without a license. ADP will initiate an investigation within ten working days of receipt of the complaint.

You can file a complaint by calling (916) 322-2911, or by faxing a completed complaint form to (916) 322-2658. The complaint form can be obtained by accessing the following ADP web page:
<http://www.adp.ca.gov/feedback/ComQad.shtml>. You may also write to:

*Department of Alcohol and Drug Programs
LCD - Complaint Investigations Section
1700 K Street, 3rd Floor
Sacramento, CA 95814
Via email at: LCBcomp@adp.ca.gov*

16. How can I be assured that someone will investigate my complaint?

ADP will investigate all complaints that deal with violation of an alcoholism or drug abuse treatment or recovery law, regulation, and/or certification standard. A program is evaluated according to Division 10.5 of the Health and Safety Code; CCR, Title 9; and/or the Alcohol and/or Other Drug Program Certification Standards, depending on its license or certification. Complaints can be made anonymously.

17. How does the State investigate situations involving unlicensed facilities?

If ADP receives a complaint in which a facility is alleged to be operating without a license, ADP staff shall initiate an investigation within ten working days of receipt of the complaint. If ADP finds that services are being provided unlawfully, ADP will notify the operator to cease operation. ADP also has the authority to assess fines for noncompliance if unlicensed facilities fail to comply, and may ask for court assistance to order closure of a facility.

18. How can a completed/closed ADP inspection report and/or complaint investigation report be requested on a facility?

The Public Records Act provides the public access to certain information following the completion of on-site inspections. You may request a copy of any completed/closed inspection report or complaint investigation by submitting a written request to:

Department of Alcohol and Drug Programs
LCD – Public Information Request
1700 K Street, 3rd Floor
Sacramento, CA 95814
Via fax at: (916)322-2658

Your request must provide the name and location of the facility and the year the report/investigation was completed.

Drug Medi-Cal Facilities

19. What is the difference between being certified for AOD program services and being certified for the Drug Medi-Cal (DMC) program for substance abuse treatment services?

AOD certification indicates that a program exceeds a minimal level of service quality and that the program is in substantial compliance with ADP's certification standards.

A clinic that is DMC certified is authorized to provide services that have been approved by a physician as medically necessary to an individual who is otherwise Medi-Cal eligible.

DMC certified facilities must also be AOD certified.

20. What are the first steps in becoming DMC certified?

Programs must be AOD certified in order to become DMC certified. Prospective applicants for DMC certification should first attend a free DMC orientation session provided by ADP. The DMC orientation will explain the requirements in the application process and the procedures once a provider is DMC certified. The session also serves as a source of technical assistance through the application process. Upon completion of the orientation, the applicant is issued a Certificate of Completion, which must be attached to the DMC application. For more information on an upcoming free DMC orientation sessions, you may contact LCD at (916) 322-2911.

Applicants must also send a letter to the County Alcohol and Drug Program Administrator in which the clinic will be located; the letter should inform the county that the applicant is submitting a DMC Certification application to ADP. A copy of the letter must also be attached to the DMC application.

21. How do I become DMC certified?

Once ADP determines that the provider's application is complete, an on-site review is scheduled to ensure that the clinic is in full compliance with federal and State Medicaid requirements. Once the requirements are met a certification is issued.

For more information on the DMC application process and requirements, you may contact LCD at (916) 322-2911.

22. How can I get reimbursed for my DMC services?

If you have met the State requirements and are certified as a DMC clinic you are eligible to be reimbursed for your services. The services eligible for reimbursement through the DMC system are outpatient drug free, narcotic treatment program (formerly outpatient methadone maintenance), day care rehabilitative, naltrexone, and perinatal residential.

Reimbursement for DMC services will normally be obtained through a contract with the county. Information regarding the contract process can be obtained directly from the County Alcohol and Drug Program Administrator for the county in which the clinic will be located.

Since the DMC program is considered to be a covered entity under the Health Insurance Portability and Accountability Act (HIPAA), claims submitted by the DMC clinic must be HIPAA compliant. The HIPAA 837 Professional (837P) claim transaction is the required claim format for State reimbursement of DMC services provided to eligible patients.

For more information on HIPAA, you may contact the ADP - HIPAA Compliance Section at (916) 327-3133, and for more information on DMC billing, you may contact the ADP - Fiscal Management Accounting Branch at 916) 323-2043.

General Questions

23. Do AOD treatment counselors need to be certified?

The Counselor Certification Regulations became effective on April 1, 2005, under California Code of Regulations (CCR), Title 9, Chapter 8, Commencing with Section 13000. Any individual providing intake, assessment of need for services, treatment or recovery planning, or individual or group counseling to participants, patients, or residents in an ADP licensed or certified program are required by the State of

California to be certified.

To obtain certification, counselors must register with one of the 10 certifying organizations listed in the regulations; from the date of registry, counselors have 5 years to become certified. Information on counselor certification and the 10 certifying organizations may be obtained by accessing the following web page:

<http://www.adp.ca.gov/LCB/LCBhome.shtml>

Further information may also be obtained by calling LCD at (916) 322-2911.

24. How can I be assured that information about my participation in a licensed or certified AOD treatment or recovery program remains private?

The federal government enacted regulations in the early 1970's to guarantee the confidentiality of information regarding an individual that is receiving alcohol and/or drug abuse prevention and treatment services. These regulations were enacted to encourage persons with alcohol and/or other drug problems to get help without incurring the risk of adding to their problems. The regulations (Code of Federal Regulations 42, Part 2) apply to any licensed and/or certified recovery/treatment program and all the personnel connected with that program.

In 1996, Congress also enacted Public Law 104-9 known as the Health Insurance Portability and Accountability Act (HIPAA). One of the provisions under HIPAA requires the federal Department of Health and Human Services to adopt national standards for electronic health care transactions, and privacy and security rules to protect individual's identifiable health information. ADP, as well as California's licensed and certified AOD programs are currently required to comply with stringent confidentiality rules under federal regulations. For more information on HIPAA, you may contact the ADP - HIPAA Compliance Section at (916) 327-3133.

25. Are there facilities that provide alcohol and/or other drug treatment or recovery services that are licensed by other agencies?

Programs that have an alcohol and/or other drug recovery/treatment service component and are seeking additional funds from ADP may be required by their funding agency to obtain certification from ADP.

The California Department of Social Services licenses group homes and oversee an array of programs offered by group homes that provide care, supervision, and services for children at risk. The alcohol and/or other drug recovery/treatment services provided by these homes may also be certified by ADP.

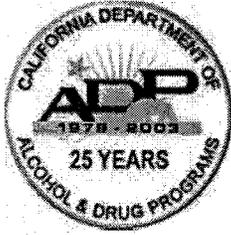
The Department of Health Services licenses chemical dependency recovery hospitals that may also have ADP-certified alcohol and/or other drug recovery/treatment services.

26. What are other important information related to alcohol and/or other drug recovery programs?

Information about Alcohol- and Drug-Free Housing, better known as sober living can be obtained by accessing the following web page: <http://www.adp.ca.gov/FactSheets/Alcohol and Drug-Free Housing/pdf>

Information regarding Social Model Recovery can be accessed at: http://www.adp.ca.gov/FactSheets/Social_Model_Recovery/pdf and <http://www.adp.ca.gov/FactSheets/Social Model the Most Frequently Asked Questions/pdf>

Information regarding the Therapeutic Community can be accessed at: <http://www.adp.ca.gov/FactSheets/Therapeutic Community/pdf> and <http://www.adp.ca.gov/FactSheets/Therapeutic Community the Most Frequently Asked Questions/pdf>



Fact Sheet:



Drug Court Programs

BACKGROUND

California's first adult drug court began in Alameda County in 1991. In 1995, California's first juvenile offender drug court began in Tulare County. The Department of Alcohol and Drug Programs (ADP) has supported the development of drug courts in California since 1998. ADP, in alliance with the numerous drug courts throughout the State is committed to the concept that alcohol and drug services and treatment are preferable to incarceration of nonviolent drug offenders.

The goals of drug court programs are to:

- reduce drug usage and recidivism;
- provide court supervised treatment;
- offer the capability to integrate drug treatment with other rehabilitation services to promote long-term recovery and reduce social costs; and
- access federal and State support for local drug courts.

COMMON TYPES OF DRUG COURTS

Across the State, local agencies have developed adult, juvenile, and dependency drug courts, which generally fall into one of four models.

Pre-plea models afford drug possession offenders a stay of prosecution if they participate in court-supervised treatment. Upon successful completion of the drug court program the participant is discharged without a criminal record. However, failure to complete the program leads to the filing of charges and adjudication.

Post-plea models require a defendant to enter a guilty plea before entering treatment. Treatment is from nine months to three years. Upon successful completion of the drug court program, the criminal charges are dismissed. However, failure to complete the program leads to the sentencing phase of adjudication.

Post-adjudication models allow repeat drug offenders to enter treatment after their conviction, but prior to serving their sentence. Successful completion of the drug court program allows these offenders to serve their sentence in treatment instead of custody. Failure to complete the program leads directly to the activation of their sentence.

Civil models allow individuals involved in civil actions (usually child custody) to enter treatment as a condition of retaining or regaining custody of their child(ren). Failure to complete the program leads to permanent loss of custody.

Dependency Drug Court focuses on cases involving parental rights in which an adult is the party litigant, which includes a substance abuse charge against a parent. The goal is to provide parent(s) with the necessary parenting skills and treatment for their substance abuse to allow children to remain safely in their parents care and to help decrease the number of children placed in foster care.

Adult Drug Courts focus on adult offenders. Participants are convicted felons or misdemeanants. The primary purpose of adult drug court is to provide access to treatment for substance-abusing offenders while minimizing the use of incarceration by providing structure by linking supervision and treatment with ongoing judicial oversight and team management. Majority of drug courts include initial intensive treatment services with ongoing monitoring and continuing care for 12 months or more.

Juvenile Drug Courts focus on delinquency matters that involve substance-using juveniles by providing immediate and intensive intervention with continuous court supervision. This includes requiring both the juvenile and the family to participate in treatment, submit to frequent drug testing, appear regularly at frequent court status hearings, and comply with other court conditions geared toward accountability, rehabilitation, long-term sobriety and cessation of criminal activity.

ADP'S DRUG COURT PROGRAMS

The Drug Court Partnership (DCP) Act of 1998 created the DCP program. This program has granted State General Fund (SGF) to counties each year beginning in May 1999. The funds are in support of adult drug courts in 33 Counties.

The Comprehensive Drug Court Implementation (CDCI) Act of 1999 created the CDCI program. This program has granted SGF to counties each year beginning in December 2000. The funds are in support of adult, juvenile, dependency, and family drug courts. Currently ADP funds CDCI programs in 46 counties.

TARGET POPULATION

Drug courts are diverse and serve various populations such as adults, juveniles, repeat drug offenders, multiple offenders, and drug probation violator. Generally, drug court participants have abused alcohol and other drugs for ten years or more and received little or no substance abuse treatment.

CALIFORNIA'S DRUG COURTS

ADP funding provides support to 104 drug courts in California. According to the Administrative Office of the Courts data base, as of January 2005, there were 206 drug courts within the 58 counties of the State.

PROGRAM EVALUATION

There is a growing body of information (papers, articles, and reports) about the effects of drug courts and their impact on drug offenders and communities. The Department's contributions include the March 2002, *Drug Court Partnership Final Report to the Legislature*, and the March 2005, *Comprehensive Drug Court Implementation Final Report to the Legislature*. These reports are available on the Department's website at <http://www.adp.ca.gov/drgcourt.asp>.

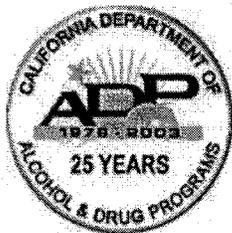
ADDITIONAL DRUG COURT INFORMATION

Visit ADP'S web page at:
<http://www.adp.ca.gov/drgcourt.asp>

OFFICE OF DRUG COURT PROGRAMS

Department of Alcohol & Drug Programs
1700 K Street
Sacramento, CA 95814
Phone: (916) 445-7456
Fax: (916) 327-9285

County	Dependency	Juvenile	Family	Adult	DCP Funded	CDCI Funded
Alameda	0	0	0	2	✓	✓
Butte	0	0	0	1	✓	✓
Calaveras	0	0	0	1		✓
Contra Costa	0	2	0	1	✓	✓
El Dorado	2	2	0	0		✓
Fresno	0	0	0	1	✓	✓
Glenn	0	0	0	1	✓	✓
Humboldt	0	1	0	1	✓	✓
Kern	0	0	0	1	✓	✓
Lake	0	1	0	0		✓
Lassen	0	0	0	1	✓	✓
Los Angeles	0	0	0	12	✓	✓
Madera	0	0	0	1		✓
Marin	0	0	0	1		✓
Mariposa	0	0	0	1		✓
Mendocino	0	0	0	1	✓	✓
Merced	1	0	0	1	✓	✓
Modoc	1	0	0	1		✓
Monterey	0	0	0	1		✓
Napa	0	0	0	1	✓	✓
Nevada	0	1	0	1	✓	✓
Orange	1	0	0	5	✓	✓
Placer	0	0	0	2	✓	✓
Plumas	0	0	0	1	✓	✓
Riverside	0	0	0	3	✓	✓
Sacramento	1	0	0	1	✓	✓
San Bernardino	0	0	0	2	✓	✓
San Diego	4	0	0	4	✓	✓
San Francisco	0	1	0	1	✓	✓
San Joaquin	0	0	0	1	✓	✓
San Luis Obispo	1	0	0	1	✓	✓
San Mateo	0	0	0	2	✓	✓
Santa Barbara	0	3	0	2	✓	✓
Santa Clara	2	1	0	1	✓	✓
Santa Cruz	1	0	0	1	✓	✓
Shasta	0	1	0	1	✓	✓
Siskiyou	0	0	0	1		✓
Solano	1	0	0	2		✓
Sonoma	0	0	0	1	✓	✓
Stanislaus	0	0	0	1	✓	✓
Sutter	0	0	0	1	✓	
Trinity	0	1	0	0		✓
Tulare	0	1	0	2		✓
Tuolumne	1	0	0	1	✓	✓
Ventura	1	1	0	0		✓
Yolo	0	0	0	1	✓	✓
Yuba	0	0	0	1		✓
Totals	14	16	0	74	33	46



Fact Sheet:



SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000

On November 7, 2000, California voters approved Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA). The law became effective statewide on July 1, 2001.

What is the intent of SACPA?

Under SACPA, first or second time non-violent adult drug offenders who use, possess, or transport illegal drugs for personal use will receive drug treatment rather than incarceration. Implementation of SACPA has required a new model of collaboration between the criminal justice system and public health agencies to promote treatment as a more appropriate and effective alternative for illegal drug use. SACPA was designed to:

1. Preserve jail and prison cells for serious and violent offenders;
2. Enhance public safety by reducing drug-related crime; and
3. Improve public health by reducing drug abuse through proven and effective treatment strategies.

What are the requirements of SACPA?

Eligible offenders may receive up to one year of drug treatment and six months of aftercare. Treatment must be provided in a program licensed or certified by the State. The courts may sanction offenders who are not amenable to treatment. Vocational training, family counseling, literacy training, and other services may also be provided. Upon completion of successful drug

treatment, participants may petition the sentencing court for dismissal of charges.

Funding

SACPA established the Substance Abuse Treatment Trust Fund (SATTFF) which provided \$60 million in start-up funds for State fiscal year 2000-2001 and \$120 million annually through State fiscal year 2005-06. The Department of Alcohol and Drug Programs (ADP) distributes these funds to counties to implement SACPA.

Continuation funding for the Proposition 36 program was reauthorized in the FY 2006-07 Budget Act and was augmented by a new \$25 million dollar Offender Treatment Program component, in which counties may request funds to improve SACPA outcomes. Counties will contribute a 10% match under this program.

Lead Agencies and Partners

Regulations (Chapter 2.5, Division 4, Title 9, California Code of Regulations) implementing SACPA require counties to designate a county lead agency to administer SACPA locally and to receive the funds. As a condition of receiving funds, counties must annually submit a county plan describing the processes and services they will employ to implement SACPA, as well as proposed expenditures.

The plans must be developed and implemented in collaboration with county agencies and any other organizational entities responsible for administering SACPA.

Data and Evaluation

SACPA requires the State to fund a long-term evaluation and submit an annual report on the effectiveness and financial impact of the programs that are funded pursuant to the requirements of SACPA. To fulfill these requirements, ADP:

- Maintains a web-based SACPA Reporting Information System (SRIS) to collect and maintain county-level data on clients and program expenditures; and
- Allocates up to 0.5 percent of the fund's total monies each year for a long-term (five-year) independent evaluation of the program. The study is being conducted by the University of California, Los Angeles (UCLA), Integrated Substance Abuse Programs.

SACPA Website

ADP maintains an active website dedicated to promoting collaboration among the various entities involved in implementing SACPA.

<http://www.adp.ca.gov/SACPA/prop36.shtml>

Visitors to the website will find comprehensive information available on:

- County SACPA allocations and financial reporting;
- All County Lead Agency (ACLA) Letters that provide information on SACPA administration;
- Evaluation updates;
- Statewide Advisory Group activities; and
- Conference proceedings.

The SACPA pages also include a user-friendly and convenient method for submitting questions to ADP. At the bottom

of the SACPA navigation bar is an "E-mail SACPA" link. ADP staff will provide acknowledgement within two days, with full responses prepared as quickly as possible after submission.

Select California Laws Relating to Residential Recovery Facilities and Group Homes

Residential Recovery Facilities Conference

Radisson Hotel, Newport Beach, California
March 2, 2007

Presented by:

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I. Introduction

This paper summarizes two sources of protection for group homes and supportive housing under California law. First, it reviews state statutes that protect certain licensed group homes. Second, it explains California case law relating to the right of privacy, which prevents local governments from discriminating between families and unrelated individuals. It concludes by describing areas of uncertainty and suggesting strategies for local governments and for providers related to those issues.

II. Statutes Protecting Licensed Facilities

A complex set of statutes requires that cities and counties treat small, licensed group homes like single-family homes. Inpatient and outpatient psychiatric facilities, including residential facilities for the mentally ill, must also be allowed in certain zoning districts.

A. California Licensing Laws

California has adopted a complicated licensing scheme in which group homes providing certain kinds of care and supervision must be licensed. Some licensed homes cannot be closer than 300 feet to each other, while other licensed homes have no separation requirements. All licensed facilities serving six or fewer persons must be treated like single-family homes for zoning purposes.

While this section discusses some of the most common licensed facilities, it does not include every type of license or facility regulated in this very complex area of law.

1. Community Care Facilities

Community care facilities must be licensed by the California Department of Social Services (CDSS).¹ A "community care facility" is a facility where non-medical care and supervision are provided for children or adults in need of personal services.² Facilities serving adults typically provide care and supervision for persons between 18-59 years of age who need a supportive living environment. Residents are usually mentally or developmentally disabled. The services provided may include assistance in dressing and bathing; supervision of client activities; monitoring of food intake; or oversight of the client's property.³

CDSS separately licenses residential care facilities for the elderly and residential care facilities for the chronically ill. Residential care facilities for the elderly provide varying levels of non-medical care and supervision for persons 60 years of age or older.⁴ Residential care facilities for the chronically ill provide treatment for persons with AIDS or HIV disease.⁵

¹ Cal. Health & Safety Code 1500 *et seq.*

² Cal. Health & Safety Code 1502(a).

³ 22 Cal. Code of Regulations 80001(c)(2).

⁴ Cal. Health & Safety Code 1569.2(k).

⁵ 22 Cal. Code of Regulations 87801(a)(5).

2. Drug and Alcohol Treatment Facilities

The State Department of Drug and Alcohol Programs ("ADP") licenses facilities serving six or fewer persons that provide residential non-medical services to adults who are recovering from problems related to alcohol or drugs and need treatment or detoxification services.⁶ Individuals in recovery from drug and alcohol addiction are defined as disabled under the Fair Housing Act.⁷ This category of disability includes both individuals in licensed detoxification facilities and recovering alcoholics or drug users who may live in "clean and sober" living facilities.

3. Health Facilities

The State Department of Health Services and State Department of Mental Health license a variety of residential health care facilities serving six or fewer persons.⁸ These include "congregate living health facilities" which provide in-patient care to no more than six persons who may be terminally ill, ventilator dependent, or catastrophically and severely disabled⁹ and intermediate care facilities for persons who need intermittent nursing care.¹⁰ Pediatric day health and respite care facilities with six or fewer beds are separately licensed.¹¹

B. Protection from Land Use Regulations for Certain Licensed Facilities

Small facilities licensed under these sections of California law and serving six or fewer residents must be treated by local governments identically to single-family homes. Additional protection from discrimination is provided to certain psychiatric facilities. However, some group homes may be subject to spacing requirements.

1. Limitations on Zoning Control of Small Group Homes Serving Six or Fewer Residents

Licensed group homes serving six or fewer residents must be treated like single-family homes for zoning purposes.¹² In other words, a licensed group home serving six or fewer residents must be a permitted use in all residential zones in which a single-family home is permitted, with the same parking requirements, setbacks, design standards, and the like. No conditional use permit, variance, or special permit can be required for these small group homes unless the same permit is required for single-family homes, nor can parking standards be higher, nor can special design standards be imposed. The statutes specifically state that these facilities cannot be considered to

⁶ Cal. Health & Safety Code 11834.02.

⁷ 24 C.F.R. 100.201.

⁸ Cal. Health & Safety Code 1265 – 1271.1.

⁹ Cal. Health & Safety Code 1250(i).

¹⁰ Cal. Health & Safety Code 1250(e) and 1250(h).

¹¹ Cal. Health & Safety Code 1760 – 1761.8.

¹² This rule appears to apply to virtually all licensed group homes. Included are facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 - 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1, pediatric day health facilities (Health & Safety Code 1267.9; 1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

be boarding houses or rest homes or regulated as such.¹³ Staff members and operators of the facility may reside in the home in addition to those served.

Homeowners' associations and other residents also cannot enforce restrictive covenants limiting uses of homes to "private residences" to exclude group homes for the disabled serving six or fewer persons.¹⁴

The Legislature in 2006 adopted AB 2184 (Bogh) to clarify that communities may fully enforce local ordinances against these facilities, including fines and other penalties, so long as the ordinances do not distinguish residential facilities from other single-family homes.¹⁵

2. Facilities Serving More Than Six Residents

Because California law only protects facilities serving six or fewer residents, many cities and counties restrict the location of facilities housing seven or more clients. They may do this by requiring use permits, adopting special parking and other standards for these homes, or prohibiting these large facilities outright in certain zoning districts. While this practice may raise fair housing issues, no published California decision prohibits the practice, and analyses of recent State legislation appear to assume that localities can restrict facilities with seven or more clients. Some cases in other federal circuits have found that requiring a conditional use permit for large group homes violates the federal Fair Housing Act.¹⁶ However, the federal Ninth Circuit, whose decisions are binding in California, found that requiring a conditional use permit for a building atypical in size and bulk for a single-family residence does not violate the Fair Housing Act.¹⁷

One specific statutory provision states that a congregate living *health* facility serving more than six persons is "subject to the conditional use permit requirements of the city or county in which it is located."¹⁸ It is not clear whether this section means that these facilities must be permitted in any zone with a use permit; or, that the facilities must obtain a use permit if the zoning district otherwise allows the facility with a use permit.

A city or county cannot require an annual review of a group home's operations as a condition of a use permit. The Ninth Circuit has held that an annual review provision of a special use permit was not consistent with the Fair Housing Act.¹⁹

In 2006, the Legislature passed a bill (SB 1322) sponsored by State Senator Cedillo that would have required all communities to designate sites where licensed facilities with seven or more residents could locate either as a permitted use or with a use permit. It was motivated by newspaper reports of suburban communities' "dumping" the mentally ill and homeless in big

¹³ For example, see Health & Safety Code 1566.3 & 11834.23.

¹⁴ Government Code 12955; Hall v. Butte Home Health Inc., 60 Cal. App. 4th 308 (1997); Broadmoor San Clemente Homeowners Assoc. v. Nelson, 25 Cal. App. 4th 1 (1994).

¹⁵ Health & Safety Code 1566.3; Chapter 746, Statutes of 2006.

¹⁶ ARC of New Jersey v. New Jersey, 950 F. Supp. 637 (D. N.J. 1996); Assoc. for Advancement of the Mentally Handicapped v. City of Elizabeth, 876 F. Supp. 614 (D. N.J. 1994).

¹⁷ Gamble v. City of Escondido, 104 F.3d 300, 304 (9th Cir. 1997).

¹⁸ Cal. Health & Safety Code 1267.16(c).

¹⁹ Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

cities. The bill would also have severely limited communities' ability to deny these facilities by including them within the protections of the so-called "Anti-NIMBY Law"²⁰ (now renamed the Housing Accountability Act). It was vetoed by the Governor.

3. Siting of Inpatient and Outpatient Psychiatric Facilities

Cities must allow health facilities for both inpatient and outpatient psychiatric care and treatment in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted with a conditional use permit.²¹ "Health facilities" include residential care facilities for mentally ill persons. This means that if a zoning ordinance permits hospitals or nursing homes in an area, it must also permit all types of mental health facilities, regardless of the number of patients or residents. This is important because most cities are supportive of hospitals and nursing zones and may allow them in areas where they would normally not wish to allow large facilities for the mentally ill.

In one case, a residential care facility for 16 mentally ill persons was refused a permit in an R-2 zoning district where "rest homes" and "convalescent homes" were permitted, but not "nursing homes." Since the zoning district did not permit "nursing homes" or hospitals, the City believed that it was able to forbid the use in that zoning district. However, the court found that the City's definitions of "rest homes" and "convalescent homes" were very similar to its definition of "nursing homes"—rest homes and convalescent homes were, in effect, nursing homes—and so held that the City must allow the residential facility for mentally ill persons within that zoning district.²²

4. Separation Requirements for Certain Licensed Facilities

CDSS must deny an application for certain group homes if the new facility would result in "overconcentration." For community care facilities,²³ intermediate care facilities, and pediatric day health and respite care facilities,²⁴ "overconcentration" is defined as a separation of less than 300 feet from another licensed "residential care facility," measured from the outside walls of the structure housing the facility. Congregate living health facilities must be separated by 1,000 feet.²⁵

These separation requirements do *not* apply to residential care facilities for the elderly, drug and alcohol treatment facilities, foster family homes, or "transitional shelter care facilities," which provide immediate shelter for children removed from their homes. None of the separation requirements have been challenged under the federal Fair Housing Act, although separation requirements have been challenged in other states.²⁶

²⁰ Cal. Government Code 65589.5.

²¹ Cal. Wel. & Inst. Code 5120.

²² City of Torrance v. Transitional Living Centers, 30 Cal. 3d 516 (1982).

²³ Cal. Health & Safety Code 1520.5.

²⁴ Cal. Health & Safety Code 1267.9.

²⁵ Cal. Health & Safety Code 1267.9(b)(2).

²⁶ Based on cases from other states, the 1,000-foot limit for congregate living health facilities is unlikely to be upheld.

CDSS must submit any application for a facility covered by the law to the city where the facility will be located. The city may request that the license be denied based on overconcentration or may ask that the license be approved. CDSS cannot approve a facility located within 300 feet of an existing facility (or within 1,000 feet of a congregate living health facility) unless the city approves the application. Even if there is adequate separation between the facilities, a city or county may ask that the license be denied based on overconcentration.²⁷

These separation requirements apply only to facilities with the same type of license. For instance, a community care facility would not violate the separation requirements even if located next to a drug and alcohol treatment facility.

C. Facilities That Do Not Need a License

Housing in which some services are provided to persons with disabilities may not require licensing. In housing financed under certain federal housing programs, including Sections 202, 221(d)(3), 236, and 811, if residents obtain care and supervision independently from a third party that is not the housing provider, then the housing provider need not obtain a license.²⁸

"Supportive housing" and independent living facilities with "community living support-services," both of which provide some services to disabled people, generally do not need to be licensed.²⁹ Recovery homes providing group living arrangements for people who have *graduated* from drug and alcohol programs, but which do not provide care or supervision, also do not need to be licensed.³⁰

The result is that many situations exist where persons with disabilities will live together and receive some services in unlicensed facilities. Because State law does not require that these facilities be treated as single-family homes, some communities have attempted to classify them as lodging houses or other commercial uses and require special permits. Distinguishing a "lodging house" from a "residence" is discussed in more detail in the next section. However, courts in other jurisdictions have found that when the state does not provide a license for a type of facility, cities cannot discriminate against facilities merely because they are unlicensed.³¹ Although there is no case on point in California or the Ninth Circuit, there may be both a fair housing and equal protection argument against requiring a use permit for an unlicensed group home with six or fewer residents when a licensed group home does not require a permit. This is discussed in more detail below.

Assemblymember Bogh introduced legislation in 2006 to make clear that communities *could* regulate *unlicensed* facilities with six or fewer residents. The legislation was ultimately amended to remove this provision after receiving fierce opposition from advocates for the disabled and State agencies responsible for finding placements for foster children and recovering drug and alcohol abusers.

²⁷ See, e.g., Cal. Health & Safety Code 1520.5(d).

²⁸ Cal. Health & Safety Code 1505(p).

²⁹ Cal. Health & Safety Code 1504.5.

³⁰ Cal. Health & Safety Code 1505(i).

³¹ North-Shore Chicago Rehabilitation Inc. v. Village of Skokie, 827 F. Supp. 497 (1993).

D. Protection from Discrimination in Land Use Decisions

California's Planning and Zoning Law prohibits discrimination in local governments' zoning and land use actions based on (among other categories) familial status, disability, or occupancy by low to middle income persons.³² It also prevents agencies from imposing different requirements on single-family or multifamily homes because of the familial status, disability, or income of the intended residents.³³

In general, the statute serves the same purposes and requires the same proof as a violation of the federal Fair Housing Act.³⁴ However, federal fair housing law does not specifically limit discrimination based on *income*,³⁵ and the State statute provides another potential claim that may be relevant when a group home is denied.

III. Protections Provided by the California Right to Privacy

Unlike the federal Constitution, California's Constitution contains an *express* right to privacy, adopted by the voters in 1972. The California Supreme Court has found that this right includes "the right to be left alone in our own homes" and has explained that "the right to choose with whom to live is fundamental."³⁶ Consequently, the California courts have struck down local ordinances that attempt to control *who* lives in a household—whether families or unrelated persons, whether healthy or disabled, whether renters or owners. On the other hand, the courts will support ordinances that regulate the *use* of a residence for commercial purposes.

Communities opposed to certain unlicensed facilities, such as halfway houses, clean and sober houses, and supportive housing, have attempted to define them as commercial *uses* rather than restricting *who* lives there.

A. Families v. Unrelated Persons in a Household

In many states, local communities can control the number of unrelated people permitted to live in a household. However, based on the privacy clause in the State Constitution, California case law requires cities to treat groups of related and unrelated people identically when they function as one household.³⁷ Local ordinances that define a "family" in terms of blood, marriage, or adoption, and that treat unrelated groups differently from "families," violate California law. California cities cannot limit the number of unrelated people who live together while allowing an unlimited number of family members to live in a dwelling.

In the lead case of *Adamson v. City of Santa Barbara*, Mrs. Adamson owned a very large 6,200 sq. ft., 10-bedroom single-family home that she rented to twelve "congenial people." They became "a close group with social, economic, and psychological commitments to each other.

³² Cal. Gov't Code 65008(a) and (b).

³³ Cal. Gov't Code 65008(d)(2).

³⁴ *Keith v. Volpe*, 858 F.2d 467, 485 (9th Cir. 1987).

³⁵ *Affordable Housing Development Corp. v. City of Fresno*, 433 F.3d 1182 (2006).

³⁶ *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451, 459-60 (2001).

³⁷ *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 134 (1980).

They shared expenses, rotated chores, ate evening meals together" and considered themselves a family.

However, Santa Barbara defined a family as either "two (2) or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit," or a maximum of five unrelated adults. The court considered the twelve residents to be an "alternate family" that achieved many of the personal and practical needs served by traditional families. The twelve met half the definition of "family," because they lived as a single housekeeping unit. However, they were not related by blood. The court found that the right of privacy guaranteed them the right to choose whom to live with. The purposes put forth by Santa Barbara to justify the ordinance—such as a concern about parking—should be handled by neutral ordinances applicable to all households, not just unrelated individuals, such as applying limits on the number of cars to *all* households. "*In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.*"³⁸

Despite this long-standing rule, a 2002 study found that *one-third* of local zoning ordinances, including that of the City of Los Angeles, still contained illegal definitions of "family" that included limits on the number of unrelated people in a household.³⁹ While most cities were aware that these limits were illegal and did not enforce them, interviews with staff members in the City of Los Angeles, for example, found that many did attempt to enforce the limits on the number of unrelated persons.⁴⁰

If a group of people living together can meet the definition of a "household" or "family," there is no limit on the number of people who are permitted to live together, except for Housing Code limits discussed in the next section. By comparison, many ordinances regulate licensed group homes more strictly if they have seven or more residents, by defining such licensed facilities as a separate *use*.

Since *Adamson*, the California courts have struggled to determine when zoning ordinances are focusing on the *occupants* of the home and when they are focusing on the *use* of the home. In particular, courts have struck down ordinances that:

- Limited the residents of a second dwelling unit to the property owner, his/her dependent, or a caregiver for the owner or dependent.⁴¹
- Allowed owner-occupied properties to have more residents than renter-occupied properties.⁴²
- Imposed regulations on tenancies-in-common that had the effect of requiring unrelated persons to share occupancy of their units with each other.⁴³

³⁸ *Adamson*, 27 Cal. 3d at 133.

³⁹ Housing Rights, Inc., *California Land Use and Zoning Campaign Report 27-28* (2002).

⁴⁰ Kim Savage, *Fair Housing Impediments Study 37* (prepared for Los Angeles Housing Department) (2002).

⁴¹ *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451 (2001).

⁴² *College Area Renters and Landlords Assn. v. City of San Diego*, 43 Cal. App. 4th 677 (1996). However, this case was decided primarily on equal protection grounds, rather than on the right of privacy.

⁴³ *Tom v. City & County of San Francisco*, 120 Cal. App. 4th 674 (2004).

On the other hand, the courts have upheld regulations when they were convinced that the city's primary purpose was to prevent non-residential or commercial *use* in a residential area. In particular, the courts have upheld ordinances that:

- Regulated businesses in single-family residences ("home occupations") and limited employees to residents of the home.⁴⁴
- Prohibited short-term transient rentals of properties for less than thirty days.⁴⁵

B. Occupancy Limits

The Uniform Housing Code (the "UHC") establishes occupancy limits—the number of people who may live in a house of a certain size—and in almost all circumstances municipalities may not adopt more restrictive limits. The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person.⁴⁶ Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage). Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. Efforts by cities to adopt more restrictive standards based on other impacts (such as parking and noise) have been overturned in California.⁴⁷

Similarly, the Ninth Circuit found that a local ordinance that limited the number of persons in a homeless shelter to 15, when the building code would allow 25 persons, was unreasonable, and found that allowing 25 persons in the shelter would constitute a reasonable accommodation.⁴⁸

Based on these federal and state precedents, localities may not limit the number of people living in a dwelling below that permitted by the UHC.

C. Defining Unlicensed Facilities as Lodging Houses

Communities often attempt to define certain group residences, such as sober living homes, as "lodging houses," "boarding houses" or "rooming homes" so that they can be regulated more strictly. Lodging houses typically require a conditional use permit and are not permitted in single-family residential zones. Potential locations for sober living houses would be severely limited if they could not be located in single-family areas.

A recent opinion of the State Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone in order to preserve the residential character of the neighborhood.⁴⁹ Here the City of Lompoc defined a lodging house as "a

⁴⁴ City of Los Altos v. Barnes, 3 Cal. App. 4th 1193 (1992).

⁴⁵ Ewing v. City of Carmel, 234 Cal. App. 3d 1579 (1991).

⁴⁶ Cal. Health and Safety Code 17922(a)(1). See Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992) (holding that the state Uniform Housing Code preempts local regulation of occupancy limits).

⁴⁷ Briseno, 6 Cal. App. 4th at 1383.

⁴⁸ Turning Point, Inc. v. City of Caldwell, 74 F.3d 941 (9th Cir. 1996).

⁴⁹ 86 Op. Att'y Gen'l Cal. 30 (2003).

residence or dwelling . . . wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." The Attorney General agreed that a lodging house could be considered a *commercial* use and so could be prohibited in residential areas.

To avoid being subject to such a provision, all residents of the dwelling would need to sign the lease or rental agreement, so that it could not be argued that the rooms were rented under separate agreements.

Cities have also sought to distinguish lodging houses from residences by requiring that all occupants in a residence have common use of and access to all living and eating areas and food preparation and service areas. Some also seek to distinguish transient use from permanent residence. For instance, one city states in a publication on residential care homes that:

"Court cases have recognized that a family represents an intentionally structured relationship between the occupants implying a permanent, long-term relationship as opposed to one that is short-term or transient. The latter includes roominghouse; halfway, and sober/drug-free living homes where the person is at the home for a defined period and then is required to move to more permanent living arrangements..."

The *Adamson* court did not specifically address the issue of transiency (although some of the cases on which it relied considered this to be a factor). The above definition would appear to require a fairly intrusive investigation into the precise relationship between residents living in a clean and sober house.

Ordinances requiring greater regulation for *unlicensed* homes with fewer services than *licensed* homes providing more services may well raise equal protection and fair housing issues. For example, a Connecticut court found evidence of discriminatory decision-making where a city classified a clean and sober house as a boarding house and enforced a zoning restriction against the house in response to neighborhood opposition. The court listed among factors it considered in finding evidence of discriminatory intent "the decision's historical background," "the specific sequence of events leading up to the challenged decision," and "departures from the normal procedural sequences."⁵⁰

If a group is challenged as not constituting a single housekeeping unit, it will likely assert that it is indeed operating as a single unit. Unless there is public information available showing that a residence is operated as a lodging house (e.g., an ad saying, "Rooms for Rent"), an investigation would be required to demonstrate otherwise. If complaints were based primarily on the disability of the occupants (which could include their status as recovering drug and alcohol abusers), then California privacy rights and fair housing laws might be implicated. In one Washington, D.C., case, a federal district court found a violation of the federal Fair Housing Act where the Zoning Administrator carried out a detailed investigation of a residence for five mentally ill men in response to neighbors' concerns, finding that the Zoning Administrator's actions were motivated

⁵⁰ *Tsombanidis v. City of West Haven*, 180 F. Supp. 2d 262, 286-88 (D. Conn. 2001).

in part by the neighbors' fears about the residents' mental illness.⁵¹ In California, a similar challenge might be additionally based on rights of privacy and equal protection concerns.

In general, the courts look with particular disfavor on local decisions that appear to have been influenced by neighborhood opposition to the types of people who will live there.

IV. Best Practices

A. Local Agencies

In advising our public agency clients, we recommend that they treat unlicensed facilities identically to licensed facilities, allowing facilities with six or fewer persons to be treated like single-family homes. This avoids what may be a losing battle to force supportive housing into the "lodging house" definition.

For facilities with seven or more residents, the challenge for a local agency is to define an unlicensed facility as a *use* that is different from a residence. The Attorney General's opinion provides guidance to those wishing to define these facilities as lodging houses. Others have defined "residential service facilities" as a separate use. One such definition reads as follows:

Residential Service Facility. A residential facility, other than a residential care facility or single housekeeping unit, designed for the provision of personal services in addition to housing, or where the operator receives compensation for the provision of personal services in addition to housing. Personal services may include, but are not limited to, protection, care, supervision, counseling, guidance, training, education, therapy, or other nonmedical care.

Because this definition is more related to care than is the definition of a lodging house, it may be perceived as being directed at disabled persons and hence more subject to challenge as intentionally discriminatory. It can also force supportive housing and foster care homes (which are not usually the target of community wrath) into lengthy and complicated processes.

Other defensible ordinances would attempt to control the behavior or actions that the community finds offensive: too many cars, groups smoking outdoors, too much noise. In trying to control these problems, local agencies have been constrained since *Adamson* by being required to apply ordinances uniformly to traditional families and to households made up of unrelated people. For instance, communities could deal with complaints about too many cars by limiting the number of vehicles that could be parked at a home—but the ordinance would also need to apply to families with two teenagers and four cars. Controls on outdoor cigarette smoking would similarly need to be applied uniformly. Consequently, developing controls on offensive behavior is a challenge.

B. Service Providers

We advise our nonprofit sponsors that if a facility with more than six persons can be considered a single housekeeping unit, the facility must be treated as a residence with one family residing in it. The most defensible structure for such a facility would be to:

⁵¹ Community Housing Trust v. Dep't of Consumer & Regulatory Affairs, 257 F. Supp. 2d 208 (D.D.C. 2003).

- Have one rental agreement or lease signed by all *occupants*. If, instead, the provider signs the lease and each resident has a verbal or written agreement with the provider, then the facility could be considered a "lodging house" under the definition upheld by the Attorney General.
- Give all residents equal access to all living and eating areas and food preparation and service areas.
- Do not require occupants to move after a certain period of time, except for time limits imposed by the rental agreement or lease with the owner.

V. Conclusion

In my own experience as a former city official, many group homes were invisible in the community and caused few problems. Most complaints about overcrowding and excessive vehicles did not involve a group home, but rather the poorest areas where space was rented out to the limits of the Housing Code.

The group homes that caused the most concern were sober living facilities which tended to concentrate in certain inexpensive single-family neighborhoods. In one case, all five homes on one block face were purchased by a single owner. He was knowledgeable about his rights but unconcerned about his obligations, and sneered at the City's and neighborhood's concerns. Without required licensing, there was no regulatory oversight. When the occupant of one home was arrested for drug dealing, it caused an uproar.

Many providers are conscious of their position in neighborhoods and make an effort to accommodate community concerns. Others may be perceived as arrogant and dismissive of local concerns, viewing all neighbors as "NIMBYs." Providers who view themselves as part of the community and set house rules that encourage community involvement, restrict noise, control parking, and establish smoking locations not visible from the street can go a long way toward abating perceived problems.

Cities should modify their zoning ordinances to address unlicensed group homes and decide on a strategy for dealing with group homes with seven or more persons (use permit and reasonable accommodation). State legislation requiring some minimal licensing for sober living facilities would also be beneficial to set standards for minimal levels of care, along with minimal separation requirements to maintain the "community integration" purpose of the statutes. Cities need also to avoid the kind of incidents that result in the Legislature's willingness to further constrain local control of these homes.

SUMMARY: GROUP HOME ANALYSIS

IF LICENSED:

6 or fewer clients:

Must be treated like a single-family home for all zoning purposes, except for spacing requirements for certain licensed facilities (eg, community care facilities). Community care facilities for the elderly and drug and alcohol treatment centers do not have spacing requirements.

7 or more clients:

Psychiatric facilities—both inpatient and outpatient—must be permitted in any zone that permits nursing homes or hospitals as conditional or permitted uses. (City of Torrance v. Transitional Living Centers)

Other licensed facilities are often subject to a use permit and may not be permitted in certain zones. Advocates may request a reasonable accommodation to avoid use permit requirements. But the Ninth Circuit has not found a use permit *per se* to violate the Fair Housing Act. (Gamble v. City of Escondido)

IF UNLICENSED:

Can it be considered a single housekeeping unit? Or can it be defined as a boarding house or another use? (Adamson v. City of Santa Barbara) Only the *use* can be regulated, not the *user*. Unlicensed homes are more likely to be considered as a single housekeeping unit if they meet the following tests:

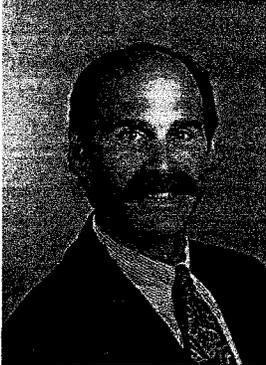
- Physical design: all have access to common areas, kitchens; laundry is free; one mailbox; looks like a home.
- No limits on term of occupancy ["must move after 3 months"]
- All residents on lease or rental agreement [AG's opinion]

There are different *local* definitions of various uses relating to the qualification of unlicensed homes as a single housekeeping unit. (For instance, some localities do not use the existence of separate rental agreements as a test for a single housekeeping unit.)

6 or fewer clients: equal protection or fair housing argument if treated more strictly than licensed facilities.

SPEAKER BIOS

Jeffrey A. Goldfarb



Partner, Public Law Section
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Education

U.C. Hastings College of the Law,
J.D. 1986 Cum Laude
Member Hastings Law Journal,
1985
Note Editor Hastings Law Journal,
1986
U.C. Berkeley, B.A. Political Science 1983
Phi Beta Kappa
High Honors in General Scholarship
Author: "Rent Control in Three Bay
Area Cities"
U.C. Berkeley Annual
Undergraduate Political Science
Journal

Judicial Clerkships

California Supreme Court
Extern for the Honorable Justice
Allen E. Broussard, Spring 1983

Public Offices

Assistant City Attorney, San Clemente
Deputy City Attorney, Dana Point
Deputy City Attorney, La Palma
Conflict Counsel, San Bernardino
Local Agency Formation
Commission

Memberships

State Bar of California
American Bar Association
Orange County Bar Association
Phi Beta Kappa National Honor
Society
League of California Cities Adult
Oriented Business Task Force

Mr. Goldfarb has been practicing law at the law firm of Rutan & Tucker, LLP since graduating *cum laude* from the University of California, Hastings College of the Law, in 1986. Jeff became a partner in the Public Law Section in 1994.

Mr. Goldfarb has served as the Assistant City Attorney for the City of San Clemente since 1987 and was the Assistant City Attorney for the City of Irvine from 1990-2004. In his capacity as the Assistant City Attorney for the City of San Clemente, Mr. Goldfarb is the assistant director of that city's legal department and advises the city on all issues of municipal law. Mr. Goldfarb also has primary responsibility for advising the city's Planning Commission and is an expert in the Federal Fair Housing Act (FHAA), Fair Political Practices Act, the Brown Act, the California Environmental Quality Act, the Planning and Zoning Act, the Subdivision Map Act, and the regulation of both group homes and adult-oriented businesses. In addition to sitting as the legal advisor with the city's Planning Commission, Mr. Goldfarb fills in for the City Attorney when he is unavailable.

Courses Taught:

- Panelist – Regulation of Group Homes, Orange County City Attorneys Association, 2007
- Lecturer – “So You Want Public Input? Improve the Hearing Process!,” Planners Institute/League of California Cities, 2005
- Lecturer – “Making Partner or Not,” Saturday Suggestions for Defining Your Career: Making the Right Moves Today & Tomorrow, California Young Lawyers Association, 2004
- Lecturer – “What the Law Says About Closing Mobilehome Parks, An Orange County Case Study,” MHET (Manufactured Housing Educational Trust) Breakfast Forum, 2004
- Lecturer – CEQA and/or Legal Findings, Orange County Planning Directors Annual Forum, 2003
- Lecturer – Current Issues in Land Valuation – Entitlements, Appraisal Institute, 2002
- Lecturer – RLUIPA (Religious Land Use and Institutionalized Persons Act) and the Fair Housing Act, Orange County Planning Directors Annual Meeting, 2001
- Lecturer – CEQA Issues: APA Orange County Seminar, 2000
- Lecturer - Finders Keepers: How to Make Good Findings, California League of Cities Planners Institute, 1997
- Lecturer - Everything a Planner Should Know About Sex (Housing, Developer Fees and CEQA, Too!), Cal Chapter American Planning Association Conference, 1996

Jeffrey A. Goldfarb

Publications/Seminars

Avoiding the Five Deadly (Entitlement)

Sins, Shopping Centers Today,
ICSC, May 2002

Guest Speaker, Community
Redevelopment Association,
League of Cities City Attorney's
Conference

American Planning Association
California City Clerk's Association
Lecturer-Instructor, University of
California Irvine extension course
on Planning and Zoning Law

- Lecturer - Regulating Sex-Oriented Businesses in Urban California, California Redevelopment Association, 1995
- Lecturer - Regulation of Adult Uses, Orange County City Attorneys Association, 1995
- Lecturer - Twilight Zoning: Recreation, Resort and Adult Entertainment, American Planning Association, 1994 Nuts and Bolts Conference
- Lecturer - Liability of Public Employees for Negligent Conduct Under State Law, California Building Officials Conference, November 1994

Cases Litigated (Partial List):

- City of Arcadia v. Taboo Gentleman's Club (revocation of adult business regulatory permit)
- Medieval Dinner & Tournament, Inc. v. City of Buena Park (CEQA challenge)
- Wilbur v. City of Costa Mesa (Master Plan challenge)
- Paff v. City of Costa Mesa (CEQA challenge)
- City of Costa Mesa v. Orange House (Federal Fair Housing Act challenge to group home enforcement)
- Lyburtus v. City of La Habra (CEQA challenge)
- Via Maria, Inc. v. City of Cypress (First Amendment challenge to entertainment permit revocation)
- City of Baldwin Park v. B&B Motel (red light abatement action)
- City of Baldwin Park v. Lucky 7 Motel (red light abatement action)
- City of Newport Beach v. Tily B., Inc. (adult oriented business litigation to obtain compliance of business with City's zoning and adult oriented business zoning ordinance)
- Gammoh v. City of Anaheim (same description as above)
- People v. Johar (criminal First Amendment/code enforcement action for City of Anaheim)
- Mediavilla v. City of Lawndale (challenge to City's adult oriented business ordinance)
- Thoroughbreds, Inc. v. City of Fullerton (same description as above)
- People v. Williams (code enforcement action terminating illegal residential use in commercial zone for City of San Clemente)
- Serrano Irrigation District v. City of Orange (challenge to adoption of specific plan)

Jeffrey A. Goldfarb

REFERENCES

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Joan Robbins
Manager
Policy and Program Support Branch
Licensing and Certification Division
Department of Alcohol and Drug Programs

Biography

Joan Robbins, a Sacramento native, began her state career with the California Highway Patrol in 1981. Joan continued her career with the State Department of Alcohol and Drug Programs (ADP) in 1989. She has been involved in many major policy improvements in the areas of licensing and certification of Alcohol and Other Drug (AOD) treatment programs. In her work she has been very instrumental in the development of innovative approaches to assist the treatment field and the community at large. In addition to her professional expertise, Joan has graduated as an addiction specialist.

In her current assignment, Joan is responsible for the regulatory development of licensed residential AOD, narcotic treatment and certified outpatient AOD treatment programs. Joan also oversees the administrative functions of the Division including the review and approval of new program providers of all treatment modalities governed by ADP.

DEPARTMENT OF SOCIAL SERVICES

Statewide Children's Residential Program
Community Care Licensing Division
744 P Street MS 19-50
Sacramento Ca. 95814



Biography

Sergio Ramirez,
Acting Assistant Program Administrator
California Department of Social Services
Community Care Licensing Division
Statewide Children's Residential Program

Sergio serves in the dual capacity of Acting Assistant Program Administrator for the Statewide Children's Residential Program and Regional Manager for the Pacific Inland Regional Office with the Community Care Licensing Division of the California Department of Social Services. Sergio has been with the Community Care Licensing Division for over 25 years.

Sergio's career with the state began in 1980 as a Rehabilitation Counselor with the California Department of Rehabilitation. In 1982, he transferred to the California Department of Social Services to work as a Licensing Program Analyst with the Community Care Licensing Division. After serving in the Adult, Elderly and Children's programs, Sergio specialized in the Adoption and Foster Family Agency programs where he participated in rewriting Title 22 Regulations and standardizing operational procedures for the agencies. In 1985, Sergio promoted to Licensing Program Supervisor with oversight responsibility for all Children's Residential Programs in Orange County. In this capacity, he was also responsible for centralizing all Adoption and Foster Family Agencies in the southern half of the state. In 1990, Sergio promoted to District Manager with jurisdiction over the Adult, Elderly and Children's Residential Programs in Los Angeles County. In 2004, Sergio returned to the Children's Residential Programs as Regional Manager of the Pacific Inland Regional Office with state jurisdiction over the counties of Orange, Riverside, San Bernardino, Imperial, and San Diego. In early 2006 Sergio accepted the additional responsibility of Acting Assistant Administrator for the Statewide Children's Residential Program.

Sergio has a Bachelor's degree in Sociology from California State University Long Beach and is a Certified Chairperson for the California Department of Social Services Personnel Division. In this capacity, he has chaired numerous examinations for the Department and has participated on numerous special projects including the Licensing Program Analyst Deep Class Series, a recent Assistant Chief Counsel Exam and participated in the California Department of Social Services Strategic Plan.

Sergio is married to his wife Jeanne of 21 years. They have one son. Sergio enjoys jogging, reading and family activities. He is interested in Child Welfare Services and fulfills this interest by participating on several committees such as the Orange County Juvenile Justice Commission and numerous special projects for the California Department of Social Services.

Alene M. Taber, AICP

Alene M. Taber is an Associate with the law firm of Jackson, DeMarco, Tidus & Peckenpaugh. She represents clients before planning commissions, city councils, administrative hearing boards and local agency formation commissions. Ms. Taber has experience litigating CEQA cases, disapprovals of development projects, defending challenges to development projects, and land use-related constitutional and civil rights claims.

Prior to joining Jackson, DeMarco, Tidus & Peckenpaugh, Ms. Taber worked for the South Coast Air Quality Management District ("SCAQMD") for twelve and half years. As a Senior Manager, she was responsible for managing the permitting and enforcement of certain facilities, overseeing the CEQA and socioeconomic analysis to support SCAQMD rulemaking activities, and managing the development of air quality rules including those affecting port facilities, petroleum facilities, aerospace, printing operations, spray painting, asbestos abatement, and construction sites. Ms. Taber has experience with trading markets (RECLAIM), Title V permitting, public notification under AB 2588, indirect source regulations, and global warming issues.

Ms. Taber also was a previous city planner with the Southern California Association of Governments ("SCAG") and the City of Carson. While with SCAG, Ms. Taber worked on transportation and air quality issues. As a city planner, she processed land use entitlements and subdivision maps, drafted CEQA documents, and wrote several ordinances regulating parking, truck maneuvering, and commercial facilities.

Ms. Taber has taught air pollution issues in land use planning for the University of California, Irvine, Extension Program. In addition to being admitted to the California Bar, she is a certified land use planner with the American Institute of Certified Planners.

In 2005, Ms. Taber was named one of southern California's "Superlawyers Rising Stars" by & Politics and Los Angeles Magazine.

Education

Whittier Law School (J.D., magna cum laude, 2001) Certificate in Hazardous Materials Management, University of California, Irvine (1988)

Professional Associations

American Planning Association/American Institute of Certified Planners

Association of Environmental Professionals

Harbor Association of Industry and Commerce

American Bar Association, National Resources & Environment Section, and Air Quality Committee

Recent Speaking Engagements

Planning Commissioners' Training, UCLA Extension, Los Angeles, California, October 5, 2006

Development Impact Fees, 5th Annual Building Industry Legal Defense Foundation

SuperConference,

Long Beach, California, September 28, 2006

Indirect Source Review Seminar, Building Industry Association, Bakersfield, California,

August 8, 2006

Indirect Source Review Seminar, Building Industry Association, Modesto, California, June 28, 2006

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Emphasis of Practice:

Land use, inclusionary zoning, CEQA compliance, redevelopment and economic development.

Education:

A.B., Stanford University, cum laude, Mellon Fellow. Masters in City Planning, University of California, Berkeley, Mellon Fellow. J.D., University of San Francisco School of Law, highest honors. Articles Editor, USF Law Review.

Previous Employment:

Community Development Director and Assistant City Manager, City of San Mateo. Planning Director, Town of Corte Madera. Associate Planner, City of Walnut Creek.

Professional and Volunteer Affiliations:

State Bar of California. American Bar Association, Section on State and Local Government. Fellow, American Institute of Certified Planners. American Planning Association. Urban Land Institute; Association of Environmental Professionals. Former Member, Board of Directors, California League of Cities.

Kylee Otto
Assistant City Attorney
City of Santa Ana City Attorney's Office

Ms. Otto presently serves as an Assistant City Attorney in the City Attorney's Office for the City of Santa Ana. Her practice emphasizes land use, environmental law, airport and aviation law, open meeting laws as well as conflict of interest and ethics regulations. She is legal counsel to city boards and commissions including the Historic Resources Commission. She regularly provides in-house training seminars on a variety of topics including seminars on open meeting laws, conflicts of interest, California Environmental Quality Act (CEQA) and basic land use principles. Prior to joining the City, she was employed in private practice, as a civil litigator. Ms. Otto received her Juris Doctor from the California Western School of Law, and served as Executive Editor of the Law Review. She received her Bachelor of Arts in History and Law and Society from University of California, Riverside. She is currently a member of the California and Oregon State Bars.

David Levy

Development Director / Housing Rights Advocate Fair Housing Council of Orange County (FHCOC)

Mr. Levy has worked for FHCOC on fair housing and housing counseling activities for over 16 years. In addition to the major responsibility of securing much of the non-profit agency's funding, he works on most aspects of its fair housing education, counseling and enforcement programs. Outside of his work at FHCOC, Mr. Levy is an affordable housing advocate and activist. He is board president of the Affordable Housing Clearinghouse, a non-profit that brings together lenders, non-profits, local governments and others to facilitate affordable housing development and preservation. He also sits on the board of directors of the Kennedy Commission, a non-profit that advocates for housing serving extremely low-income households. Prior to his work in the housing arena Mr. Levy had a career in electronics engineering, following his education at Caltech.

PANEL #2

Legislative Perspective

A California Public Agency Conference to Protect the Character of Residential Neighborhoods

Friday, March 2nd, 2007

8:30 a.m. to 2:30 p.m.

Newport Beach Radisson Hotel

4545 MacArthur Boulevard, Newport Beach, CA

Second Panel

11:30 to 12:30 – Second Panel

Legislative Perspective

- What kinds of things have been brought to the Legislature? How have they fared? What has been the Legislature's perspective on these issues?
- What do we know about how federal law can or should be changed to help localities address adverse impacts?
- If localities were to prepare a bill or bills, what should the bills do?
- Q & A

MODERATOR AND SPEAKERS:

- **State Senator Tom Harman** (*Moderator*)
- **Genevieve Morelos**, Legislative Analyst, League of California Cities
- **Teresa Trujillo**, Legislative Director, Assembly Member William Emmerson's Office
- **Anne J. Blue**, Emanuels Jones & Associates

12:30 to 1:15 – Lunch & Networking

Sign-ups for more information/networking e-mail list.

SPEAKER BIOS

BIOGRAPHY

Tom Harman represents the people of the 35th Senate District.

Harman, a member of the Republican Party, was first elected to the State Assembly in November 2000, following six years of service as a Huntington Beach City Councilman.

Senator Harman, a local businessman and civic volunteer, has lived and worked in Orange County for the past 43 years.

While serving in the California State Assembly, Harman was named "Legislator of the Year" by the Golden State Mobile Home Owners League (GSMOL) for his work in passing legislation that protects the rights of mobile home owners.

Harman's bill to protect the California coast by banning the import, sale and possession of the noxious aquarium plant called Killer Algae was widely hailed when it was signed into law by the governor.



To protect children, Harman supported the Project Kid Safe legislative package. This legislation included implementation of the Amber Alert system, which has been used successfully to find abducted children. Project Kid Safe will assist local law enforcement agencies in monitoring habitual sex offenders and enforcing registration requirements.

To fight corruption in politics, Harman introduced legislation to strengthen laws regarding conflicts of interest for public officials.

To protect the rights of senior citizens, Harman introduced legislation that will require financial institutions to better communicate with their customers when an account is in danger of being transferred to the State of California because it has been dormant for three years. This bill was signed into law by the governor.

Harman's other accomplishments during his tenure as an Assembly member include:

- Co-authoring over 50 pieces of legislation designed to:
 - Lower taxes
 - Reduce size of government
 - Protect safety of citizens
 - Improve education
 - Protect natural environment
- Serving on six Assembly Standing Committees
 - Governmental Organization
 - Judiciary
 - Local Government
 - Natural Resources
 - Revenue and Taxation
 - Veterans
- Serving on five Assembly Select Committees
 - Air and Water Quality
 - Horse Racing Industry
 - Future of California's Film Industry
 - Future Farming of California
 - School Safety



- Bringing an impressive \$8,653,023 to his district in his first term in office.
- Securing a financial commitment from the Department of Fish and Game for maintenance work at the Bolsa Chica Ecological Reserve, including repairs to the parking lot, walkbridge, and trail system, which are needed for public safety.
- Obtaining \$5,000,000 in funding for the Orange County Water District for construction of the much-needed Groundwater Replenishment System Project.
- Helping to secure \$600,000 in funding to upgrade a Wildlife Care Center that provides veterinary care for the wildlife of Orange County.
- Obtaining a grant for over \$357,000 to remodel a local community health clinic and purchase much needed new medical equipment.
- Securing \$264,000 in funding under the Safe Routes to School (SR2S) Program for local street and sidewalk improvements to help children get to school more safely.
- Securing \$2,215,430 in funding for a job training program to update the skills of 2,934 health care system employees



Harman's extensive community service includes membership in the Huntington Beach Chamber of Commerce and Bolsa Chica Land Trust. He is past president of both the Huntington Youth Shelter and Huntington Beach Rotary Club. He also served for four years on the Orange County Local Agency Formation Commission.

Harman founded the citizen action group Huntington Beach Tomorrow and, while on the city council, launched an Organizational Efficiency Program to improve services, stop waste, and reduce costs in

government.

Other important accomplishments from his service on the city council include:

- Increasing the number of police on patrol
- Improving fire protection
- Expanding senior programs
- Reducing the accessibility of narcotics
- Addressing gang-related issues to provide greater safety for residents

Harman holds a Juris Doctorate from Loyola University Los Angeles School of Law and a Bachelor of Science in Business Administration from Kansas State University. He formerly practiced law in Huntington Beach for 27 years.



Harman and his wife Dianne have been married for over 40 years and have two children, Michael and Michelle.

**Genevieve Morelos
Legislative Analyst
League of California Cities
1400 K Street
Sacramento, CA 95814
916/658-8254**

Genevieve Morelos is a legislative analyst with the League of California Cities. She has been with the League for 4 years covering a range of issues. She currently covers Housing and Land use, community services and telecommunications issues. She is also the Federal liaison at the League for all Federal Issues.

Prior to working at the League she worked in Washington, DC for NALEO, National Association of Latino Elected and Appointed Officials covering federal immigration legislation.

TERESA TRUJILO

Teresa Trujillo is the Legislative Director for Assemblyman Bill Emmerson. She has been with Assemblyman Emmerson since he entered the Legislature in 2005. Teresa has covered numerous subjects including Public Safety, Local Government and most recently Health.

Teresa graduated from California State University, Sacramento in 2004 with a Bachelor of Arts degree in Government.

RESUME
Anne J. Blue



Emanuel Jones & Associates. Principal. Beginning Fall 2004.

Chief Legislative Representative, City of Los Angeles, 1999-2004.

Chief lobbyist for the City of Los Angeles, reporting to the Mayor, responsible for supervising the city's three person lobbying team. Priority was to maintain relationships with 27 Senators and Assembly Members who constitute the City's delegation. Assisted in the development of the City's legislative positions. Drafted and sponsored legislation. Testified for and against legislation on behalf of the City. Primary negotiator on bill amendments. Supervised two contract lobbying firms employed by the City.

Legislative Representative, City of Los Angeles, 1986-1998.

Represented City as one of its three lobbyists. Areas of expertise were: housing, redevelopment, planning and land use, social services including child care, domestic violence and fire protection. Also specifically represented the City's Police Department, Harbor Department and the International Airport.

Mayor and council member, Town of Loomis, pop. 6000, 1984-1988.

Was the first mayor of the first elected council of the Town of Loomis. Provided leadership for the newly incorporated city. First task was hiring of competent staff, negotiating salaries and developing job descriptions and employee guidelines. With the city manager, negotiated service contracts with the county sheriff. Initiated city's first general plan.

Vice Chair, LAFCO, Placer County, 1984-1988.

Represented cities within Placer County on the local LAFCO.

Member, Community Services Commission, Placer County, 1984-1988.

Advisory oversight commission for county social services, including "meals on wheels", intervention for homes with domestic violence and a suicide hot line.

B.S. Education, Auburn University, Auburn, Alabama, 1970