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INFORMATIONAL HEARING: SUBSTANCE USE DISORDER TREATMENT IN CALIFORNIA

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Overview of Fair Housing and Other Laws Protecting the Housing Rights of Individuals with Disabilities

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The following summary of laws protecting housing for individuals with disabilities is excerpted from *Fair Housing Impediments Study: How Land Use and Zoning Regulations and Practices Impact Housing for Individuals with Disabilities* (November 2002), which was prepared at the request of the City of Los Angeles to identify and address land use and zoning barriers to the development, siting and use of critically needed housing for individuals with disabilities. While the extensive report was prepared in 2002, the statutes discussed remain in effect. The full report is available through the City of Los Angeles, Housing and Community Investment Department.

Overview of Fair Housing and Other Laws Protecting the Housing Rights of Individuals with Disabilities

Local land use and zoning regulations and activities must comply with federal and state fair housing laws that prohibit discrimination in housing against individuals with disabilities and other laws intended to further the housing opportunities of individuals with disabilities. This section of the Study provides an overview of those laws. A more detailed discussion of the application of these laws to local zoning regulations and practices is provided in the impediments discussion, Section V.

Fair Housing Laws

The Federal Fair Housing Act

A decade ago, the federal Fair Housing Amendments Act of 1988 (hereafter “the Act”) went into effect, extending fair housing protections to individuals with disabilities in virtually every housing activity or transaction.¹ The fundamental purpose of the Act is to prohibit practices that “restrict the choices” of people with disabilities to live where they wish or “that discourage or obstruct choices in a community, neighborhood or development.”²

The Act protects an individual with a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having any such impairment; or anyone who has a record of having such an impairment.³ Individuals in recovery from drug or alcohol abuse are also covered under the law.⁴ However, individuals currently using illegal substances are not protected under the law, unless they have a separate disability. This definition

¹ 42 U.S.C. §§ 3601 et seq. (Federal Fair Housing Act).

² 24 C.F.R. § 100.70(a) (1994).

³ 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

⁴ 24 C.F.R. § 100.201; United States v. Southern Management Corp., 955 F. 2d 914 (4th Cir. 1992); Oxford House v. Town of Babylon, 819 F. Supp. 1179 (E.D.N.Y. 1993).

of “disability” or “handicap” is essentially the same under all of the federal and state laws discussed in this Section. The protections afforded by the Act also extend to those who are associated with them; providers and developers of housing for people with disabilities have “standing” to file a court action alleging a violation under the Act or seek administrative relief from a federal or state agency that enforces fair housing laws.⁵

The Act prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning rules, policies, practices and procedures. The legislative history of the Act specifically recognizes that zoning ordinance provisions have discriminated against people with disabilities by limiting opportunities to live in the community in congregate or group living arrangements.

While state and local governments have authority to protect safety and health and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals to live in communities.

This has been accomplished by such means as the enactment or imposition of . . . land use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against people with disabilities.⁶

(Emphasis added.)

In addition to not discriminating against people with disabilities, cities and counties have an affirmative duty to provide reasonable accommodation in land use and zoning rules, policies, practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing.⁷ While the Act intends that all people have equal access to housing, the law also recognizes that people with disabilities may need extra tools to achieve equality. In the land use and zoning context, reasonable accommodation means providing individuals with disabilities, or developers of housing for people with disabilities, flexibility in land use and zoning regulations and procedures, or waiver of certain requirements when it is necessary to achieve equal access to housing.⁸

California Fair Employment and Housing Act

In 1994, the strongest fair housing legislation in the nation went into effect in California.⁹ This state’s law explicitly prohibits discriminatory “public or private land use practices, decisions and authorizations” including, but not limited to, “zoning laws, denials of permits, and other [land use] actions . . . that make housing opportunities unavailable” to people with

⁵ Persons prevented from providing housing for individuals with disabilities because of a municipality’s discriminatory acts have standing to sue under the Act; See, Judy B. v. Borough of Tioga, 889 F.Supp. 792 (M.D. Pa 1995) and Epicenter of Steubenville v. City of Steubenville, 924 F.Supp. 845 (S.D. Ohio 1996).

⁶ H.R. Rep. No 711, 100th Cong., 2d Sess. 24 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2185.

⁷ 42 U.S.C. § 3604(f)(3)(B).

⁸ Turning Point, Inc. v. Caldwell, 74 F. 3d 941 (9th Cir. 1996).

⁹ Cal. Gov’t. Code §§ 12900 et seq. (Fair Employment and Housing Act).

disabilities.¹⁰ In enacting Section 12955(1) and adopting other amendments to the Fair Employment and Housing Act (FEHA), the Legislature recognized that land use practices have discriminated against group living arrangements for individuals with disabilities. In a statement of legislative intent that accompanied the amendments, the following findings were made:

- a. That public and private land use practices, decisions, and authorizations have restricted, in residentially zoned areas, the establishment and operation of group housing, and other uses.
- b. That people with disabilities . . . are significantly more likely than other people to live with unrelated people in group housing.
- c. That this act covers unlawful discriminatory restrictions against group housing for these people.¹¹

(Emphasis added).

The definition of disability under California's fair housing law was recently broadened; the FEHA now clarifies that a determination as to whether an individual has a physical or mental impairment that limits his or her ability to participate in major life activities must be made without consideration of mitigating measures (e.g., eye glasses).¹² FEHA also requires that housing providers make reasonable accommodation to afford individuals with disabilities equal opportunity to use and enjoy a dwelling.¹³

Proving Discrimination Under Fair Housing Laws

The federal Act and California's FEHA prohibit both intentional discrimination and zoning rules and regulations that have the effect of discriminating against housing for people with disabilities. This two-prong basis is particularly important in land use and zoning because, in many instances, zoning regulations, practices and procedures are facially neutral and do not single out individuals with disabilities, but the rules or practices have an adverse impact which results in the denial of housing opportunities.

To prove discriminatory intent, an individual need only show that disability was one of the factors considered by the city or county in making a land use or zoning decision.¹⁴ For example, a zoning provision that specifically prohibits the development of group homes for people with disabilities in a single family residential zone is discriminatory on its face.

Discrimination may also be established by proving that a particular practice has a disparate impact on people with disabilities. Discriminatory intent need not be proven. Effect,

¹⁰ Cal. Gov't Code § 12955(1).

¹¹ Stats. 1993 ch. 1277, § 18.

¹² Cal. Gov't Code §§ 12955.3, 12926.

¹³ Cal. Gov't Code § 12927(c)(1).

¹⁴ Oxford House-C v. City of St. Louis, 843 F.Supp. 1556 (E.D. Mo. 1994); Potomac Group Home Corp. v. Montgomery County, 823 F.Supp. 1285 (D. Md. 1993).

not motivation, is the touchstone.¹⁵ For example, a zoning ordinance that limits the number of unrelated persons that may reside together in a single family residential zone through a restrictive definition of “family,” without singling out any particular group, has the effect of discriminating against people with disabilities who frequently live together in congregate living arrangements. Both of the foregoing examples of zoning regulations are illegal under fair housing laws because either intentionally, or in effect, the restrictions deny housing opportunities to people with disabilities. While case law has established that a fair housing violation may be proven through disparate impact, California law has codified that a victim may establish liability solely on the basis of discriminatory effect.¹⁶

Other Relevant Federal and State Laws Protecting Housing for Individuals with Disabilities

Federal Law: The Americans with Disabilities Act

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities by state and local governments, including the programs and services offered by a jurisdiction’s housing development, planning and zoning agencies.¹⁷ The ADA has a broad scope and complements the federal Fair Housing Act in covering certain non-traditional housing such as government–operated homeless shelters as well as social services offices and treatment programs serving individuals with disabilities.¹⁸ Title II protects against discriminatory land use and zoning decisions made by local governments against the development of these uses. In addition, entities associated with individuals with disabilities are protected from discrimination under the ADA.

Title II of the ADA, like the Fair Housing Act, requires that municipalities make reasonable modifications in “policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.”¹⁹ The ADA term “reasonable modification” is essentially synonymous with the fair housing phrase “reasonable accommodation.” The requirement that cities and counties make reasonable accommodation under fair housing laws, or reasonable modification under Title II of the ADA, is particularly important for relief where local land use and zoning regulations, practices and procedures restrict the siting of housing for individuals with disabilities. Reasonable accommodation is discussed in the impediments section of the Study.

¹⁵ Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977); Martin v. Constance, 843 F.Supp. 1321 (E.D. Mo. 1994).

¹⁶ Cal. Gov’t Code § 12955.8(b); Broadmoor San Clemente Homeowners v. Nelson, 30 Cal. Rptr. 2d 316 (Cal. App. 4 Dist. 1994).

¹⁷ 42 U.S.C. §§ 12101 *et seq.* (Americans with Disabilities Act, Title II).

¹⁸ Bay Area Addiction Research and Treatment, Inc. v. City of Antioch, 179 F. 3d 725 (9th Cir. 1999)

¹⁹ 28 C.F.R. § 35.130(b)(7).

Relevant State Laws

California's Community Care Facilities Act

This State's Community Care Facilities Act requires that state licensed residential care facilities for six or fewer persons be treated the same as single family residences and, in doing so, pre-empts local zoning regulation of these facilities.²⁰ The Act is designed to move individuals with disabilities out of institutions and into family-like surroundings in residential neighborhoods. A residential care facility is any group care facility or similar facility that provides 24-hour nonmedical care of people in need of supervision or assistance essential for sustaining activities of daily living.²¹ By requiring that these group homes with up to six residents be treated as single family residences, the Act negates the "business" features of any such facilities which might preclude them from locating in compatible residential zones.

The law further provides that residential care facilities serving six or fewer individuals with disabilities be considered family uses for purposes of zoning laws which relate to the residential use of the property. State law specifies that for purposes of local zoning codes, these facilities shall not be included in the definition of boarding or rooming house, guest home, rest home or other similar term which implies that residential care facilities are a business and different than a family dwelling.²²

State Department of Alcohol and Drug Programs Regulations

In the earlier discussion of federal and state fair housing laws, it was explained that individuals who are in recovery for substance abuse are considered as having a disability. The California legislature has enacted a series of laws intended to provide and ensure the accessibility of alcohol and drug recovery, intervention and prevention services to these individuals.²³

These Alcohol and Drug Recovery Program statutes provide that alcoholism or drug abuse recovery or treatment facilities that serve six or fewer persons be considered a residential use for purposes of zoning.²⁴ Like the Community Care Facilities Act, which addresses licensed residential care facilities for six or fewer residents, these statutes pre-empt local regulation of state licensed alcohol or drug abuse recovery or treatment facilities serving six or fewer individuals. "Alcoholism or drug abuse recovery or treatment facility" means any premises that provide 24-hour nonmedical services to adults who are recovering from problems related to alcohol and/or drug abuse or misuse and who need recovery treatment or detoxification services.²⁵ These facilities which serve six or fewer individuals shall not be included within the definition of rooming or boarding house, institution or home for the care of minors, the aged or

²⁰ Health & Safety Code §§ 1566 *et seq.*

²¹ Health & Safety Code § 1502(a)(1).

²² Health & Safety Code § 1566.3.

²³ Health & Safety Code § 1781.

²⁴ Health & Safety Code § 11834.23.

²⁵ Health & Safety Code § 11834.02.

other similar term that implies that the facility is a business run for profit and differs in any other way from a single-family residence.²⁶

State Law Protecting the Siting of Mental Health Treatment Programs

Despite the existence of strong federal and state fair housing laws, the California Legislature recognized that local land use and zoning regulations were continuing to discriminate against the siting of critically needed mental health treatment programs in the community. To remedy this statewide problem, California enacted legislation pre-empting certain municipal regulation in this area. This Welfare & Institutions statute provides that in any zone in which hospitals or nursing homes are permitted, either by right or conditional use permit, psychiatric treatment programs, both inpatient and outpatient, are permitted.²⁷

This state pre-emption statute prohibits local zoning regulations that treat general hospitals and mental health treatment programs differently for purposes of siting; cities and counties cannot impose greater restrictions on the siting of mental health treatment programs than the siting of general hospitals.

²⁶ Health & Safety Code § 11834.23. *See* note 49, *supra*.

²⁷ Welfare & Institutions Code § 5120.