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## Joint Statement Of The Department Of Justice And The Department Of Housing And Urban Development

### GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation. This joint statement provides an overview of the Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, national origin, familial status, and disability.<sup>(1)</sup> The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and government entities and prohibits them from making zoning or land use decisions or implementing land use policies that discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. For example, an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental retardation, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. For example, denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations are necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning policies, it is not a "reasonable" accommodation.

**If SLA's and transitional housing is for transition of released prisoners then the community needs to know that. Unlicensed group homes are an issue that licensed RFFG are concerned with as well so we can protect both the community and seniors who rely on licensed RFFG.**

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of being adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not apply to persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, such as mediation, as alternatives to litigation.

August 18, 1999

#### Questions and Answers

#### on the Fair Housing Act and Zoning

### Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government entities to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the Supreme Court had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory manner.

### Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by unrelated individuals with disabilities.<sup>(2)</sup> Sometimes, but not always, housing is provided by organizations that also offer various services to individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live there, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a family -- who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap, or familial status (families with minor children).

**Q. Who are persons with disabilities within the meaning of the Fair Housing Act?**

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, or other physical or mental condition. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

**Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?**

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without a special use permit. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires a special use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions apply to all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Fair Housing Act if it disallows a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group home for seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given an opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be granted. In such an instance, but the ordinance would not be invalid in all circumstances.

**Q. What is a reasonable accommodation under the Fair Housing Act?**

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or adjustments to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to enjoy a dwelling).

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel is provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts and circumstances. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental change in the character of the neighborhood or a fundamental change in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow more than four unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation might be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than a single-family home. In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the zoning scheme. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expenses on the neighborhood, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a group home for six persons with disabilities might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the requested accommodation, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

**Q. What is the procedure for requesting a reasonable accommodation?**

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities

request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria d local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could als

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made stat indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly a without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such well known within the community.

**Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?**

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to ad The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have address that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood c composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the obj persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concernec for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, j separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

**Q. What kinds of health and safety regulations can be imposed upon group homes?**

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health an residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes : legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such re on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group h or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire o assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of r involved.

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group a residential neighborhood?**

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbor: housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home o reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is sc individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the eviden decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial pa concerns, that could be enough to prove a violation.

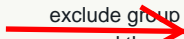
Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hea as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purp reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find tha discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain cir create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors c this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify d application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of indiv disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to de permit.

**This is why we feel strongly that SLA's need to have public disclosure of where SLA's are and survey results.**



**If you can walk, do not use any adaptive devices and do not have any cognitive or mental illness issues you may not need a sprinkler. But if you have either then you need a sprinkler.**



**Q. What is the status of group living arrangements for children under the Fair Housing Act?**

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act's protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provision against discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that allows a group of up to six unrelated adult persons as a family, but specifically disallows a group living arrangement for six or fewer children, discriminates on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a group of neighbors who did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision facilities for children would not violate the familial status provisions of the Fair Housing Act.

**Q. How are zoning and land use matters handled by HUD and the Department of Justice?**

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes to be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are enforced, unless there is evidence that the mere existence of the provisions is preventing or discouraging the development of

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to bring suit in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice finding that there is no reasonable basis to believe that there may be a violation does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangement to be a group home and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

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