

1000 Homes Learning Day

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The Legal Aspects of Developing Supportive Housing

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What Does Fair Housing Have to Do With Increasing the Supply of Supportive Housing?

- Local land use and zoning regulations historically have restricted the development, siting & use of housing for people with disabilities;
- Without legal protections communities have successfully defeated projects or re-shaped them, undercutting size, location & program operations;
- The law now provides protections generally and specifically for permanent supportive housing;
- The law is a tool for addressing opposition from local government and the community.

Relevant Laws

- Federal Fair Housing Amendments Act of 1988
- California Fair Employment & Housing Act
- Americans with Disabilities Act, Title II
- California Health & Safety Code § 1504.5
- SB 2 – Gov't Code § 65583(a)(5)
- California laws protecting affordable housing

Federal & State Fair Housing Laws

Prohibit local governments & individuals from denying or to “otherwise make unavailable” housing based on:

1. Race
2. Color
3. National Origin
4. Religion
5. Sex
6. Familial Status
7. Disability
8. Marital Status*
9. Sexual Orientation*
10. Ancestry*
11. Source of Income*

Federal Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq.
California Fair Employment & Housing Act, Cal.Gov't. § 12900 et seq.

Federal and State Fair Housing Laws

- Apply to residential dwellings: single family homes*, duplexes, multi-family & usually shelters;
- Prohibit discrimination against housing for people with disabilities in siting, development & use;
- Require eliminating discriminatory regulations, procedures & practices;
- Require reasonable accommodation.

Residential Uses Protected by Fair Housing Laws

Congregate or group living arrangement in single family dwelling	State licensed residential care, drug & alcohol programs, social rehabilitation	Sober living homes [people currently in recovery]
Transitional housing AND Permanent Supportive Housing	Emergency shelters & SRO's	Transitional Age Youth (TAY)

Discrimination in Land Use & Zoning

Type: Intentional

- On its face singles out;
- Treats housing for people w/disabilities differently by:
 - requiring more process;
 - imposing more restrictions;
- Must be eliminated.

Type: Effect

- Does not specifically mention disability;
- Adverse/disparate impact on housing for people w/disabilities;
- Eliminate or in some instances provide reasonable accommodation.

Americans With Disabilities Act

Title II

- Applies to public entities - state and local governments in planning & land use activities
- Covers program services/offices, not housing
- Cannot exclude/deny benefits or participation
- Provide services/activities in the most integrated setting - equal opportunity
- Reasonable Modifications (Accommodations)
- Physical Access

What Are Land Use and Zoning Constraints?

- Regulations that deny housing opportunities by prohibiting or restricting the development, siting and/or use of housing for people with disabilities;
- Regulations that single out housing for people with disabilities and treat it differently based on the personal characteristics of the residents;
- Regulations that do not single out but have a disparate impact on housing for people with disabilities.

Siting Challenges for Supportive Housing

(Before 2002)

- Supportive housing compared to state licensed homes that provide “care and supervision”
- Subjected to conditional use permit with public notice & hearing process
- Restricted to R-3 and R-4 or commercial zones
- Local government misclassified supportive housing as a business and restricted siting based on commercial use.

Supportive Housing & Other Independent Living Arrangements Exempted from Licensure

- Health & Safety Code § 1504.5 (2002) exempts supportive housing from licensure by distinguishing it from those that provide “care & supervision”
- Legislative intent is to further integration of people with disabilities to community living, housing of choice, with supports necessary for independent living
- Law defines supportive housing
- Does not specifically address local zoning constraints

Supportive Housing

- Rental housing affordable to people w/disabilities
- Independent including:
 - each person holds lease/rental agreement in own name & responsible for the rent \$
 - has own room & is responsible for any shared tenancy arrangements
 - housing is permanent
 - housing is subject to California landlord-tenant laws
 - supportive services are voluntary
- Community Living Support Services

Health & Safety Code § 1504.5.

What Are Community Living Support Services?

Services that are:

- chosen by the individual
- services that further independent living

Examples:

- education/training in meal planning, budgeting, medication self-management, vocational opportunities
- assistance w/arrangements to meet basic needs

SB 2 Housing Element Law Amendments

- Requires local government to analyze constraints to supportive housing for people with disabilities & demonstrate efforts to remove constraints;
- Clarifies that supportive housing is a residential use;
- Supportive housing is subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

Summary of Current Protections Specifically for Supportive Housing

- Law defines supportive housing structure and function so legal protections can be invoked;
- Supportive housing is deemed a residential use;
- Supportive housing should not be subject to conditional use permit or other entitlement;
- Multi-family developments should site by right in multi-family residential zones;
- Use of single family home for supportive housing should site by right in R-1 and R-2 zones.

Reasonable Accommodation

Local governments have an affirmative duty to be flexible in the application of land use & zoning regulations, rules and procedures or may need to waive a rule if it is necessary for equal access to housing for people with disabilities.

Providing reasonable accommodations is a requirement under federal and state fair housing laws and the ADA.

Reasonable Accommodation

- Affirmative duty for housing providers (including city or county) under federal and state fair housing laws, and the ADA;
- Available to individuals with disabilities, their families or developers of housing for people with disabilities;
- Housing Element law requires adoption of a written procedure. Gov't § 65583(a)(4), (c)(1)(B)(3).

Reasonable Accommodation vs. Conditional Use Permit

Reasonable

Accommodation

- looks at the needs of the individual
- avoids public process
- not based on aesthetics
- includes burden analysis

Conditional Use Permit

- general welfare standard
- doesn't look at need for access to housing
- public process for input
- wrong standard for civil rights matter

Overview of Analysis for Reasonable Accommodation:

- The housing that is the subject of the request is for person/ people w/disabilities;
- The accommodation is necessary to make housing available to people w/ disabilities;
- Granting would not impose an undue financial or administrative burden;
- Granting will not result in a fundamental alteration of the zoning code.

Reasonable Accommodation Examples:

- Waiver of fence height restrictions
- Using a second unit for caregiver
- Locating residential in commercial zone
- Using garage for resident counseling
- Extending the footprint
- Deviating from side yard requirements
- Reduction in parking
- Waiving project development design elements to accommodate accessibility features.

Interactive Process

- If the local government intends to deny the request for reasonable accommodation, it must engage in the *interactive process*;
- Parties must meet in good faith to consider alternate accommodation that would meet the needs of the application;
- Applicant is not required to accept this
- Implied in the law/authority uncertain.

California Laws Protecting Affordable Housing

- **CA Housing Accountability Act (Gov't § 65589.5)**
 - local planning cannot deny or unreasonably condition projects
 - requires very specific written findings to do so
 - significant consequences to local government for violating law
- **CA Law Prohibiting Discrimination Against Affordable Housing (Gov't § 65008)**
 - forbids discrimination against affordable housing (and shelters) by local govt. agencies exercising planning & land use powers
 - prohibits discriminatory policies, laws against affordable housing
 - protections extend to financing/occupancy by low – moderate income
 - liability for both unintentional and intentional discrimination

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