

**Correspondence Between
Staff and Applicant
Approval Letter**



Community & Economic Development Division
Planning and Development Services

7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

To: Planning Commission
From: Greg Bloemberg, Senior Planner 
Through: Tim Curtis, Current Planning Director 
Date: September 21, 2017
Re: 9/27/17 Study Session (2-TA-2017: Care Homes Text Amendment)

Commissioners,

As you may be aware, there is a text amendment (2-TA-2017) working its way through the process that is intended to update the City's Zoning Ordinance with regard to various types of care homes and group homes. The proposed amendment includes an update to related uses, regulations and definitions. While care homes and group homes in general are the subject of the amendment, the primary focus is what are commonly referred to as "sober homes". The amendment was triggered by a petition filed with the City Clerk by a citizen group requesting City Council place restrictions/regulations specifically on "sober homes".

Home care is not new in Scottsdale. In 1993, the Zoning Ordinance was amended to add the "Adult Care Home" land use to the permitted uses for single-family residential districts; and apply use criteria in an effort to preserve single-family neighborhoods. At the time, the notion of home care for persons recovering from substance abuse was not even contemplated. The Adult Care Home land use primarily applied to elderly care, or "assisted living" homes; and the current definition reflects that. Since then, a new trend in home care has emerged that caters primarily to persons recovering from substance abuse. The Zoning Ordinance was not specific to types of treatment; so it was determined that "Adult Care Home" was the most analogous use (along with the applicable criteria). In the last few years, Scottsdale has seen a spike in "sober homes" and group homes (also known as "halfway houses"); and residents have become more vocal in their concerns that care homes in general are eroding residential neighborhoods and causing safety concerns.

The challenges in crafting an ordinance to address the issue are numerous, however the primary challenge is Federal law; specifically the Fair Housing Act (FHA). The FHA was originally adopted by Congress in 1968 to prevent discrimination in housing opportunities. In 1988, it was broadened to include protections for the disabled with regard to employment opportunities as well as housing. The definition of "disability" in the FHA includes addiction to drugs or alcohol; and there is no distinction in the definition between disabilities. Thus, all disabilities must be treated equally when considering zoning regulations. The proposed ordinance attempts to clarify the land use, add definitions, employ strengthened criteria in an

effort to respond to citizen and provider concerns, and add procedural guidance when flexibility in criteria or development standards is needed (demonstrated) to provide equal opportunity for disabled persons to find housing; while also maintaining compliance with the FHA.

More specifically, the proposed ordinance provides greater administrative oversight and protections for residential neighborhoods by requiring proof of licensing by the Arizona Department of Health Services, as well as an increase in the separation requirement between care homes. The proposed definition of family (6 or fewer adults) will help to ensure that homes not providing "care services" (unlicensed group homes) will be limited to 6 or fewer adults in single-family zoning districts. Unlicensed group homes with greater than 6 adults will only be permitted in multi-family zoning districts.

Below is the current timeline for adoption of the proposed ordinance:

- 9/27/17: PC Study Session (introduction)
- 10/11/17: PC hearing (Non-Action)
- 10/25/17: PC hearing (Action; tentative)
- 12/4/17 or 12/5/17: City Council Hearing (tentative)

Attachment 1: Draft Ordinance

Attachment 2: Joint Statement from the Department of Justice and the Department of Housing
And Urban Development (HUD)

Attachment 3: Frequently Asked Questions

PURPOSES:

WHEREAS the City desires to permit disabled persons to reside in single family residential neighborhoods in compliance with the Fair Housing Act and the Americans with Disabilities Act; and

WHEREAS the City desires to promote the social and treatment benefits to disabled persons provided in a residential setting by preventing a concentration of facilities for the disabled in any particular area so as to institutionalize that area; and

WHEREAS the City desires to maintain the residential character of its neighborhoods as a quiet place for families of all kinds to thrive

AMENDMENTS TO ZONING ORDINANCE RELATING TO GROUP LIVING AND CARE HOMES

Sec. 1.202. - Interpretations and decisions.

A. The provisions of this Zoning Ordinance shall be interpreted and applied by the Zoning Administrator. Any request for a Zoning Ordinance interpretation or decision must be made in writing to the Zoning Administrator. The Zoning Administrator shall respond in writing to such requests for Zoning Ordinance interpretations or other decisions within forty-five (45) days from the date of the written request, provided no building permits have been issued on the subject development. A record of the Zoning Administrator's responses shall be available for public review.

B. The appeal of Zoning Ordinance interpretations or other decisions by the Zoning Administrator may be initiated by any aggrieved person or by any officer, department, board or commission of the city affected by the interpretation or decision of the Zoning Administrator. For purposes of this subsection an aggrieved person is one who receives a particular and direct adverse impact from the interpretation or decision which is distinguishable from the effects or impacts upon the general public. Appeals must be filed with the City Clerk no later than thirty (30) days after the Zoning Administrator issues any written interpretation or decision. Any timely appeal shall be processed pursuant to Section 1.805

C. When the provisions of this Zoning Ordinance are interpreted or applied they shall be held to be the minimum requirements for the promotion of the public safety, health and general welfare.

D. The presumption established in this Zoning Ordinance is that all general uses of land are permissible within at least one (1) zoning district in the city's planning jurisdiction. The use regulations set forth in each district cannot be all inclusive, and may include general use descriptions that encompass several specific uses. Uses listed specified in each district shall be interpreted liberally to include other uses which have similar impacts to the listed uses. However, the use regulations shall not be interpreted to allow more than one principal use

in a dwelling in a residential district shown on Table 4.100.A. or the residential portion of a Planned Community P-C-, or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown in Table 4.100.A., or to allow an unspecified use in one (1) zoning district which more closely relates to a use that is permissible in another zoning district. The Zoning Administrator shall interpret uses within each district.

E. Accessory uses are allowed in all districts. Accessory uses shall not alter the principal~~primary~~ use of building or lot, or adversely affect other properties in the district. All accessory uses shall be reasonably compatible with the types of uses permitted in the surrounding areas.

Sec. 1.801. – Powers of the Board of Adjustment.

The Board of Adjustment shall hear all applications for:

A. ~~Vari~~variances from the provisions of this Zoning Ordinance; ~~The Board shall also hear appeals from the:~~

A. B. Appeals from the Zoning Administrator's interpretation of the Zoning Ordinance or other decisions; ~~and~~

~~B-C.~~ Requests for Disability Accommodation made pursuant to section 1.920; and

D. Under the Land Divisions ordinance, the General Manager's interpretations and decisions made on appeals.

[Renumber current 1.806 to 1.807, and insert the following new 1.806:]

Sec. 1.806. - Disability Accommodation

A. A disability accommodation from a development standard or separation requirement shall not be authorized unless the Board shall find upon sufficient evidence all of the following:

1. The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.);
2. The requested accommodation is necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling;
3. The standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale;
4. The requested accommodation does not fundamentally alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale;
5. The requested accommodation will not impose an undue financial or administrative burden on the City, as "undue financial or administrative burden" is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law;

- B. The profitability or financial hardship of the owner/service provider of a facility shall not be considered in determining whether to grant a disability accommodation.
- C. The requested accommodation must comply with all applicable building and fire codes.
- D. The requested accommodation must not, under the specific facts of the application, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others;

Sec. 1.920. Request for Disability Accommodation.

An applicant may request a disability accommodation from a development standard or separation requirement if the standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the city of Scottsdale. The zoning administrator may administratively approve up to a ten percent (10%) modification of a development standard or separation requirement upon finding that such a modification will further the policies contained in the Arizona and federal fair housing laws and the Americans with Disabilities Act. All other requests for disability accommodation shall be submitted to the Board of Adjustment as a request for disability accommodation.

Sec. 1.1304. - Enlargement, extension, reconstruction or structural alteration of nonconforming structure; enlargement of nonconforming use.

- A. Except as set forth in paragraph (b) of this subsection, no existing structure designed or arranged in a manner not permitted under the regulations of this Zoning Ordinance for the district in which such structure is located shall be enlarged, extended, reconstructed or structurally altered unless such structure together with such enlargement, extension, reconstruction or structural alterations conform in every respect with the regulations specified by this Zoning Ordinance for such district in which said structure is located. Provided nothing herein shall prohibit any reasonable repairs or alterations to such structure. Similarly, except as set forth in paragraph (c) of this subsection, no existing use not permitted under the regulations of this Zoning Ordinance shall be enlarged or extended unless such use conforms in every respect with the regulations specified by this ordinance for the district in which such use is located.
- B. For all dwellings located in residential zoning districts that are not located within an environmentally sensitive lands overlay zone:
 - 1. Structural enlargements, extensions, reconstruction or modifications to dwellings are permitted if:
 - a. The enlargement, extension, reconstruction or modification is made to the ground level story;
 - b. The height of any portion of the dwelling is not increased;
 - c. The total of the initial and any subsequent enlargement, extension, reconstruction or modification constitutes less than fifty (50) percent of the gross floor area of the existing dwelling; and

- d. The dwelling enlargement, extension, reconstruction, or structural modification conforms to all of the regulations specified by this Zoning Ordinance for such district in which the dwelling is located.
 2. Nothing contained in this subsection shall prohibit any reasonable repairs or alterations to such dwelling.
 3. An existing use not permitted under the regulations of this Zoning Ordinance shall not be enlarged or extended unless such use conforms to the regulations specified by this Zoning Ordinance for the district in which the use is located.
- C. Any authorized care home that is lawfully located and operating in a residential zoning district on [date of ordinance adoption], may continue to operate in their existing location. Nothing in this section will grandfather a care home operating unlawfully or that is located in violation of the provisions of the Zoning Ordinance of the City of Scottsdale existing on [date of ordinance adoption].

Section 3.100. Definitions

Adult Care home shall mean a residential care institution which provides supervisory care, personal care, or custodial care services to adults who require the assistance of no more than one (1) person to walk or to transfer from a bed, chair, or toilet, but who are able to self-propel a wheelchair, as subject to licensing by the State of Arizona dwelling shared as a primary residence by no more than ten adults with a disability that is licensed as a health care institution under Arizona law, and in which on-site supervisory or other care services are provided to the disabled residents. For purposes of this definition, a person must live in the dwelling a minimum of thirty consecutive days for this dwelling to be considered a primary residence. A care home is a, not an accessory, use.

Convalescent home or nursing home shall mean any place or institution which makes provisions for bed care, or for chronic or convalescent care for one (1) or more persons exclusive of relatives, who by reason of illness or physical infirmity are unable to properly care for themselves. Alcoholics, drug addicts, persons with mental diseases and persons with communicable diseases, including contagious tuberculosis, shall not be admitted or cared for in these homes licensed under the State of Arizona, as a convalescent and nursing home.

Disability means a physical or mental impairment that substantially limits one or more major life activities where the person with a disability either has a record of having such impairment or is regarded as having such impairment. A person with a disability shall not include any person currently engaging in the illegal use of controlled substances under Arizona law. The term disability will be interpreted consistent with the Americans with Disabilities Act and the Federal Fair Housing Act.

Dwelling shall mean any building, or portion thereof, which that is designed exclusively principally for residential purposes, and that includes sleeping, cooking and sanitary facilities.

Family shall mean one (1) to six (6) adults and, if any, their related dependent children or more persons occupying a premise[s] and living as a single housekeeping unit. as distinguished from

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~~a group occupying a boardinghouse, lodginghouse or hotel as herein defined. For purposes of the Zoning Ordinance, "Family" includes a residential facility as that term is defined in Title 36, Chapter 5.1, Article 2 of the Arizona Revised Statutes, in which persons with developmental disabilities live and that is licensed, operated, supported or supervised by the State of Arizona.~~

Group home means a dwelling shared by more than six adults as their primary residence in which no supervisory or other care is provided. For purposes of this definition, a person must live in the dwelling a minimum of thirty consecutive days for this dwelling to be considered a primary residence.

Minimal residential health care facility shall mean a residential health care facility which provides resident rooms or residential units to disabled residents ~~services such as central dining, transportation and limited medical assistance.~~

Related dependent children shall mean all persons under the age of 18, or who have been declared dependent by a court of competent jurisdiction, who are related to one of the adults by blood, guardianship, or adoption, or who is the foster child of one of the adults.

Residential health care facility shall mean a health care institution with, at a minimum, 24-hour supervisory care services.

Single housekeeping unit shall mean a group of one (1) or more persons residing together in a dwelling who share use of and responsibility for common areas, household activities, and responsibilities such as meals, chores, household maintenance, and expenses. This term excludes living situations where an entity or individual other than a resident provides job training or life skill development services on-site, or provides supervisory, medical, personal, or custodial care services to more than six adults residing in the dwelling.

Specialized residential health care facility shall mean a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician. ~~convalescent or nursing home which normally provides medical care and supervision.~~

Supervisory care services means general supervision, including daily awareness of resident functioning and continuing needs, and the ability to intervene in a crisis and to assist in the self-administration of prescribed medications.

Sec. 5.012. - Use regulations. [R1-190]

A. *Permitted uses.* Buildings, structures, or premises shall be used and buildings and structures shall hereafter be erected, altered, or enlarged only for the following uses:

1. Accessory buildings, swimming pools, home occupations and other accessory uses. The landing and taking-off of aircraft is not a valid accessory use in residential districts and is prohibited.
2. ~~Adult~~ Care homes; subject to the following criteria:
 - a. *Floor area ratio:* Is limited to thirty-five hundredths (0.35) of the net lot area.

DRAFT: CARE HOME ORDINANCE 9/5/2017

- b. *Capacity:* The maximum number of residents, other than including up to ten disabled persons, the manager/supervisor, or property owner, and residential staff at the home is twelve ten (10) per residential lot.
 - c. *Location:* An adult care home shall not be located within seven hundred fiftytwo hundred (750) feet, measured from lot line to lot line, of another adult-care home on the same street frontage or within five hundred (500) feet in any other direction of another adult care home.
 - d. *Compatibility:* The home and its premises shall be maintained in a clean, well-kept condition, that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
 - e. *Criteria:* Care homes must be licensed by the State of Arizona and must provide proof of such licensing by the State of Arizona as a health care institution to the Director of Planning prior to the commencement of operations. All care homes must pass an initial and annual fire inspection administered by the Scottsdale Fire Department. Proof of such inspection and of correction of any noted deficiencies must be available at the care home at all times.
 - f. *Accommodation:* A disabled person may request a disability accommodation from the above criteria or a development standard pursuant to Section 1.806 of this Zoning Ordinance.
3. Charter school located on property with a net lot size of one (1) acre or more.
 4. Day care home.
 5. Day care group home.
 6. Dwelling units, single-family, including Vacation rental or Short-term rental; limited to one main dwelling unit per lot.
 7. Guest house, as an accessory use subject to the following criteria:
 - a. The cumulative square footage of the guest house(s) shall be no greater than one-half (1/2) the livable square footage of the main dwelling.
 - b. Any guest house shall be connected to the existing water meter for the main dwelling. It shall not be separately metered.
 - c. The guest house shall not be rented or offered for rent independent of the main dwelling.
 8. Model homes.
 9. Municipal uses.
 10. Wireless communications facilities; Types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.
 11. Private tennis courts.
 12. Public, elementary and high schools
 13. Temporary sales office buildings and buildings for uses incidental to construction work, to be removed upon completion or abandonment of construction work.

14. Churches and places of worship; subject to Development Review Board approval and compliance with the following standards, as well as those otherwise required in the R1-190 District:

- a. Lot area: The minimum lot area shall be equal to that required for the district, except that no lot shall be less than twenty thousand (20,000) square feet (net).
- b. Floor area ratio: In no case shall the gross floor area of the structure(s) exceed an amount equal to 0.20 multiplied by the net lot area.
- c. Building height: Development Review Board may allow building heights, including, towers, spires, and mechanical equipment (such equipment must be screened) limited to thirty (30) feet in height, and may allow a maximum of ten (10) percent of the roof area to exceed the height limit by fifteen (15) feet. Height and location are subject to the Development Review Board review and approval for compatibility with the established neighborhood character. Maximum permissible heights may not be achievable in all neighborhoods. (This provision supersedes Section 7.100. through 7.102, exceptions to height restrictions, which shall not apply to churches within this district.)
- d. Required open space:
 - i. Minimum: 0.24 multiplied by the net lot area.
 - ii. For building heights over twenty (20) feet: the minimum open space requirement plus 0.004 multiplied by the net lot area for each foot of building height over twenty (20) feet.
 - iii. NAOS may be included in the required open space.
- e. Parking: Parking shall observe the minimum front yard setbacks of the district for all frontages. On streets classified in the Transportation Master Plan as major arterial or greater, parking may be located between the established front building line and the front yard setback. On all other street classifications, parking shall be located behind the established front building line(s).

A minimum of fifteen (15) percent of all parking areas shall be landscaped.

A ten-foot minimum landscaped setback shall be provided where parking is adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.

- f. Lighting: All pole mounted lighting shall be directed down and shielded and shall be a maximum of sixteen (16) feet in height.

All lighting adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A. shall be set back a minimum of thirty (30) feet from the property line. All lighting, other than security, shall be shut off by 10:00 p.m.

- g. Screening: There shall be a minimum six-foot high masonry wall and/or landscape screen, as approved by the Development Review Board, on the side and rear property lines that are adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.

There shall be a three-foot high landscaped berm along all street frontage where parking occurs.

- h. Access: All churches must have primary access to a street classified in the Transportation Master Plan as a minor collector or greater.

Access to a local or local collector residential street is prohibited when the primary worship center, auditorium or other major gathering place exceeds three thousand (3,000) square feet.

- i. Operations: No outdoor activities shall be permitted after 10:00 p.m.

- j. Noise: Outdoor speakers or paging systems are not allowed.

B. *Uses subject to conditional use permit.*

1. Cemetery (see Section 1.403 for criteria).
2. Ham transmitting or receiving radio antennas in excess of seventy (70) feet.
3. Community buildings and recreational facilities not publicly owned, such as: athletic fields, boys' clubs, etc.
4. Farms and ranches.
5. Golf course (except miniature golf course or commercial driving range).
6. Wireless communications facilities; Type 4, subject to requirements of Sections 1.400, 3.100 and 7.200.
7. Private colleges and universities having a regular curriculum, with their related services and activities.
8. Private school having no room regularly used for housing or sleeping overnight. Subject to Development Review Board approval and compliance with the following standards, including, but not limited to, the following as well as those otherwise required in the R1-190 District.
 - a. Lot area: The minimum lot area shall be equal to that required for the district, except that no lot shall be less than eighty-six thousand (86,000) square feet minimum lot size.
 - b. Floor area ratio: In no case shall the gross floor area of the structure(s) exceed an amount equal to 0.20 multiplied by the net lot area.
 - c. Noise: Outdoor speaker systems or bells are not allowed.
 - d. Required open space:
 - i. Minimum: 0.24 multiplied by the net lot area.

- ii. For building heights over twenty (20) feet: the minimum open space requirement plus 0.004 multiplied by the net lot area for each foot of building height over twenty (20) feet.
- iii. NAOS may be included in the required open space.
- e. **Parking:** Parking shall be allowed in the front yard setbacks of the district for schools on streets classified in the Transportation Master Plan as minor collector or greater. There shall be a three-foot high landscaped berm or wall along the street frontage where parking occurs. On all other street classifications, parking shall be located behind the established front building line(s). A minimum of fifteen (15) percent of all parking areas shall be landscaped in addition to open space in d. above. A twenty-foot minimum landscaped setback shall be provided where parking is adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.
- f. **Lighting:** All pole mounted lighting shall be directed down and shielded and shall be a maximum of sixteen (16) feet in height. All lighting adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A., shall be setback a minimum of thirty (30) feet from the property line. All lighting, other than security, shall be turned off by 10:00 p.m., unless otherwise approved through a special event permit.
- g. **Screening:** There shall be a minimum six-foot high masonry wall and/or landscape screen, as approved by the Development Review Board, on the side and rear property lines adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.
- h. **Access:** All private schools shall have frontage on a street classified in the Transportation Master Plan as a minor collector or greater. Side street access to a local collector residential street is prohibited when the number of students allowed to attend the school is greater than two hundred fifty (250). A drop off area shall be provided that accommodates a minimum of five (5) cars at one (1) time.
- i. **Operations:** No outdoor activities shall be permitted after 8:00 p.m. unless otherwise approved through a special event permit. Any additions to, expansions of or proposed playgrounds or outdoor activity areas shall be setback fifty (50) feet from any single-family residential district shown on Table 4.100.A., or the single-family residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A. property line (including right-of-way width) or setback twenty-five (25) feet from any Two-family Residential R-2, Medium Density Residential R-3, Townhouse Residential R-4, Resort/Townhouse Residential R-4R, Multiple-family Residential R-5 or Manufactured Home M-H district property line (including right-of-way width). All

playgrounds and outdoor activity areas shall be screened from any residential district shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A. by a minimum six-foot high screen wall and/or landscape screen, as approved by the Development Review Board.

- j. Building design: All buildings shall be designed to be compatible with the surrounding residential neighborhood. All building elevations shall be approved by the Development Review Board.
 - k. Circulation plan: The applicant shall submit a circulation plan to ensure minimal conflicts between the student drop-off area, potential van and bus drop-off area, parking, access driveways, pedestrian and bicycle paths on site.
9. Public utility buildings, structures or appurtenances thereto for public service uses.
10. Recreational uses (see section 1.403 for specific uses and development criteria for each).

Sec. 5.102. - Use regulations. [R1-43]

A. *Permitted uses.* Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

- 1. Accessory buildings, swimming pools, home occupations and other accessory uses. The landing and taking-off of aircraft is not a valid accessory use in residential districts and is prohibited.
- 2. Adult care homes; subject to the following criteria:
 - a. Floor area ratio: Is limited to thirty-five hundredths (0.35) of the net lot area.
 - b. Capacity: The maximum number of residents, including up to ten disabled persons, other than the manager/supervisor, or property owner, and residential staff at the home is ten-twelve (12-10) per residential lot.
 - c. Location: An adult care home shall not be located within seven hundred fifty (750) twelve hundred (1200) feet, measured from lot line to lot line, of another adult care home on the same street frontage or within five hundred (500) feet in any other direction of another adult care home.
 - d. Compatibility: The home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
 - e. Parking: All parking for the property owner residents and any employees shall be provided in off-street locations but in no case shall parking occupy more than three-tenths (0.3) of the required front yard.
 - f. Criteria: Care homes must provide proof of licensing as a health care institution by the State of Arizona to the Director of Planning prior to the commencement of operations. All care homes must pass an initial and annual fire inspection administered by the Scottsdale Fire Department. Proof of such inspection and of correction of any noted deficiencies must be available at the care home at all times.

g. Accommodation: A disabled person may request a disability accommodation from the above criteria or a development standard pursuant to Section 1.806 of this Zoning Ordinance.

3. Charter school located on property with a net lot size of one (1) acre or more.
4. Day care home.
5. Day care group home.
6. Dwelling units, single-family, including Vacation rental or Short-term rental, limited to one main dwelling per lot.
7. Guest houses, as an accessory use subject to the following criteria:
 - a. The cumulative square footage of the guest house(s) shall be no greater than one-half (1/2) the livable square footage of the main dwelling.
 - b. The guest house shall be connected to the water meter for the main dwelling. It shall not be separately metered.
 - c. The guest house shall not be rented or offered for rent independent of the main dwelling.
8. Model homes.
9. Municipal uses.
10. Wireless communications facilities; Types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.
11. Private tennis courts.
12. Public, elementary and high schools.
13. Temporary sales office buildings and buildings for uses incidental to construction work, to be removed upon completion or abandonment of construction work.
14. Churches and places of worship; subject to Development Review Board approval and compliance with the following standards, as well as those otherwise required in the R1-43 District:
 - a. Lot area: The minimum lot area shall be equal to that required for the district, except that no lot shall be less than twenty thousand (20,000) square feet (net).
 - b. Floor area ratio: In no case shall the gross floor area of the structure(s) exceed an amount equal to 0.20 multiplied by the net lot area.
 - c. Building height: Development Review Board may allow building heights, including towers, spires, and mechanical equipment (such equipment must be screened) limited to thirty (30) feet in height, and may allow a maximum of ten (10) percent of the roof area to exceed the height limit by fifteen (15) feet. Height and location are subject to the Development Review Board review and approval for compatibility with the established neighborhood character. Maximum permissible heights may not be achievable in all neighborhoods. (This provision supersedes Sections 7.100 through 7.102, exceptions to height restrictions, which shall not apply to churches within this district.)

- d. Required open space.
 - i. Minimum: 0.24 multiplied by the net lot area.
 - ii. For building heights over twenty (20) feet: the minimum open space requirement plus 0.004 multiplied by the net lot area for each foot of building height over twenty (20) feet.
 - iii. NAOS may be included in the required open space.
 - e. Parking: Parking shall observe the minimum front yard setbacks of the district for all frontages. On streets classified in the Transportation Master Plan as major arterial or greater, parking may be located between the established front building line and the front yard setback. On all other street classifications, parking shall be located behind the established front building line(s). A minimum of fifteen (15) percent of all parking areas shall be landscaped. A ten-foot minimum landscape setback shall be provided where parking is adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.
 - f. Lighting: All pole mounted lighting shall be directed down and shielded and shall be a maximum of sixteen (16) feet in height. All lighting adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A., shall be set back a minimum of thirty (30) feet from the property line. All lighting, other than security, shall be shut off by 10:00 p.m.
 - g. Screening: There shall be a minimum six-foot high masonry wall and/or landscape screen, as approved by the Development Review Board, on the side and rear property lines that are adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.

There shall be a three-foot high landscaped berm along all street frontages where parking occurs.
 - h. Access: All churches must have primary access to a street classified in the Transportation Master Plan as a minor collector or greater.

Access to a local or local collector residential street is prohibited when the primary worship center, auditorium or other major gathering place exceeds three thousand (3,000) square feet.
 - i. Operations: No outdoor activities shall be permitted after 10:00 p.m.
 - j. Noise: Outdoor speakers or paging systems are not allowed.
- B. *Uses subject to conditional use permit.*
- 1. Cemetery (see section 1.403 for criteria).

2. Community buildings and recreational facilities not publicly owned, such as: Athletic fields, boys' clubs, etc.
3. Farms.
4. Golf course (except miniature golf course or commercial driving range).
5. Ham transmitting or receiving radio antennas in excess of seventy (70) feet.
6. Wireless communications facilities; Type 4, subject to requirements of Sections 1.400, 3.100 and 7.200.
7. Private colleges and universities having a regular curriculum, with their related services and activities.
8. Private school having no room regularly used for housing or sleeping overnight. Subject to Development Review Board approval and compliance with standards, including, but not limited to, the following as well as those otherwise required in the R1-43 District.
 - a. Lot area: The minimum lot area shall be equal to that required for the district, except that no lot shall be less than eighty-six thousand (86,000) square feet minimum lot size.
 - b. Floor area ratio: In no case shall the gross floor area of the structure(s) exceed an amount equal to 0.20 multiplied by the net lot area.
 - c. Noise: Outdoor speaker systems or bells are not allowed.
 - d. Required open space:
 - i. Minimum: 0.24 multiplied by the net lot area.
 - ii. For building heights over twenty (20) feet: the minimum open space requirement plus 0.004 multiplied by net lot area for each foot of building height over twenty (20) feet.
 - iii. NAOS may be included in the required open space.
 - e. Parking: Parking shall be allowed in the front yard setbacks of the district for schools on streets classified in the Transportation Master Plan as minor collector or greater. There shall be a three-foot high landscaped berm or wall along the street frontage where parking occurs. On all other street classifications, parking shall be located behind the established front building line(s). A minimum of fifteen (15) percent of all parking areas in addition to open space in d. above shall be landscaped. A twenty-foot minimum landscaped setback shall be provided where parking is adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.
 - f. Lighting: All pole mounted lighting shall be directed down and shielded and shall be a maximum of sixteen (16) feet in height. All lighting adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an

underlying zoning district comparable to the residential districts shown on Table 4.100.A., shall be setback a minimum of thirty (30) feet from the property line. All lighting, other than security, shall be turned off by 10:00 p.m., unless otherwise approved through a special event permit.

- g. Screening: There shall be a minimum six-foot high masonry wall and/or landscape screen, as approved by the Development Review Board, on the side and rear property lines adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.
 - h. Access: All private schools shall have frontage on a street classified in the Transportation Master Plan as a minor collector or greater. Side street access to a local collector residential street is prohibited when the number of students allowed to attend the school is greater than two hundred fifty (250). A drop off area shall be provided that accommodates a minimum of five (5) cars at one (1) time.
 - i. Operations: No outdoor activities shall be permitted after 8:00 p.m. unless otherwise approved through a special event permit. Any additions to, expansions of or proposed playgrounds or outdoor activity areas shall be setback fifty (50) feet from the property line (including right-of-way width) of any single-family residential district shown on Table 4.100.A., or the single-family residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A. or setback twenty-five (25) feet from any Two-family Residential R-2, Medium Density Residential R-3, Townhouse Residential R-4, Resort/Townhouse Residential R-4R, Multi-family Residential R-5 or Manufactured Home M-H district property line (including right-of-way width). All playgrounds and outdoor activity areas shall be screened from any residential district shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A. by a minimum six-foot high screen wall and/or landscape screen, as approved by the Development Review Board.
 - j. Building design: All buildings shall be designed to be compatible with the surrounding residential neighborhood. All building elevations shall be approved by the Development Review Board.
 - k. Circulation plan: The applicant shall submit a circulation plan to ensure minimal conflicts between the student drop-off area, potential van and bus drop-off area, parking, access driveways, pedestrian and bicycle paths on site.
9. Public utility buildings, structures or appurtenances thereto for public service uses.
10. Recreational uses including commercial stables, ranches and tennis clubs (see section 1.403 for specific uses and development criteria for each).

Sec. 5.703. - Use regulations. [R-3]

A. *Permitted uses.* Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

1. Group homes.
42. Day care home.
23. Dwelling unit(s), including Vacation rental or Short-term rental.
34. Accessory buildings; swimming pool, private home occupations and other accessory uses. The landing and taking-off of aircraft is not a valid accessory use in residential districts and is prohibited.
45. Temporary buildings for uses incidental to construction work to be removed upon completion or abandonment of construction work.
56. Model dwelling units.
67. Municipal uses.
- 6-48. Wireless communications facilities; types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.

B. *Uses permitted by conditional use permit.*

1. Wireless communications facilities; type 4, subject to requirements of sections 1.400, 3.100 and 7.200.
2. Residential health care facility (see section 1.403 for criteria except as modified in section 5.704.C.)

Sec. 5.803. - Use regulations. [R-4]

A. *Permitted uses.* Building, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

1. Single-family dwelling having either party walls or walled courtyards, including Vacation rental or Short-term rental.
2. Accessory buildings and uses customarily incident to the permitted uses, including private garage, home occupations, swimming pools and recreation buildings. The landing and taking-off of aircraft is not a valid accessory use in residential districts and is prohibited.

3. Group homes.

4. Municipal uses.

3-45. Wireless communications facilities; Types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.

46. Temporary sales office buildings and model homes.

57. Churches and places of worship.

68. Day care home.

B. *Permitted uses by conditional use permit.*

1. Wireless communications facilities; Type 4, subject to requirements of sections 1.400, 3.100 and 7.200.

2. Residential health care facility (see section 1.403 for criteria except as modified in section 5.804.D.)

Sec. 5.903. - Use regulations. [R-4R]

A. Permitted Uses

1. Travel Accommodation.

2. Dwelling units having either party walls or walled courtyards, including Vacation rental or Short-term rental.

3. Accessory buildings and uses customarily incidental to the permitted uses, including private garages, home occupations, swimming pool, recreation buildings and walled driveway entrance.

4. Group homes.

5. Municipal uses.

56. Wireless communications facilities, Types 1, 2 and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.

67. Churches and places of worship.

78. Day care home.

B. *Permitted uses by conditional use permit.*

1. Golf courses.

2. Wireless communications facilities; Type 4, subject to requirements of sections 1.400, 3.100 and 7.200.

3. Recreational uses (see section 1.403 for specific uses and development criteria for each).

Sec. 5.1003. - Use regulations. [R-5]

A. *Permitted uses.* Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

1. Accessory buildings; swimming pool; home occupations; and other accessory uses. The landing and taking-off of aircraft is not a valid accessory use in residential districts and is prohibited.

2. Group home.

23. Day-care home.

34. Dwelling, single-family detached or attached, including Vacation rental or Short-term rental.

45. Dwelling, multiple family.

56. Municipal uses.

DRAFT: CARE HOME ORDINANCE 9/5/2017

67. Wireless communications facilities; Types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.

78. School: Public and charter, elementary and high.

89. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of construction work.

910. Temporary sales office buildings and model homes.

4011. Churches and places of worship.

B. Uses permitted by conditional use permit.

1. Commercial and/or ham transmitting or receiving radio and television antennas in excess of seventy (70) feet.

2. Community buildings or recreational fields not publicly owned.

~~3. Convent.~~

43. Day-care center.

54. Golf course, regulation or par-three, that is incidental to and located within the development.

~~6. Orphanage.~~

75. Plant nursery; provided, however, that all materials (other than plant materials) shall be screened from view by a solid fence or wall at least six (6) feet in height, and further that a completely enclosed building having a minimum floor area of five hundred (500) square feet shall be provided.

~~86. Private club, fraternity, sorority and lodges.~~

97. Private lake, semi-public lake, tennis courts.

408. Private school having no room regularly used for housing or sleeping overnight. Subject to Development Review Board approval and compliance with the following standards, as well as those otherwise required in the R-5 District.

a. Lot area: The minimum lot area shall be equal to that required for the district, except that no lot shall be less than forty-three thousand (43,000) square feet (net).

b. Floor area ratio: In no case shall the gross floor area of the structure(s) exceed an amount equal to 0.20 multiplied by the net lot area.

c. Noise: Outdoor speaker system or bells are not allowed if the school building is within one hundred (100) feet of a single-family dwelling or multifamily dwelling unit.

d. Required open space.

i. Minimum: 0.24 multiplied by the net lot area.

ii. For building heights over twenty (20) feet: the minimum open space requirement plus 0.004 multiplied by the net lot area for each foot of building height over twenty (20) feet.

iii. NAOS may be included in the required open space.

e. Parking: Parking shall be allowed in the front yard setbacks of the district for schools on streets classified in the Transportation Master Plan as minor collector or greater. There shall be a three-foot high landscaped berm or wall along the street frontage where parking occurs. On all other street classifications, parking shall be located behind the established front building line(s). A minimum of fifteen (15) percent of all parking areas shall be landscaped. A twenty-foot minimum landscaped setback shall be provided where parking is adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.

f. Lighting: All pole mounted lighting shall be directed down and shielded and shall be a maximum of sixteen (16) feet in height. All lighting adjacent to residential districts shall be setback a minimum of thirty (30) feet from the property line. All lighting, other than security, shall be turned off by 10:00 p.m., unless otherwise approved through a special event permit.

g. Screening: There shall be a minimum six-foot high masonry wall and/or landscape screen, as approved by the Development Review Board, on the side and rear property lines adjacent to residential districts shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A.

h. Access: All private schools shall have frontage on a street classified in the Transportation Master Plan as a minor collector or greater. Side street access to a local collector residential street is prohibited when the number of students allowed to attend the school is greater than two hundred fifty (250). A drop off area shall be provided that accommodates a minimum of five (5) cars at one (1) time.

i. Operations: No outdoor activities shall be permitted after 8:00 p.m. unless otherwise approved through a special event permit. No playground or outdoor activity area shall be located within fifty (50) feet of any single-family residential district shown on Table 4.100.A., or the single-family residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or within twenty-five (25) feet of any Two-family Residential R-2, Medium Density Residential R-3, Townhouse Residential R-4, Resort/Townhouse Residential R-4R, Multiple-family Residential R-5 or Manufactured Home M-H district. All playgrounds and outdoor activity areas shall be screened from any residential district shown on Table 4.100.A., or the residential portion of a Planned Community P-C or any portion of a Planned Residential Development PRD with an underlying zoning district comparable to the residential districts shown on Table 4.100.A., by a minimum six-foot high screen wall.

j. Building design: All buildings shall be designed to be compatible with the surrounding residential neighborhood. All building elevations shall be approved by the Development Review Board.

449. Public buildings other than hospitals.

DRAFT: CARE HOME ORDINANCE 9/5/2017

102. Public utility buildings, structures or appurtenances thereto for public service uses.

113. Recreational uses.

124. Residential health care facility.

135. Travel accommodation.

16. Wireless communications facilities; Type 4, subject to requirements of sections 1.400., 3.100., and 7.200.

DRAFT



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION
OF THE FAIR HOUSING ACT**

INTRODUCTION

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.² The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),³ Section 504 of the Rehabilitation Act of 1973 (“Section 504”),⁴ and Title VI of the Civil Rights Act of 1964.⁵ In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. §12132.

⁴ 29 U.S.C. § 794.

⁵ 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.⁶

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*⁷ The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”⁸

⁶ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

⁷ ___ U.S. ___, 135 S. Ct. 2507 (2015).

⁸ *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and
Local Land Use and Zoning Regulation of Group Homes**

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

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

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

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

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, 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. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect 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 unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

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 a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.⁹

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,¹⁰ the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

⁹ Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

¹⁰ 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

**Questions and Answers on the Fair Housing Act and
Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of
Complaints Involving Land Use and Zoning**

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, available at <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, available at <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, available at http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

Frequently Asked Questions re: Care Home Ordinance

Summary: Lauber, Daniel. “Maximum Restrictions Local Zoning Can Place on Community Residences for People With Disabilities” 2017

<http://www.grouphomelaw.com/2%20page%20summary%20zoning%20for%20community%20residences%20family%20condensed.pdf>

U. S. Department Of Housing And Urban Development and U. S. Department Of Justice. “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice: State And Local Land Use Laws And Practices And The Application Of The Fair Housing Act.” Justice.gov. November 2016.

<https://www.justice.gov/crt/page/file/909956/download>

1. Since the State doesn't license sober homes, why doesn't the City?

There is a state statute, A.R.S. § 36-407, that requires that all health care institutions be licensed by the state. Therefore the types of homes for recovering addicts where behavioral health, medical and supervisory care services are provided are licensed by the State. The State does not license homes where recovering addicts live together where no such care is provided. However, federal law prohibits the City from making it more difficult for disabled persons, including recovering addicts, to live in a residential setting, which includes requiring them to obtain a license or a permit just because they are going to be in a residential setting. The Department of Justice and the Department of Housing and Urban Development have made this clear in the “Joint Statement” referred to above. For example:

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. (p. 4)

2. Is there any way to separate the handling of sober/recovery homes from other homes where care is provided, such as assisted living homes?

The federal government in its “Joint Statement” referenced above addresses that: “Although a group home for persons in recovery may commonly be called a “sober home,” the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes.” (p. 7) Further, the Joint Statement says:

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use

and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness. (p. 10)

Can we regulate separately the maximum number of residents allowed in a care home, the number of care takers required per resident, footage separating each kind from other neighbors, traffic control, parking, street safety, etc. ?

The Joint Statement addresses this as follows:

Examples of state and local land use and zoning laws or practices that may violate the Act include: . . .

- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities. (p. 3)

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. (p.5)

What will happen to existing assisted living homes?

The City's zoning ordinance provides for the grandfathering of existing legal uses. S.R.C. § 1.1301.

What are surrounding cities are doing about these issues and what their regulations are regarding these types of homes?

A Chart showing what other Arizona cities are doing is attached.

Are there other types of specialized residential homes that would fall under this same set of regulations and guidelines?

Yes. Small assisted living homes and behavioral health care homes would be regulated under the proposed ordinance.

Will homes for the homeless, half-way houses, homes run as charities, etc. fall under the same rules?

Under the proposed ordinance, any home where care is provided will be treated as either a care home (~~six~~ ten or fewer persons) or a residential health care facility. Any home where care is NOT provided will be treated as a family (six or fewer adults and their related children) or a group home.

Is a Private Business allowed to operate in the middle of a residential neighborhood?

The zoning ordinance allows home occupations in single-family zoning districts. Additionally, adult care homes are permitted in residential districts, and because federal law treats recovering substance abusers as disabled persons the "business" of taking care of them is considered an allowed care home.

Why aren't neighbors notified when a sober home or any business moves into a neighborhood?

Because care homes are allowed uses in residential districts there is not a notification process that applies to them.

What about our children who may come in contact with the half way house residents?

If unlawful activity occurs, then that may be a matter for the police.

What happens to our home re-sale values when trying to sell our homes?

The City cannot prohibit a use that is protected by federal law even if it may have an adverse effect on property values.

How/why was the zoning/business license ever approved for this type of operation?

There is no zoning license required for adult care homes. The State typically licenses facilities providing medical or supervisory care where such licenses are required.

Regulation of housing for disabled in single family residential districts

	NAME GIVEN	PERMIT FOR CARE HOMES?	FAMILY	SEPARATION IN R1	CRITERIA/CONDITIONS	ACCOMMODATION
PROPOSED	Family: up to 6, no care Group Home: more than 6, no care Care Home: up to 6 disabled + up to 2 caregivers; 24 hour on-site supervision required Residential Health Care Facility: Care + 24-hour on-site supervision	Registration, but in some circumstances licensed by State. Use permit required for Residential Health Care facilities.	Up to 6 unrelated adults and their dependents.	Group homes not allowed in R1 Districts Care homes: 1200' separation in R1 Districts	Licensed care homes must provide proof of state licensing; City registration + operational criteria for all other care homes.	Yes – up to 10% administratively
PRESCOTT	Family: up to 4 unrelated Community Residence (zoning): 5-12 disabled --Family Community Residence (yearly tenancy) --Transitional Comm. Residence (monthly tenancy) Sober Living Home (licensing): a community residence, except for “a self-governed community residence . . .”	Family: none Sober Living Home: License required Family Community Residence: Permitted all districts Transitional Comm. Residence: Use Permit in SF (R1)	4 unrelated/ any related + 2 caregivers/2 unrelated with their children	Family Community Residence: 800' from another (Others require use permit and proof of compatibility)	Family Community Residence: 800' from nearest community residence AND operator is licensed/certified by State of Arizona to operate (If either criteria missing, use permit required) Sober Living Home. Licensing requirements: no registered sex offenders allowed; must have treatment plans; must have insurance (\$1mill/\$3mill)/no second hand smoke to neighbors/no drug or alcohol use/ good neighbor plan	Yes, for 12+ disabled Yes for sober living licensing
PHOENIX	Assisted Living, Home: 1 to 10 Residential Care Home: 1 to 10 Sober Living Home: Assisted Living Center: 11+ Residential Care Center: 11+	To 5: by right 6-10: registration & conditions Centers: not permitted in R1; Use permit in multifamily	5 unrelated	to 5: allowed by right; 6-10: 1320 feet		Yes as to separation requirement
GILBERT	Congregate Care: Group Homes for the Handicapped: up to 5 excluding staff, unless state licensed – up to 10 Recovery Residence: to 11	Congregate Care: Use Permit Group Home: State license & town Registration Recovery Home: Licensing and Registration + Operation Plan	5 unrelated	1200 feet		Yes
CHANDLER	Residential Care Homes: ≤ 5 residents with a disability, unless accommodation granted Group Home: > 5 unrelated, no disability	Registration for group and residential care homes	1+ living as single housekeeping unit (up to 5 unrelated)	1200 feet	Residential Care: no more than 5 persons	Yes as to number of residents

Regulation of housing for disabled in single family residential districts

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CHANDLER	Residential Care Homes: ≤ 5 residents with a disability, unless accommodation granted Group Home: > 5 unrelated, no disability	Registration for group and residential care homes	1+ living as single housekeeping unit (up to 5 unrelated)	1200 feet	Residential Care: no more than 5 persons	Yes as to number of residents