

Heather Dukes

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

CITY OF SCOTTSDALE
Planning and Development Services Department
3939 N. Drinkwater Boulevard
Scottsdale, AZ 85251

June 16, 2022

RE: Comments Regarding Care Home Text Amendment Case No. 1-TA-2022

Dear City of Scottsdale Planning Staff:

On behalf of sober living operators, the following are comments and concerns regarding the proposed “care home” text amendment to the Zoning Ordinance, which has been scheduled for an open house meeting on June 16, 2022.

As we have disclosed to the City in the past, the care home limitations in the Zoning Ordinance and their application to sober living homes are discriminatory on their face and have a disparate impact on persons with disabilities by severely limiting housing options in Scottsdale. This proposed care home text amendment does very little to alleviate discriminatory treatment and impact to Scottsdale’s disabled populations and, if adopted, will continue to violate the Fair Housing Act and the Americans with Disabilities Act. The following outlines our initial concerns:

1. The disability accommodation criteria in Section 1.806 of the Zoning Ordinance violates the Fair Housing Act by:
 - a. Limiting accommodation requests to a “development standard or separation requirement,” and
 - b. Requiring that the requested accommodation “comply with all applicable building and fire codes”, when certain provisions in the building and fire codes may require modification through a reasonable accommodation process as well.
2. The ability of an applicant to request a disability accommodation is unlawfully restricted in Section 1.920 of the Zoning Ordinance in violation of the Fair Housing Act by:
 - a. Limiting accommodation requests to a “development standard or separation requirement,” and

- b. Limiting accommodation requests to only those applicants who can demonstrate that such standards or requirements unduly restrict their opportunity to find adequate housing within the City of Scottsdale or from utilizing their existing property.

Both Sections 1.806 and 1.920 should be revised to allow a disability accommodation request to be filed with regard to any provision in the Zoning Ordinance. These Sections should also be revised by deleting the additional restrictions noted above.

For a more detailed analysis providing the reasons that an applicant should not be restricted to filing a reasonable accommodation request for only certain Zoning Ordinance standards or requirements, see email from Heather Dukes to Planning Director Tim Curtis dated September 16, 2021.

3. The minor disability accommodation process requires notification to property owners within 300 feet of the property, despite this being an administrative process with no hearing requirement.

Such notification requirements often result in neighborhood opposition and discriminatory treatment of disabled applicants and should be deleted.

4. The definition of “care home” in the Zoning Ordinance has been expanded to apply to disabled, sober adults living in a dwelling unit in which no care is provided. The broadening of the care home definition to include sober living homes is discriminatory and a violation of the Fair Housing Act. Sober, disabled adults will not be permitted to find housing in the community of their choice as a result of the unjustifiable 1200-foot spacing requirement and the fact that the Zoning Ordinance does not allow care homes in any multifamily residential zoning district.

The regulation of care homes, sober living homes and group homes throughout the entire Scottsdale Zoning Ordinance should be reevaluated and significantly modified in order to meet Fair Housing Act requirements. A public comment from Rose Daly-Rooney, the Legal Director of the Arizona Center for Disability Law, dated December 5, 2017 is attached hereto providing a thorough analysis of the City’s current care home ordinance and how it violates the Fair Housing Act and the Americans with Disabilities Act

We recommend that the City conduct a thorough review of the ordinance and consider the disparate impact of not only the 2017 text amendment but also this most recent text amendment, both of which unlawfully limit housing for disabled populations. Additionally, we recommend that the City publish notice of additional open houses in a newspaper of general circulation and to contact care home and sober living home operators who are registered with the City of Scottsdale and Arizona Department of Health Services. It is our understanding that, to date, these notifications have not occurred.

City of Scottsdale

June 16, 2022

Page 3 of 3

Sincerely,

A handwritten signature in blue ink that reads "Heather N. Dukes". The signature is fluid and cursive, with the first name "Heather" being the most prominent.

Heather N. Dukes, Esq.

on behalf of Scottsdale Recovery

Sanctuary Sober Living

Safe and Sound Sober Living

Stepping Stones Recovery

Pinnacle Peak Recovery

602.320.8866 | hdukesesq@gmail.com

Enclosures



Heather Dukes <hdukesesq@gmail.com>

Reasonable Accommodation Application for 7910 and 7920 E. Wilshire Drive

Heather Dukes <hdukesesq@gmail.com>

Thu, Sep 16, 2021 at 3:21 PM

To: "Curtis, Tim" <tcurtis@scottsdaleaz.gov>

Cc: "Cluff, Bryan" <BCluff@scottsdaleaz.gov>, "Barnes, Jeff" <JBarnes@scottsdaleaz.gov>

Dear Tim:

As we discussed, I am sending this email to further explain our FHA reasonable accommodation application to be submitted for the Scottsdale Recovery sober living property at 7910 and 7920 E. Wilshire Drive. I am also sending this email to confirm a few dates and procedural items.

Overview of Reasonable Accommodation Application

Currently, we have a pending interpretation appeal before the Board of Adjustment scheduled to be heard on November 3rd (Case No. 6-BA-2021 – requesting an interpretation that 2 to 4 sober, disabled individuals living in each dwelling unit would constitute a “family” and be permitted in the R-3 zoning district as a matter of right).

In addition to the pending interpretation appeal, my client will be filing an application requesting that the Board of Adjustment issue a reasonable accommodation to allow the proposed sober living use in the R-3 zoning district at this particular location pursuant to the federal Fair Housing Act [42 U.S.C. § 3604(f)(3)(B)] and the nearly identical protections set forth in Arizona's Fair Housing Act [Ariz.Rev.Stat. § 41-1491]. The reasonable accommodation application should be scheduled at the same BOA hearing as the interpretation Case No. 6-BA-2021 (currently set for Nov 3, 2021).

The reasonable accommodation application will address both: (i) the disability accommodation tests set forth in Section 1.806 of the Zoning Ordinance and (ii) the reasonable accommodation tests identified in the 9th Circuit and Arizona case law.

The reasonable accommodation application will be supported by additional evidence that we are currently compiling. We will also be submitting information and evidence showing that the reasonable accommodation must be granted to Scottsdale Recovery and its disabled residents as result of the following:

1. The City's Zoning Ordinance is facially discriminatory. The Ordinance prohibits care homes for the disabled in multifamily zoning districts but allows group homes and vacation rentals for non-disabled residents in multifamily zoning districts.
2. Scottsdale Recovery and its disabled residents have been subjected to disability-based disparate treatment as a result of the City's implementation of the Zoning Ordinance and the interpretation issued in 6-BA-2021.
3. The Zoning Ordinance and the City's implementation of the Ordinance have a discriminatory impact on persons with disabilities.

The Fair Housing Act Affords the Right to Request a Reasonable Accommodation in this Case

To assist the City in reviewing our reasonable accommodation application and scheduling the Board of Adjustment hearing for November 3rd, I am provided this summary of our rights to request a reasonable accommodation in this matter.

You have mentioned that the Zoning Ordinance limits the scope of disability accommodations that may be granted by the City. In particular, you have noted that disability accommodations to the Zoning Ordinance are applicable to development standards and separation requirements, not land uses allowed by zone.

You are correct in that Section 1.806 provides a list of criteria that must be satisfied in order for the Board of Adjustment to authorize "a disability accommodation from a development standard or separation requirement." In addition, Section 1.920 of the Zoning Ordinance provides guidance as to when the Zoning Administrator may grant an administrative accommodation and requires that "all other requests for disability accommodation shall be submitted to the Board of Adjustment as a request for disability accommodation." But, neither Section 1.806 nor Section 1.920 specifically prohibit a reasonable accommodation request pertaining to land uses allowed in certain zoning districts. Any attempt to do so would be contrary to the reasonable accommodation rights we are afforded under the federal and Arizona Fair Housing Acts. It would also violate the Supremacy Clause.

The Fair Housing Act is a "broad mandate to eliminate discrimination against and equalize housing opportunities for disabled individuals." *Canady v. Prescott Canyon Estates Homeowners Ass'n*, 204 Ariz. 91, 93 (App.2002). "Because it is a broad remedial statute, its provisions are to be generously construed and its exemptions must be read narrowly." *Id.*

The 1988 amendments to the federal Fair Housing Act (the "FHAA") require cities and towns to accept and "make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such persons [with disabilities] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Across the country, the "reasonable accommodation requirement has been applied to zoning ordinances and other land use regulations and practices." *Canady*, 204 Ariz. at 94. The City's disability accommodation procedure and its regulation of care homes are not exempt from Fair Housing Act mandates and the requirement to make reasonable accommodations of certain zoning ordinance provisions on a case-by-case basis. In fact, I have found no caselaw which has upheld a City's right to preclude or reject a FHA reasonable accommodation request by disabled residents as a result of a local zoning ordinance limiting reasonable accommodation applications to only certain claims.

The application of the Supremacy Clause in this instance was also addressed in the 2016 Joint Statement issued by the Department of Housing and Urban Development and the Department of Justice titled "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act" (the "2016 Joint Statement"). The 2016 Joint Statement advises cities and towns that the FHA makes it unlawful to refuse to accept and make reasonable accommodations to zoning ordinance provisions when such accommodations may be necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling. The 2016 Joint Statement references the Supremacy Clause of the U.S. Constitution as the basis for enforcing federal laws such as the FHA regardless of scenarios when a city's zoning ordinance has conflicting rules and requirements.

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.

Emphasis added. See 2016 Joint Statement, pg. 2. As a result of the Supremacy Clause, the City of Scottsdale may not limit the scope of a reasonable accommodation under the Fair Housing Act. Scottsdale Recovery is entitled to request a reasonable accommodation to allow a sober living use in the R-3 multifamily zoning district because such prohibition is discriminatory against disabled individuals and denies housing because of a protected characteristic.

Furthermore, the House Committee Report on the FHAA indicates that Congress intended the FHAA to apply to "local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps." 1988 U.S.C.C.A.N. at 2185. In fact, the House Committee Report made it abundantly clear that any discriminatory rule or policy is not defensible simply because of the manner in which such rule or practice has traditionally been constituted or carried out. Instead, such rules, policies and practices must be modified in some instances to accommodate the needs of the disabled.

New [FHAA] subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accommodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" has a long history in regulations and case law dealing with discrimination on the basis of handicap . . . A discriminatory rule, policy, practice, or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.

Giebeler v. M&B Associates, 343 F.3d 1143, 1148-49 (9th Cir.2003), citing H.R. REP. NO. 100-711, at 25 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2186 (internal citations omitted). With this legislative history in mind, courts have interpreted "the FHAA's accommodation provisions with the specific goals of the FHAA in mind: 'to protect the right of handicapped persons to live in the residence of their choice in the community,' and 'to end the unnecessary exclusion of persons with handicaps from the American mainstream.'" *Giebeler*, 343 F.3d at 1149, internal citations omitted.

In this case, the City of Scottsdale must accept Scottsdale Recovery's request for a reasonable accommodation of the City's Zoning Ordinance provision which prevents care homes from operating within the R-3 multi-family zoning district. The City of Scottsdale has adopted discriminatory rules and policies that are not defensible simply because the City has precluded all care homes in multi-family residential districts since its 2017 text amendment. Furthermore, there are no limitations in the FHAA which prevent Scottsdale Recovery from making this reasonable accommodation request. As set forth in the House Committee Report referenced above, the City of Scottsdale is required to consider and make changes to traditional rules or practices when it is necessary to permit a person with disabilities an equal opportunity to use and enjoy a dwelling, such as a condominium dwelling unit with several amenities and benefits that are instrumental in assisting disabled individuals who are choosing sobriety.

Caselaw Supports the Right to Request a Reasonable Accommodation in this Case

The following two cases support our request for a reasonable accommodation to allow the proposed sober living use at 7910/7920 E Wiltshire Drive in the R-3 zoning district:

In *Judy B. v. Borough of Tioga*, 889 F. Supp. 792 (M.D. Pa. 1995), the court held that requiring a local jurisdiction to either grant a use variance or waive requirements under the Zoning Ordinance, so that an entity could convert a former motel into residences for individuals with disabilities, constituted a reasonable accommodation under the FHA. In *Judy B. v. Borough of Tioga*, the motel property was located in a restricted commercial/industrial (CI) zone, that was surrounded on three sides by a medium-density residential district. The court emphasized that such relief would require an extremely modest accommodation in the borough's zoning rules, since the CI district where the property was located permitted uses such as professional and business offices, personal convenience services, and "other uses which shall be similar in character" as the proposed use. The court noted that the proposed use was consistent with the character of the surrounding neighborhood and would not adversely impact neighboring property owners, but rather would, if anything, subject the neighborhood to less traffic and fewer parking problems and disruptions than the former motel use or any/all of the uses expressly permitted in the CI zoning district.

In *Corporation of Episcopal Church in Utah v. West Valley City*, 119 F. Supp. 2d 1215 (D. Utah 2000), a church and association sought approval to build a residential treatment facility for recovery drug addicts and alcoholics in a residentially zoned area of the city. The Court granted summary judgment to the applicants because the city had refused to make a reasonable accommodation under the FHA after it denied a permit to build the facility because the zoning ordinance did not allow halfway houses and similar uses in the residential zoning district applicable to the property. The

city argued that the accommodation requested by the applicants was unreasonable in that it would require a drastic change in policy, but the court responded that no evidence whatsoever had been established other than complaints of neighbors.

The facts in Scottsdale Recovery's case are very similar to the cases cited above, in which a local jurisdiction fails to make a reasonable accommodation for disabled individuals because a group living environment for disabled individuals is prohibited in a certain zoning district. The cases cited above confirm that a municipality's zoning ordinance is subject to the FHAA standards and is a proper subject matter for a reasonable accommodation request when such ordinances prevents disabled individuals from living in certain zoning districts.

The 2016 Joint Statement by HUD and Department of Justice Supports a Reasonable Accommodation in this Case

The court decisions referenced above are reinforced by the 2016 Joint Statement, which provides several examples of local land use and zoning laws that may violate the Fair Housing Act, many of which are at issue in the case at hand:

- *"Prohibiting . . . housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status. . . ." See 2016 Joint Statement, pg. 3.*
 - In this case, the City of Scottsdale has interpreted 2 to 4 disabled individuals living in a sober living environment to be a "care home." Care homes are prohibited in all multi-family residential dwelling units throughout the City with the knowledge that such residents are members of a disabled 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" Id.*
 - In this case, the City of Scottsdale has imposed a zoning ordinance restriction on group housing for persons with disabilities by prohibiting all care homes in multifamily residential zoning districts. Meanwhile, this restriction is not imposed on group housing for persons without disabilities. Group homes are permitted in multifamily residential districts.
- *"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 housing." Id.*
 - In this case, the City of Scottsdale cannot refuse to accept or provide a reasonable accommodation of the zoning ordinance policy preventing care homes in all multifamily residential districts because such accommodation is necessary to allow persons with disabilities to have an equal opportunity to use and enjoy multifamily housing.
- *"Prohibiting . . . multi-family 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." Id. At 5.*
 - In this case, the City of Scottsdale is prohibiting all multi-family housing for persons with disabilities wanting to live in a group living situation that the City's defines as a "care home". Persons with disabilities, including those in alcohol and substance use recovery, are members of a protected class that are being negatively impacted by the discriminatory effects of the Zoning Ordinance. The City has presented no legally sufficient justification for making care homes or sober living uses a prohibited use in multifamily residential districts.
- *"Prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities." Id. at pg. 8.*
 - In this case, the City of Scottsdale Zoning Ordinance prohibits certain group homes for persons with disabilities in multi-family neighborhoods, which is discriminatory as well.

- *"Enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community." Id. at pg 8.*
 - In this case, the City of Scottsdale has enacted a Zoning Ordinance with an unjustified discriminatory effect on persons with disabilities who seek to live in a care home or a sober living environment in a multifamily residential district.

- *"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 people with disabilities less favorably than families and unrelated persons without disabilities."*
 - In this case, the City's interpretation of its Zoning Ordinance violates the FHAA in exactly this manner. A family of 2-4 unrelated adults living together as a household unit are allowed to live in any zoning district without special permission from the City of Scottsdale. On the other hand, the same Zoning Ordinance prohibits 2 to 4 unrelated, disabled adults living together as a household unit in all multifamily residential districts. The Zoning Ordinance violates the FHAA because it treats people with disabilities less favorably than families and unrelated persons without disabilities. Therefore, a reasonable accommodation request is justified and proper.

Scottsdale Recovery will be submitting a formal reasonable accommodation application under the FHAA to allow a sober living use at 7910 and 7920 E. Wilshire Drive, within the R-3 zoning district.

Please confirm the deadline for submitting this reasonable accommodation application in order for it to be heard and decided by the Board of Adjustment at the November 3rd hearing. Thank you.

Sincerely,

Heather Dukes

602.320.8866

Sent from [Mail](#) for Windows

Smith, Erica

From: Webmaster
Sent: Tuesday, December 05, 2017 3:46 PM
To: Smith, Erica
Subject: Comment on 12-05-2017 Agenda Item (response #2)

Comment on 12-05-2017 Agenda Item (response #2)

Survey Information

Site:	ScottsdaleAZ.gov
Page Title:	Comment on 12-05-2017 Agenda Item
URL:	http://www.scottsdaleaz.gov/council/meeting-information/agenda-comments/12-05-2017
Submission Time/Date:	12/5/2017 3:45:48 PM

Survey Response

AGENDA ITEM	
Which agenda item are you commenting on?	Proposed Care HOMes Ordinance 2-TA-2017
COMMENT	
Comment:	<p>Arizona Center for Disability Law is a non-profit law firm that assists Arizonans with disabilities to promote and protect their legal rights to independence, justice, and equality. ACDL offers the following comments about the City of Scottsdale's proposed Care Home Ordinance. The FHA makes it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap[.]" 42 U.S.C. § 3604(f)(1) (2017). Group homes are "dwellings." 42 U.S.C. § 3602(b) (2017). Zoning ordinances, practices and decisions that discriminate against individuals with disabilities violate 42 U.S.C. § 3604 if they contribute to making housing unavailable or denying housing to them. H.R. Rep. No. 100-711, at 24 (1988), 1988 U.S.C.C.A.N. 2173, 2185. The FHA expressly preempts local laws requiring or permitting violations of § 3604 or § 3617. 42</p>

U.S.C. § 3615 (2017); see also Nevada Fair Hous. Ctr., Inc., 565 F. Supp. 2d at 1183 (concluding that the FHAA preempted Nevada's facially discriminatory group home statute). A zoning ordinance or decision that "facially single[s] out the handicapped and appl[ies] different rules to them" violates the FHA under a disparate treatment theory. *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995). A determination of facial discrimination does not depend upon "a showing of malice or discriminatory animus of a defendant." *Id.* at 1501 Although a benign legislative intent does not convert a facially discriminatory law into a neutral law, zoning officials may justify a facially discriminatory law by showing "(1) that the restriction benefits the protected class or (2) that [the restriction] responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes." *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1049–50 (9th Cir. 2007); see also *Mont. Fair Hous., Inc. v. City of Bozeman*, 854 F. Supp. 2d 832, 839 (D. Mont. 2012) (City failed to show that its discriminatory policy was objectively legitimate because the preservation of a neighborhood's residential character neither benefits the disabled nor responds to a legitimate, non-stereotypical safety concern); *Nev. Fair Hous. Ctr., Inc.*, 565 F. Supp. 2d at 1186 (FHA preempted Nevada's facially discriminatory zoning policy because it did not address "handicap-specific benefits or handicap-specific safety concerns"). Many of the City's Ordinance Provisions are facially discriminatory or will have a discriminatory effect based on disability or a consequence of disability. Here is a brief summary of concerns:

- Vague and Confusing Definitions. The Ordinance's definitions of critical terms, such as Care Home, Group Home, Minimal Residential Health Care Facility, Residential Health Care Facility, and Specialized Health Care Facility are vague and confusing. The City of Scottsdale (City) has not defined key terms, such as health care institution, that appear in the text of definitions. While state laws include definitions of terms, such as health care institution, the City did not incorporate the statutory definitions. The City included several terms, such as Minimal Residential Health Care Facility and Specialized Residential Health Care Facility in the definitions, but those types of facilities do not otherwise appear in the ordinance text as a permitted or conditional land use. Vague and confusing definitions in zoning ordinances make it impossible for citizens to comply with the zoning

requirements. Equally important, vague and confusing definitions lead to inconsistent and discriminatory code enforcement, which can make state, county and city governments subject to liability for discrimination claim under the Fair Housing Act and Title II of the Americans with Disabilities Act as well as other civil rights violations. • Discriminatory Impact on Specific Disabilities. The City's zoning ordinance will likely have a discriminatory impact upon specific disabilities, such as alcoholism, where individuals would otherwise satisfy the Care Home definition, except for the absence of a license. The State of Arizona Department of Health Services licenses many residential facilities, such as group homes for people living with developmental disabilities, behavioral health residential homes, therapeutic care homes, assisted living facilities, and nursing homes, but they do not currently license sober homes. If a dwelling does not fit into the Care Home definition, the only other option is to seek a conditional use permit in one zoning district while other groups of unrelated persons do not face the same restrictions. The FHA recognizes disparate impact claims. • Limited Permitted Uses of Care Homes. The City provides for Care Homes—residences for people with disabilities—to be a permitted land use only in the City's two single-family residential zoning districts, in contrast to Group Homes—residences of any group of unrelated persons—to be a permitted land use in other zoning districts. Nor does the City does list Care Homes as a conditional use in any other zoning district. Zoning regulations that deny people with disabilities in group living arrangements an equal opportunity to live in the housing of their choice when compared to their non-disabled citizens violates the ADA and Title II of the Americans with Disabilities Act. • Discriminatory Treatment . The City subjects Care Homes to additional criteria that do not apply to other groups of unrelated persons. The City imposes criteria related to (1) the Floor area ratio, 2) maximum number of residents, including supervisors and staff, 3) location and density requirements, and 5) compatibility that families and other groups of unrelated persons are not subject to. Zoning regulations that subject groups of people with disabilities less favorably than families or other groups of unrelated persons are discriminatory. This zoning ordinance facially singles out people with disabilities and applies different rules to them and is not objectively legitimate to serve the stated purposes of the statute. In particular, spacing requirements have

been struck down by numerous courts as facially discriminatory treatment. • Reasonable Accommodation Standards. The City takes the position that to grant a reasonable accommodation from a development standard or a separation requirement, the Board of Supervisors must find sufficient evidence of eight criteria. First, only one of the criteria addressing the necessity of the reasonable accommodation is lawful. The FHA does require an individual seeking a reasonable accommodation to show that they need the accommodation for an equal opportunity to use and enjoy the housing of their choice. However, the FHA does not impose a requirement that the individual show that they cannot find or would be unduly restricted from finding other housing in the City without the accommodation. These "unduly restricts housing" standard does not comport with the "equal opportunity for choice" standard and is impractical to prove. Second, under the FHA, the City must consider whether its actions generally make housing unavailable to people with disabilities who require group living arrangements to the extent that it becomes financially infeasible for service providers to locate in Scottsdale. Third, the City states that the reasonable accommodation must comply with all applicable building and fire codes. Numerous across-the-board rules applying to fire safety, rather than individualized determinations about fire safety based on the residents abilities and needs and state licensing requirements, have been stuck down as unlawful where they make housing unavailable due to the expense. Thank you for the opportunity to comment. ACDL is willing to meet with the City and disability community stakeholders to discuss non-discriminatory zoning provisions.

Comments are limited to 8,000 characters and may be cut and pasted from another source.

NAME

Name:

Rose Daly-Rooney, ACDL Legal Director

CONTACT INFORMATION

Please provide the following information so someone may follow up with you if they have questions about your comment (optional).

Email:

rdalyrooney@azdisabilitylaw.org

Phone:

(520) 327-9547

Address:	177 N. Church, Ste 800, Tucson 85701
Example: 3939 N. Drinkwater Blvd, Scottsdale 85251	