

SUMMARY OF KEY POINTS IN NEW JOINT STATEMENT

Below is a summary of key points in the *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practice and the Application of the Fair Housing Act*.

Accommodation Requests

As a general rule, a city may deny an accommodation request if granting it would impose an undue financial and administrative burden on local government or would fundamentally alter the city's zoning scheme. Factors to consider include the nature and extent of the potential burden, the cost of the requested accommodation, the financial resources of the local government, and the benefits of the accommodation to the disabled individual. [Pages 14-15] A city can also deny an accommodation if there is no disability-related need for an accommodation because there is no relationship between the accommodation and the disability. [Page 15] The accommodation must actually be *necessary* to afford the disabled individual equal access to housing. A city is well within its rights to ask a requesting person or entity to demonstrate why the accommodation is indeed necessary.

In particular, the new Joint Statement makes clear that, when reviewing a group home's request for an accommodation from an ordinance, **municipalities may take into account concerns about the overconcentration and proximity of group homes to one another.** [Page 12]

While cities must treat equally all homes housing a particular number of unrelated individuals, cities may in some circumstances consider the impact of high-occupancy homes on a community when assessing an accommodation request. For example, when a group home seeks a reasonable accommodation to operate in an area with limited on-street parking, a city may raise concerns that the group home might create too much demand for parking than would a typical family. This could justify denying a reasonable accommodation request. [Page 14]

It is important to keep in mind that a group home must have the opportunity to both apply for a reasonable accommodation and also take part in a back-and-forth

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with a municipality to mitigate any burden that fulfilling the request might pose. Requests for accommodation can be either written or oral and can take place at any point.

Preventing De Facto Segregation

The Supreme Court ruled in *Olmstead v. L.C.* that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of people with disabilities in institutional settings when they could otherwise live in integrated settings. A segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. [Page 11] The Joint Statement makes clear that ADA principles such as this can apply in the context of the Fair Housing Act's disability protections. Therefore, it is possible to interpret the ADA prohibition on de facto segregation of congregate living to extend in the FHA context to a community populated primarily by sober homes. In practice, this means that this principle from *Olmstead* may be a defense to denying a group home's accommodation request.

Distance Requirements

Distance or spacing requirements that aim to address group home density are generally inadvisable and may be discriminatory, especially if they aim to discriminate against those with disabilities, but **facially neutral distance requirements may be permissible** if they apply equally to all homes with more than a certain number of unrelated individuals, if the city can demonstrate that the requirements are not based on stereotypical fears about living near people with disabilities or motivated by animus against the disabled, and if such distance requirements are the only method to accomplish a city's stated purpose. [Pages 11-12] The burden of demonstrating the need for such distance requirements – such as preventing the fundamental alteration of a municipal zoning scheme – will fall upon the local government. The city could, in theory, incorporate the *Olmstead* argument, that failing to enact distance requirements would necessarily undermine community integration.

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Licensing and Registration

Licensing and other requirements for group homes for health and safety purposes **may be permitted** if they are not based on stereotypes, equally apply to all homes with a minimum number of unrelated residents, and do not target homes based on the presence of individuals with a disability. For example, **requiring only individuals with disabilities to obtain a license to cohabitate would be discriminatory**. Also, a licensing requirement enacted to address a problem that also could be addressed via less discriminatory means would violate the Fair Housing Act. However, a *necessary* licensing scheme that required all homes that house more than X number of unrelated individuals to obtain a license would not automatically be discriminatory on its face. [12-13] For example, a city might require any landlord renting to more than a certain number of unrelated people to register with the city. That said, the requirements to obtain the license would have to be reasonably possible to be fulfilled.

Incentivizing Group Homes to Locate Elsewhere

The Fair Housing Act allows cities and states to implement strategies to integrate group homes for those with disabilities in neighborhoods where they are not yet located, including via affirmative marketing and incentives. For example, **a city could offer variances or tax incentives to sober homes that locate in neighborhoods where sober homes are not currently located**, rather than in neighborhoods where there are already many sober homes. [Page 13]

People Not Protected by the Fair Housing Act

Not everyone struggling with addiction to drugs or alcohol is protected under the Fair Housing Act. Those currently using illegal drugs are not protected by the Fair Housing Act. However, **the fact that one or more residents of a group home is currently illegally using drugs does not deprive the other residents of Fair Housing Act protections**. [Page 7] In practice, this means that if a sober home resident were to abuse illegal drugs, a city would not be permitted to take an otherwise prohibited action under the Fair Housing Act against the whole sober home, such as revoking its reasonable accommodation or license.

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The Fair Housing Act also does not protect people whose tenancy would create a *direct* threat to the health and safety of others or whose tenancy demonstrably would result in substantial physical damage to the property of others. [Page 8]

Preventing Fraud

The Fair Housing Act **does not prevent state or local government from taking action in response to criminal activity**, insurance fraud, Medicaid Fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes. [Page 13]

Treating All Group Homes the Same

The Fair Housing Act treats people who live in sober homes the same as people with disabilities who live in other group homes. Targeting people or homes based on a specific disability is a form of intentional discrimination. [Page 9] This means that **an ordinance may not specifically single out all sober homes in a manner that treats them differently than other homes** housing a large number of unrelated individuals, including other group homes.

Things Cities and States Cannot Do

Cities and states CANNOT:

- **Pass an ordinance prohibiting all group homes or sober homes from being located in single-family neighborhoods.** [Page 7]
- Impose restrictions or conditions on group homes for people with disabilities that are not imposed on other groups of unrelated individuals, for, by example, requiring a permit for the disabled to live in a single-family home or community, while not requiring that of other residents. [Page 2]
- **Impose restrictions on housing based on public safety concerns that are based on stereotypes about residents' disability status**, for, by example, requiring additional security measures because of a belief that those addicted to drugs are more likely to engage in criminal activity. [Page 2]
- Prohibit the development of housing based on a belief that residents will have a disability. For example, a city cannot place a moratorium on the

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development of multifamily housing or of group homes because of concern that residents will be disabled. [Page 2]

- Refuse to provide a reasonable accommodation to a law, policy, or ordinance when such accommodation is *necessary* to allow a person with disabilities to have an equal opportunity to use and enjoy a housing unit, subject to reasonable accommodation exceptions noted above. [Page 3]
- **Act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about residents because those residents have a disability, such as addiction.** However, a city council or zoning board is not legally bound by every discriminatory statement said by every person who speaks at a public hearing about a proposed ordinance. [Page 5]
- Cite homes for the disabled with code violations if they do not cite other residences for similar violations. [Page 2]
- Require individuals with disabilities to receive medical or support services they do not need or want as a condition for living in a group home or living in a home located in a particular community. [Page 7]

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